



AGENDA
NEWMAN CITY COUNCIL
SPECIAL MEETING JUNE 10, 2014
CITY HALL CONFERENCE ROOM, 6:00 P.M., 938 FRESNO STREET

1. Call To Order.
2. Roll Call.
3. Items from the Public - Non-Agenda Items.
4. Workshop - Review 2014/2015 Fiscal Year Budget. ([View Report](#)) ([View Preliminary Budget](#))
5. Adjournment.



AGENDA
NEWMAN CITY COUNCIL
REGULAR MEETING JUNE 10, 2014
CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET

1. **Call To Order.**
2. **Pledge Of Allegiance.**
3. **Invocation.**
4. **Roll Call.**
5. **Declaration Of Conflicts Of Interest.**
6. **Ceremonial Matters.**
 - a. Proclamation – Disability Awareness Month.
7. **Items from the Public - Non-Agenda Items.**
8. **Consent Calendar**
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants. ([View Warrant Register](#))
 - c. Approval Of Minutes Of The May 27, 2014 Meetings. ([View Minutes](#))
 - d. Adopt Resolution No. 2014- , A Resolution Requesting That The Board Of Supervisors Of Stanislaus County Consolidate The City Of Newman Municipal Election To Be Held November 4, 2014 With The Gubernatorial General Election To Be Held On The Same Date. ([View Report](#))
 - e. Adopt Resolution No. 2013- , A Resolution Approving The City Of Newman CDBG Tulare Street 2014 Infrastructure Improvement Project As Complete And Authorizing Ed Katen As Mayor, And Michael E. Holland As City Clerk To Record A Notice Of Completion. ([View Report](#))
 - f. Adopt Resolution No. 2014- , Approving A Three (3) Year Lease Agreement With Newman Co-Op Nursery School And Authorizing The City Manager To Execute Said Lease For The Property Located At 1147 “R” Street. ([View Report](#))
9. **Public Hearings**
 - a. Adopt Resolution No. 2014- , A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4. ([View Report](#))

- b. Second Reading And Adoption Of Ordinance 2014- , Amending Title 4 Building Regulations, Chapter 4.11 Floodplain Management, Of The Newman City Code And Authorize Staff To Publish A Summary Of Said Ordinance. ([View Report](#))
- c. Second Reading And Adoption Of Ordinance 2014- , Amending Title 5 Zoning, Adding Chapter 29 Urban Growth Boundary, Of The Newman City Code And Authorize Staff To Publish A Summary Of Said Ordinance. ([View Report](#))

10. Regular Business

- a. Adopt Resolution No. 2014- , A Resolution Calling For And Giving Notice Of The Holding Of A General Municipal Election To Be Held In The City Of Newman On Tuesday, November 4, 2014, For The Purposes Of Submitting To The Qualified Voters A Ballot Measure Amending The City Of Newman General Plan To Create An Urban Growth Boundary, Requesting Consolidation Thereof With The Statewide Election To Be Held On The Same Date, And Requesting The Stanislaus County Board Of Supervisors To Permit The Stanislaus County Clerk To Render Specific Services To The City Of Newman Relating To The Conduct Of The General Municipal Election. ([View Report](#))
- b. Second Reading And Adoption Of Ordinance 2014- , An Ordinance Of The City Council Of The City Of Newman Approving A Second Amendment To The Sherman Ranch Development Agreement And Authorize Staff To Publish A Summary Of Said Ordinance. ([View Report](#))
- c. Adopt Resolution No. 2014- , A Resolution Approving An Agreement With The Villas Communities, LLC And Authorizing The City Manager To Execute Said Agreement. ([View Report](#))
- d. Adopt Resolution No. 2014- , A Resolution Designating The Americans With Disabilities Act (ADA) Coordinator And Adopting ADA Grievance Procedure. ([View Report](#))

11. Items From District Five Stanislaus County Supervisor.

12. Items From The City Manager And Staff.

13. Items From City Council Members.

14. Adjournment.

Calendar of Events

June 7 - Outdoor Movie Night - *Toy Story* - Sherman Park - 8:00 P.M.

June 10 - City Council - 7:00 P.M.

June 12 - Recreation Commission - Cancelled.

June 15 - Father's Day.

June 17 - City Council - Special Meeting - 7:00 P.M.

June 19 - Planning Commission - Cancelled.

June 24 - City Council - 7:00 P.M.

June 29 - Comforting Kids Car Show - Pioneer Park - 9:00 A.M. - 4:00 P.M.

July 4 - Independence Day Holiday - City Offices Closed.

July 8 - City Council - 7:00 P.M.

July 10 - Recreation Commission - 7:00 P.M.

July 17 - Planning Commission - 7:00 P.M.

July 19 - Outdoor Movie Night - *Despicable Me 2* - Sherman Park - 8:00 P.M.

July 21 - Comforting Kids Car Show - Pioneer Park - 9:00 A.M. - 4:00 P.M.

July 22 - City Council - 7:00 P.M.



**City of Newman
City Manager's Office
Memorandum**

Date: June 6, 2014
To: Mayor and City Council
From: Michael E. Holland *MEH*

Subject: Special Budget Workshop @ 6:00 p.m.

A workshop has been scheduled for 6:00 p.m. so that staff can present the City's 2014/15 budget. Staff is preparing a PowerPoint presentation outlining projected revenues and the anticipated expenditures. The preliminary budget was handed out to the Council at the May 27th Council meeting. Staff is NOT anticipating that Council will take final action on the budget on Tuesday but rather has scheduled a special session on June 17th at 7:00 P.M. so the full Council may consider the budget. Staff respectfully requests direction on the draft budget so that we prepare a final version for the Council to consider at the June 17th Special Meeting.

Proclamation

of the Mayor of the City of Newman

WHEREAS, the City Council of the City of Newman have recognized healthy communities as a priority; and

WHEREAS, disabilities can affect all people, regardless of race, age, gender, or social status and the essence of life is not embodied by physical or mental perfection, but is an integral part of the human spirit; and

WHEREAS, increasing public awareness about diverse abilities is vital to fighting the stigma and discrimination that often serve as a barrier to employment, socialization, and individual well-being; and

WHEREAS, there are an estimated 4,268,000 people with disabilities in the State of California, and over 87,000 people over the age of 5 with disabilities in Stanislaus County; and

WHEREAS, within the next year, at least one out of eight Californians will experience a disability personally or through a family member; and

WHEREAS, the Society for Disabilities will commemorate June 2014, and each June hereafter, as *Disability Awareness Month*.

NOW, THEREFORE, I Ed Katen, Mayor, on behalf of the Newman City Council, do hereby proclaim the month of June as Disability Awareness Month in the City of Newman and urge all citizens to become aware of the needs and capabilities of persons with disabilities.

Signed the 10th day of June, 2014

Signed _____



Accounts Payable

ACH Batch AP register for Council



CITY OF NEWMAN
938 Fresno St. - 2nd Floor
P.O. Box 787
Newman, CA 95360
209-862-3725

User: efaria

Printed: 05/27/2014 - 9:43 AM

<u>Name</u>	<u>Vendor No</u>	<u>Account</u>	<u>Invoice No</u>	<u>Description</u>	<u>Amount</u>	<u>Check Date</u>	<u>ACH Chec</u>
SJVIA	SJV01	10-00-2260	June 2014	Health Insurance premium/June 2014	16,764.22	05/27/2014	Yes
					<hr/> <hr/>		
					16,764.22		
					<hr/> <hr/>		

Accounts Payable

Manual check register for Council



CITY OF NEWMAN
 938 Fresno St. - 2nd Floor
 P.O. Box 787
 Newman, CA 95360
 209-862-3725

User: efaria

Printed: 06/02/2014 - 11:11 AM

Name	Account	Amount	Check Number	Check Date	Description
Rabobank	10-21-6120	1,425.00	105539	06/02/2014	HSA deposit/E. Gonzalez
Rabobank	60-50-6120	37.50	105539	06/02/2014	HSA deposit/E. Gonzalez
Rabobank	63-56-6120	37.50	105539	06/02/2014	HSA deposit/E. Gonzalez
		<hr/> <hr/>			
		1,500.00			
		<hr/> <hr/>			

Accounts Payable Void Check Register



CITY OF NEWMAN
938 Fresno St. - 2nd Floor
P.O. Box 787
Newman, CA 95360
209-862-3725

User: efaria

Printed: 06/02/2014 - 9:27 AM

Vendor N	Name	Account	Invoice No	Description	Amoun	Check Da	Selected for Void
VIL07	VILLALOBOS MIGU	10-21-6695	02/15/14	Per diem/POST training/Villalobos	40.00	02/06/2014	yes
					40.00		



Manual Check Register June 5, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
City of Riverbank	10-03-6690	\$ 15.00	105552	6/2/2014	Brounstein "A lesson in Ethics"/Maier
City of Riverbank	10-02-6690	\$ 15.00	105552	6/2/2014	Brounstein "A lesson in Ethics"/Holland
City of Riverbank	10-06-6690	\$ 15.00	105552	6/2/2014	Brounstein "A lesson in Ethics"/Ocasio
City of Riverbank	60-50-6690	\$ 7.50	105552	6/2/2014	Brounstein "A lesson in Ethics"/Kim
City of Riverbank	63-56-6690	\$ 7.50	105552	6/2/2014	Brounstein "A lesson in Ethics"/Kim
City of Riverbank	10-02-6690	\$ 100.00	105552	6/2/2014	City's share of cost of program Brounstein "A lesson in Ethics"
		\$ 160.00		6/2/2014 Total	
		\$ 160.00		Grand Total	



AP Check Register June 6, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
AUS Sacramento MC Lockbox	10-33-6200	\$ 63.91	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
AUS Sacramento MC Lockbox	10-44-6200	\$ 42.61	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
AUS Sacramento MC Lockbox	60-50-6200	\$ 63.91	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
AUS Sacramento MC Lockbox	63-56-6200	\$ 42.61	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
AUS Sacramento MC Lockbox	10-22-6200	\$ 25.84	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
AUS Sacramento MC Lockbox	10-07-6200	\$ 96.80	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
AUS Sacramento MC Lockbox	10-21-6200	\$ 79.72	6/6/2014	105553	Mat rental/uniform cleaning/towels/May 2014
		\$ 415.40		105553 Total	
Atkinson, Andelson, Loya, Ruud and Romo	10-15-6200	\$ 2,525.00	6/6/2014	105554	Professional services rendered thru 4/30/14 on matter 10
		\$ 2,525.00		105554 Total	
AT&T	10-21-6420	\$ 136.53	6/6/2014	105555	Emergency dispatch line @ PD 4/20/14 to 5/19/14
AT&T	10-21-6420	\$ 336.23	6/6/2014	105555	T1 line @ PD 4/20/14 to 5/19/14
AT&T	10-14-6420	\$ 5.73	6/6/2014	105555	Analog line for alarm @ city hall 4/13/14 to 5/12/14
AT&T	60-50-6420	\$ 5.73	6/6/2014	105555	Analog line for alarm @ city hall 4/13/14 to 5/12/14
AT&T	63-56-6420	\$ 5.73	6/6/2014	105555	Analog line for alarm @ city hall 4/13/14 to 5/12/14
AT&T	10-21-6420	\$ 17.61	6/6/2014	105555	Telephone service 4/13/14 to 5/12/14
AT&T	10-14-6420	\$ 46.83	6/6/2014	105555	Telephone service 4/13/14 to 5/12/14
AT&T	10-07-6665	\$ 15.72	6/6/2014	105555	Telephone service 4/13/14 to 5/12/14
AT&T	63-56-6420	\$ 46.42	6/6/2014	105555	Telephone service 4/13/14 to 5/12/14
AT&T	60-50-6420	\$ 16.66	6/6/2014	105555	Telephone service 4/13/14 to 5/12/14
		\$ 633.19		105555 Total	
BERTOLOTTI DISPOSAL	10-41-6200	\$ 60,801.50	6/6/2014	105556	Garbage service/May 2014
		\$ 60,801.50		105556 Total	
B G AUTO	60-50-6300	\$ 18.94	6/6/2014	105557	Mirror and WD40
		\$ 18.94		105557 Total	
Bohannon Insurance Group	10-00-2260	\$ 729.24	6/6/2014	105558	Consulting fee for health insurance/May 2014
		\$ 729.24		105558 Total	
CALIF DEPT OF PUBLIC HEAL	63-56-6635	\$ 100.00	6/6/2014	105559	Grade D3 examination fee/R. Rocha
		\$ 100.00		105559 Total	
CALIFORNIA CONSULTING, LL	10-02-6200	\$ 1,000.00	6/6/2014	105560	Grant writing services monthly retainer/June 2014
CALIFORNIA CONSULTING, LL	60-50-6200	\$ 1,000.00	6/6/2014	105560	Grant writing services monthly retainer/June 2014
CALIFORNIA CONSULTING, LL	63-56-6200	\$ 1,000.00	6/6/2014	105560	Grant writing services monthly retainer/June 2014
		\$ 3,000.00		105560 Total	
CARTER JEFF	68-68-7722	\$ 100.00	6/6/2014	105561	Monthly rent of parking lot/June 2014
		\$ 100.00		105561 Total	
CBA (ADMIN FEES)	10-00-2261	\$ 247.00	6/6/2014	105562	Dental-vision administration fees/June 2014
		\$ 247.00		105562 Total	



AP Check Register June 6, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
CENTRAL SANITARY SUPPLY	10-44-6660	\$ 139.89	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-44-6670	\$ 69.94	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-07-6300	\$ 34.97	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-21-6300	\$ 34.98	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-07-6665	\$ 17.48	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-22-6300	\$ 17.49	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-44-6300	\$ 17.48	6/6/2014	105563	
CENTRAL SANITARY SUPPLY	10-46-6300	\$ 17.49	6/6/2014	105563	
		\$ 349.72		105563 Total	
Churchwell White, LLP	10-15-6200	\$ 324.53	6/6/2014	105564	Monthly retainer for legal ser
Churchwell White, LLP	60-50-6200	\$ 324.44	6/6/2014	105564	Monthly retainer for legal ser
Churchwell White, LLP	63-56-6200	\$ 324.43	6/6/2014	105564	Monthly retainer for legal ser
		\$ 973.40		105564 Total	
City of Turlock	10-15-6200	\$ 1,000.00	6/6/2014	105565	Legal services rendered 1/1/14 to 1/31/14
City of Turlock	10-15-6200	\$ 1,000.00	6/6/2014	105565	Legal services rendered 2/1/14 to 2/28/14
		\$ 2,000.00		105565 Total	
COELHO CARL J. (CHUCK)	10-22-6690	\$ 50.00	6/6/2014	105566	Monthly fire stipend/Coelho/June 2014
		\$ 50.00		105566 Total	
Cogdill and Associates, Inc.	64-56-6201	\$ 2,800.00	6/6/2014	105567	Appraisal services for 27725 Hardin Rd
		\$ 2,800.00		105567 Total	
COMCAST CABLE	60-50-6200	\$ 38.53	6/6/2014	105568	High speed internet/sewer
COMCAST CABLE	63-56-6200	\$ 38.55	6/6/2014	105568	High speed internet/water
COMCAST CABLE	10-21-6200	\$ 38.53	6/6/2014	105568	High speed internet/PD
		\$ 115.61		105568 Total	
CROP PRODUCTION SERVICES	60-50-6300	\$ 800.73	6/6/2014	105569	30 gallons Gly Star/15 gallons Amine/WWTP
		\$ 800.73		105569 Total	
CSG Consultants, Inc	10-23-6215	\$ 2,848.23	6/6/2014	105570	Building permit issuance/May 2014
CSG Consultants, Inc	10-23-6215	\$ 286.88	6/6/2014	105570	Plan check services/May 2014
CSG Consultants, Inc	10-23-6243	\$ 25.00	6/6/2014	105570	Business license inspection/Sam's Mini Mart/May 2014
		\$ 3,160.11		105570 Total	
Dave's Drain Cleaning & Plumbing	64-56-7505	\$ 357.45	6/6/2014	105571	Installed new toilet at corp yard/cameraed sewer line
Dave's Drain Cleaning & Plumbing	61-55-7505	\$ 357.45	6/6/2014	105571	Installed new toilet at corp yard/cameraed sewer line
		\$ 714.90		105571 Total	
Del Puerto Health Care District	60-50-6200	\$ 140.00	6/6/2014	105572	Pre-employment physical/12 panel drug screen/P. Garcia
		\$ 140.00		105572 Total	
E&M ELECTRIC, INC.	10-07-6200	\$ 72.50	6/6/2014	105573	Repaired light switch @ 926 Fresno St
E&M ELECTRIC, INC.	64-56-7505	\$ 227.92	6/6/2014	105573	Added new receptical in storage reoom for battery charges/Corp y
E&M ELECTRIC, INC.	63-56-6225	\$ 253.75	6/6/2014	105573	Changed out t relays @ well #5



AP Check Register June 6, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
E&M ELECTRIC, INC.	63-56-6225	\$ 72.50	6/6/2014	105573	Checked out problem with well #5 not starting
		\$ 626.67		105573 Total	
ENERGY SYSTEMS	63-56-6225	\$ 1,732.48	6/6/2014	105574	Emergency generator repairs at well #8
		\$ 1,732.48		105574 Total	
ENVIRONMENTAL TECHNIQUES	60-50-6300	\$ 4,343.00	6/6/2014	105575	Bio-dredging of aeration basin #2 @ WWTP
		\$ 4,343.00		105575 Total	
FERGUSON ENTERPRISES, INC	63-56-6300	\$ 416.58	6/6/2014	105576	6 wide cast iron coupling/flange/gasket
		\$ 416.58		105576 Total	
FGL ENVIRONMENTAL, INC	60-50-6200	\$ 287.00	6/6/2014	105577	Inorganic analysis/support analysis/WWTP
FGL ENVIRONMENTAL, INC	60-50-6200	\$ 287.00	6/6/2014	105577	Inorganic analysis/support analysis/WWTP
		\$ 574.00		105577 Total	
GARTON TRACTOR	60-50-6530	\$ 70.47	6/6/2014	105578	Hose and fitting for backhoe
		\$ 70.47		105578 Total	
Garcia Karely	10-00-2840	\$ 200.00	6/6/2014	105579	Refund Memorial Bldg deposit/N. Arana
		\$ 200.00		105579 Total	
G BAR N VETERINARY CLINIC	10-21-6208	\$ 1,159.90	6/6/2014	105580	Monthly animal contract/nueter
G BAR N VETERINARY CLINIC	10-21-6207	\$ 479.10	6/6/2014	105580	Exams fpr K-9 dogs Ringo and Sam/Feb 2014
G BAR N VETERINARY CLINIC	10-21-6208	\$ 945.00	6/6/2014	105580	Monthly animal contract/March 2014
G BAR N VETERINARY CLINIC	10-21-6208	\$ 1,295.00	6/6/2014	105580	Monthly animal contract/April 2014/other animal issues
		\$ 3,879.00		105580 Total	
Gouveia Engineering, Inc	10-31-6200	\$ 84.00	6/6/2014	105581	Final map review/The Villas tentative map
Gouveia Engineering, Inc	10-00-2545	\$ 283.50	6/6/2014	105581	Meeting and follow-up/Mattos Ranch
Gouveia Engineering, Inc	71-07-7505	\$ 18,734.81	6/6/2014	105581	Memorial Bldg renovation work/May 2014
Gouveia Engineering, Inc	20-32-7780	\$ 3,122.44	6/6/2014	105581	Engineering services for CDBG Tulare Street/May 2014
Gouveia Engineering, Inc	10-31-6200	\$ 94.50	6/6/2014	105581	Engineering services general for Public Works/May 2014
Gouveia Engineering, Inc	10-31-6200	\$ 664.13	6/6/2014	105581	Project scoping mtg with PW director for CMAQ apps/May 2014
Gouveia Engineering, Inc	10-31-6200	\$ 212.63	6/6/2014	105581	Stakeholder's mtg @ City with follow-up/Rule 20 A/May 2014
Gouveia Engineering, Inc	24-32-7766	\$ 7,924.88	6/6/2014	105581	Design & prep of plans with engineers estimate/CNG fast fill sta
		\$ 31,120.89		105581 Total	
HOUSE STEPHANIE	10-45-6739	\$ 79.53	6/6/2014	105582	Reimbursement for supplies purchased for teen center snack bar
		\$ 79.53		105582 Total	
HUB INTERNATIONAL OF CA I	10-00-2845	\$ 342.84	6/6/2014	105583	Liability insurance premium payable/May 2014/Arana/Correa/Bernab
		\$ 342.84		105583 Total	
IDEXX LABORATORIES, INC.	63-56-6300	\$ 331.81	6/6/2014	105584	Supplies for water testing
		\$ 331.81		105584 Total	
JOE'S LANDSCAPING & CONCR	10-33-6300	\$ 86.10	6/6/2014	105585	(4) 5-gal Dietes trees
JOE'S LANDSCAPING & CONCR	10-33-6300	\$ 46.28	6/6/2014	105585	1 Top soil
JOE'S LANDSCAPING & CONCR	69-47-6200	\$ 9,665.00	6/6/2014	105585	Landscape services for the LLD district/May 2014



AP Check Register June 6, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
		\$ 9,797.38		105585 Total	
KAISER PERMANENTE	10-00-2260	\$ 3,256.27	6/6/2014	105586	Health insurance premium for July 2014
		\$ 3,256.27		105586 Total	
Mutoza Inspection Service	20-32-7780	\$ 3,280.00	6/6/2014	105587	82 hours of inspection services/CDBG Tulare St Project
		\$ 3,280.00		105587 Total	
NEWMAN MINI MART	10-21-6500	\$ 194.50	6/6/2014	105588	Unleaded gasoline pumped @ Newman Mini Mart
		\$ 194.50		105588 Total	
NEWMAN SMOG AND LUBE	10-21-6530	\$ 415.80	6/6/2014	105589	Replaced fan/motor assembly on 2009 Dodge Charger
		\$ 415.80		105589 Total	
Newman City Tow Service, Inc	10-21-6530	\$ 225.00	6/6/2014	105590	Towing of Buick LaCross from Ceres to Newman
		\$ 225.00		105590 Total	
NEWMAN ACE HARDWARE/JACT,	69-47-6300	\$ 127.72	6/6/2014	105591	Exterior paint/Stihl chain/batteries/hose coupling/bypass pruner
NEWMAN ACE HARDWARE/JACT,	10-33-6300	\$ 177.16	6/6/2014	105591	misc pvc/duct tape/key blank/WD40/light bulbs/blade recpt/hack b
NEWMAN ACE HARDWARE/JACT,	10-07-6300	\$ 118.33	6/6/2014	105591	Upright vacuum with vacuum bags/sprayer
NEWMAN ACE HARDWARE/JACT,	10-44-6300	\$ 164.74	6/6/2014	105591	oil/stripping paint/Sthil autocutcarwash/flag mark/batteries/padl
NEWMAN ACE HARDWARE/JACT,	62-60-6225	\$ 24.19	6/6/2014	105591	Webster duster/anti-seize
NEWMAN ACE HARDWARE/JACT,	10-46-6300	\$ 6.45	6/6/2014	105591	Sthil saw files
NEWMAN ACE HARDWARE/JACT,	61-55-7505	\$ 5.08	6/6/2014	105591	Wallplate/wall receptacle/toggle switch
NEWMAN ACE HARDWARE/JACT,	10-44-6660	\$ 4.28	6/6/2014	105591	2 key blanks
		\$ 627.95		105591 Total	
O'Dell Engineering	17-44-7521	\$ 7,975.20	6/6/2014	105592	Professional services 4/7/14 to 5/4/14/Skate Park
		\$ 7,975.20		105592 Total	
OPERATING ENGINEERS/	10-00-2260	\$ 723.00	6/6/2014	105593	Health Insurance premium/July 2014
		\$ 723.00		105593 Total	
Otis Elevator Company	10-07-6200	\$ 435.00	6/6/2014	105594	Labor & expenses to perform fire emergency conditions testing/e
		\$ 435.00		105594 Total	
P G & E	10-07-6410	\$ 1,429.20	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-22-6410	\$ 310.60	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-33-6410	\$ 4,825.45	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-44-6410	\$ 521.44	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-45-6410	\$ 414.79	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-46-6410	\$ 355.79	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-44-6660	\$ 757.08	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-07-6665	\$ 45.74	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	10-44-6670	\$ 232.18	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	60-50-6410	\$ 27,181.10	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	62-60-6411	\$ 271.88	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	62-60-6412	\$ 779.37	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.



AP Check Register June 6, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
P G & E	63-56-6410	\$ 16,906.11	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	69-47-6410	\$ 3,155.95	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	73-70-6651	\$ 264.46	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
P G & E	73-70-6672	\$ 507.28	6/6/2014	105595	Gas and electric use from 4/18/14 to 5/16/14.
		\$ 57,958.42		105595 Total	
PIONEER DRUG	62-60-6225	\$ 3.54	6/6/2014	105596	Log binder
PIONEER DRUG	63-56-6300	\$ 3.22	6/6/2014	105596	Bleach
PIONEER DRUG	60-50-6300	\$ 6.95	6/6/2014	105596	Sewer maps
		\$ 13.71		105596 Total	
RALEY'S IN STORE CHARGE	60-50-6300	\$ 28.44	6/6/2014	105597	Water/soda/chips/cookies/PW meeting
RALEY'S IN STORE CHARGE	60-50-6300	\$ 32.45	6/6/2014	105597	Croissant sandwiches/PW meeting
RALEY'S IN STORE CHARGE	10-01-6620	\$ 139.00	6/6/2014	105597	Ice/plates/crackers/sandwich trays/vegetable tray WS Healthcare
		\$ 199.89		105597 Total	
Stat-X General Engineering, Inc.	20-32-7780	\$ 71,494.53	6/6/2014	105598	CDBG Tulare Street infrastructure improvements/payment #1
		\$ 71,494.53		105598 Total	
STAPLES CREDIT PLAN	10-21-6300	\$ 208.47	6/6/2014	105599	HP ink/spray adhesive/highlighters/batteries/memo books
STAPLES CREDIT PLAN	10-21-6300	\$ 10.74	6/6/2014	105599	Glue tape
STAPLES CREDIT PLAN	10-45-6300	\$ 45.10	6/6/2014	105599	Colored paper/rec dept
STAPLES CREDIT PLAN	10-14-6300	\$ 10.61	6/6/2014	105599	Swifter refills/posting rolls/finance dept
STAPLES CREDIT PLAN	60-50-6300	\$ 10.61	6/6/2014	105599	Swifter refills/posting rolls/finance dept
STAPLES CREDIT PLAN	63-56-6300	\$ 10.62	6/6/2014	105599	Swifter refills/posting rolls/finance dept
		\$ 296.15		105599 Total	
STANTEC CONSULTING SERVICE, Inc	64-56-6201	\$ 2,800.00	6/6/2014	105600	Predesign of well & transmission
		\$ 2,800.00		105600 Total	
SUN VALLEY PORTABLES	69-47-6200	\$ 155.73	6/6/2014	105601	Portable restroom rental & service/May 2014
		\$ 155.73		105601 Total	
TelePacific Communications	10-45-6420	\$ 103.60	6/6/2014	105602	Telephone service 6/1/14 to 6/30/14
TelePacific Communications	10-14-6420	\$ 103.60	6/6/2014	105602	Telephone service 6/1/14 to 6/30/14
TelePacific Communications	60-50-6420	\$ 103.61	6/6/2014	105602	Telephone service 6/1/14 to 6/30/14
TelePacific Communications	63-56-6420	\$ 103.61	6/6/2014	105602	Telephone service 6/1/14 to 6/30/14
TelePacific Communications	10-21-6420	\$ 204.12	6/6/2014	105602	Telephone service 6/1/14 to 6/30/14
		\$ 618.54		105602 Total	
T.H.E. OFFICE CITY	60-50-6300	\$ 7.45	6/6/2014	105603	Post-it pop ups
T.H.E. OFFICE CITY	63-56-6300	\$ 7.45	6/6/2014	105603	Post-it pop ups
T.H.E. OFFICE CITY	10-14-6300	\$ 6.76	6/6/2014	105603	Post-it pop ups
T.H.E. OFFICE CITY	60-50-6300	\$ 6.75	6/6/2014	105603	Post-it pop ups
T.H.E. OFFICE CITY	63-56-6300	\$ 6.75	6/6/2014	105603	Post-it pop ups
		\$ 35.16		105603 Total	



AP Check Register June 6, 2014

Vendor	Fund-Dept-Acct	Amount	Date	Check #	Description
3T Equipment Company Inc.	63-56-6300	\$ 20.71	6/6/2014	105604	Ball valve handle
		\$ 20.71		105604 Total	
TOSTA BARBARA J.	10-45-6725	\$ 150.00	6/6/2014	105605	Young at heart instructor/May 2014
		\$ 150.00		105605 Total	
UNIVAR USA, INC	63-56-6300	\$ 452.22	6/6/2014	105606	150 gals sodium hypochlorite Well #8
UNIVAR USA, INC	63-56-6300	\$ 671.87	6/6/2014	105606	235 gals sodium hypochlorite Well #8
UNIVAR USA, INC	63-56-6300	\$ 387.64	6/6/2014	105606	150 gals sodium hypochlorite Well #5
		\$ 1,511.73		105606 Total	
VALLEY PARTS SERVICE	63-56-6300	\$ 17.67	6/6/2014	105607	Antifreeze/hose clamp
VALLEY PARTS SERVICE	63-56-6530	\$ 6.25	6/6/2014	105607	Power steering fluid
VALLEY PARTS SERVICE	60-50-6530	\$ 13.17	6/6/2014	105607	Engine stop switch/shuttle/spray rig
VALLEY PARTS SERVICE	10-21-6530	\$ 10.55	6/6/2014	105607	Gas cap for 2010 Charger
VALLEY PARTS SERVICE	69-47-6300	\$ 104.19	6/6/2014	105607	Portable winch/Sherman pkwy ditch trees
VALLEY PARTS SERVICE	60-50-6530	\$ 120.59	6/6/2014	105607	Air and oil filters/dexron
VALLEY PARTS SERVICE	10-44-6530	\$ 4.38	6/6/2014	105607	Napa oil
		\$ 276.80		105607 Total	
VARGAS GEORGE	10-22-6690	\$ 50.00	6/6/2014	105608	Monthly Fire stipend/Vargas/June 2014
		\$ 50.00		105608 Total	
Westside Landscape & Concrete	10-33-6200	\$ 130.00	6/6/2014	105609	Stump grinding @ 1013 Merced Street
		\$ 130.00		105609 Total	
		\$ 286,033.48		Grand Total	



MINUTES
NEWMAN CITY COUNCIL
SPECIAL MEETING MAY 27, 2014
CITY HALL CONFERENCE ROOM, 6:30 P.M., 938 FRESNO STREET

1. **Call To Order** - Mayor Katen 6:30 P.M.
2. **Roll Call** - **PRESENT:** Hutchins, Martina And Mayor Katen.
ABSENT: Davis (Excused) And Candea (Excused).
3. **Items From The Public** - None.
4. **Adjourn To Closed Session** - 6:31 P.M.
 - a. Public Employee Personnel Evaluation - City Manager - G.C. 54957.6.
 - b. Return To Open Session - 7:03 P.M.

No Reportable Action Was Taken.

5. **Adjournment.**

ACTION: On Motion By Hutchins Seconded By Martina, The Meeting Was Adjourned At 7:04 P.M. By The Following Vote: **AYES:** Hutchins, Martina And Katen; **NOES:** None; **ABSENT:** Davis And Candea; **NOT PARTICIPATING:** None.



MINUTES
NEWMAN CITY COUNCIL
REGULAR MEETING MAY 27, 2014
CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET

1. **Call To Order** - Mayor Katen 7:07 P.M.
2. **Pledge Of Allegiance.**
3. **Invocation** - Mayor Pro Tem Martina.
4. **Roll Call - PRESENT:** Hutchins, Martina And Mayor Katen.
ABSENT: Davis (Excused) And Candea (Excused).
5. **Declaration Of Conflicts Of Interest** - None.
6. **Ceremonial Matters** - None.
7. **Items from the Public - Non-Agenda Items -**

Natalie Karsten Introduced Herself As The New Branch Manager Of The Newman Library. Karsten Then Reviewed Current And Upcoming Programs And Events Being Offered By The Newman Library.

8. Consent Calendar

- a. Waive All Readings Of Ordinances And Resolutions Except By Title.
- b. Approval Of Warrants.
- c. Approval Of Minutes Of The May 13, 2014 Meetings.
- d. Adopt Resolution No. 2014-24, A Resolution Rejecting The Claim Of Arturo Moreno.

Council Member Hutchins Requested That Item 8.c. (Minutes Of The May 13, 2014 Meetings) Be Pulled From The Consent Calendar.

ACTION: On A Motion By Hutchins Seconded By Martina, The Consent Calendar Minus Item 8.c. Was Approved By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

ACTION: On A Motion By Martina Seconded By Katen, Item 8.c. Was Approved By The Following Vote: AYES: Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: Hutchins.

9. Public Hearings

- a. Adopt Resolution No. 2014-25, A Resolution Authorizing The Change In Garbage Collection Rates Per Prior Contractual Agreement.

Mayor Katen Opened The Public Hearing At 7:12 P.M.

There Being No Public Comment, Katen Closed The Public Hearing At 7:13 P.M.

ACTION: On Motion By Martina Seconded By Hutchins, Resolution No. 2014-25, Authorizing The Change In Garbage Collection Rates Per Prior Contractual Agreement, Was Adopted By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- b. First Reading And Introduction Of Ordinance No. 2014- , An Ordinance Of The City Council Of The City Of Newman Approving A Second Amendment To The Sherman Ranch Development Agreement.

Mayor Katen Opened The Public Hearing At 7:18 P.M.

There Being No Public Comment, Katen Closed The Public Hearing At 7:19 P.M.

ACTION: On Motion By Martina Seconded By Hutchins, Ordinance No. 2014- , An Ordinance Of The City Council Of The City Of Newman Approving A Second Amendment To The Sherman Ranch Development Agreement Was Introduced By Council Member Martina And Had Its First Reading By Title Only, By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

10. Regular Business

- a. First Reading And Introduction Of Ordinance No. 2014- , Amending Title 5 Zoning, Adding Chapter 29 Urban Growth Boundary, Of The Newman City Code.

ACTION: On Motion By Hutchins Seconded By Martina, Ordinance No. 2014- , Amending Title 5 Zoning, Adding Chapter 29 Urban Growth Boundary, Of The Newman City Code, Was Introduced By Council Member Hutchins, And Had Its First Reading By Title Only, By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- b. Report On The Lighting And Landscape Maintenance District For Fiscal Year 2014-2015
 - I. Adopt Resolution No. 2014-26, Approving The Annual Report For The Lighting And Landscape Maintenance District For Fiscal Year 2014-2015.

ACTION: On Motion By Martina Seconded By Hutchins, Resolution No. 2014-26, Approving The Annual Report For The Lighting And Landscape Maintenance District For Fiscal Year 2014-2015, Was Adopted By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- II. Adopt Resolution No. 2014-27, Declaring Its Intention To Levy And Collect Assessments For The Lighting And Landscape Maintenance District For Fiscal Year 2014-2015 And Declaring The Intention Of The Council To Conduct A Public Hearing Concerning The Levy Of Assessments.

ACTION: On Motion By Hutchins Seconded By Martina, Resolution No. 2014-27, Declaring Its Intention To Levy And Collect Assessments For The Lighting And Landscape Maintenance District For Fiscal Year 2014-2015 And Declaring The Intention Of The Council To Conduct A Public Hearing Concerning The Levy Of Assessments, Was Adopted By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- c. First Reading And Introduction Of Ordinance No. 2014- , Amending Title 4 Building Regulations, Chapter 4.11 Floodplain Management, Of The Newman City Code.

ACTION: On Motion By Martina Seconded By Hutchins, Ordinance No. 2014- , Amending Title 4 Building Regulations, Chapter 4.11 Floodplain Management, Of The Newman City Code, Was Introduced By Council Member Martina And Had Its First Reading By Title Only, By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- d. Authorize The Mayor To Sign An Application For FEMA National Flood Insurance Program Community Rating System.

ACTION: On Motion By Martina Seconded By Hutchins, The City Council Authorized The Mayor To Sign An Application For FEMA National Flood Insurance Program Community Rating System By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- e. Adopt Resolution No. 2014-28, A Resolution Approving An Application To Receive A PG&E On-Bill Financing 0% Loan For Street Lighting Conversion Project And Authorize The City Manager To Execute Associated Documents.

ACTION: On Motion By Hutchins Seconded By Martina, Resolution No. 2014-28, Approving An Application To Receive A PG&E On-Bill Financing 0% Loan For Street Lighting Conversion Project And Authorize The City Manager To Execute Associated Documents, Was Adopted By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

- f. Adopt Resolution No. 2014-29, A Resolution Approving Amendment No. 1 To The Purchase And Sale Agreement Between The City And George And Marlene Souza.

ACTION: On Motion By Martina Seconded By Hutchins, Resolution No. 2014-29, A Resolution Approving Amendment No. 1 To The Purchase And Sale Agreement Between The City And George And Marlene Souza, Was Adopted By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

11. Items From District Five Stanislaus County Supervisor – None.

12. Items From The City Manager And Staff.

City Manager Holland Commented That The Youth Baseball Season Was Nearing Its End. Holland Reminded Everyone That The City Would Be Hosting An Outdoor Movie Night Event Featuring *Toy Story* On June 7th He Concluded By Mentioning That The New City Hall Flooring Would Soon Be Sealed And Buffed.

Public Works Director Kim Noted That Since Repairs To Water Well Number Five Have Been Completed, That Its Output Had Increased From 350 Gallons Per Minute To 900 Gallons Per Minute.

Finance Director Humphries Reminded The City Council That The Special City Council Budget Workshop Meeting Would Be Taking Place On June 10th At 6:00 P.M., Just Prior To The Regular Council Meeting On The Same Date.

City Planner Ocasio Reported That The City Had Received An Additional \$15,000 Sierra Health Foundation Grant For The Skate Plaza Project.

13. Items From City Council Members.

Mayor Katen Reviewed Some Salvation Army Programs That Are Available To Local Residents In Need Of Assistance. Katen Noted That He, Council Member Hutchins Along With Miss Newman And Her Court Attended A Luncheon And Play At The San Jose Children's Theatre As Guests Of Walter Newman. He Concluded By Mentioning That He Has Attend Memorial Services At The National Cemetery And Complemented Them On Their Memorial Day Program.

14. Adjournment.

ACTION: On Motion By Hutchins Seconded By Martina, The Meeting Was Adjourned At 8:05 P.M. By The Following Vote: AYES: Hutchins, Martina And Katen; NOES: None; ABSENT: Davis And Candea; NOT PARTICIPATING: None.

**REQUEST THAT THE BOARD OF SUPERVISORS OF STANISLAUS COUNTY CONSOLIDATE
THE NOVEMBER 6, 2014 CITY OF NEWMAN MUNICIPAL ELECTION WITH THE
GUBERNATORIAL GENERAL ELECTION TO BE HELD ON THE SAME DATE**

RECOMMENDATION:

It is recommended that the Newman City Council adopt Resolution No. 2014- , a resolution requesting that the Board of Supervisors of Stanislaus County consolidate the November 4, 2014 City of Newman Municipal Election with the Gubernatorial General Election to be held on the same date.

BACKGROUND:

Per Election Code 10002, the Stanislaus County Board of Supervisors requires that the City of Newman send a request to the County asking them to conduct election services for the City. The City of Newman has routinely consolidated all its municipal elections with coinciding general elections in the past.

The following City of Newman Elective Offices will appear on the November 6, 2014 ballot:

Mayor - 2-year term
Two (2) Council Members - 4-year terms

Following approval by the Board of Supervisors, the resolution requesting consolidation is forwarded to the County Election Department who will conduct the election for the City.

ANALYSIS:

General Municipal Elections are typically consolidated with Statewide General Elections whenever possible. Consolidation provides the most cost effective method of conducting municipal elections and the expertise of the Stanislaus County Registrar of Voters. When consolidated, the City Clerk employs the County to handle all responsibilities for procuring polling places, precinct workers, the publication and mailing of the sample ballot and canvassing the returns of the election. All other functions of the election are the responsibility of the City Clerk as the Elections Official.

FISCAL IMPACT:

The City is billed its pro-rata share for city election costs (the County was unable to provide a cost estimate at this time). The Fiscal Year 2014/2015 Budget will contain \$6,000 for the Municipal Election in account 10-03-6240.

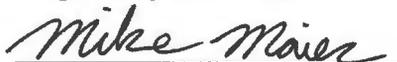
CONCLUSION:

Staff believes consolidation is the best and most cost effective method of conducting municipal elections; therefore staff recommends that the City Council adopt Resolution No. 2014- , a resolution requesting that the Board of Supervisors of Stanislaus County consolidate the City of Newman Municipal Election to be held on November 4, 2014 with the Gubernatorial General Election.

ATTACHMENTS:

1. Resolution No. 2014-

Respectfully submitted,



Mike Maier
Deputy City Clerk

REVIEWED/CONCUR


Michael Holland,
City Manager

RESOLUTION NO. 2014-

A RESOLUTION REQUESTING THAT THE BOARD OF SUPERVISORS OF STANISLAUS COUNTY CONSOLIDATE THE NOVEMBER 4, 2014 CITY OF NEWMAN MUNICIPAL ELECTION WITH THE GUBERNATORIAL GENERAL ELECTION TO BE HELD ON THE SAME DATE

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 4, 2014, for the election of Municipal Officers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWMAN, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Newman, California, on Tuesday, November 4, 2014, a General Municipal Election for the purpose of electing two (2) Members of the City Council for the full term of four (4) years and a Mayor for the full term of two (2) years.

Section 2. That the City Council of the City of Newman hereby requests that the Board of Supervisors of Stanislaus County, California, order the consolidation of the City of Newman Municipal Election to be held on November 4, 2014 with the Gubernatorial General Election to be held on the same date.

Section 3. That the ballots to be used at the election shall be in form and content as required by law.

Section 4. That the City Clerk is authorized, instructed and directed to coordinate with the County of Stanislaus Registrar-Recorder/County Clerk to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 5. That the polls for the election shall be open at seven o'clock a.m. the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in §14401 of the Elections Code of the State of California.

Section 6. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 8. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June, 2014 by Council Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call vote adopted.

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

Mayor of the City of Newman

Deputy City Clerk of the City of Newman

ADOPT RESOLUTION NO. 2014- , APPROVING THE NEWMAN CDBG TULARE STREET 2014 INFRASTRUCTURE IMPROVEMENT PROJECT AS COMPLETE AND AUTHORIZING ED KATEN AS MAYOR, AND MICHAEL E. HOLLAND AS CITY CLERK TO RECORD A NOTICE OF COMPLETION

RECOMMENDATION:

It is recommended that the City of Newman City Council adopt Resolution No. 2014- , Approving the Newman CDBG Tulare Street 2014 Infrastructure Improvement Project as complete and authorizing Ed Katen as Mayor, and Michael E. Holland as City Clerk to record a Notice of Completion.

BACKGROUND:

The City received grant funding from the Stanislaus County CDBG Consortium for infrastructure improvements in the City's income-eligible area bordered by Yolo Street, "N" Street, Inyo Avenue and the western city limit line.

Portions of the 1000 (P/Main Street Alleyway) through the 1300 (Tulare/S Street intersection) blocks of Tulare Street had a number of trip hazards, lifted curb areas, lacked ADA improvements or had past their useful lifespan. Project improvements included the installation/repair/replacement of curb, gutter, sidewalk and street repair and overlay (due to infrastructure repairs) in the following quantities:

Quantity	Unit	Description
427	Linear Feet	Curb and Gutter
3	Each	Alley Approaches
Removal of 20	Feet	Sidewalk Tripping Hazards
260	Square Feet	Sidewalk
98	Linear Feet	Root Barriers
6	Each	ADA Curb Ramps

ANALYSIS:

On March 11, 2014, the City Council awarded a contract to Stat-X General Engineering for \$64,299.00; project construction was completed on May 27, 2014. There was one change order approved for the project in the amount of \$10,958.40 for additional excavation and sidewalk (for ADA compliance); resulting in a total project cost of \$75,257.40. The original Engineer's Estimate for the project was \$114,150.00.

Construction work was inspected by Mr. Doug Mutoza of Mutoza Inspection Service. City Engineer Mario Gouveia and Mr. Mutoza performed the final inspection and found the work to be in compliance with approved project plans and specifications.

FISCAL IMPACT:

Original Project Bid	\$64,299.00		
Change Order	\$10,958.40		
Total Project Cost	\$75,257.40	Available CDBG Funding	\$139,571.72

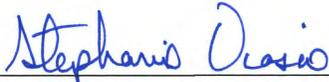
CONCLUSION:

The Newman CDBG Tulare Street 2014 Infrastructure Improvement Project constructed by Stat-X General Engineering has been completed in compliance with the plans and specifications with a final construction cost of \$75,257.40. Therefore, staff recommends that the City Council adopt Resolution No. 2014- , Approving The Newman CDBG Tulare Street 2014 Infrastructure Improvement Project As Complete And Authorizing Ed Katen As Mayor, And Michael E. Holland As City Clerk To Record A Notice Of Completion For The Project.

ATTACHMENTS:

1. Resolution No. 2014-

Respectfully Submitted,



Stephanie Ocasio
City Planner

REVIEWED/CONCUR:



Michael E. Holland
City Manager

RESOLUTION NO. 2014-

**A RESOLUTION APPROVING THE CITY OF NEWMAN CDBG TULARE STREET
2014 INFRASTRUCTURE IMPROVEMENT PROJECT AS COMPLETE AND
AUTHORIZING ED KATEN AS MAYOR, AND MICHAEL E. HOLLAND AS CITY
CLERK TO RECORD A NOTICE OF COMPLETION**

WHEREAS, on the 13th day of March, 2014, agreements were entered into between the CITY OF NEWMAN, herein after referred to as "CITY" and Stat-X General Engineering, herein after referred to as "CONTRACTOR" for the making of certain improvements in the City of Newman, County of Stanislaus, State of California, known as the CITY OF NEWMAN CDBG TULARE STREET 2014 INFRASTRUCTURE IMPROVEMENT PROJECT; and

WHEREAS, the improvement security referred to in said agreement was duly executed and filed by Contractor;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman as follows:

1. That the improvements referred to in said agreement and the maps and other matters referred to therein be, and the same hereby are, approved and accepted.
2. That Ed Katen, as Mayor and Michael E. Holland as City Clerk, are hereby authorized and directed to execute and record a Notice of Completion of said improvements.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June, 2014 by Council Member _____, who moved its adoption which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Ed Katen, Mayor

ATTEST:

Michael E. Holland, City Clerk

I hereby certify that the foregoing is a full, correct and true copy of a resolution passed by the City Council of the City of Newman, a municipal corporation of the County of Stanislaus, State of California, at a regular meeting held on June 10, 2014, and I further certify that said resolution is in full force and effect and has never been rescinded or modified.

DATED: _____, 2014.

City Clerk

Honorable Mayor and Members
of the Newman City Council

**AUTHORIZE THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH NEWMAN
CO-OP NURSERY SCHOOL FOR THE PROPERTY LOCATED AT 1147 "R" STREET**

RECOMMENDATION:

Adopt Resolution No. 2014- , approving a three (3) year lease agreement and authorizing the City Manager to execute said lease with the Newman Co-Op Nursery School for the property located at 1147 "R" Street.

BACKGROUND:

In 2000, the Newman Co-Op Nursery School relocated from the Teen Center to the Old Orestimba School House; located at 1147 "R" Street. At that time, they signed a five (5) year lease establishing the rent at \$200.00 per month; the City and Nursery School continued to operate under the original lease until 2008, even though the lease expired in 2005. In 2008 and 2011, the Newman Co-Op Nursery School signed three (3) year lease agreements establishing the rents of \$2,000.00 and \$3,000.00 per year. The current lease is set to expire in September of this year.

ANALYSIS:

As the Nursery School's lease agreement was nearing the completion of its term, City staff requested the City Attorney review the current lease format to ensure it was up-to-date with current legal and liability standards. Following a series of meetings with the Nursery School team, an agreement was reached for a new three-year lease agreement. The primary changes to the agreement include an increase of the yearly rent to \$3,500 to help offset City costs and additional language regarding indemnification requirements that are being recommended by the City Attorney and City Risk Management professionals. The City provided the Nursery School the option of selecting how they desired to structure their rent payments and they elected to pay \$350.00 per month for the months of January, February, March, April, May, September, October, November and December and \$175.00 per month for the months of June and July (equal to \$3,500.00 per year).

In addition to providing water, sewer, garbage and recycling services, the City will continue to assume responsibility for the maintenance of all structural issues, lawn and grounds, the landscape sprinkler system, playground bark, any major plumbing or electrical issues, as well as the repair and/or removal of vandalism.

The Nursery School has agreed to be responsible for minor repairs as detailed in the agreement; as well as to fifty percent (50%) of the cost of the repairs for the fence, water heater, exterior painting, heating and/or air conditioning unit and the roof.

FISCAL IMPACT:

Positive: Additional reimbursement of costs.

CONCLUSION:

Staff worked diligently to provide a lease agreement that is fair to both parties. The adjustments to the lease will better indemnify the City and help the City in its continual effort to strive for fiscal responsibility but still provide the Nursery School with a location at below market rate rent. This lease will be evaluated again at conclusion of the three (3) year term. Staff has presented the proposed lease to the tenants for consideration and they have agreed to all the terms of the said lease.

The City appreciates the services that the Newman Co-Op Nursery School provides to the community. However, the City will continue to evaluate all agreements upon renewal. In an ongoing effort of fairness, the City has agreed to continue providing affordable rent to the Nursery School. Staff believes this lease agreement is equitable to both parties and recommends approval of the lease agreement as submitted.

ATTACHMENTS:

1. Resolution No. 2014-
2. Attachment "A" - Copy of Lease Agreement.

Respectfully submitted,



Michael Holland
City Manager

RESOLUTION NO. 2014-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWMAN AUTHORIZING THE CITY MANAGER TO EXECUTE A THREE (3) YEAR LEASE WITH THE NEWMAN CO-OP NURSERY SCHOOL FOR THE PROPERTY LOCATED AT 1147 "R" STREET.

WHEREAS, the City of Newman is the owner of a certain parcel of real property, located at 1147 "R" Street; and

WHEREAS, the Newman Co-Op Nursery School has leased the aforementioned property since 2000; and

WHEREAS, the City appreciates the services that the Newman Co-Op Nursery School provides to the community; and

WHEREAS, in an ongoing effort of fairness, the City has agreed to continue providing affordable rent to the Newman Co-Op Nursery School; and

WHEREAS, the City wishes to renew the lease for a term of three (3) years commencing the first day of September, 2014 and subject to the terms and conditions set forth in the Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman and in accordance with the recommendations of the City Manager, authorizes the City Manager to execute a three (3) year lease agreement (Attachment "A") with The Newman Co-Op Nursery School for the property located at 1147 "R" Street.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June 2014 by Council Member _____, who moved its adoption, which motion was duly seconded and was upon roll call carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor

ATTEST:

Deputy City Clerk

Attachment "A"



NEWMAN CO-OP NURSERY SCHOOL LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") is entered into this _____ day of _____, 2014, by and between the **NEWMAN CO-OP NURSERY SCHOOL** (hereinafter referred to as "Tenant") and the **CITY OF NEWMAN**, a **municipal corporation** (hereinafter referred to as "City") collectively referred to as the "Parties."

RECITALS

WHEREAS, on September 1, 2011, the Parties entered into a 3-year Lease Agreement (the "Lease"); and

WHEREAS, said Lease is set to expire on August 31, 2014; and

WHEREAS, the City is willing to lease the premises to Tenant; and

WHEREAS, Tenant desires to lease the premises from City; and

WHEREAS, the Parties have renegotiated a new lease for a 3-year term, September 1 2014 through August 31, 2017, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

LEASE AGREEMENT

1. Description of Premises. City agrees to rent to Tenant the premises commonly known as 1147 "R" Street and/or Old Orestimba School House, located in Densmore Park, North of the Stanislaus County Library, on "R" Street, in the City of Newman, California ("the Premises"). (Exhibit A)

2. Term. The term of this Agreement will commence on the 1st day of September, 2014 and shall continue for three (3) years thereafter.

3. Consideration/Rent. Tenant will pay the sum of Three Hundred Fifty Dollars (\$350.00) per month for the months of January, February, March, April, May, September, October, November and December and One Hundred Seventy-Five Dollars (\$175.00) per month for the months of June and July (equal to Four Thousand Dollars (\$3,500.00) per year); no rent will be paid for the month of August. Rent is due, in advance, to City by or before the 1st day of each month.

Attachment "A"

4. **Use.** The Premises is leased to Tenant for the operation of the Newman Co-Op Nursery School and activities directly related to the Nursery School.

5. **Operation and Maintenance.**

A. **Utilities.** Tenant shall be responsible for the payment of all possible utilities including, but not limited to gas, electric, cable, computer, telephone and alarm services associated with Tenant's use of the Premises.

B. **Alterations and Improvements.** Tenant shall not make any improvement or alterations to the Premises (interior or exterior) without the express written permission of the City. Based on the improvements, City may stipulate insurance requirements of contractor who is hired by Tenant. Upon completion, any such repairs, alterations, or improvements shall become part of the Premises, at no cost to City.

C. **Entry by Owner.** City reserves the right to enter the Premises at any time, and without notice, to take necessary corrective actions to preserve the Premises as a result of an emergency or sudden unexpected occurrence. The City will use its best effort to notify Tenant as soon as possible regarding the need for entry.

D. **Volunteer Waiver of Liability.** Tenant shall be responsible to secure a signed City Waiver of Liability, Medical Release and Indemnification Agreement from each volunteer. The signed agreements will be held by the Tenant and City. (Exhibit B)

E. **Representatives of the Parties.** The City Manager or designee shall represent City in all matters pertaining to the administration of this Agreement. All requirements of City pertaining to the Premises shall be coordinated through the City representative. Tenant's co-director or designee shall represent Tenant in all matters pertaining to the administration of this Agreement. All requirements of Tenant pertaining to the Premises shall be coordinated through Tenant's representative.

F. **Furnishings:** Tenant shall furnish the Premises and is solely responsible for any and all cost associated with furnishing the Premises.

6. **Tenant Obligations.** Tenant agrees to perform the following obligations, at its sole cost and expense:

A. To keep the Premises as clean and sanitary as their condition permits;

B. To dispose of all rubbish, garbage and other waste in a clean and sanitary manner; and not store vehicles, auto parts, equipment, or other unsightly items, as determined by City in its sole and unfettered discretion, in or about the Premises;

C. To use and operate properly all electrical, gas, and plumbing fixtures and pipes, and to keep them as clean and sanitary as their condition permits; and

D. To refrain from negligently, willfully or wantonly destroying, defacing, damaging, impairing or removing any part of the Premises or the facilities, equipment or appurtenances or permitting any person on the Premises to commit such acts.

E. To comply with all local, State and Federal laws.

Attachment "A"

7. Repairs and Maintenance. The City agrees to repair and/or maintain:

- The playground bark
- Major plumbing issues (i.e. – leaky water lines and toilet water supply issues)
- Major electrical issues, as determined by the City
- All structural issues
- Landscape sprinkler system
- Maintenance of the lawn and grounds
- Repair and or remove vandalism (i.e. – graffiti or broken windows)
- Water, sewer and garbage service

The cost of the repairs of the fence, water heater, exterior painting, heating and/or air conditioning unit and roof shall be paid as follows: \$50% by the City, 50% by the Tenant. All other repairs and the cost and expense of same shall be the responsibility of the Tenant; including, but not limited to the following:

- Minor Plumbing Issues (I.E. – clogged sinks or toilets)
- Minor Electrical Issues (I.E. – light bulb replacement)
- Supplies (I.E. – Garbage bags, paper towels, soap, etc...)
- Maintenance and Cleaning
- Accounts For Utilities (I.E. – PG&E, telephone service, etc...)
- The steel canopy frame covering sand pit.
- Interior air filtration system.
- Full cost of floor replacement as well as repair and replacement of vinyl floor tiles.
- Repairs and maintenance to the custom cabinetry in adult bathroom and office space.
- The playground sand
- Interior Painting

The Tenant agrees, at its sole cost and expense, to keep the property in at least as good a condition as it was upon assuming tenancy, and assumes responsibility for repairs/ maintenance not performed by the City; reasonable wear and tear excluded.

8. Live Scan Services – As part of this agreement the City agrees to the Newman Co-Op Nursery School's Volunteers at a cost of \$10.00 per scan/participant payable at the time Live Scan Services are rendered.

9. Indemnification. To the fullest extent permitted by law, Tenant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers, from and against any and all liability, loss, damage, claims, and expenses including reasonable costs, attorney's fees arising out of or resulting from the negligent, willful or intentional conduct of Tenant and/or Tenant's guests and invitees, and Tenant's activities and use of the Premises pursuant to this Agreement. If any term or portion of this section is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law. This indemnity provision shall survive the expiration or termination of this Agreement.

Attachment "A"

10. Insurance Requirements. Tenant shall not take possession of the Premises under this Agreement until Tenant has obtained City's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall Tenant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. Tenant shall procure and maintain, or reimburse the City for procuring and maintaining, insurance for the duration of this Agreement against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Tenant, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of contract.

A. Minimum Scope of Insurance: Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) with an additional insured endorsement (form CG 20 10 11 85 or its equivalent), to be approved by the City of Newman.

(2) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance: Tenant shall maintain General Liability limits no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by City of Newman. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elective and appointive boards, officers, agents, employees, and volunteers; or (b) Tenant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions: The commercial general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) City, its elective and appointive boards, officers, agents, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Tenant; and with respect to liability arising out of work or operations performed by or on behalf of Tenant, including materials, parts or equipment furnished in connection with such work or operations, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the contract. General liability coverage can be provided in the form of an endorsement to Tenant's insurance (CG 20 10 11 85 or its equivalent), or as a separate Owners Protective Liability policy providing both ongoing operations and completed operations.

(2) For any claims related to this project, Tenant's insurance coverage shall be primary insurance as respects City and any insurance or self-insurance maintained by City shall be excess of Tenant's insurance and shall not contribute with it.

Attachment "A"

(3) Notice of cancellation or coverage change is required. Each policy of insurance required by this Agreement shall be endorsed to provide City a minimum of thirty (30) days' written notice of cancellation or nonrenewal.

(4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

E. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

F. Verification of Coverage: Tenant shall furnish City with original certificates and endorsements, including amendatory endorsements, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

G. Waiver of Subrogation: Tenant agrees to provide a written endorsement waiving its subrogation rights against the City for any and all statutory workers' compensation benefits paid to an employee of Tenant as the result of a work related injury, whether due to the alleged negligence of the City or not.

H. Subcontractors: Tenant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein

I. City shall procure and maintain for the duration of this Agreement property insurance for the primary building.

11. Possessory Interest Tax. The property interest created herein, if any, may be subject to property taxes. Should any property tax be imposed by the County of Stanislaus, or any other taxing agency, Tenant shall be responsible for its payment.

12. General Provisions.

A. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other parties.

B. Singular, Plural, Gender. In this Agreement, where applicable, references to the singular shall include the plural and references to the plural shall include the singular; in addition, where applicable, all references to the masculine gender shall include the feminine gender.

C. Headings. The headings in this Agreement are included for convenience of reference only, and shall not affect the construction or interpretation of any of its provisions.

Attachment "A"

D. Additional Instruments. The parties agree to execute and deliver any other documents or instruments not specifically referred to herein, which are necessary or reasonably required by a party to carry out the intents and purposes of this Agreement.

E. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

F. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or if mailed by first-class mail with postage prepaid:

If to City: THE CITY OF NEWMAN
Attention: Michael Holland, City Manager
P.O. Box 787
Newman, CA 95360

If to Tenant: NEWMAN CO-OP NURSERY SCHOOL
Attention: Janet Perry, Director and/or
Sharon Andrade, Director
P.O. Box 524
Newman, CA 95360

G. Governing Law. This Agreement shall be governed by, interpreted, and construed under the laws of the State of California.

H. Entire Agreement. The Parties declare and represent that no promise, inducement, or agreement not herein expressed has been made by or to any party, and that this written Agreement contains the entire agreement between the parties hereto relating to the subject matter of this Agreement and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatever. This Agreement may not be modified, altered, or amended except by a writing signed by all Parties hereto.

I. Time of Essence. Time is of the essence in this Agreement.

J. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

K. Disclaimer of Condition of Property. City makes no warranty or representation of any kind concerning the Premises or the fitness of the Premises for the use intended by Tenant. Tenant will inspect the Premises prior to occupancy and Tenant waives any express or implied indemnity against City.

L. Discrimination. Neither City nor Tenant shall discriminate in the employment of persons engaged in the performance of this Agreement or in any other way related to this Agreement, on account of race, color, national origin, ancestry, sex, disability, sexual orientation, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

Attachment "A"

M. Assignment. This Agreement, either in whole or in part, is not assignable by Tenant without the prior written consent of City.

N. Effect of Waiver of Breach or Violation. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision of law shall not be deemed to be a waiver of any other term, covenant, or condition or law. The subsequent acceptance by either party of any money that may become due hereunder shall not be deemed a waiver of any preceding breach or violation by the other party of any term or condition of this Agreement, or of any applicable law.

O. Legal Actions; Attorney Fees. Any disputes regarding this Agreement shall be resolved according to the laws of the State of California. Any legal proceedings shall be instituted in the courts of the State of California and County of Stanislaus, irrespective of any claim of diversity of citizenship or other possible jurisdictional conditions. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable attorney's fees expended in connection with such an action from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by and through their respective officers thereunto duly authorized.

CITY OF NEWMAN, a municipal corporation

NEWMAN CO-OP NURSERY SCHOOL

By: _____
Michael E. Holland, City Manager

By: _____

Date: _____

Title: _____

APPROVED AS TO SUFFICIENCY:

Print name: _____

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Phaedra A. Norton, City Attorney

By: _____

ATTEST:

Title: _____

By: _____
Mike Maier, City Clerk

Print name: _____

Date: _____

Attachment "A"

EXHIBIT A
PREMISES



Attachment "A"
EXHIBIT A
PREMISES



Attachment "A"

EXHIBIT B WAIVER OF LIABILITY

NEWMAN CO-OP NURSERY SCHOOL

Statement of Informed Consent WAIVER, RELEASE, AND ASSUMPTION OF RISK

I, _____, am participating as a volunteer at the
(Please Print)
Newman Co-Op Nursery School during the _____ School Year.

My participation in this activity is knowing and voluntary and I assume any and all risk associated with my participation in this activity.

In consideration of the acceptance of my participation in the above activity, I hereby waive, release and discharge any and all claims for damages for death, personal injury or property damage which I may have, or which hereafter accrue to me, against the City as a result of my participation in this activity. This release is intended to discharge the City of Newman and the Newman Co-Op Nursery School, their officers, officials, employees, and volunteers, and any other involved municipalities or public agencies from and against any and all liability arising out of or connected in any way with my participation in the activity, even though that liability may arise out of the negligence or carelessness on the part of persons or entities mentioned above. I further understand that accidents and injuries can arise out of the event; knowing the risks, nevertheless, I hereby agree to assume those risks and to release and to hold harmless all of the persons or agencies mentioned above who (through negligence or carelessness) might otherwise be liable to me (or my heirs or assigns) for damages. It is further understood and agreed that this waiver, release, and assumption of risk is to be binding on my heirs and assigns.

I hereby expressly waive and release all claims and causes of action I now have or in the future may have against the City of Newman, a municipal corporation and the Newman Co-Op Nursery School (hereinafter the "Released Parties") based on, or related directly or indirectly to, my knowing and voluntary participation as a volunteer at the Newman Co-Op Nursery School. To the extent of such waiver and release, I expressly waive my rights, if any, under California Civil Code Section 1542 which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Date: _____

PRINT NAME OF PARTICIPANT

Signature

PRINT NAME OF PARENT/LEGAL GUARDIAN

Signature (required if Participant under age 18)

REPORT ON NUISANCE ABATEMENT

RECOMMENDATION:

Adopt Resolution No. 2014- , Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.

BACKGROUND:

Abatement notices for property maintenance were sent to several properties in accordance with Ordinance 95-4, Chapter 2, Title 8-2-3.

ANALYSIS:

This notice informs property owners of all nuisance abatement procedures, option and their right to object at a public hearing. It is anticipated that many property owners will comply with the abatement notices prior to the hearing date. A final compliance survey will be done on Monday, June 9, 2014. A list of properties that have not complied with the abatement notice will be handed out at the council meeting prior to the public hearing.

FISCAL IMPACT:

None

CONCLUSION:

This staff report is submitted for City Council consideration and possible future action.

ATTACHMENTS:

1. Resolution No. 2014- , a resolution declaring the existence of a public nuisance
2. Exhibit A – Abatement List

Respectfully submitted,



Randy Richardson, Chief of Police

REVIEWED/CONCUR:



Michael Holland, City Manager

RESOLUTION NO. 2014-

**A RESOLUTION DECLARING THE EXISTENCE OF A PUBLIC NUISANCE UNDER
ORDINANCE NO. 95-4**

WHEREAS, the Chief of Police has reported a nuisance as outlined in Section 8-2-2 of the Newman Municipal Code located and existing upon property in the City of Newman in violation of Ordinance No. 95-4 of the City of Newman, a description of said property being attached hereto and made a part of this resolution by this reference; and,

WHEREAS, the Chief of Police caused notice to be mailed to the respective owners of the subject properties as in said Ordinance provided, said notice giving notice to abate said nuisance and setting a time and place for hearing objections to the proposed abatement; and,

WHEREAS, said hearing was held on June 10, 2014, at 7:00 p.m., as in said notice provided; and,

WHEREAS, no objections to the proposed abatement were received at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that said City Council of the City of Newman finds that a condition exists with regard to the properties in said City which is dangerous to life, limb and property, and to the public health, safety and morals, in that weeds, rubbish, dirt and rank growth are growing, located and existing upon said property in violation of the provisions of Ordinance No. 95-4 of the City of Newman, which endangers and may injure neighboring property and endangers and injures the welfare of residents in the vicinity of said property, and which is a fire hazard; that a description of said properties is attached hereto and made a part of this resolution by this reference.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June, 2014 by Council Member _____, who moved its adoption, which motion was duly seconded and was adopted upon roll call vote.

AYES:
NOES:
ABSENT:

APPROVED:

Mayor

ATTEST:

Deputy City Clerk

City of Newman
Abatement list

1. 625 Sweet Gum

Overgrown trees in the front and backyard as well as tall weeds in the backyard.





Honorable Mayor and Members
of the Newman City Council

SECOND READING AND ADOPTION OF ORDINANCE NO. 2014- AMENDING TITLE 4 BUILDING REGULATIONS, CHAPTER 4.11 FLOODPLAIN MANAGEMENT-OF THE NEWMAN CITY CODE

RECOMMENDATION:

It is recommended that

1. Conduct a Public Hearing regarding proposed Ordinances amendments to Title 4 Building Regulations, Chapter 4.11 Floodplain Management.
2. Adopt said Ordinance and authorize staff to publish a summary of said Ordinance.

BACKGROUND:

FEMA Region IX (9) staff reviewed the current Floodplain Management Ordinances of the City of Newman as a part of the Community Rating System (CRS) application requirements. Based on FEMA reviews and the California Ordinance Checklist, few revisions were requested. These revisions will improve the local code and comply with the current floodplain requirements. At the May 27, 2014 Council meeting, the introduction of the ordinance and first reading was conducted.

ANALYSIS:

After CRS specialists conducted an evaluation and verification meeting on May 6th, the City became the first CRS community in Stanislaus County; however, per the California Ordinance Checklist, two revisions and one addition to the current Floodplain Management Ordinances were requested by FEMA Regional IX (9) staff. Upon adoption of these changes, the City will be in full compliance with the FEMA CRS program requirements.

The requested revisions include:

1. Minor revisions in the definitions section – Specifying the adoption date for the Flood Insurance Rate Map (FIRM)
2. A revision on designation of Community Floodplain Administrator section
3. An addition to notification of other agencies section associated with the Base Flood Elevation Changes.

The amended ordinances are attached to this staff report.

FISCAL IMPACT:

None.

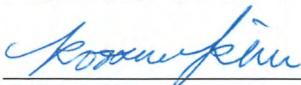
CONCLUSION:

Staff recommends that City Council conduct a public hearing and a second reading, adopt Ordinance 2014- and authorize staff to publish a summary of said ordinance.

ATTACHMENTS:

1. Ordinance No. 2014- amending Title 4 Building Regulations, Chapter 4.11 Floodplain Management

Respectfully submitted,



Koosun Kim
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager

ORDINANCE NO. 2014-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWMAN, CALIFORNIA,
AMENDING TITLE 4 BUILDING REGULATIONS, CHAPTER 4.11 FLOODPLAIN
MANAGEMENT-OF THE NEWMAN CITY CODE**

WHEREAS, the City of Newman held a Public Hearing on June 10, 2014 as noticed, to allow the City Council to hear and consider all protests and objections concerning the proposed Floodplain Management ordinances; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newman DOES HEREBY RESOLVE as follows:

1. The above recitals are all true and correct.
2. That Title 4 of the Newman City Code be amended as stated in Attachment "A", attached hereto and made a part hereof by this reference.
3. All other sections and provisions of Title 4 shall remain in full force and effect.
4. This Ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the West Side Index, a newspaper of general circulation, published and circulated in the City of Newman and thenceforth and thereafter the same shall be in full force and effect.

Introduced at a regular meeting of the City Council of the City of Newman held on the 27th day of May, 2014 by Council Member Martina and adopted at a regular meeting of said City Council held on the 10th day of June, 2014 by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

ATTEST:

Mayor of the City of Newman

Deputy City Clerk of the City of Newman

ATTACHMENT "A"

TITLE 4 BUILDING REGULATIONS CHAPTER 4.11 FLOODPLAIN MANAGEMENT

(Revised Sections in Blue)

Article I. Statutory Authorization, Findings of Fact, Purpose and Methods

- 4.11.010 Statutory authorization.
- 4.11.020 Findings of fact.
- 4.11.030 Statement of purpose.
- 4.11.040 Methods of reducing flood losses.

Article II. Definitions

4.11.050 Definitions.

Article III. General Provisions

- 4.11.060 Lands to which this chapter applies.
- 4.11.070 Basis for establishing the areas of special flood hazard.
- 4.11.080 Compliance.
- 4.11.090 Abrogation and greater restrictions.
- 4.11.100 Interpretation.
- 4.11.110 Warning and disclaimer of liability.
- 4.11.120 Severability.

Article IV. Administration

- 4.11.130 Establishment of development permit.
- 4.11.140 Designation of the Floodplain Administrator.**
- 4.11.150 Duties and responsibilities of the Floodplain Administrator.**
- 4.11.160 Appeals.

Article V. Provisions for Flood Hazard Reduction

- 4.11.170 Standards of construction.
- 4.11.180 Standards for utilities.
- 4.11.190 Standards for subdivisions.
- 4.11.200 Standards for manufactured homes.
- 4.11.210 Standards for recreational vehicles.
- 4.11.220 Floodways.

Article VI. Variance Procedure

- 4.11.230 Nature of variances.
- 4.11.240 Appeal Board.
- 4.11.250 Conditions for variances.

Article I. Statutory Authorization, Findings of Fact, Purpose and Methods

4.11.010 Statutory authorization.

The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local 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 Newman does hereby adopt the following floodplain management regulations. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 1.1, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.020 Findings of fact.

A. The flood hazard areas of the City of Newman 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 uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities also contributes to the flood loss. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 1.2, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.030 Statement of purpose.

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 areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 1.3, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.040 Methods of reducing flood losses.

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

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Control filling, grading, dredging, and other development which may increase flood damage; and

E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 1.4, 9-12-2000; Ord. 95-1, 3-28-1995)

Article II. Definitions

4.11.050 Definitions.

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.

“Accessory use” means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

“Alluvial fan” means a geomorphologic feature characterized by a cone- or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

“Apex” means the point of highest elevation on an alluvial fan, which on undisturbed fans is generally the point where the major stream that formed the fan emerges from the mountain front.

“Appeal” means a request for a review of the Floodplain Administrator’s interpretation of any provision of this chapter.

“Area of shallow flooding” means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). 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. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard. See “special flood hazard area (SFHA).”

“Base flood” means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the “100-year flood”). “Base flood” is the term used throughout this chapter.

“Basement” means any area of the building having its floor subgrade – i.e., below ground level – on all sides.

Building. See “structure.”

“Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Encroachment” means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“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) is completed before ~~the effective date of the floodplain management regulations adopted by a community.~~ **September 29, 1978.**

“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,” “flooding,” or “flood water” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
2. The condition resulting from flood-related erosion.

“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 special flood hazard and the floodway.

“Flood Hazard Boundary Map (FHBM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of flood hazards.

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

“Flood Insurance Study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

“Floodplain” or “flood-prone area” means any land area susceptible to being inundated by water from any source. See “flooding.”

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain management regulations” means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes Federal, State or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

“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. (Refer to FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93 for guidelines on dry and wet floodproofing.)

“Floodway” means the channel of a river 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 one foot. Also referred to as “regulatory floodway.”

“Floodway fringe” is that area of the floodplain on either side of the “regulatory floodway” where encroachment may be permitted.

“Fraud and victimization” as related to Article VI, Variance Procedure, of this chapter means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Newman City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for 50 to 100 years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

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

“Governing body” is the local governing unit, i.e., county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

“Hardship” as related to Article VI, Variance Procedure, of this chapter means the exceptional hardship that would result from a failure to grant the requested variance. The City Council requires that the variance 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 one’s neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

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

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. 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;
3. Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. 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 in states without approved programs.

“Levee” means a manmade 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 (see “basement”).

1. An unfinished or flood-resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided it conforms to applicable nonelevation design requirements, including, but not limited to:

- a. The wet floodproofing standard in NCC 4.11.170(C)(3);
- b. The anchoring standards in NCC 4.11.170(A);
- c. The construction materials and methods standards in NCC 4.11.170(B); and
- d. The standards for utilities in NCC 4.11.180.

2. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "basement"). This prohibition includes below-grade garages and storage areas.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a recreational vehicle.

"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" shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the Floodplain Administrator, but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

"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," for floodplain management purposes, means structures for which the "start of construction" commenced on or after ~~the effective date of floodplain management regulations adopted by this community~~ September 29, 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) is completed on or after ~~the effective date of floodplain management regulations adopted by this community~~ September 29, 1978.

"Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-Hundred-Year Flood or 100-Year Flood. See "base flood."

"Public safety and nuisance" as related to Article VI, Variance Procedure, of this chapter means that the granting of a variance must not result in anything 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.

"Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory floodway” means the channel of a river 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 one foot.

“Remedy a violation” means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

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

Sheet Flow Area. See “area of shallow flooding.”

“Special flood hazard area (SFHA)” means an area in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1 – A30, AE, A99, or AH.

“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 slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a 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 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.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic structure; provided, that the alteration will not preclude the structure’s continued designation as an historic structure.

“Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

“Violation” means the failure of a structure or other development to be fully compliant with this chapter. 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.

“Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. “Watercourse” includes specifically designated areas in which substantial flood damage may occur. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 2.0, 9-12-2000; Ord. 95-1, 3-28-1995)

Article III. General Provisions

4.11.060 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Newman. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.1, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.070 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration (FIA) or the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) dated March 1, 1978, and accompanying Flood Insurance Rate Maps (FIRMs), and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. This FIS and attendant mapping 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 of Newman by the Floodplain Administrator. The study, FIRMs and FBFMs are on file at 1162 Main Street, City Hall. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.2, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.080 Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City of Newman from taking such lawful action as is necessary to prevent or remedy any violation. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.3, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.090 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 ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.4, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.100 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- 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. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.5, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.110 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 areas of special flood hazard 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 of Newman, any officer or employee thereof, the State of California, the Federal Insurance Administration, Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.6, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.120 Severability.

This chapter and the various parts thereof are hereby 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. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 3.7, 9-12-2000; Ord. 95-1, 3-28-1995)

Article IV. Administration

4.11.130 Establishment of development permit.

A development permit shall be obtained before any construction or other development begins within any area of special flood hazard established in NCC 4.11.070. Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, and drainage facilities; and the location of the foregoing. Specifically, the following information is required:

A. Site plan, including but not limited to:

1. For all proposed structures, spot ground elevations at building corners and 20-foot or smaller intervals along the foundation footprint, or one-foot contour elevations throughout the building site; and
 2. Proposed locations of water supply, sanitary sewer, and utilities; and
 3. If available, the base flood elevation from the Flood Insurance Study and/or Flood Insurance Rate Map;
- and
4. If applicable, the location of the regulatory floodway; and

B. Foundation design detail, including but not limited to:

1. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures; and
2. For a crawl-space foundation, location and total net area of foundation openings as required in NCC 4.11.170(C)(3) and FEMA Technical Bulletins TB 1-93 and TB 7-93; and
3. For foundations placed on fill, the location and height of fill, and compaction requirements (compacted to 95 percent using the Standard Proctor Test method); and

C. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in NCC 4.11.170(C)(2) and FEMA Technical Bulletin TB 3-93; and

D. All appropriate certifications listed in NCC 4.11.150(D); and

E. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 4.1, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.140 Designation of the Floodplain Administrator.

~~The City Manager~~ The City Manager or designee is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permits in accord with its provisions. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 4.2, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.150 Duties and responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but not be limited to the following:

A. Permit Review. Review all development permits to determine that:

1. Permit requirements of this chapter have been satisfied;
2. All other required State and Federal permits have been obtained;
3. The site is reasonably safe from flooding; and
4. 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 increase the water surface elevation of the base flood more than one foot at any point.

B. Review, Use and Development of Other Base Flood Data.

1. When base flood elevation data has not been provided in accordance with NCC 4.11.070, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal or State agency, or other source, in order to administer Article V of this chapter. Any such information shall be submitted to the City Council for adoption; or

2. If no base flood elevation data is available from a Federal or State agency or other source, then a base flood elevation shall be obtained using one of two methods from the FEMA publication “Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-Year) Flood Elevations,” dated July 1995, in order to administer Article V of this chapter:

a. Simplified Method.

- i. One-hundred-year or base flood discharge shall be obtained using the appropriate regression equation found in a U.S. Geological Survey publication, or the discharge-drainage area method; and
- ii. Base flood elevation shall be obtained using the Quick-2 computer program developed by FEMA; or

b. Detailed Method.

- i. One-hundred-year or base flood discharge shall be obtained using the U.S. Army Corps of Engineers’ HEC-HMS computer program; and
- ii. Base flood elevation shall be obtained using the U.S. Army Corps of Engineers’ HEC-RAS computer program.

~~**C. Notification of Other Agencies. In alteration or relocation of a watercourse:**~~

- ~~1. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;~~
- ~~2. Submit evidence of such notification to the Federal Insurance Administration, Federal Emergency Management Agency; and~~
- ~~3. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.~~

C. Notification of Other Agencies.

1. Alteration or relocation of a watercourse:

- a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;**

b. Submit evidence of such notification to the Federal Insurance Administration, Federal Emergency Management Agency; and

c. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.

2. Base flood elevation changes due to physical alterations:

a. Within six months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or ensure that the permit applicant submits technical or scientific data to FEMA for a letter of map revision (LOMR).

b. All LOMRs for flood control projects are approved prior to the issuance of building permits. Building permits must 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.

c. 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.

3. Changes in Corporate Boundaries. Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

D. Documentation of Floodplain Development. Obtain and maintain for public inspection and make available as needed the following:

1. Certification required by NCC 4.11.170(C)(1) (lowest floor elevations) and 4.11.200;
2. Certification required by NCC 4.11.170(C)(2) (elevation or floodproofing of nonresidential structures);
3. Certification required by NCC 4.11.170(C)(3) (wet floodproofing standard);
4. Certification of elevation required by NCC 4.11.190(B) (subdivision standards); and
5. Certification required by NCC 4.11.220(A) (floodway encroachments).

E. Map Determinations. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard. Where there appears to be a conflict between a mapped boundary and actual field conditions, grade and base flood elevations shall be used to determine the boundaries of the special flood hazard area. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article VI of this chapter.

F. Remedial Action. Take action to remedy violations of this chapter as specified in NCC 4.11.080. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 4.3, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.160 Appeals.

The City Council of the City of Newman shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 4.4, 9-12-2000; Ord. 95-1, 3-28-1995)

Article V. Provisions for Flood Hazard Reduction

4.11.170 Standards of construction.

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be adequately 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 NCC 4.11.200.

B. Construction Materials and Methods. All new construction and substantial improvement shall be constructed:

1. With flood-resistant materials as specified in FEMA Technical Bulletin TB 2-93, and utility equipment resistant to flood damage;
2. Using methods and practices that minimize flood damage;
3. 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; and
4. If within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

C. Elevation and Floodproofing. (See NCC 4.11.050 definitions for “basement,” “lowest floor,” “new construction,” “substantial damage” and “substantial improvement.”)

1. Residential construction, new or substantial improvement, shall have the lowest floor, including basement:

a. In an AO Zone, elevated above the highest adjacent grade to a height equal to or exceeding the depth number specified in feet on the FIRM, or elevated at least two feet above the highest adjacent grade if no depth number is specified. (The State of California recommends that in AO Zones without velocity the lowest floor be elevated above the highest adjacent grade to a height exceeding the depth number specified in feet on the FIRM by at least two feet or elevated at least four feet above the highest adjacent grade if no depth number is specified.) Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the Community Building Inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator and is required within six months of project completion, submittal of technical data to FEMA for a letter of map revision.

b. In an A Zone, elevated to or above the base flood elevation; said base flood elevation shall be determined by one of the methods in NCC 4.11.150(B). (The State of California recommends the lowest floor be elevated at least two feet above the base flood elevation, as determined by the community.) Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the Community Building Inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator and is required within six months of project completion, submittal of technical data to FEMA for a letter of map revision.

c. In all other zones, elevated to or above the base flood elevation. (The State of California recommends the lowest floor be elevated at least two feet above the base flood elevation.)

2. Nonresidential construction, new or substantial improvement, shall either be elevated to conform with subsection (C)(1) of this section or together with attendant utility and sanitary facilities:

a. Be floodproofed below the elevation recommended under subsection (C)(1) of this section so that 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 section are satisfied. Such certification shall be provided to the Floodplain Administrator.

3. All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement shall follow the guidelines in FEMA Technical Bulletins TB 1-93 and TB 7-93, and must exceed the following minimum criteria:

a. Have 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. 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 flood water; or

b. Be certified by a registered professional engineer or architect.

4. Manufactured homes shall also meet the standards in NCC 4.11.200. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 5.1, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.180 Standards for utilities.

A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:

1. Infiltration of flood waters into the systems; and
2. Discharge from the systems into flood waters.

B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them, during flooding. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 5.2, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.190 Standards for subdivisions.

A. All preliminary subdivision proposals shall identify the special flood hazard area and the elevation of the base flood.

B. All subdivision plans will provide the elevation of proposed structure(s) and pad(s). If the site is filled above the base flood elevation, the lowest floor and pad elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

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. All new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, shall include within such proposals base flood elevation data. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 5.3, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.200 Standards for manufactured homes.

A. All manufactured homes that are placed or substantially improved, within Zones A1 – 30, AH, and AE on the community's Flood Insurance Rate Map, on sites located:

1. Outside of a manufactured home park or subdivision;
2. In a new manufactured home park or subdivision;
3. In an expansion to an existing manufactured home park or subdivision; or
4. In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation (the State of California recommends at least two feet above the base flood elevation) and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1 – 30, AH, and AE on the community's Flood Insurance Rate Map that are not subject to the provisions of subsection (A) of this section will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

1. Lowest floor of the manufactured home is at or above the base flood elevation (the State of California recommends at least two feet above the base flood elevation); or

2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the Community Building Inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 5.4, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.210 Standards for recreational vehicles.

A. All recreational vehicles placed on sites within Zones A1 – 30, AH, and AE on the community's Flood Insurance Rate Map will either:

1. Be on the site for fewer than 180 consecutive days, and be fully licensed and ready for highway use – a recreational vehicle is 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 no permanently attached additions; or

2. Meet the permit requirements of Article IV of this chapter and the elevation and anchoring requirements for manufactured homes in NCC 4.11.200(A). (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 5.5, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.220 Floodways.

Located within areas of special flood hazard established in NCC 4.11.070 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters, which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvement, and other new development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in the base flood elevation during the occurrence of the base flood discharge.

B. If subsection (A) of this section is satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of this article. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 5.6, 9-12-2000; Ord. 95-1, 3-28-1995)

Article VI. Variance Procedure

4.11.230 Nature of variances.

A. The variance criteria 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 granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter 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.

B. It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 6.1, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.240 Appeal Board.

A. In passing upon requests for variances, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:

1. Danger that materials may be swept onto other lands to the injury of others;
2. Danger of life and property due to flooding or erosion damage;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
11. 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, and streets and bridges.

B. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
2. Such construction below the base flood level increases risks to life and property. It is recommended that a copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Stanislaus County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

C. The Floodplain Administrator will 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 Insurance Administration, Federal Emergency Management Agency. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 6.2, 9-12-2000; Ord. 95-1, 3-28-1995)

4.11.250 Conditions for variances.

A. Generally, 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 structures constructed below the base flood level, providing that the procedures of Articles IV and V of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

B. Variances may be issued for the repair or rehabilitation of historic structures (as defined in NCC 4.11.050) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued

designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, this means the City Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.

E. Variances shall only be issued upon a:

1. Showing of good and sufficient cause;
2. Determination that failure to grant the variance would result in exceptional hardship (as defined in NCC 4.11.050) to the applicant; and
3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in NCC 4.11.050 – see "public safety and nuisance"), cause fraud or victimization (as defined in NCC 4.11.050) of the public, or conflict with existing local laws or ordinances.

F. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use; provided, that the provisions of subsections (A) through (E) of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

G. Upon consideration of the factors of NCC 4.11.240(A) and the purposes of this chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. (Ord. 2013-3 § 1 (Att. A), 11-12-2013; Ord. 2010-7 § 1 (Att. A), 10-12-2010; Ord. 2007-10 § 1, 11-27-2007; Ord. 2000-4 § 6.3, 9-12-2000; Ord. 95-1, 3-28-1995)

NEWMAN SAVE OPEN SPACE AND AGRICULTURAL RESOURCES ORDINANCE

RECOMMENDATION:

1. Conduct a Public Hearing; and
2. Adopt Ordinance 2014- , an Ordinance adding Title 5 Zoning, Chapter 29 Urban Growth Boundary to the Newman Municipal Code.

BACKGROUND:

In September 2012, Stanislaus Local Agency Formation Commission (LAFCO) passed an Agricultural Preservation Policy. This new policy requires all Stanislaus County cities to develop a method or strategy for minimizing the loss of agricultural lands when an annexation occurs. One strategy identified by LAFCO includes a voter approved urban growth boundary.

On April 2, 2014, staff presented the City Council with a draft version of an Urban Growth Boundary Ordinance that was similar to one approved by the voters in Thousand Oaks, CA, in Ventura County. Upon conclusion of staff's presentation, the Council permitted staff to review said ordinance with LAFCO staff and select Board members and solicit comments. LAFCO staff and board members were generally positive towards the ordinance. City Staff advised them that we planned to move forward in May and they could forward any additional thoughts or comments. To date, no additional comments have been submitted.

The Council reviewed the proposed Ordinance, along with the changes recommended by LAFCO, at the May 27th meeting and introduced it on a unanimous affirmative vote.

ANALYSIS:

In accordance with the General Plan policies, the City has initiated the development of a master plan document for Area Plan No. 3 with the intention of annexing the area to the City within the first half of calendar year 2015. Upon build out of the area, the project is anticipated to include 1,200 residential units and create up to 2,000 jobs. The proposed Ordinance has been drafted to comply with the recently adopted Agricultural Preservation Policy and would support the proposed annexation as part of the City's Agricultural Preservation Plan; which is review by LAFCO during annexation proceedings. With an affirmative voter from the electorate, the City would utilize the Urban Growth Boundary (UGB) as part of our strategy for Ag preservation.

The attached Ordinance establishes an UGB that is coterminous with the General Plan's Sphere of Influence. The proposed Ordinance limits urbanized growth to the area within the City's current General Plan boundaries until 2040; twenty-five (25) years. The Ordinance does include provisions that allow the Council to review and potentially modify the boundary under limited and specific circumstances.

If the Council elects to support this strategy, the Ordinance needs to be adopted by the Council and a Measure placed on the November 4, 2014 ballot. The electorate would vote on the following measure.

URBAN GROWTH BOUNDARY MEASURE: "Shall the ordinance amending the City of Newman General Plan to create an Urban Growth Boundary be adopted?"	YES
	NO

Subsequent to release the previous report, City staff received a letter from Stanislaus LAFCO regarding one of the amendment provisions. After some back and forth conversation, both sides agreed to include a required 'finding' for amendment provision 1.a. Other minor wording changes were included as well, but do not have a material change on the Ordinance. The changes to the Ordinance are delineated using ~~strikethrough~~ and **bold underline** text on the attachment.

FISCAL IMPACT:

This Ordinance will not have a direct fiscal impact.

CONCLUSION:

Staff recommends the Council open a public hearing and allow the public to speak in support of and/or opposition to the proposed Ordinance. Should no significant opposition be submitted during the hearing, staff recommends the Council approve Newman Save Open-space and Agricultural Resources Ordinance (Urban Growth Boundary) and place it on the November 4, 2014, ballot as a Measure for the local electorate. Staff will be available to answer any questions regarding the Ordinance or the process moving forward.

ATTACHMENTS:

1. Newman Save Open-space and Agricultural Resources (Newman SOAR) Ordinance; with changes recommended by Stanislaus LAFCO.

Respectfully submitted,



Michael Holland
City Manager

ORDINANCE NO. 2014- - CS
(2014 City Council Sponsored Measure __)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWMAN
ADDING TITLE 5, CHAPTER 29 TO THE NEWMAN MUNICIPAL CODE
TO BE KNOWN AS THE "URBAN GROWTH BOUNDARY ORDINANCE"**

SUBJECT TO APPROVAL OF THE VOTERS

The City Council of the City of Newman does hereby ordain as follows:

Part 1

SECTION 1. AMENDMENT: Article 1 is added to Chapter 29 of Title 5 of the Newman Municipal Code to read as follows:

Article 1. URBAN GROWTH BOUNDARY

Section 5.29.101. Title.

This ordinance shall be known as the Newman Save Open-space and Agricultural Resources, or Newman SOAR, ordinance.

Section 5.29.102. Purpose and Findings.

A. Purpose. The purpose of this ordinance is to create the City of Newman (City) Urban Growth Boundary (Newman UGB). The Newman UGB has the following objectives:

1. To encourage efficient growth patterns and protect the City's quality of life by concentrating future development within the adopted Sphere of Influence;
2. To promote on lands outside the Newman UGB ongoing agricultural and other natural resource and open space uses such as preservation of natural resources, public and private outdoor recreation, uses that foster public health and safety, and productive investment for farming enterprises;
3. To manage the City's growth in a manner that fosters and protects the character of the City while encouraging appropriate economic development in accordance with the City's unique local conditions and General Plan;
4. To allow the City to continue to meet its reasonable housing needs for all economic segments of the population by directing the development of housing into areas where services and infrastructure are more efficiently available; and
5. To promote stability in long term planning for the City by establishing a cornerstone policy within the General Plan designating the geographic limits of long term urban development and allowing sufficient flexibility within those limits to respond to the City's changing needs over time.

B. Findings.

1. The protection of existing agricultural, open space, watershed and other lands surrounding the City is of critical importance to present and future residents of the City.

Agriculture has been and remains a major contributor to the economy of the City and County of Stanislaus, directly and indirectly creating employment for many people and generating substantial revenues for the City and the County of Stanislaus.

2. In particular, the City and surrounding area, with its alluvial plain topography, excellent climate and prime agricultural soils, is located in the heart of one of the finest agricultural regions in the world. Vegetable, nut and dairy production from the County of Stanislaus and adjacent to the City continue to enhance the City's, and County's, economy and reputation.

3. Continued urban encroachment into agricultural, open space or watershed areas may impair agriculture and threaten the public health, safety and welfare by causing increased traffic congestion, associated air pollution, not only for the City but for its jurisdictional neighbors. Such urban encroachment may eventually result in both the unnecessary, expensive extension of public services and facilities and inevitable conflicts between urban, agricultural and open space uses.

4. The unique character of the City and quality of life of City residents depend on the protection of a substantial amount of open space, rural and agricultural lands particularly outside of City's Sphere of Influence. The protection of such lands not only ensures the continued viability of agriculture, but also protects the available water supply to surrounding communities and contributes to the protection of wildlife, environmentally sensitive areas, and irreplaceable natural resources. As importantly, adopting a UGB around the City would promote the formation and continuation of a cohesive community by defining the boundaries and by helping to prevent urban sprawl. Such an UGB would promote efficient municipal services and facilities by confining urban development to defined development areas.

5. This measure ensures that the important Goals and Policies of the General Plan are inviolable against transitory short-term political decisions and that agricultural, watershed and open space lands are not prematurely or unnecessarily converted to other non-agricultural or non-open space uses without public debate and a vote of the people. Accordingly, the ordinance requires that until December 31, 2040, the City of Newman shall restrict the provision of urban services, or creation of urban uses, other than in certain circumstances and according to specific procedures set forth in this measure, within the Newman UGB created by this ordinance ~~generally~~ using the location of the Sphere of Influence Line established by the Local Agency Formation Commission as a reference for locating the Newman UGB. The Newman UGB line shall be coterminous with the Sphere of Influence line established by the Local Agency Formation Commission for the City, as it exists as of January 1, 2014.

6. Although established in the same location as the Sphere of Influence line as it exists as of January 1, 2014, the Newman UGB is not intended to and shall in no way inhibit the Local Agency Formation Commission from changing or altering the Sphere of Influence line in accordance with state law. The two lines, although coincidentally coterminous as of one point in time are independent one from the other in legal significance and purpose. While the Sphere of Influence line may be altered by the Local Agency Formation Commission in accordance with the provisions of state law, the Newman UGB is a local land use policy of the City and shall not be changed except as herein provided.

Section 5.29.103. General Plan Amendment: Changes in Boundary

This ordinance hereby amends the Newman General Plan by adding the following as Chapter 9 to the Community Design Element of the General Plan:

NEWMAN CITY URBAN GROWTH BOUNDARY

Introduction.

The electorate of the City of Newman (City) have adopted a UGB line denominated the City of Newman UGB (Newman UGB). Its purpose, principals, implementation procedures, and methodologies for amendment are set forth in this General Plan Amendment.

A. Purpose.

1. The City and surrounding area, with its alluvial plain topography, excellent climate and prime agricultural soils, is located in the heart of one of the finest agricultural regions in the world. Vegetable, nut, and dairy production from the County of Stanislaus and adjacent to the City continue to enhance the City's, and County's, economy and reputation.

2. The purpose of this amendment is to ensure that the preservation of agricultural production, open space, and protection of environmentally sensitive habitat are inviolable against transitory short-term political decisions and that agricultural, viewshed, watershed, and open space lands are not prematurely or unnecessarily converted to other non-agricultural or non-open space uses without public debate and a vote of the people.

3. As importantly, limiting urban sprawl through the use of an UGB enhances the sense of community, allows for development unique to the City of Newman and promotes the efficient use of the City's infrastructure.

B. Principals.

1. Continued urban encroachment into open space, viewshed, watershed and agricultural areas negatively impacts sensitive environmental areas, intrudes on open space irrevocably changing its utility, diminishes the quality of life and threatens the public health, safety and welfare by causing increased traffic congestion, associated air pollution, and causing potentially serious water problems, such as pollution, depletion, and sedimentation of available water resources not only for the City of Newman but for its jurisdictional neighbors. Such urban encroachment may eventually result in both the unnecessary, expensive extension of public services and facilities and inevitable conflicts between urban and Open Space/ Agricultural uses.

2. The unique character of the City, and quality of life of City residents, depend on the protection of a substantial amount of open space, viewshed, and watershed. The protection of such lands through the implementation of this measure not only ensures the continued viability of agriculture, but also protects the available water supply and contributes to flood control and the protection of wildlife, environmentally sensitive areas, and irreplaceable natural resources.

C. Implementation.

1. The City hereby establishes the Newman Urban Growth Boundary (Newman UGB). The Newman UGB is established coterminous with the Sphere of Influence line established by the Local Agency Formation Commission for the City, as it exists as of January 1, 2014.

2. Until December 31, 2040, the City shall restrict urban services (except temporary mutual assistance with other jurisdictions) and urbanized uses of land to within the Newman UGB, except as provided herein and except for the purpose of completing roadways designated in the circulation element of the Newman General Plan as of January 1, 2014, construction of public

potable water facilities, public schools, public parks or other government facilities. Other than the exceptions provided for herein, upon the effective date of this UGB General Plan amendment, the City and its departments, boards, commissions, officers and employees shall not grant, or by inaction allow to be approved by operation of law, any general plan amendment, rezoning, specific plan, subdivision map, conditional use permit, building permit or any other ministerial or discretionary entitlement, which is inconsistent with the purposes of this General Plan amendment, unless in accordance with the Amendment Procedures of Section D of this General Plan Amendment.

3. "Urbanized uses of land" shall mean any development which would require the establishment of new community sewer and/or water systems or the significant expansion of existing community sewer and/or water systems; or, would result in the creation of residential densities greater than one primary residential unit per 10 acres in area; or, would result in the establishment of commercial or industrial uses which are neither agriculturally-related nor related to the production of mineral resources.

4. The City of Newman LAND USE DESIGNATIONS Map, figure LU3 to the Land Use Element is amended to reflect the existence of the Newman UGB which is coterminous with the Sphere of Influence line as it exists as of January 1, 2014.

5. The Newman UGB may not be amended, altered, revoked or otherwise changed prior to December 31, 2040, except by vote of the people or by the City Council pursuant to the procedures set forth in Section D of this General Plan Amendment.

D. Amendment Procedures.

1. Until December 31, 2040, the foregoing Purposes, Principles and Implementation provisions of this General Plan amendment, and the Newman UGB may be amended only by a vote of the people or pursuant to one of the following methods:

a) The City Council may, by a majority vote, amend the Newman UGB described herein for non-residential uses if it deems it to be in the public interest, **consistent with the intent of this Ordinance**, provided that the amended boundary is adjacent to the Newman UGB established by this General Plan amendment **and an equal or greater amount of land is removed from the existing Sphere of Influence/UGB. The result of the action would be a negative or neutral impact on the amount of land within the UGB. Such amendment may be adopted only if the City Council makes the following finding:**

(i) **The land subject to the proposed Newman UGB boundary amendment is immediately adjacent to existing compatibly developed areas and the applicant for inclusion of land within the UGB has provided to the City evidence that the Fire Department, Police Department, and Department of Public Works with jurisdiction over such land have adequate capacity to accommodate the proposed development and provide it with adequate public services: or**

b) The City Council, following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with the California Environmental Quality Act ("CEQA"), may amend, by majority vote, the Newman UGB as described herein to comply with General Plan Goal LU-6 to "Provide adequate land for and promote development of employment uses that create high quality jobs and enhance the economy of Newman". Such amendment may be adopted only if the City Council makes each of the following findings:

i) The land subject to the proposed Newman UGB boundary amendment is immediately adjacent to existing compatibly developed areas and the applicant for the inclusion of land within the UGB has provided to the City evidence that the Fire Department, Police Department, and Department of Public Works with jurisdiction over such land have adequate capacity to accommodate the proposed development and provide it with adequate public services; and

ii) That inventory of undeveloped commercial, business park, and/or industrial designated land within the Newman UGB has reached a level of less than one hundred (100) acres. At this point, the City would be placed at an economic disadvantage when trying to recruit existing businesses to expand and/or attract new businesses to relocate to the City; and

iii) That it is not reasonably feasible to accommodate the proposed development by re-designating lands within the Newman UGB due to size, shape and/or location; or

c) The City Council, following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with CEQA, may amend, by majority vote, the Newman UGB described herein to comply with state law regarding the provision of housing for all economic segments of the community. The City Council may amend the Newman UGB as described herein in order to accommodate lands to be designated for residential uses, provided that no more land may be brought within the UGB as required for compliance with State law for this purpose. Such amendment may be adopted only if the City Council makes each of the following findings:

i) The land is immediately adjacent to existing compatibly developed areas and the applicant for the inclusion of land within the Newman UGB has provided to the City evidence that the Fire Department, Police Department, Department of Public Works, the Community Services Department, applicable water and sewer districts, and the School District with jurisdiction over such land have adequate capacity to accommodate the proposed development and provide it with adequate public services; and

ii) That the proposed development will address the highest priority need identified in the analysis by which the City has determined it is not in compliance with State law, i.e., low and very low income housing; and

iii) That there is no existing residentially designated land available within the Newman UGB to accommodate the proposed development; and

iv) That it is not reasonably feasible to accommodate the proposed development by redesignating lands within the Newman UGB; or

d) The City Council following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with CEQA, may amend, by majority vote, the Newman UGB described herein, based on substantial evidence in the record, if the City Council makes each of the following findings:

i) Application of the provisions of subsections a, b or c of these amendment procedures are unworkable and failure to amend the Newman UGB would constitute an unconstitutional taking of a landowner's property for which compensation would be required or would deprive the landowner of a vested right; and

ii) The amendment and associated land use designations will allow additional land uses only to the minimum extent necessary to avoid said unconstitutional taking of the landowner's property or to give effect to the vested right; or

e) The City Council following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with CEQA, may place any amendment to the Newman UGB or the provisions of this ordinance on the ballot pursuant to the mechanisms provided by State law; or

f) The General Plan may be reorganized and individual provisions, including the provisions of this ordinance, may be renumbered or reordered in the course of ongoing updates of the General Plan in accordance with the requirements of State law.

Section 5.29.104. Exemptions.

The provisions of this Article do not apply to any roadways designated in the circulation element of the Newman General Plan as of January 1, 2014, construction of public potable water facilities, public schools, public parks or other government facilities, nor to any development project that has obtained as of the effective date of this ordinance a vested right pursuant to State or local law.

Section 5.29.105. Insertion Date.

A. Upon the effective date of this ordinance, the General Plan is effectively amended to incorporate the terms of this ordinance; except, that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year have already been utilized in 2014, prior to the effective date of this ordinance, this General Plan amendment shall be deemed inserted into the City's General Plan on January 1, 2015.

B. The City's General Plan in effect when the ordinance was adopted and that General Plan as amended by this measure, comprise an integrated, internally consistent and compatible statement of policies for the City. In order to ensure that the City's General Plan remains an integrated, internally consistent and compatible statement of policies for the City, as required by state law, and to ensure that the actions of the voters in enacting this ordinance are given effect, any provision of the General Plan that is adopted between the City Council submittal date to be placed on the ballot and the date that this ordinance is deemed inserted into the General Plan, shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by Section 5.29.103 of this ordinance, that interim-enacted provision shall be amended as soon as possible and in the manner and time required by State law to ensure consistency between the provisions adopted by this ordinance and other elements of the City's General Plan. In the alternative, such interim-enacted inconsistent provision shall be disregarded and of no validity or effect.

Section 5.29.106. Severability.

This ordinance shall be interpreted so as to be consistent with all federal and State laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this ordinance is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The voters hereby declare that this ordinance, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this ordinance is declared invalid as applied to any person or circumstance, such invalidity shall not affect any application of this ordinance that can be given effect without the invalid application. This ordinance shall be broadly construed in order to achieve the purposes stated in this ordinance. It is the intent of the voters that the provisions of this ordinance shall be interpreted by the City and others in a manner that facilitates the confinement of urban uses within the City's UGB thereby protecting agricultural, open space and rural lands, and preventing urban sprawl.

Section 5.29.107. Amendment or Repeal.

Except as otherwise provided herein, this ordinance may be amended or repealed only by the voters of the City at an election held in accordance with State law.

Section 5.29.108. Competing Measures.

In the event there are competing measures on the same ballot with this measure that purport to address the same subject matter of this measure, the following rules shall apply: If more than one such measure passes, both measures shall go into effect except to the extent that particular provisions of one measure are in direct, irreconcilable conflict with particular provisions of another measure. In that event, as to those conflicting provisions only, the provisions of the measure which received the most votes shall prevail.

SECTION 2. ENACTMENT: This ordinance shall take effect thirty (30) days after its passage by the City Council, and following the affirmative vote of a majority of the electors of the City of Newman voting on the measure. Prior to the expiration of fifteen (15) days from the passage and adoption thereof, this ordinance shall be published in a newspaper of general circulation printed and published in the County of Stanislaus, State of California, together with names of the members of the City Council voting for and against the same.

Introduced at a regular meeting of the City Council of the City of Newman held on the 27th day of May, 2014 by Council Member Hutchins and adopted at a regular meeting of said City Council held on the 10th day of June, 2014 by the following vote:

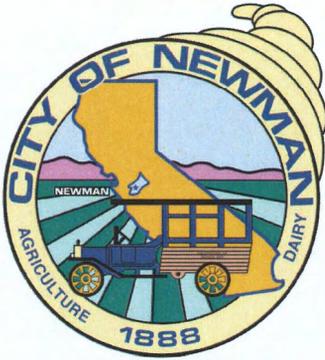
AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

Signed and approved this ___ day of _____, 2014.

ED KATEN, Mayor

ATTEST:

Mike Maier, Deputy City Clerk,
City of Newman, County of Stanislaus,
State of California



**City of Newman
City Manager's Office
Memorandum**

Date: June 5, 2014
To: Mayor Katen and City Council
From: Michael E. Holland, City Manager *meh*

Subject: Item No. 10a. - Approve Resolution No. 2014- , Placing Newman SOAR Ordinance on the November Ballot.

Attached is a Resolution submitting the Newman Save Open-space and Agricultural Resources (SOAR) Ordinance as a measure on the November 2014, ballot for consideration by qualified voters. The Resolution also directs the City Attorney to prepare an Impartial Analysis, not to exceed 500 words, concerning the Measure and authorizes each member of the City Council to file written arguments, not to exceed 30 words, in favor of or in opposition to the Measure. Upon adoption of the attached Resolution, the City Clerk will forward said Resolution and the Impartial Analysis to the Stanislaus County Board of Supervisors.

RESOLUTION NO. 2014-

A RESOLUTION CALLING FOR AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF NEWMAN ON TUESDAY, NOVEMBER 4, 2014, FOR THE PURPOSES OF SUBMITTING TO THE QUALIFIED VOTERS A BALLOT MEASURE AMENDING THE CITY OF NEWMAN GENERAL PLAN TO CREATE AN URBAN GROWTH BOUNDARY, REQUESTING CONSOLIDATION THEREOF WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DATE, AND REQUESTING THE STANISLAUS COUNTY BOARD OF SUPERVISORS TO PERMIT THE STANISLAUS COUNTY CLERK TO RENDER SPECIFIC SERVICES TO THE CITY OF NEWMAN RELATING TO THE CONDUCT OF THE GENERAL MUNICIPAL ELECTION

WHEREAS, under the provisions of California Government Code Sections 34870-34884 and 34900-34906, and the laws relating to general law cities in the State of California, a general municipal election shall be held on November 4, 2014 for the purpose of submitting to the qualified voters a ballot measure amending the City of Newman General Plan to create an urban growth boundary; and

WHEREAS, Section 10002 of the Elections Code of the State of California provides that the governing body of the City may by resolution request the Board of Supervisors of the County to permit the County Clerk to render special services to the City relating to the conduct of elections; and

WHEREAS, pursuant to Section 10002 of the Elections Code of the State of California, the City shall reimburse the County in full for the services performed upon presentation of a bill to the City; and

WHEREAS, the City Council desires to call such election and request its consolidation with the statewide election to be held on the same date and have the County Clerk perform specified election services to the City of Newman.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWMAN, hereby resolves, determines, finds, and orders as follows:

1. Pursuant to the Elections Code of the State of California there is called and ordered to be held in the City of Newman, California, on Tuesday, November 4, 2014, a general municipal election for the purpose of submitting to the qualified voters a ballot measure amending the City of Newman General Plan to create an urban growth boundary.

2. That by _____ (i.e., majority, unanimous, etc.) vote of all members of its membership, the City Council hereby approves the proposed ordinance to be submitted to the voters. The proposed Measure shall not take effect until approved by at least a majority of affirmative votes of the voters voting on the question at the election.

3. The text of the proposed ordinance to be submitted to the voters is attached as Exhibit A to this resolution. The exact form of the Measure to be voted upon shall appear on the ballot as follows:

URBAN GROWTH BOUNDARY MEASURE: "Shall the ordinance amending the City of Newman General Plan to create an Urban Growth Boundary be adopted?"	YES
	NO

The Measure shall be designated on the ballot by a letter printed on the left margin of the square containing a description of the Measure, as provided in California Election Code Section 13116.

4. Pursuant to Section 10400, et seq. of the Elections Code of the State of California, the County Board of Supervisors is hereby requested to consent and agree to the consolidation of the elections referred to herein with any other election to be held on November 4, 2014.

5. Pursuant to Section 10002 of the Elections Code, the City requests the Board of Supervisors to permit the County Clerk to render special services to the City relating to this election.

6. The consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the elections shall be regulated and done by the County Clerk in accordance with the provision of law regulating a regularly scheduled election. The Board of Supervisors is hereby requested to issue all officers of the County charged with duties pertaining to the November 4, 2014 election instructions to take any and all steps necessary for the holding of a consolidated election pursuant to Section 10418 of the Elections Code of the State of California.

7. The ballots to be used at the election shall be in such form and content as may be required by law to be used at the election.

8. The County Clerk is authorized and directed to do any and all things necessary in order to ensure the lawful conduct of any election which has been consolidated with City's elections in the County of Stanislaus.

9. In all particulars not recited in this resolution, the elections shall be held and conducted as provided by law for holding elections in the City of Newman that are consolidated with any other elections.

10. Notice of the time and place of holding the elections is given and the County Clerk is authorized and directed to give such further or additional information in the time, form, and manner required by law in connection with consolidated elections.

11. Pursuant to Section 9282 of the Elections Code of the State of California, the deadline for submitting arguments, not to exceed 300 words, for or against the measure to the Newman City Clerk for transmittal to the Registrar of Voters is hereby set for July 11, 2014, at 12:00 p.m. The provisions of this Section shall apply only to the election to be held on November 4, 2014, and shall then be repealed.

12. Pursuant to Section 9285 of the Elections Code of the State of California, rebuttal arguments, not to exceed 250 words, shall be filed with the Newman City Clerk for transmittal to the Registrar of Voters not later than 10 days after the filing date for primary arguments.

The provisions of this Section shall apply only to the election held on November 4, 2014 and shall then be repealed.

13. The full text of the ordinance amending the City of Newman General Plan to create an Urban Growth Boundary will be made available, at no cost, at the Newman City Clerk's office or on the City of Newman's website at www.cityofnewman.com. A statement about how to obtain the full text of the ordinance will be included in the voter information pamphlet below the impartial analysis.

14. For and in consideration of the election services to be rendered by the Stanislaus County Clerk, the City of Newman agrees to pay to Stanislaus County the City's proportionate share of the reasonable expenses of said election. Said share to consist of all direct costs as determined by the Stanislaus County Clerk related to the conduct of the City of Newman's general municipal election together with the City's proportionate share of the expenses for election services rendered by Stanislaus County that are being shared equally with other jurisdictions, if any, by virtue of the consolidation of the City's municipal elections with elections being held by other jurisdictions, if any, in the City of Newman on November 4, 2014.

15. The City Clerk is directed, pursuant to Elections Code Section 9280 to transmit a copy of the Measure to the City Attorney for the purpose of preparing an Impartial Analysis of the Measure. The City Attorney is directed to prepare an Impartial Analysis, not to exceed 500 words, concerning the Measure to be voted upon. A copy of the City Attorney's analysis is attached as Exhibit B to this resolution.

16. Any and all members of the City Council are hereby authorized to file written arguments, not to exceed 300 words, in favor of or in opposition to the Measure.

17. The City Clerk is directed to file with the Board of Supervisors and the County Clerk of Stanislaus County certified copies of this Resolution.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June, 2014 by Council Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call vote adopted.

AYES:

NOES:

ABSENT:

APPROVED:

Mayor of the City of Newman

ATTEST:

Deputy City Clerk of the City of Newman

Exhibit A

ORDINANCE NO. 2014- - CS
(2014 City Council Sponsored Measure __)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWMAN
ADDING TITLE 5, CHAPTER 29 TO THE NEWMAN MUNICIPAL CODE
TO BE KNOWN AS THE "URBAN GROWTH BOUNDARY ORDINANCE"**

SUBJECT TO APPROVAL OF THE VOTERS

The City Council of the City of Newman does hereby ordain as follows:

Part 1

SECTION 1. AMENDMENT: Article 1 is added to Chapter 29 of Title 5 of the Newman Municipal Code to read as follows:

Article 1. URBAN GROWTH BOUNDARY

Section 5.29.101. Title.

This ordinance shall be known as the Newman Save Open-space and Agricultural Resources, or Newman SOAR, ordinance.

Section 5.29.102. Purpose and Findings.

A. Purpose. The purpose of this ordinance is to create the City of Newman (City) Urban Growth Boundary (Newman UGB). The Newman UGB has the following objectives:

1. To encourage efficient growth patterns and protect the City's quality of life by concentrating future development within the adopted Sphere of Influence;
2. To promote on lands outside the Newman UGB ongoing agricultural and other natural resource and open space uses such as preservation of natural resources, public and private outdoor recreation, uses that foster public health and safety, and productive investment for farming enterprises;
3. To manage the City's growth in a manner that fosters and protects the character of the City while encouraging appropriate economic development in accordance with the City's unique local conditions and General Plan;
4. To allow the City to continue to meet its reasonable housing needs for all economic segments of the population by directing the development of housing into areas where services and infrastructure are more efficiently available; and
5. To promote stability in long term planning for the City by establishing a cornerstone policy within the General Plan designating the geographic limits of long term urban development and allowing sufficient flexibility within those limits to respond to the City's changing needs over time.

B. Findings.

1. The protection of existing agricultural, open space, watershed and other lands surrounding the City is of critical importance to present and future residents of the City.

Exhibit A

Agriculture has been and remains a major contributor to the economy of the City and County of Stanislaus, directly and indirectly creating employment for many people and generating substantial revenues for the City and the County of Stanislaus.

2. In particular, the City and surrounding area, with its alluvial plain topography, excellent climate and prime agricultural soils, is located in the heart of one of the finest agricultural regions in the world. Vegetable, nut and dairy production from the County of Stanislaus and adjacent to the City continue to enhance the City's, and County's, economy and reputation.

3. Continued urban encroachment into agricultural, open space or watershed areas may impair agriculture and threaten the public health, safety and welfare by causing increased traffic congestion, associated air pollution, not only for the City but for its jurisdictional neighbors. Such urban encroachment may eventually result in both the unnecessary, expensive extension of public services and facilities and inevitable conflicts between urban, agricultural and open space uses.

4. The unique character of the City and quality of life of City residents depend on the protection of a substantial amount of open space, rural and agricultural lands particularly outside of City's Sphere of Influence. The protection of such lands not only ensures the continued viability of agriculture, but also protects the available water supply to surrounding communities and contributes to the protection of wildlife, environmentally sensitive areas, and irreplaceable natural resources. As importantly, adopting a UGB around the City would promote the formation and continuation of a cohesive community by defining the boundaries and by helping to prevent urban sprawl. Such an UGB would promote efficient municipal services and facilities by confining urban development to defined development areas.

5. This measure ensures that the important Goals and Policies of the General Plan are inviolable against transitory short-term political decisions and that agricultural, watershed and open space lands are not prematurely or unnecessarily converted to other non-agricultural or non-open space uses without public debate and a vote of the people. Accordingly, the ordinance requires that until December 31, 2040, the City of Newman shall restrict the provision of urban services, or creation of urban uses, other than in certain circumstances and according to specific procedures set forth in this measure, within the Newman UGB created by this ordinance generally using the location of the Sphere of Influence Line established by the Local Agency Formation Commission as a reference for locating the Newman UGB. The Newman UGB line shall be coterminous with the Sphere of Influence line established by the Local Agency Formation Commission for the City, as it exists as of January 1, 2014.

6. Although established in the same location as the Sphere of Influence line as it exists as of January 1, 2014, the Newman UGB is not intended to and shall in no way inhibit the Local Agency Formation Commission from changing or altering the Sphere of Influence line in accordance with state law. The two lines, although coincidentally coterminous as of one point in time are independent one from the other in legal significance and purpose. While the Sphere of Influence line may be altered by the Local Agency Formation Commission in accordance with the provisions of state law, the Newman UGB is a local land use policy of the City and shall not be changed except as herein provided.

Section 5.29.103. General Plan Amendment: Changes in Boundary

This ordinance hereby amends the Newman General Plan by adding the following as Chapter 9 to the Community Design Element of the General Plan:

Exhibit A

NEWMAN CITY URBAN GROWTH BOUNDARY

Introduction.

The electorate of the City of Newman (City) have adopted a UGB line denominated the City of Newman UGB (Newman UGB). Its purpose, principals, implementation procedures, and methodologies for amendment are set forth in this General Plan Amendment.

A. Purpose.

1. The City and surrounding area, with its alluvial plain topography, excellent climate and prime agricultural soils, is located in the heart of one of the finest agricultural regions in the world. Vegetable, nut, and dairy production from the County of Stanislaus and adjacent to the City continue to enhance the City's, and County's, economy and reputation.

2. The purpose of this amendment is to ensure that the preservation of agricultural production, open space, and protection of environmentally sensitive habitat are inviolable against transitory short-term political decisions and that agricultural, viewshed, watershed, and open space lands are not prematurely or unnecessarily converted to other non-agricultural or non-open space uses without public debate and a vote of the people.

3. As importantly, limiting urban sprawl through the use of an UGB enhances the sense of community, allows for development unique to the City of Newman and promotes the efficient use of the City's infrastructure.

B. Principals.

1. Continued urban encroachment into open space, viewshed, watershed and agricultural areas negatively impacts sensitive environmental areas, intrudes on open space irrevocably changing its utility, diminishes the quality of life and threatens the public health, safety and welfare by causing increased traffic congestion, associated air pollution, and causing potentially serious water problems, such as pollution, depletion, and sedimentation of available water resources not only for the City of Newman but for its jurisdictional neighbors. Such urban encroachment may eventually result in both the unnecessary, expensive extension of public services and facilities and inevitable conflicts between urban and Open Space/ Agricultural uses.

2. The unique character of the City, and quality of life of City residents, depend on the protection of a substantial amount of open space, viewshed, and watershed. The protection of such lands through the implementation of this measure not only ensures the continued viability of agriculture, but also protects the available water supply and contributes to flood control and the protection of wildlife, environmentally sensitive areas, and irreplaceable natural resources.

C. Implementation.

1. The City hereby establishes the Newman Urban Growth Boundary (Newman UGB). The Newman UGB is established coterminous with the Sphere of Influence line established by the Local Agency Formation Commission for the City, as it exists as of January 1, 2014.

2. Until December 31, 2040, the City shall restrict urban services (except temporary mutual assistance with other jurisdictions) and urbanized uses of land to within the Newman UGB, except as provided herein and except for the purpose of completing roadways designated in the circulation element of the Newman General Plan as of January 1, 2014, construction of public

Exhibit A

potable water facilities, public schools, public parks or other government facilities. Other than the exceptions provided for herein, upon the effective date of this UGB General Plan amendment, the City and its departments, boards, commissions, officers and employees shall not grant, or by inaction allow to be approved by operation of law, any general plan amendment, rezoning, specific plan, subdivision map, conditional use permit, building permit or any other ministerial or discretionary entitlement, which is inconsistent with the purposes of this General Plan amendment, unless in accordance with the Amendment Procedures of Section D of this General Plan Amendment.

3. "Urbanized uses of land" shall mean any development which would require the establishment of new community sewer and/or water systems or the significant expansion of existing community sewer and/or water systems; or, would result in the creation of residential densities greater than one primary residential unit per 10 acres in area; or, would result in the establishment of commercial or industrial uses which are neither agriculturally-related nor related to the production of mineral resources.

4. The City of Newman LAND USE DESIGNATIONS Map, figure LU3 to the Land Use Element is amended to reflect the existence of the Newman UGB which is coterminous with the Sphere of Influence line as it exists as of January 1, 2014.

5. The Newman UGB may not be amended, altered, revoked or otherwise changed prior to December 31, 2040, except by vote of the people or by the City Council pursuant to the procedures set forth in Section D of this General Plan Amendment.

D. Amendment Procedures.

1. Until December 31, 2040, the foregoing Purposes, Principles and Implementation provisions of this General Plan amendment, and the Newman UGB may be amended only by a vote of the people or pursuant to one of the following methods:

a) The City Council may, by a majority vote, amend the Newman UGB described herein for non-residential uses if it deems it to be in the public interest, consistent with the intent of this Ordinance, provided that the amended boundary is adjacent to the Newman UGB established by this General Plan amendment and an equal or greater amount of land is removed from the existing Sphere of Influence/UGB. The result of the action would be a negative or neutral impact on the amount of land within the UGB. Such amendment may be adopted only if the City Council makes the following finding:

(i) The land subject to the proposed Newman UGB boundary amendment is immediately adjacent to existing compatibly developed areas and the applicant for inclusion of land within the UGB has provided to the City evidence that the Fire Department, Police Department, and Department of Public Works with jurisdiction over such land have adequate capacity to accommodate the proposed development and provide it with adequate public services: or

b) The City Council, following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with the California Environmental Quality Act ("CEQA"), may amend, by majority vote, the Newman UGB as described herein to comply with General Plan Goal LU-6 to "Provide adequate land for and promote development of employment uses that create high quality jobs and enhance the economy of Newman". Such amendment may be adopted only if the City Council makes each of the following findings:

i) The land subject to the proposed Newman UGB boundary

Exhibit A

amendment is immediately adjacent to existing compatibly developed areas and the applicant for the inclusion of land within the UGB has provided to the City evidence that the Fire Department, Police Department, and Department of Public Works with jurisdiction over such land have adequate capacity to accommodate the proposed development and provide it with adequate public services; and

ii) That inventory of undeveloped commercial, business park, and/or industrial designated land within the Newman UGB has reached a level of less than one hundred (100) acres. At this point, the City would be placed at an economic disadvantage when trying to recruit existing businesses to expand and/or attract new businesses to relocate to the City; and

iii) That it is not reasonably feasible to accommodate the proposed development by re-designating lands within the Newman UGB due to size, shape and/or location; or

c) The City Council, following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with CEQA, may amend, by majority vote, the Newman UGB described herein to comply with state law regarding the provision of housing for all economic segments of the community. The City Council may amend the Newman UGB as described herein in order to accommodate lands to be designated for residential uses, provided that no more land may be brought within the UGB as required for compliance with State law for this purpose. Such amendment may be adopted only if the City Council makes each of the following findings:

i) The land is immediately adjacent to existing compatibly developed areas and the applicant for the inclusion of land within the Newman UGB has provided to the City evidence that the Fire Department, Police Department, Department of Public Works, the Community Services Department, applicable water and sewer districts, and the School District with jurisdiction over such land have adequate capacity to accommodate the proposed development and provide it with adequate public services; and

ii) That the proposed development will address the highest priority need identified in the analysis by which the City has determined it is not in compliance with State law, i.e., low and very low income housing; and

iii) That there is no existing residentially designated land available within the Newman UGB to accommodate the proposed development; and

iv) That it is not reasonably feasible to accommodate the proposed development by redesignating lands within the Newman UGB; or

d) The City Council following at least one noticed public hearing for presentations by an applicant and the public, and after compliance with CEQA, may amend, by majority vote, the Newman UGB described herein, based on substantial evidence in the record, if the City Council makes each of the following findings:

i) Application of the provisions of subsections a, b or c of these amendment procedures are unworkable and failure to amend the Newman UGB would constitute an unconstitutional taking of a landowner's property for which compensation would be required or would deprive the landowner of a vested right; and

ii) The amendment and associated land use designations will allow additional land uses only to the minimum extent necessary to avoid said unconstitutional taking of the landowner's property or to give effect to the vested right; or

e) The City Council following at least one noticed public hearing for

Exhibit A

presentations by an applicant and the public, and after compliance with CEQA, may place any amendment to the Newman UGB or the provisions of this ordinance on the ballot pursuant to the mechanisms provided by State law; or

f) The General Plan may be reorganized and individual provisions, including the provisions of this ordinance, may be renumbered or reordered in the course of ongoing updates of the General Plan in accordance with the requirements of State law.

Section 5.29.104. Exemptions.

The provisions of this Article do not apply to any roadways designated in the circulation element of the Newman General Plan as of January 1, 2014, construction of public potable water facilities, public schools, public parks or other government facilities, nor to any development project that has obtained as of the effective date of this ordinance a vested right pursuant to State or local law.

Section 5.29.105. Insertion Date.

A. Upon the effective date of this ordinance, the General Plan is effectively amended to incorporate the terms of this ordinance; except, that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year have already been utilized in 2014, prior to the effective date of this ordinance, this General Plan amendment shall be deemed inserted into the City's General Plan on January 1, 2015.

B. The City's General Plan in effect when the ordinance was adopted and that General Plan as amended by this measure, comprise an integrated, internally consistent and compatible statement of policies for the City. In order to ensure that the City's General Plan remains an integrated, internally consistent and compatible statement of policies for the City, as required by state law, and to ensure that the actions of the voters in enacting this ordinance are given effect, any provision of the General Plan that is adopted between the City Council submittal date to be placed on the ballot and the date that this ordinance is deemed inserted into the General Plan, shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by Section 5.29.103 of this ordinance, that interim-enacted provision shall be amended as soon as possible and in the manner and time required by State law to ensure consistency between the provisions adopted by this ordinance and other elements of the City's General Plan. In the alternative, such interim-enacted inconsistent provision shall be disregarded and of no validity or effect.

Section 5.29.106. Severability.

This ordinance shall be interpreted so as to be consistent with all federal and State laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this ordinance is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The voters hereby declare that this ordinance, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this ordinance is declared invalid as applied to any person or circumstance, such invalidity shall not affect any application of this ordinance that can be given effect without the invalid application. This ordinance shall be broadly construed in order to achieve the purposes stated in this ordinance. It is the intent of the voters that the provisions of this ordinance shall be interpreted by the City and others in a manner that facilitates the confinement of urban uses within the City's UGB thereby protecting agricultural, open space and rural lands, and preventing urban sprawl.

Exhibit A

Section 5.29.107. Amendment or Repeal.

Except as otherwise provided herein, this ordinance may be amended or repealed only by the voters of the City at an election held in accordance with State law.

Section 5.29.108. Competing Measures.

In the event there are competing measures on the same ballot with this measure that purport to address the same subject matter of this measure, the following rules shall apply: If more than one such measure passes, both measures shall go into effect except to the extent that particular provisions of one measure are in direct, irreconcilable conflict with particular provisions of another measure. In that event, as to those conflicting provisions only, the provisions of the measure which received the most votes shall prevail.

SECTION 2. ENACTMENT: This ordinance shall take effect thirty (30) days after its passage by the City Council, and following the affirmative vote of a majority of the electors of the City of Newman voting on the measure. Prior to the expiration of fifteen (15) days from the passage and adoption thereof, this ordinance shall be published in a newspaper of general circulation printed and published in the County of Stanislaus, State of California, together with names of the members of the City Council voting for and against the same.

Introduced at a regular meeting of the City Council of the City of Newman held on the 27th day of May, 2014 by Council Member Hutchins and adopted at a regular meeting of said City Council held on the 10th day of June, 2014 by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

Signed and approved this ____ day of _____, 2014.

ED KATEN, Mayor

ATTEST:

Mike Maier, Deputy City Clerk,
City of Newman, County of Stanislaus,
State of California

Exhibit B



M E M O R A N D U M

TO: City Clerk

FROM: City Attorney

DATE:

SUBJECT: City Attorney's Impartial Analysis of
Urban Growth Boundary, City Measure ____

Pursuant to state law, the City Attorney's Office has reviewed the City Council sponsored measure proposed for the November 2014 ballot to create an urban growth boundary, and prepared the following impartial analysis.

CITY ATTORNEY'S ANALYSIS:

Under this proposed ordinance, the City's General Plan would be amended and an "Urban Growth Boundary" (UGB) would be established around the City of Newman, coterminous with the City's Sphere of Influence line established by the Local Agency Formation Commission for the City as it exists as of January 1, 2014.

This ordinance prohibits most urbanized uses of land, as defined in the ordinance, from being approved by the City for land outside of the UGB until December 31, 2040. However, construction of public potable water facilities, certain roadways, public schools, public parks and other government facilities outside the UGB would be allowed. The ordinance does not apply to any project which has received a vested right to develop on the effective date of the ordinance.

Generally, in order to amend or repeal this ordinance, or the Urban Growth Boundary, before December 31, 2040, a majority vote of the City's voters is required. However, the City Council may amend the UGB following at least one public hearing, and after compliance with the California Environmental Quality Act, as follows:

Exhibit B

MEMORANDUM

TO: City Clerk
FROM: City Attorney
DATE:
SUBJECT: Impartial Analysis of Urban Growth Boundary, Measure ___
PAGE: 2 of 2

- (1) For non-residential uses, if it deems it to be in the public interest provided the amended boundary is adjacent to the UGB and an equal or greater amount of land is removed from the existing Sphere of Influence/UGB.
- (2) To comply with the General Plan Goal LU-6 – Provide adequate land for and promote development of employment uses that create high quality jobs and enhance the economy but only after making certain findings as set forth in the ordinance.
- (3) To comply with State law regarding the provisions of housing for all economic segments of the community but only after making certain findings as set forth in the ordinance.

The UGB could also be amended by the City Council without a vote of the City's voters, if the modification to the boundary is required to avoid an unconstitutional taking of a landowner's property, with the boundary amended only to the minimum extent necessary to avoid such taking.

Phaedra A. Norton
Newman City Attorney

PREPARED PURSUANT TO
ELECTIONS CODE SECTION 9280
BY THE NEWMAN CITY ATTORNEY,
PHAEDRA A. NORTON
DATED: _____

THE ABOVE STATEMENT IS
AN IMPARTIAL ANALYSIS OF
MEASURE __. IF YOU DESIRE
A COPY OF THE ORDINANCE
OR MEASURE, PLEASE
CONTACT THE CITY CLERK
AT (209) 862-3725 AND A
COPY WILL BE MAILED AT
NO COST TO YOU.

Honorable Mayor and Members
of the Newman City Council

SECOND AMENDMENT TO THE SHERMAN RANCH DEVELOPMENT AGREEMENT

RECOMMENDATION:

Adopt Ordinance 2014- , an Ordinance approving the second amendment to the Sherman Ranch Development Agreement.

BACKGROUND:

In November 2004, the City and SCM Hearthstone LLC entered into a Development Agreement relating to Sherman Ranch development. This Development Agreement was amended by the Council in April 2011 pursuant to a Settlement Agreement reached with the developer relating to a dispute over inspection and plan check fees for the project. While the infrastructure for the project is completed, only an estimated 30% of the lots contain a completed residential structure.

Council held a Public Hearing on this 2nd Amendment at the May 27th meeting in which no one spoke.

ANALYSIS:

The proposed changes in this second amendment would continue two programs that were added to the agreement in the first amendment. The expiration dates for the two programs have passed and the developer is requesting they be reinstated as part of this agreement. The first program is designed to assist 'qualified' low income buyers through the use of HOME funds. The program would set aside \$125,000 to defray impact fee costs to the buyer and help achieve a lower purchase price. Approval would continue this program until June 30, 2015.

The second program involves building permits. The developer is requesting that building permits submitted to the City on or prior to December 31, 2013 be automatically extended for up to two years. Staff agreed provided that the fees for the permit are set on the day the building permit is issued. This added condition ensures the City is collecting up to date fees. The City's Building Official stated he does not foresee any issue with granting this provision.

FISCAL IMPACT:

These programs do not have a fiscal impact on the City.

CONCLUSION:

Staff recommends the Council adopt the attached Second Amendment to the Sherman Ranch Development Agreement.

ATTACHMENT:

1. Ordinance No. 2014- , Approving Second Amendment to the Sherman Ranch Development Agreement.
2. Second Amendment to the Sherman Ranch Development Agreement

Respectfully submitted,



Michael Holland
City Manager

ORDINANCE NO. 2014-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWMAN APPROVING A SECOND AMENDMENT TO THE SHERMAN RANCH DEVELOPMENT AGREEMENT

WHEREAS, The City of Newman and SCM Hearthstone entered into a Development Agreement by and between the City of Newman and SCM Hearthstone, LLC Homes Relating to the Development known as Sherman Ranch, on November 12, 2004; and;

WHEREAS, The City Council approved the First Amendment to the Sherman Ranch Development Agreement on Tuesday, April 12, 2011; and;

WHEREAS, The Planning Commission held a Public Hearing on Thursday, May 15, 2014, to consider a Second Amendment to the Sherman Ranch Development Agreement (DA) No. 2014-01; and;

WHEREAS, The Planning Commission recommended of approval of the proposed Development Agreement, in accordance with Section 6.110.80 of the Newman Municipal Code; and

WHEREAS, The City Council conducted a Public Hearing on May 27, 2014 to consider and review the Second Amendment to Sherman Ranch Development Agreement; and

WHEREAS, Notice of the Public Hearing before the Planning Commission and before the City Council was given in the time and in the manner required by State Law and City Code;

WHEREAS, This Amendment would not directly result in any physical land use changes or impacts to the environment; and

WHEREAS, The City Council has determined the best interests of the City of Newman and of its residents would be served by the approval of this Amendment; and

WHEREAS, The City Council has independently considered all evidence, including the conclusions and recommendations of Planning Commission of the City of Newman; and

WHEREAS, The City Council of the City of Newman hereby finds that said Amendment is consistent with the objectives, policies, general land uses, and programs specified in the Newman General Plan; and

WHEREAS, The City of Newman determined that Environmental Review has been addressed through the previously certified Final Environmental Impact Report (FEIR) for the Newman 2030 General Plan and the Expanded Initial Study prepared for the Sherman Ranch Subdivision. Section 15162 of CEQA guidelines specifies that no additional environmental work is needed where an EIR is prepared unless:

1. Subsequent changes to the project require important revisions; or
2. Substantial changes occur to the circumstances or settings; or
3. New information of substantial importance becomes available; and

WHEREAS, Staff is of the opinion that no circumstances, as outlined in Section 15162 exists and that no further environmental documentation is required. Applicable mitigation measures are incorporated as conditions of approval. The proposed resolution includes statements which confirms that the previously certified Environmental Impact Report prepared for the Newman General Plan addresses CEQA pursuant to Section 15162 of the CEQA Guidelines; and

WHEREAS, In independently reaching this conclusion, the City Council has considered all of the evidence, including the conclusions and recommendations of the planning department; and

WHEREAS, the City Council of the City of Newman finds that said CEQA Compliance has been addressed on the previously certified Environmental Impact Report and the Sherman Ranch Development Agreement will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of Newman as a whole; and

WHEREAS, The City Council of the City of Newman finds that said amendment will not adversely affect the orderly development of property or the preservation of property values; and

WHEREAS, Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, and amendments thereto. This Amendment has been processed, considered, and executed in accordance with those City rules and regulations; and

WHEREAS, The Amendment has adhered to, and is consistent, with the requirements of the Development Agreement Statute; and

WHEREAS, The City finds that the Developer has a legal or equitable interest in the property subject to the Development Agreement; and

WHEREAS, The City Council has considered all of the evidence, including the conclusions and recommendations of the City's Planning Department.

NOW, THEREFORE, BE IT ORDAINED By the City Council of the City of Newman as follows:

Section 1. The recitals above are true and correct, and the City Council hereby makes the findings set forth herein.

Section 2. The City Council of the City of Newman hereby approves the Second Amendment to the Sherman Ranch Development Agreement, Attachment "A" and finds that said Amendment is consistent with the requirement of Government Code Section 65814, et seq.

Section 3. The Mayor and City Clerk of the City of Newman are authorized and directed to execute and record said Development Agreement.

Section 4. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not effect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the validity of any particular portion thereof.

Section 6. This ordinance shall become effective thirty (30) days after its final passage.

Section 7. Within fifteen (15) days after its final passage, the City Clerk shall cause this ordinance to be published in the West Side Index in accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced by Council Member Martina, and the title thereof read at the regular meeting of the City Council of the City of Newman held on, May 27, 2014, and by a unanimous vote of the Council Members present, further reading was waived.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was duly passed by the City Council of the City of Newman at a regular meeting thereof held on June 10, 2014, by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor of City of Newman

ATTEST:

Deputy City Clerk

Attachment "A"

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

Neumiller & Beardslee
PO Box 20
Stockton, CA 95201-3020
Attention: Rod A. Attebery, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SECOND AMENDMENT TO SHERMAN RANCH DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("Second Amendment") is made and entered into this ____ day of _____, 201__, by and between The Villa Communities, LLC, a California limited liability company ("Developer"), and the City of Newman, a municipal corporation ("City"), pursuant to the authority of section 65864 et seq. of the Government Code of the State of California.

RECITALS

A. To ensure the timely, efficient, orderly, and proper development of the Project known as Sherman Ranch, on November 12, 2004, SCM Hearthstone, LLC and City entered into that certain Development Agreement for Sherman Ranch ("Development Agreement") pursuant to which City granted Developer a vested right to develop the Project.

B. The parties entered into a First Amendment to Sherman Ranch Development, dated _____, 201__, ("First Amendment"), recorded with the Stanislaus County Recorder on _____, as Document Number _____, in which the parties extended the term of the Development Agreement and added additional provisions to the Development Agreement which clarified and specified certain rights of Developer associated with the Project.

C. SCM Hearthstone, LLC subsequently transferred its ownership interest in the "Villas" to The Villa Communities, LLC and due to such transfer is the party to this Second Amendment.

D. The parties desire again to clarify the additional provisions added in the First Amendment.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Newman as follows:

1. The recitals above are true and correct and hereby made a part of this Second Amendment.

2. All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement and the First Amendment.

3. Section 8.03 of the First Amendment is hereby amended to read as follows:

8.03 Fee Offsets. City agrees that it shall establish a Fee Offset Fund, as set forth herein.

A. **Fee Offset Fund.** City agrees that it shall reserve an amount equal to ~~TWO ONE HUNDRED FIFTY TWENTY-FIVE THOUSAND DOLLARS (\$250,000)~~ TWO ONE HUNDRED FIFTY TWENTY-FIVE THOUSAND DOLLARS (\$250,000) ("Fee Offset Fund") to be used to pay for a portion of certain City fees, as specified in Exhibit A, attached hereto and incorporated herein by reference, for the Sherman Ranch Development, and as such fees may be adjusted for inflation by City. ~~The sole source of these funds, ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund shall consist of federal HOME funds allocated to City (the "HOME Fee Offset Fund"), and ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund (the "Agency Fee Offset Fund") shall consist of funds from the Low and Moderate Income Housing Fund of the Redevelopment Agency of the City of Newman (the "Agency").~~ The sole purpose of the Fee Offset Fund is to pay for City fees due at the time of final inspection for those housing units (the "Affordable Units") being sold to Qualified Buyers, as defined below.

The Sherman Ranch Development consists of three models of housing development: (i) the "Classics" homes are low-density units; (ii) the "Heritage" homes are medium-density units; and (iii) the "Villas" homes are high-density units. The HOME Fee Offset Fund shall only be used to pay the fees for up to twelve (12) units within the Villas development. The Agency Fee Offset Fund may be used to pay the fees for units within either the Classics or Heritage developments. The City's obligation to maintain the Fee Offset Fund, in whole or in part, for the uses specified in this Section 2.1 shall terminate upon the earlier of (i) the use of all monies in the Fee Offset Fund; or (ii) ~~December 31, 2013~~ June 30, 2015. ~~The City may, in its sole discretion, request that the Agency provide additional funds to be deposited in the Agency Fee Offset Fund, prior to December 31, 2013, so that additional Affordable Units may be sold to Qualified Buyers.~~

B. **Qualified Buyers.** A Qualified Buyer shall be a person or family of low or moderate income, as defined in Health and Safety Code section 50093, as may be adjusted by the California Department of Housing and Community Development ("HCD"). For purposes of this ~~Settlement Agreement~~ Second Amendment, "area median income" shall mean the median income for households in Stanislaus County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD"). A 2010 schedule of low and moderate income limits for Stanislaus County is attached hereto as Exhibit B and incorporated herein by this reference.

The City's obligation to use the Fee Offset Fund shall be expressly conditioned upon the City receiving from Developer evidence reasonably satisfactory to City certifying the income level of any proposed Qualified Buyer, and that the proposed sales price of any Affordable Unit does not exceed the affordable housing cost, as defined by Health and Safety Code section 50052.5, for such Qualified Buyer. The maximum sales prices of any Affordable Unit to a Qualified Buyer must comply with the regulations promulgated by HCD.

C. Payment of Fees. City shall pay to Developer, upon the sale of each Affordable Unit to a Qualified Buyer, the amount of fees attributable to such Affordable Unit from either the HOME Fee Offset Fund or the Agency Fee Offset Fund, ~~as the case may be.~~ Such payment may be made either directly to Developer, upon the close of escrow, or through escrow, as the parties may determine.

4. Section 10.05A of the First Amendment is hereby amended to read as follows:

10.05. Building Permits.

A. Applications. For all building permit applications submitted by Developer to the City on or prior to December 31, 2010, for any of the lots identified on Exhibit C, (Sections A-C), attached hereto and incorporated herein by this reference, the City hereby agrees that such application shall be valid for two years. For purposes of applying building standards, conditions, and/or regulations, and/or permit fees, a building permit shall be deemed effective upon the application date. Any failure of Developer to pursue an application shall not be grounds for revocation by abandonment under the California Building Code.

For all building permit applications submitted by Developer to the City on or prior to December 31, 2013, including those that have been submitted prior to the execution of this Second Amendment, for any of the lots identified on Exhibit C, (Section D), the City agrees that such application shall be valid for two years. Developer shall be required to pay the building permit fee in effect at the time of issuance. For purposes of applying building standards, conditions, and/or regulations, (but excluding building permit fees), a building permit shall be deemed effective upon the application date.

5. Except as modified by this Second Amendment, the Development Agreement and the First Amendment shall remain unchanged and in full force and effect.

6. This Second Amendment may be executed in any number of counterparts with the same effect as if the parties had all signed the same document, and which together shall constitute one and the same instrument.

7. Facsimile, electronically scanned, and photocopied signatures shall be as valid as original signatures only for purposes of demonstrating execution of the Second Amendment until such time as originally executed documents can be circulated. Said originally executed documents shall be binding and shall constitute evidence of the execution of this Second Amendment for all purposes.

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IN WITNESS WHEREOF, the parties have hereunder set their hand the day and year first written above.

Approved as to Form:

CITY

City Attorney

CITY OF NEWMAN, a municipal corporation

By _____
City Manager

By _____
City Clerk

Approved as to Form:

DEVELOPER

NEUMILLER & BEARDSLEE

The Villa Communities, LLC

By: _____
Rod A. Attebery
Attorneys for Developer

By: _____
Steve C. Mothersell, Sr.
President

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**EXHIBIT A
FEE OFFSET FUND**

EXHIBIT A

FEE OFFSET FUND

	Classics Exhibit F Section B <u>Low Density</u>	Heritage Exhibit F Section C <u>Medium Density</u>	Villas Exhibit F Section D <u>High Density</u>
	City RDA Agency Fee Offset <u>Fund</u>	City RDA Agency Fee Offset <u>Fund</u>	City HOME Fee Offset <u>Fund</u>
Paid at time of Issuance of Final Inspection			
CWSMP – Impact Fee			
Water	80.70	38.14	24.62
Traffic	2,190.51	1,784.35	2,598.92
Storm	87.11	42.53	40.93
Sewer	54.82	26.77	16.73
Park In Lieu Fee	202.16	161.73	338.26
Supplemental Sewer Fee	1,500.00	1,500.00	1,500.00
Municipal Service Fees			
Community Buildings	362.92	326.32	0.00
Police	354.96	319.96	731.64
Fire	657.39	592.13	384.30
City Hall – Gov Bldgs	407.49	366.12	983.45
Corp Yard	112.00	178.28	0.00
Wildlife Habitat		41.36	36.62
General Plan		162.37	168.95
Downtown Plaza Streetscaping		250.00	250.00
General Plan Expansion Fund		220.00	220.00
Water Connection			
Sewer Connection			<u>2,330.00</u>
Total Paid at Final Inspection	<u><u>6,010.06</u></u>	<u><u>6,010.06</u></u>	<u><u>9,624.42</u></u>

EXHIBIT B
2010 STANISLAUS COUNTY INCOME LIMITS

**EXHIBIT B
2010 STANISLAUS COUNTY INCOME LIMITS**

Income Level	# in Household															
	Affordable Monthly Rent Amount (30% of monthly income) - HUD															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14		
Extremely Low 30%	12,500	\$312.50	14,300	\$357.50	16,100	\$402.50	17,850	\$446.25	19,300	\$482.50	20,750	\$518.75	22,150	\$553.75	23,600	\$590.00
Very Low 50%	20,850	\$521.25	23,800	\$595.00	26,800	\$670.00	29,750	\$743.75	32,150	\$803.75	34,550	\$863.75	36,900	\$922.50	39,300	\$982.50
Lower 80%	33,350	\$833.75	38,100	\$952.50	42,850	\$1,071.25	47,600	\$1,190.00	51,450	\$1,286.25	55,250	\$1,381.25	59,050	\$1,476.25	62,850	\$1,571.25
Median 100%	41,650	\$1,041.25	47,600	\$1,190.00	53,550	\$1,338.75	59,500	\$1,487.50	64,250	\$1,606.25	69,000	\$1,725.00	73,800	\$1,845.00	78,550	\$1,963.75
Moderate 120%	50,000	\$1,250.00	57,100	\$1,427.50	64,250	\$1,606.25	71,400	\$1,785.00	77,100	\$1,927.50	82,800	\$2,070.00	88,550	\$2,213.75	94,250	\$2,356.25

Income Level	# in Household															
	Affordable Monthly Rent Amount (per CA HASC 50052.5) - HUD															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14		
Extremely Low 30%	12,500	\$312.38	14,300	\$357.00	16,100	\$401.63	17,850	\$446.25	19,300	\$481.88	20,750	\$517.50	22,150	\$553.50	23,600	\$589.13
Very Low 50%	20,850	\$520.63	23,800	\$595.00	26,800	\$669.38	29,750	\$743.75	32,150	\$803.13	34,550	\$862.50	36,900	\$922.50	39,300	\$981.88
Lower 80%	33,350	\$728.88	38,100	\$833.00	42,850	\$937.13	47,600	\$1,041.25	51,450	\$1,124.38	55,250	\$1,207.50	59,050	\$1,281.50	62,850	\$1,374.63
Median 100%	41,650	\$1,041.25	47,600	\$1,190.00	53,550	\$1,338.75	59,500	\$1,487.50	64,250	\$1,606.25	69,000	\$1,725.00	73,800	\$1,845.00	78,550	\$1,963.75
Moderate 120%	50,000	\$1,336.27	57,100	\$1,527.17	64,250	\$1,718.06	71,400	\$1,908.96	77,100	\$2,061.35	82,800	\$2,213.75	88,550	\$2,367.75	94,250	\$2,520.15

Sample Mortgage #'s

Address	Listed Price	Annual Taxes	Estimates			
			Mo Taxes	Mo Ins	30yrs @ 5%	Mortgage
123 Anywhere St	\$169,900.00	\$2,548.50	\$212.38	160.00	\$912.06	\$1,184.44

EXHIBIT C
LOTS SUBJECT TO AGREEMENT

EXHIBIT C
LOTS SUBJECT TO AGREEMENT

SECTION A. (VALLEY CLASSICS LOTS)
SHERMAN RANCH Unit #2 (Low Density)

- 5 724 Barrington Avenue
- 48 713 Whitechurch Way
- 51 701 Whitechurch Way
- 52 451 Northampton Way
- 53 447 Northampton Way
- 54 443 Northampton Way
- 55 439 Northampton Way
- 56 435 Northampton Way
- 57 431 Northampton Way
- 58 429 Northampton Way
- 59 425 Northampton Way
- 60 421 Northampton Way
- 61 419 Northampton Way
- 62 415 Northampton Way
- 63 411 Northampton Way
- 64 407 Northampton Way
- 65 403 Northampton Way
- 66 400 Northampton Way
- 67 715 Southington Way
- 68 719 Southington Way
- 69 801 Southington Way
- 70 805 Southington Way
- 71 809 Southington Way
- 72 813 Southington Way
- 73 817 Southington Way
- 77 744 Big Ben Court
- 78 740 Big Ben Court
- 79 736 Big Ben Court
- 80 732 Big Ben Court
- 81 728 Big Ben Court
- 82 724 Big Ben Court
- 83 721 Big Ben Court
- 84 725 Big Ben Court
- 85 729 Big Ben Court
- 86 731 Big Ben Court
- 87 737 Big Ben Court
- 91 730 Peloquin Court
- 92 726 Peloquin Court
- 93 722 Peloquin Court

- 94 718 Peloquin Court
- 95 719 Peloquin Court
- 96 723 Peloquin Court
- 98 731 Peloquin Court
- 99 735 Peloquin Court/
- 105 712 Whitechurch Way
- 106 444 Northampton Way
- 107 440 Northampton Way
- 108 436 Northampton Way
- 109 432 Northampton Way

EXHIBIT C
LOTS SUBJECT TO AGREEMENT

110 428 Northampton Way
111 424 Northampton Way
112 420 Northampton Way
113 416 Northampton Way
114 412 Northampton Way
115 408 Northampton Way

SECTION B. (CLASSICS LOTS)
SHERMAN RANCH Unit #3 (Low Density)

156 323 Tower Way
157 319 Tower Way
158 315 Tower Way
159 311 Tower Way
160 307 Tower Way
161 303 Tower Way
162 227 Tower Way
172 304 Tower Way
173 308 Tower Way
174 314 Tower Way
175 320 Tower Way
176 804 Southington Way
177 808 Southington Way
178 812 Southington Way
179 816 Southington Way
180 339 Parliament Way
181 335 Parliament Way
182 331 Parliament Way
183 807 Gloucester Court
185 800 Gloucester Court
186 804 Gloucester Court

187 808 Gloucester Court
188 327 Parliament Way
189 323 Parliament Way
190 319 Parliament Way
199 318 Parliament Way
200 320 Parliament Way
201 324 Parliament Way
202 328 Parliament Way
203 332 Parliament Way
204 336 Parliament Way
205 340 Parliament Way
206 344 Parliament Way
207 345 Red Lion Way
208 341 Red Lion Way
209 337 Red Lion Way
210 333 Red Lion Way
211 329 Red Lion Way
212 325 Red Lion Way
213 321 Red Lion Way
214 317 Red Lion Way
215 313 Red Lion Way
216 237 Red Lion Way

EXHIBIT C
LOTS SUBJECT TO AGREEMENT

217 233 Red Lion Way
218 229 Red Lion Way
219 225 Red Lion Way
220 221 Red Lion Way
221 220 Red Lion Way
222 226 Red Lion Way
223 1000 Red Lion Court
224 1004 Red Lion Court
225 1009 Red Lion Court
226 1005 Red Lion Court
227 1001 Red Lion Court
228 1000 Soho Way
229 1004 Soho Way
230 1104 Soho Way

SECTION C. (HERITAGE LOTS)
SHERMAN RANCH Unit #4 (Medium Density)

238 1012 Barrington Avenue
239 1006 Barrington Avenue
240 1000 Barrington Avenue
241 912 Barrington Avenue
242 906 Barrington Avenue
243 900 Barrington Avenue
244 484 Haycastle Court
245 480 Haycastle Court
246 476 Haycastle Court
247 472 Haycastle Court
248 468 Haycastle Court
249 464 Haycastle Court
250 460 Haycastle Court
251 456 Haycastle Court
252 452 Haycastle Court
254 443 Haycastle Court
256 451 Haycastle Court
257 455 Haycastle Court
258 459 Haycastle Court
259 481 Haycastle Court
260 485 Haycastle Court/456 Red Lion Way
261 452 Red Lion Way
262 448 Red Lion Way
263 444 Red Lion Way
264 440 Red Lion Way
265 436 Red Lion Way
266 1001 Chukar Way
267 1005 Chukar Way
268 1009 Chukar Way
269 1004 Chukar Way
270 1000 Chukar Way
271 422 Red Lion Way

EXHIBIT C
LOTS SUBJECT TO AGREEMENT

272 418 Red Lion Way
273 414 Red Lion Way
274 410 Red Lion Way
275 406 Red Lion Way
276 348 Red Lion Way
277 344 Red Lion Way
278 340 Red Lion Way

279 336 Red Lion Way
280 1001 Soho Way
281 301 Strands Court
284 304 Strands Court
285 1101 Soho Way
286 1105 Soho Way
287 1109 Soho Way
288 1113 Soho Way
289 1117 Soho Way
290 1121 Soho Way
291 1116 Walshford Court
292 1112 Walshford Court
293 1108 Walshford Court
295 1100 Walshford Court
297 1105 Walshford Court
298 1109 Walshford Court

SECTION D. (VILLAS LOTS)
SHERMAN RANCH Unit #5 (High Density)

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EXHIBIT C
LOTS SUBJECT TO AGREEMENT

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Honorable Mayor and Members
of the Newman City Council

AGREEMENT WITH THE VILLAS COMMUNITIES, LLC

RECOMMENDATION:

Adopt Resolution 2014- , approving an agreement with The Villas Communities, LLC and authorizing the City Manager to execute said agreement

BACKGROUND:

In November 2004, the City and SCM Hearthstone LLC entered into a Development Agreement relating to the Sherman Ranch development. This Development Agreement was amended by the Council in April 2011 pursuant to a Settlement Agreement reached with the developer relating to a dispute over inspection and plan check fees for the project. While the infrastructure for the project is completed, only an estimated 30% of the lots contain a completed residential structure.

The proposed agreement is not an amendment to the Development Agreement, but does provide for some clean-up language relating to the Villas component of the Sherman Ranch development. This agreement works in tandem with the Second Amendment to the Development Agreement; for which the Council is holding a Public Hearing earlier on the agenda.

ANALYSIS:

The following is a summary of the issues addressed in the proposed agreement:

Assignment and Acceptance: The original Development Agreement provides SCM Hearthstone LLC (original developer) the right to assign or transfer all or any portion of its interest, rights or obligations upon City's written consent. This agreement would constitute consent for the transfer of the Villa's portion of the project to The Villa Communities, LLC from SCM Hearthstone, LLC.

Fee Credits: Based upon the layout changes to the Villas project, the total number of housing units in this segment of the project has been reduced. Due to this decrease in lot count, the City and Developer have agreed that the City will incorporate annual inflation adjustments into the credits until all credits have been exhausted. If, upon full build-out of the Villa's, fee credits remain, then at Developer's request, the City will issue payment for any outstanding credits owed.

Building Permits: The 1st amendment included a clause that allowed building permits that were submitted on or before a specified date to be valid for a period of two years. This section is being proposed again for all permits submitted on or before December 31, 2013. This clause provides the developer stability from a changing building code. The City's Building Official has reviewed the language and does not object to its inclusion. This section has been incorporated in the 2nd Amendment to the Development Agreement.

Fee Offset Fund: Again, the section is carried forward from the 1st amendment. The City will utilize federal HOME funds (\$125,000) to help offset City fees for Qualified Buyers. The goal of the program is to assist in making the homes affordable to buyers who may not otherwise be able to purchase a home. This section has also been incorporated into the 2nd Amendment to the Development Agreement.

Aquatic Center Financing: The developer agrees not to object or protest the creation of a financing program for a community aquatic center and/or recreation district and agrees to cast an affirmative vote(s) provided the charge does not exceed \$150 per lot per year. This is one funding option the City is currently exploring in an effort to move forward with the aquatic center project.

Landscaping: The developer is agreeing to purchase and donate 100 fifteen (15) gallon trees so the City can replant trees within Sherman Park and/or along Sherman Parkway.

Attorney Fees and Costs: The Developer agrees to pay up to \$3,500 towards the City's attorney fees and staff time for processing this amendment.

FISCAL IMPACT:

None of these programs have a direct fiscal impact on the City's General Fund.

CONCLUSION:

Staff recommends the Council approve the agreement with The Villa Communities, LLC.

ATTACHMENTS:

1. Resolution No. 2014- , Approving Agreement with The Villas Communities, LLC
2. Copy of the proposed Agreement with The Villas Communities, LLC

Respectfully submitted,



Michael Holland
City Manager

RESOLUTION NO. 2014-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWMAN APPROVING AN AGREEMENT WITH THE VILLAS COMMUNITIES, LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, the City Council determines that the best interests of the City of Newman and of its residents would be served by the approval of this Agreement; and

WHEREAS, this Agreement would not directly result in any physical land use changes or impacts to the environment; and

WHEREAS, the City Council of the City of Newman hereby finds that said Amendment is consistent with the objectives, policies, general land uses, and programs specified in the Newman General Plan; and

WHEREAS, this agreement is not an amendment to the original Development Agreement dated November 2004 (amended in April of 2011) but does provide for some clarification relating to the Villas component of the Sherman Ranch development; and

WHEREAS, The City Council of the City of Newman finds that said Agreement will not adversely affect the orderly development of property or the preservation of property values.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that the agreement with The Villas Communities, LLC is approved and that the City of Newman does hereby authorize the City Manager to execute said agreement.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June, 2014, by Council Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor

ATTEST:

Deputy City Clerk

AGREEMENT

This Agreement is made and entered into this ____ day of _____, 201__ (the "Effective Date"), by and between THE VILLA COMMUNITIES, LLC, a California limited liability company (hereafter "Developer") and the CITY OF NEWMAN, a municipal corporation (hereafter "City"). Developer and City are sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

RECITALS

A. The City and SCM HEARTHSTONE, LLC, a California limited liability company ("SCM Hearthstone"), have entered into several agreements pertaining to the development of a project commonly referred to as Sherman Ranch and those agreements are identified in the following recitals.

B. SCM HEARTHSTONE, LLC, subsequently transferred its ownership interest in the "Villas" to THE VILLA COMMUNITIES, LLC and due to such transfer is the party to this Agreement. The Villa Communities, LLC succeeded to all of SCM Hearthstone, LLCs rights and obligations under the Development Agreement and assumed all obligations of SCM Hearthstone, LLC, past, present, and future related to the transferred property.

C. The Sherman Ranch project consists of three models of housing development: (i) the "Classics" homes are low density units; (ii) the "Heritage" homes are medium density units; and the "Villas" homes are high density units.

D. SCM Hearthstone and City entered into that Development Agreement by and between the City of Newman and SCM Hearthstone, LLC Homes Relating to the Development known as Sherman Ranch, dated November 12, 2004, and recorded with the Stanislaus County Recorder on January 7, 2005 as Document Number 2005-0003184-00 (the "**Development Agreement**").

E. The City and SCM Hearthstone entered into that Substitute Reimbursement and Settlement Agreement by and between the City of Newman and SCM Hearthstone, LLC, effective as of May 1, 2007, and recorded with the Stanislaus County Recorder on February 25, 2008 as Document Number 2008-0018677-00 (the "**Substitute Reimbursement Agreement**"). This Substitute Reimbursement Agreement superceded all outstanding prior reimbursement agreements related to the development projects known as Sherman Ranch and Hearthstone Ranch.

F. The City and SCM Hearthstone entered into that Settlement Agreement by and between SCM Hearthstone, LLC and the City of Newman, effective as of December 16, 2010 (the "**Settlement Agreement**"). This Settlement Agreement settled and resolved all claims and disputes regarding inspection and plan check fees for the Sherman Ranch project.

G. Pursuant to Section 2 of the Settlement Agreement, the City and SCM Hearthstone entered into an Amendment to the Development Agreement, which was approved and adopted by the City as Ordinance No. 2011-2 at a regularly scheduled meeting of the Newman City Council held on April 12, 2011 (the “**Amendment to Development Agreement**”). Although the Amendment to the Development Agreement was approved by the parties, they failed to execute and record the document in the Official Records of Stanislaus County. The parties executed the Amendment to Development Agreement on May 13, 2011 which was recorded with the Stanislaus County Recorder on April 10, 2014 as Document Number 2014-0022077-00.

H. Pursuant to Section 6 of the Substitute Reimbursement Agreement, the City and SCM Hearthstone were to execute and enter into an Amendment to Substitute Reimbursement and Settlement Agreement, which was approved by the City of Newman by adoption of Resolution No. 2011-32 at a regularly scheduled meeting of the City Council held on April 12, 2011 (the “**Amendment to Substitute Reimbursement Agreement**”). Although the Amendment to Substitute Reimbursement Agreement was approved by the parties, they failed to execute and record the document in the Official Records of Stanislaus County. The parties executed the Amendment to Substitute Reimbursement Agreement on April 12, 2011 which was recorded with the Stanislaus County Recorder on April 10, 2014 as Document Number 2014-0022078-00.

I. In August 2013, the Developer made an application with the City to rezone the Villas from R-3 (Multiple Residential) to P-D. The requested zone change will allow the Developer to revise the layout, create wider lots and reduce the density (elimination of 18 lots) within the Villas.

J. Developer and City desire to set forth all agreements and obligations arising out of or concerning the Villa’s within the Sherman Ranch project in this Agreement.

NOW, THEREFORE, the Parties to this agreement hereby agree as follows:

1. Prior Agreements. All agreements and obligations of the Parties arising out of or concerning the Villa’s lots within the Sherman Ranch project, which are identified as those lots listed on the attached Exhibit “A” and identified on the map attached as Exhibit “B”, are set forth in this Agreement. To the extent that any of the agreements referenced in the Recitals contain agreements or obligations of the Parties, including successors and predecessors in interest, pertaining to the Villa’s lots, those provisions pertaining only to the Villa’s lots are hereby superceded and this Agreement shall control and all other provisions shall remain unchanged and in full force and effect.

2. Assignment and Acceptance by City. SCM Hearthstone, LLC transferred its interest in the Villa’s homes portion of the Sherman Ranch project to The Villa Communities, LLC, a successor entity under common control with SCM Hearthstone, LLC. The Development Agreement states that SCM Hearthstone, LLC has the right to assign or transfer all or any portion of its interests, rights or obligations under the Development Agreement upon City’s written consent. By executing this Agreement, City acknowledges and consents to the transfer of SCM Hearthstone, LLC interest in the Villa’s portion of the Sherman Ranch project to The Villa Communities, LLC.

3. Fee Credits.

a. City agrees to issue to Developer the specified CWSMP Water, CWSMT Traffic, CWSMP Storm, CWSMP Sewer, Park in-lieu, Water Connection and Sewer Connection fee credits, for the lots and in the amounts as provided on Exhibit "C", attached hereto and incorporated by reference, (the "Villa's Fee Credits"). The Villa's Fee Credits shall be issued to Developer at the time of final inspection, which is the same time the fees would otherwise be due and payable.

b. City may retain an administrative fee equal to three percent (3.00%) of the Villa's Fee Credits issued, to offset City's administrative and other costs and expenses incurred in the accounting, collection, and remittance of such fee credits.

c. In the event Developer has Villa's Fee Credits remaining after the credits have been applied toward the lots identified on Exhibit C, then those credits will be used to cover any annual increases to the fees by way of annual inflation adjustment, index, etc., as applied to each identified fee, until the fee credits have been exhausted. If upon full build-out of the Villa's, fee credits remain, then at Developer's request, City shall issue to Developer a cash payment equal to the fee credits remaining.

d. This Section 3 amends provisions of the Substitute Reimbursement Agreement and the Amendment to the Substitute Reimbursement Agreement as those provisions pertain to the Villa's within Sherman Ranch.

4. Building Permits.

a. For all building permit applications submitted by Developer to the City on or prior to December 31, 2013, including those that have been submitted prior to the execution of this agreement, for any of the lots identified on Exhibit C, the City agrees that such application shall be valid for two years. Developer shall be required to pay the building permit fee in effect at the time of issuance. For purposes of applying building standards, conditions, and/or regulations, (but excluding building permit fees), a building permit shall be deemed effective upon the application date.

b. This provision will be superseded by the Second Amendment to the Development Agreement, discussed in Section 6, upon that amendment taking effect.

5. Fee Offset Fund.

a. In the Amendment to Development Agreement, City and Developer established a Fee Offset Fund which requires City to pay to Developer, upon the sale of an Affordable Unit to a Qualified Buyer, the amount of fees attributable to such Affordable Unit from the Fee Offset Fund. City hereby agrees to keep this fund and program in place through June 30, 2015 as set forth in Exhibit "D." The Parties hereby acknowledge that any funds of the Fee Offset Fund that were earmarked to come from the Redevelopment Agency of the City of Newman are no longer available as the Redevelopment Agency of the City of Newman has ceased to exist.

b. This provision will be superceded by the Second Amendment to the Development Agreement, discussed in Section 6, upon that amendment taking effect.

6. Development Agreement Contingency. The Agreement is conditioned upon the effectiveness of an amendment to the Development Agreement, in the form attached hereto as Exhibit "E", approved concurrently herewith. Developer shall bear the application fee related to the amendment of the Development Agreement.

7. Aquatic Center Financing. The City has expressed a desire to create a city wide community facilities district to finance the construction of an aquatic center or to support formation of a recreation district for this purpose. Developer agrees that while Developer owns the lots identified on Exhibit A, it will not object to or protest and will cast affirmative vote(s) for the creation of the community facilities district, recreation district (or similar entity) or the imposition of the proposed tax, fee, charge or assessment, provided that the charge does not exceed \$150 per lot per year. City acknowledges that once a lot identified on Exhibit A is sold by Developer to a third party, Developer no longer has the ability to vote in favor of the creation of the community facilities district or the imposition of the tax as it pertains to the lot(s) sold.

8. Landscaping of Sherman Ranch Park and Sherman Parkway. Developer agrees to donate 100 15 gallon trees (species to be approved by the City) for purposes of re-landscaping Sherman Ranch Park and Sherman Parkway. The City shall provide all labor for installation. The Developer shall either (1) deliver the trees to a location in the City and on a schedule as approved by the City to permit replacement of existing landscaping in an orderly manner, or (2) acquire the trees at a nursery located in the City of Newman. The City shall notify Developer in writing at least thirty (30) days prior to the date City desires to install the trees, but in no event shall Developer be required to donate the trees prior to the issuance of the first building permit pulled for the Villas.

9. Zoning Contingency. A condition precedent to the effectiveness of this Agreement is the approval of the pending Zone Change No. 2013-01 request by Developer. This Agreement shall automatically terminate in 180 days from the Effective Date unless pending rezoning takes effect. The developer shall bear the application fee cost for the Zoning Change.

10. Attorney's Fees and Costs. Within 10 days following execution of this Agreement, the Developer shall reimburse the City for its costs, including staff time and attorney's fees up to \$3,500.

11. Severability. In the event that any provisions of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the enforceable portions of any such provisions and of remaining provisions shall not be adversely affected.

12. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Lots Subject to Agreement

Exhibit B: Map

Exhibit C: Villa's Fee Credits

Exhibit D: Fee Offset Fund

Exhibit E: Amendment to Development Agreement (without exhibits)

13. Miscellaneous.

13.1 The persons executing this Agreement on behalf of each party hereby represent and warrant that they have been duly authorized to do so.

13.2 This Agreement shall inure to the benefit of the Parties and each of them, and their agents, representatives, heirs, partners, directors, officers, attorneys, employees, servants, affiliates, subsidiaries, stockholders, predecessors, successors and assigns, if any.

13.3 This Agreement and any other documents referred to herein shall in all respects be interpreted, enforced and governed by and under the internal laws of the State of California. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

13.4 If any judicial or quasi-judicial proceeding is brought to enforce this Agreement or any provision hereof, the successful or prevailing Party in such proceeding shall be entitled to reasonable costs and attorneys' fees. Any claim for relief shall be limited to specific performance.

13.5 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements or correspondence, whether written or oral. This Agreement may not be altered or amended except by an instrument in writing executed by all of the Parties hereto.

13.6 This Agreement may be executed in counterpart which when so executed shall be deemed an original, and this Agreement and all its signed counterparts shall constitute one in the same instrument.

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WHEREFORE, the undersigned have executed this Agreement.

Approved as to Form:

DEVELOPER

NEUMILLER & BEARDSLEE

The Villa Communities, LLC

By: _____
Rod A. Attebery
Attorneys for Developer

By: _____
Steve C. Mothersell, Sr.
President

Approved as to Form:

CITY

City Attorney

CITY OF NEWMAN, a municipal
corporation

By _____
City Manager

By _____
City Clerk

EXHIBIT A
LOTS SUBJECT TO AGREEMENT

EXHIBIT A
LOTS SUBJECT TO AGREEMENT

SHERMAN RANCH Unit #5 (High Density) Lot Numbers

13	86
14	87
15	88
16	89
17	90
18	91
19	92
20	93
21	94
22	95
23	96
24	97
25	98
26	99
27	100
28	
29	
30	
31	
32	
33	
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EXHIBIT B
MAP

EXHIBIT C
VILLA'S FEE CREDITS

Exhibit C: Villa's Fee Credits

	CWSMFWater	CWSMFLandfill	CWSMFSewer	ParkInLiqu	WaterConn	SewerConn	Total	
SHERMAN RANCH Unit #5 (High Density)								
13	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
14	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
15	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
16	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
17	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
18	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
19	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
20	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
21	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
22	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
23	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
24	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
25	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
26	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
27	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
28	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
29	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
30	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
31	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
32	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
33	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
34	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
35	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
36	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
37	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
38	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
39	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
40	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
41	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
42	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
43	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
44	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
45	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
46	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
47	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
48	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
49	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
50	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
51	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
52	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
53	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
54	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
55	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
56	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
57	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
58	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
59	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
60	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
61	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
62	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
63	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
64	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
65	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
66	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63

Exhibit C: Villa's Fee Credits

87	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
88	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
89	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
90	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
91	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
92	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
93	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
94	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
95	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
96	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
97	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
98	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
99	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
100	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
Total Reallocated per Lot Building Permit Credits			22,518.20	0.00	37,434.68	15,297.96	309,332.00	70,380.00	0.00	454,962.84
Remaining Building Permit Fee Credits			24,621.10	0.00	40,931.70	16,727.00	338,223.38	89,010.00	0.00	509,513.18
Unallocated Building Permit Fee Credits			2,102.90	0.00	3,497.02	1,429.04	28,891.38	18,670.00	0.00	54,550.34

**EXHIBIT D
FEE OFFSET FUND**

EXHIBIT D
FEE OFFSET FUND

	Villas Exhibit F Section D <u>High Density</u>
	City HOME Fee Offset <u>Fund</u>
Paid at time of Issuance of Final Inspection	
CWSMP - Impact Fee	
Water	24.62
Traffic	2,598.92
Storm	40.93
Sewer	16.73
Park In Lieu Fee	338.26
Supplemental Sewer Fee	1,500.00
Municipal Service Fees	
Community Buildings	0.00
Police	731.64
Fire	384.30
City Hall - Gov Bldgs	983.45
Corp Yard	0.00
Wildlife Habitat	36.62
General Plan	168.95
Downtown Plaza Streetscaping	250.00
General Plan Expansion Fund	220.00
Water Connection	
Sewer Connection	<u>2,330.00</u>
Total Paid at Final Inspection	<u><u>9,624.42</u></u>

EXHIBIT E
AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

Neumiller & Beardslee
PO Box 20
Stockton, CA 95201-3020
Attention: Rod A. Attebery, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SECOND AMENDMENT TO SHERMAN RANCH DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("Second Amendment") is made and entered into this ____ day of _____, 201__, by and between The Villa Communities, LLC, a California limited liability company ("Developer"), and the City of Newman, a municipal corporation ("City"), pursuant to the authority of section 65864 et seq. of the Government Code of the State of California.

RECITALS

A. To ensure the timely, efficient, orderly, and proper development of the Project known as Sherman Ranch, on November 12, 2004, SCM Hearthstone, LLC and City entered into that certain Development Agreement for Sherman Ranch ("Development Agreement") pursuant to which City granted Developer a vested right to develop the Project.

B. The parties entered into a First Amendment to Sherman Ranch Development, dated _____, 201__, ("First Amendment"), recorded with the Stanislaus County Recorder on _____, as Document Number _____, in which the parties extended the term of the Development Agreement and added additional provisions to the Development Agreement which clarified and specified certain rights of Developer associated with the Project.

C. SCM Hearthstone, LLC subsequently transferred its ownership interest in the "Villas" to The Villa Communities, LLC and due to such transfer is the party to this Second Amendment.

D. The parties desire again to clarify the additional provisions added in the First Amendment.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Newman as follows:

1. The recitals above are true and correct and hereby made a part of this Second Amendment.

2. All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement and the First Amendment.

3. Section 8.03 of the First Amendment is hereby amended to read as follows:

8.03 Fee Offsets. City agrees that it shall establish a Fee Offset Fund, as set forth herein.

A. **Fee Offset Fund.** City agrees that it shall reserve an amount equal to ~~TWOONE HUNDRED FIFTY TWENTY-FIVE THOUSAND DOLLARS~~ (\$~~250~~125,000) ("Fee Offset Fund") to be used to pay for a portion of certain City fees, as specified in **Exhibit A**, attached hereto and incorporated herein by reference, for the Sherman Ranch Development, and as such fees may be adjusted for inflation by City. The sole source of these funds ~~ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund~~ shall consist of federal HOME funds allocated to City (the "HOME Fee Offset Fund"), ~~and ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund~~ (the "Agency Fee Offset Fund") shall consist of funds from the Low and Moderate Income Housing Fund of the Redevelopment Agency of the City of Newman (the "Agency"). The sole purpose of the Fee Offset Fund is to pay for City fees due at the time of final inspection for those housing units (the "Affordable Units") being sold to Qualified Buyers, as defined below.

The Sherman Ranch Development consists of three models of housing development: (i) the "Classics" homes are low-density units; (ii) the "Heritage" homes are medium-density units; and (iii) the "Villas" homes are high-density units. The HOME Fee Offset Fund shall only be used to pay the fees for up to twelve (12) units within the Villas development. The Agency Fee Offset Fund may be used to pay the fees for units within either the Classics or Heritage developments. The City's obligation to maintain the Fee Offset Fund, in whole or in part, for the uses specified in this Section 2.1 shall terminate upon the earlier of (i) the use of all monies in the Fee Offset Fund; or (ii) ~~December 31, 2013~~ June 30, 2015. ~~The City may, in its sole discretion, request that the Agency provide additional funds to be deposited in the Agency Fee Offset Fund, prior to December 31, 2013, so that additional Affordable Units may be sold to Qualified Buyers.~~

B. **Qualified Buyers.** A Qualified Buyer shall be a person or family of low or moderate income, as defined in Health and Safety Code section 50093, as may be adjusted by the California Department of Housing and Community Development ("HCD"). For purposes of this ~~Settlement Agreement Second Amendment~~, "area median income" shall mean the median income for households in Stanislaus County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD"). A 2010 schedule of low and moderate income limits for Stanislaus County is attached hereto as **Exhibit B** and incorporated herein by this reference.

The City's obligation to use the Fee Offset Fund shall be expressly conditioned upon the City receiving from Developer evidence reasonably satisfactory to City certifying the income level of any proposed Qualified Buyer, and that the proposed sales price of any Affordable Unit does not exceed the affordable housing cost, as defined by Health and Safety Code section 50052.5, for such Qualified Buyer. The maximum sales prices of any Affordable Unit to a Qualified Buyer must comply with the regulations promulgated by HCD.

C. Payment of Fees. City shall pay to Developer, upon the sale of each Affordable Unit to a Qualified Buyer, the amount of fees attributable to such Affordable Unit from either the HOME Fee Offset Fund or the Agency Fee Offset Fund, as the case may be. Such payment may be made either directly to Developer, upon the close of escrow, or through escrow, as the parties may determine.

4. Section 10.05A of the First Amendment is hereby amended to read as follows:

10.05. Building Permits.

A. Applications. For all building permit applications submitted by Developer to the City on or prior to December 31, 2010, for any of the lots identified on Exhibit C, (Sections A-C), attached hereto and incorporated herein by this reference, the City hereby agrees that such application shall be valid for two years. For purposes of applying building standards, conditions, and/or regulations, and/or permit fees, a building permit shall be deemed effective upon the application date. Any failure of Developer to pursue an application shall not be grounds for revocation by abandonment under the California Building Code.

For all building permit applications submitted by Developer to the City on or prior to December 31, 2013, including those that have been submitted prior to the execution of this Second Amendment, for any of the lots identified on Exhibit C, (Section D), the City agrees that such application shall be valid for two years. Developer shall be required to pay the building permit fee in effect at the time of issuance. For purposes of applying building standards, conditions, and/or regulations, (but excluding building permit fees), a building permit shall be deemed effective upon the application date.

5. Except as modified by this Second Amendment, the Development Agreement and the First Amendment shall remain unchanged and in full force and effect.

6. This Second Amendment may be executed in any number of counterparts with the same effect as if the parties had all signed the same document, and which together shall constitute one and the same instrument.

7. Facsimile, electronically scanned, and photocopied signatures shall be as valid as original signatures only for purposes of demonstrating execution of the Second Amendment until such time as originally executed documents can be circulated. Said originally executed documents shall be binding and shall constitute evidence of the execution of this Second Amendment for all purposes.

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IN WITNESS WHEREOF, the parties have hereunder set their hand the day and year first written above.

Approved as to Form:

Exhibit
City Attorney

CITY

CITY OF NEWMAN, a municipal corporation

By Exhibit
City Manager

By Exhibit
City Clerk

Approved as to Form:

NELMILLER & BEARDSLEE

By: Exhibit
Rod A. Attebery
Attorneys for Developer

DEVELOPER

The Villa Communities, LLC

By: Exhibit
Steve C. Mothersell, Sr.
President

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**ADOPT RESOLUTION NO. 2014- , DESIGNATING THE AMERICANS WITH DISABILITIES ACT
(ADA) COORDINATOR AND ADOPTING ADA GRIEVANCE PROCEDURE**

RECOMMENDATION:

It is recommended that

1. Designate the Director of Public Works as the Americans with Disabilities Act (ADA) Coordinator for the City of Newman.
2. Adopt The City of Newman ADA Grievance Procedure under the Americans with Disabilities Act.
3. Authorize staff to post the required information regarding the ADA Coordinator and Grievance Procedure on the City's website and at the City Hall.

BACKGROUND:

On July 26, 1990, Congress enacted Title II of the Americans with Disabilities Act. This Federal Law requires the City to provide disabled persons access to its services, programs, and activities. Regulations implementing the law set forth standards for what constitutes discrimination on the basis of physical or mental disability, provide a definition of disability and qualified individual with a disability, and establish a complaint mechanism for resolving allegations of discrimination.

In compliance with Title II of the ADA stated above, the City of Newman is required to designate an ADA Coordinator and an ADA Grievance Procedure for resolving complaints alleging violation of Title II of the ADA.

ANALYSIS:

The Federal government enacted the Americans with Disabilities Act of 1990 (ADA) to prevent discrimination of the physically and mentally disabled relating to employment and access to public facilities. In compliance with Title II of the ADA, the City of Newman is required to:

1. Designate an ADA coordinator who is responsible for handling requests for services and providing information about accessible programs and services, and serving as a resource to the City. The ADA Coordinator works to ensure that new facilities or alterations to existing facilities will meet the ADA requirements.
2. Adopt an ADA grievance procedure to give people a formal process to make complaints to the City. The Federal regulations included this requirement to encourage prompt and equitable resolution at the local level so that individuals would not be forced to file a Federal complaint or lawsuit.
3. Post the required information regarding the ADA coordinator, Notice under the Americans with Disabilities Act, and the City of Newman Grievance Procedure under the Americans with Disabilities Act on its website and at such other locations as may be determined from time to time.

The documents associated with the City of Newman ADA Grievance Procedure are attached to this staff report.

FISCAL IMPACT:

None.

CONCLUSION:

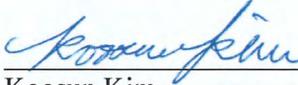
Staff recommends that City Council:

1. Designate the Public Works Director as an ADA Coordinator for the City of Newman,
2. Adopt an ADA Grievance Procedure; and
3. Authorize staff to post the required information regarding the ADA Coordinator and Grievance Procedure on the City's website and at the City Hall.

ATTACHMENTS:

1. Resolution No. 2014- , Designating The Americans With Disabilities Act (ADA) Coordinator And Adopting ADA Grievance Procedure.
2. The City of Newman Notice Under ADA.
3. The City of Newman ADA Grievance Procedure.
4. The City of Newman ADA Complaint / Grievance Form.

Respectfully submitted,



Koosun Kim
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager

RESOLUTION NO. 2014-

A RESOLUTION DESIGNATING THE AMERICANS WITH DISABILITIES ACT (ADA) COORDINATOR AND ADOPTING ADA GRIEVANCE PROCEDURE

WHEREAS, the Federal government enacted the Americans with Disabilities Act of 1990 (ADA) to prevent discrimination of the physically and mentally disabled relating to employment and access to public facilities; and

WHEREAS, in compliance with Title II of the ADA the City of Newman shall name an ADA Coordinator; and

WHEREAS, in compliance with Title II of the ADA the City of Newman shall adopt a grievance procedure for resolving complaints alleging violation of Title II of the ADA; and

WHEREAS, in compliance with Title II of the ADA the City of Newman shall post the ADA coordinator's name, office address, and telephone number along with the ADA Notice and ADA grievance procedure on the City's website.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newman DOES HEREBY RESOLVE as follows:

1. The Director of Public Works is designated as the ADA Coordinator for the City of Newman.
2. The Notice under the Americans with Disabilities Act, a copy of which is posted to the City's website, is adopted as the City of Newman Notice under the Americans with Disabilities Act.
3. The City of Newman ADA Grievance Procedure under the Americans with Disabilities Act, a copy of which is attached hereto, is adopted as the grievance procedure for addressing complaints alleging discrimination on the basis of disability in the provision of services, activities, programs or benefits by the City of Newman.
4. In compliance with Federal and State laws as set forth above, the City of Newman resolves to post the required information regarding the ADA coordinator and the City of Newman Grievance Procedure under the Americans with Disabilities Act on its website and at such other locations as may be determined from time to time.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 10th day of June 2014 by Council Member _____, who moved its adoption which motion was duly seconded and was upon roll call carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

ATTEST:

Mayor of the City of Newman

Deputy City Clerk of the City of Newman

ATTACHMENT "A"

**NOTICE UNDER THE AMERICANS
WITH DISABILITIES ACT**

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990 ("ADA"), the City of Newman will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Employment: The City of Newman does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the ADA.

Effective Communication: The City of Newman will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City of Newman's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: The City of Newman will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in the City of Newman offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the City of Newman, should contact the office of Koosun Kim, ADA Coordinator, as soon as possible but no later than 48 hours before the scheduled event. The ADA Coordinator's office is located at City Hall, 938 Fresno Street, Newman, CA 95360 and may be reached at (209) 862-4448.

The ADA does not require the City of Newman to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of the City of Newman is not accessible to persons with disabilities should be directed to Koosun Kim, ADA Coordinator. The ADA Coordinator's office is located at City Hall, 938 Fresno Street, Newman, CA 95360 and may be reached at (209) 862-4448.

The City of Newman will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

City of Newman
Grievance Procedure under
The Americans with Disabilities Act

ATTACHMENT "B"

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the City of Newman. The City of Newman's Personnel Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/his designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Koosun Kim, PE, QSD
ADA Coordinator and Public Works Director
938 Fresno St. / PO Box 787
Newman, CA 95360

Within 15 calendar days after receipt of the complaint, Koosun Kim or his designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, Koosun Kim or his designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the City of Newman and offer options for substantive resolution of the complaint.

If the response by Koosun Kim or his designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to Michael Holland, City Manager or his designee.

Within 15 calendar days after receipt of the appeal, Michael Holland or his designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, Michael Holland or his designee will respond in writing, and, where appropriate, in a format accessible to the complainant,

If the response by Michael Holland or his designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the Newman City Council or their designee.

Within 15 calendar days after receipt of the appeal, the City Council or their designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the City Council or their designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by Koosun Kim or his designee, appeals to the City Manager or his designee, and responses from these two offices will be retained by the City of Newman for at least three years.



City of Newman

ATTACHMENT "C"

ADA Complaint / Grievance Form

Complainant: _____

Person Preparing Complaint (if different from Complainant): _____

Relationship to Complainant (if different from Complainant): _____

Street Address & Apt. No.: _____

City: _____ State: _____ Zip: _____

Phone: (____) _____ E-mail: _____

Please provide a complete description of the specific complaint or grievance:

Please specify any location(s) related to the complaint or grievance (if applicable):

Please state what you think should be done to resolve the complaint or grievance:

Please attach additional pages as needed.

Signature: _____ **Date:** _____

Return to:

City of Newman
P.W. Director Koosun Kim, PE, QSD
938 Fresno St. / P.O. Box 787
Newman, CA 95360

Upon request, reasonable accommodation will be provided in completing this form, or copies of the form will be provided in alternative formats. Contact the Program Access Coordinator at the address listed above, via telephone (209) 862-3725