

Tuesday, May 2, 2023, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy

Web Site: [www.cityoftracy.org](http://www.cityoftracy.org)

**THIS MEETING WILL BE OPEN TO THE PUBLIC FOR IN-PERSON AND REMOTE PARTICIPATION PURSUANT TO GOVERNMENT CODE SECTION 54953(e).**

**MEMBERS OF THE PUBLIC MAY PARTICIPATE REMOTELY IN THE MEETING VIA THE FOLLOWING METHOD:**

*As always, the public may view the City Council meetings live on the City of Tracy's website at [CityofTracy.org](http://CityofTracy.org) or on Comcast Channel 26/AT&T U-verse Channel 99. To view from the City's website, open the "Government" menu at the top of the City's homepage and select "[City Council Meeting Videos](#)" under the "City Council" section.*

*If you only wish to watch the meeting and do not wish to address the Council, the City requests that you stream the meeting through the City's website or watch on Channel 26.*

**Remote Public Comment:**

*During the upcoming City Council meeting public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:*

- *Comments via:*
  - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2557 749 7261** and **Event Password: TracyCC**
  - ***If you would like to participate in the public comment anonymously***, you may submit your comment in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting [Anonymous@example.com](mailto:Anonymous@example.com) when prompted to provide an email address.
  - Join by phone by dialing +1-408-418-9388, enter 25577497261 #8722922# Press \*3 to raise the hand icon to speak on an item.
- *Protocols for commenting via WebEx:*
  - *If you wish to comment on the "Consent Calendar", "Items from the Audience/Public Comment" or "Regular Agenda" portions of the agenda:*
    - *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
    - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
  - *Comments for the "Consent Calendar" "Items from the Agenda/Public Comment" or "Regular Agenda" portions of the agenda will be accepted until the public comment for that item is closed.*

*Comments received on Webex outside of the comment periods outlined above will not be included in the record.*

**Americans With Disabilities Act** - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6105) 24 hours prior to the meeting.

**Addressing the Council on Items on the Agenda** - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. To facilitate the orderly process of public comment and to assist the Council to conduct its business as efficiently as possible, members of the public wishing to address the Council are requested to, but not required to, hand a speaker card, which includes the speaker's name or other identifying designation and address to the City Clerk prior to the agenda item being called. Generally, once the City Council begins its consideration of an item, no more speaker cards will be accepted. An individual's failure to present a speaker card or state their name shall not preclude the individual from addressing the Council. Each citizen will be allowed a maximum of five minutes for input or testimony. In the event there are 15 or more individuals wishing to speak regarding any agenda item including the "Items from the Audience/Public Comment" portion of the agenda and regular items, the maximum amount of time allowed per speaker will be three minutes. When speaking under a specific agenda item, each speaker should avoid repetition of the remarks of the prior speakers. To promote time efficiency and an orderly meeting, the Presiding Officer may request that a spokesperson be designated to represent similar views. A designated spokesperson shall have 10 minutes to speak. At the Presiding Officer's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

**Consent Calendar** - All items listed on the Consent Calendar are considered routine and/or consistent with previous City Council direction. One motion, a second, and a roll call vote may enact the items listed on the Consent Calendar. No separate discussion of Consent Calendar items shall take place unless a member of the City Council, City staff or the public request discussion on a specific item.

**Addressing the Council on Items not on the Agenda** – The Brown Act prohibits discussion or action on items not on the posted agenda. The City Council's Meeting Protocols and Rules of Procedure provide that in the interest of allowing Council to have adequate time to address the agenda items of business, "Items from the Audience/Public Comment" following the Consent Calendar will be limited to 15-minutes maximum period. "Items from the Audience/Public Comment" listed near the end of the agenda will not have a maximum time limit. A five-minute maximum time limit per speaker will apply to all individuals speaking during "Items from the Audience/Public Comment". For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

**Notice** - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

Full copies of the agenda are available on the City's website: [www.cityoftracy.org](http://www.cityoftracy.org)

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ACTONS, BY MOTION, OF CITY COUNCIL PURSUANT TO AB 2449, IF ANY

ROLL CALL

PRESENTATIONS

1. Employee of the Month
2. Certificates of Appointment - Measure V Residents' Oversight Committee
3. Proclamation – Bike Month & Bike to Work Week/Day
4. Proclamation - Older Americans Month
5. Proclamation – Building Safety Month
6. Proclamation - National Day of Prayer
7. Proclamation - Neurofibromatosis Awareness Month
8. Proclamation - Lyme Disease Awareness Month

1. CONSENT CALENDAR

- 1.A Adoption of April 18, 2023, Closed Session, Special Meeting and Regular Meeting Minutes.
- 1.B Waive the second reading and adopt an ordinance authorizing an amendment to the contract between the City Of Tracy and the California Public Employees' Retirement System Plan to provide public service credit for Peace Corps, Americorps Vista, or Americorps Services for all local miscellaneous members and all local Police members, pursuant to Government Code section 20471.
- 1.C Adopt a resolution awarding a public contract to H.B. Restoration, Inc., in the amount of \$62,980, for the City Hall Common Area Painting 2023, with a not-to-exceed budget of \$72,427 and authorizing the City Manager to approve any change orders up to the contingency amount of \$9,447 if needed.
- 1.D Adopt a resolution: 1) Authorizing the acceptance of a grant award from Health Plan of San Joaquin in the amount of \$1.2 million to partially fund the construction and operation of the Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter, CIP 71112); and 2) Appropriating \$1.2 million of the total grant funds to the Mobility and Housing Department, Homeless Services Division.
- 1.E Adopt a resolution (1) accepting public improvements as complete in accordance with the Off-Site Improvement Agreement for California Highway Patrol Building constructed by Tracy CHP Partners, LLC, a California Limited Liability Company, (2) authorizing the City Engineer to release performance and payment bonds, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.
- 1.F Adopt a resolution: (1) awarding a construction contract to B&M Building Inc., of Rancho Cordova, California, in the amount of \$158,610 for the Water Treatment Plant HVAC Replacement – Blower Building Project, CIP 75171, (2) authorize a not-to-exceed budget of \$206,193, and (3) authorize the City Manager to approve change orders up to the contingency amount of \$23,792, if needed.

- 1.G Adopt a resolution authorizing the (1) submittal of an Allocation Request for the Low Carbon Transit Operation Program, (2) execution of Certifications and Assurances, and (3) authorizing the City Manager to execute funding documents with the California Department of Transportation (Caltrans) for allocation of the FY 2022-23 LCTOP funds for the following project: Free Student Fares, in the amount of \$75,684.
- 1.H Adopt a resolution: (1) awarding a construction contract to GCJ, Inc., of Stockton, California, in the amount of \$2,349,496 for the Police Multipurpose Reality Based Training Facility Project, CIP 71110, with a not-to-exceed budget of \$3,171,821 and (2) authorize the City Manager to approve change orders up to the contingency amount of \$469,900, if needed.
- 1.I Adopt a resolution amending the City's Operating and Capital Budget for the Fiscal Year ending June 30, 2023, and authorize the Budget Officer to amend the City's position control roster for FY2022- 23.
- 1.J. Waive the second reading and adopt an ordinance of the City of Tracy amending Tracy Municipal Code Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, "Fireworks".

2. ITEMS FROM THE AUDIENCE

3. REGULAR AGENDA

- 3.A. Council (1) adopt a Resolution of Intention of the City Council of the City of Tracy declaring its intention to increase wastewater rates, (2) set a public hearing date for June 20, 2023, and (3) authorize staff to proceed with mailing notices to all property owners within the City, as required by Proposition 218.
- 3.B Discuss and provide direction on the proposed 1) bylaws for Tracy's Homelessness Advisory Committee and the Finance Committee and 2) modifications to the City Council's Meeting Protocols to reflect the delegation of increased authority to these standing Committees.
- 3.C The Planning Commission recommends that the City Council Introduce an Ordinance 1) determining that the Project is categorically exempt from the California Environment Quality Act, pursuant to CEQA guidelines Section 15061(B)(3), and 2) Approving amendments to Sections 10.08.3196(b) and (d) of the Tracy Municipal Code to expand the definition of youth center and to establish buffers between Cannabis Uses and (a) Sensitive Uses and (b) Residential Uses.
- 3.D. Council introduce an Ordinance of the City of Tracy: 1) Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to toll the expiration date of each existing commercial cannabis business permit for an additional six months; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and 2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).

4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**April 18, 2023, 5:00 p.m.**

Tracy City Hall, 333 Civic Center Plaza, Tracy, CA.  
and one Council Member attended remotely at the following location:  
Omni Shoreham Hotel, 2500 Calvert Street NW,  
Washington, District of Columbia 20008

1. Mayor Pro Tem Davis called the meeting to order at 5:00 p.m.
2. There was no action required pursuant to AB 2449.
3. Roll call found Council Members Bedolla, Evans and Mayor Pro Tem Davis present. Mayor Young absent.

Council Member Arriola arrived at 5:03 p.m. following roll call.

4. ITEMS FROM THE AUDIENCE - None
5. REQUEST TO CONDUCT CLOSED SESSION

5.A. Conference with Labor Negotiators (Gov. Code § 54957.6)

- City Negotiators  
Midori Lichtwardt, Acting City Manager  
Karin Schnaider, Assistant City Manager  
Kimberly Murdaugh, Human Resources Director  
Sara Cowell, Finance Director  
Bijal Patel, City Attorney  
Che Johnson, Special Counsel  
Michael W. Jarvis, Special Counsel
- Employee Organizations:  
General Teamsters Local No. 439, IBT  
Tracy Mid Managers Bargaining Unit  
Tracy Police Management Association  
Tracy Police Officers' Association  
Tracy Technical and Support Services Employee Association

There was no public comment.

**ACTION:** Motion was made by Council Member Evans and seconded by Council Member Bedolla to recess to closed session. Roll call found Council Members Arriola, Bedolla, Evans, and Mayor Pro Tem Davis in favor; passed and so ordered. Mayor Young absent. Time: 5:03 p.m.

6. Reconvene to Open Session – 5:35 p.m.
7. Report of Final Action, if Any - None
8. Council Items and Comments - None

9. Adjournment – Time: 5:36 p.m.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to adjourn. Roll call found Council Members Arriola, Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Mayor Young absent.

The above agenda was posted at the Tracy City Hall on April 14, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

SPECIAL MEETING MINUTES OF THE TRACY CITY COUNCIL

**April 18, 2023, 5:30 p.m.**

Tracy City Hall, 333 Civic Center Plaza, Tracy, CA.  
and one Council Member attended remotely at the following location:  
Omni Shoreham Hotel, 2500 Calvert Street NW, Washington,  
District of Columbia 20008

1. Mayor Pro Tem Davis called the meeting to order at 5:42 p.m.
2. There was no action required pursuant to AB 2449.
3. Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present. Mayor Young participated remotely.
4. Items from the Audience: None.

Mayor Pro Tem Davis announced that item 3.A on the following regular agenda will be continued to June 6, 2023, at the request of the applicant.

5. Staff recommends that Council conduct a workshop to consider a proposed increase to the Wastewater rates and provide feedback on rate scenarios.

Sara Cowell, Finance Director introduced the consultant and responded to questions.

Steve Gagnon, Project Manager from Raftelis provided the presentation.

Council clarifying questions followed.

James Jackson, Operations and Utilities Director responded to questions.

Stephanie Reyna-Heistand, Assistant Director - Utilities responded to questions.

Robert Tanner stated this Council does not take senior citizens into consideration and shared his concerns regarding rate increase impacts on senior citizens. There should be a mechanism to accommodate seniors, have LIRA for low income but that is not for seniors. Both scenarios more than cover the debt coverage.

Burnell Shull shared her concerns regarding rate increase impacts on seniors. Need to have a space for seniors and then go into multifamily. Seniors cannot put money away for increases.

Council Member questions and comments continued.

- ACTION:** Motion was made by Council Member Arriola and seconded Council Member Bedolla to consider a proposed increase in line with Option 2 to the wastewater rates. Roll call found all in favor; passed and so ordered.

6. Council Items and Comments – None.



7. Adjournment: Time: 7:02 p.m.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to adjourn. Roll call found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on April 14, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

**April 18, 2023, 7:00 p.m.**

City Hall, 333 Civic Center Plaza, Tracy  
and one Council Member attended remotely  
at the following location: Omni Shoreham Hotel,  
2500 Calvert Street NW, Washington, District of Columbia 20008

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Mayor Pro Tem Davis called the meeting to order at 7:08 p.m.

Pledge of Allegiance was led by students from Anthony Traina Elementary School - Dyuti Shrivastava, Abby Maranon, Amelia Wright, and Arielle Jones-Amos.

Priest Atul Batra, Sant Nirankari Mission offered the invocation.

There was no action required pursuant to AB 2449.

Roll call found Council Members Arriola, Bedolla, Evans, Mayor Pro Tem Davis and Mayor Young present. Mayor Young participated remotely.

Mayor Pro Tem Davis announced item 3.A on the regular agenda was continued to June 6, 2023.

Midori Lichtwardt, Acting City Manager presented the Employee of the Month award for April to Lauren Repetto, Parks and Recreation Department.

1. CONSENT CALENDAR – Following the removal of consent item 1.F by Council Member Arriola, Karen Moore and Mary Mitracos motion was made by Council Member Arriola and seconded by Council Member Evans to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.
  - 1.A Adopt April 4, 2023 Closed Session, Special Meeting, and Regular Meeting minutes. – **Minutes were adopted.**
  - 1.B Adopt a resolution awarding a construction contract to Tracy Grading & Paving, Inc. of Tracy, California, in the amount of \$79,800 for the Annual Water Valve Replacement Project, FY22-23, CIP 75168, with a not-to-exceed budget of \$99,750 and authorize the City Manager to approve change orders up to the contingency amount of \$7,980, if needed. - **Resolution 2023-063** awarded the construction contract to Tracy Grading & Paving, Inc.
  - 1.C Adopt a Resolution authorizing 1) amendments to the City's Classification and Compensation Plans and Master Salary Schedule to add the classification of Financial Analyst I/II and increase the bi-weekly salary range for the Parks Planning and Development Manager from \$3,968.44 - \$4,823.67 to \$4,365.28 - \$5,306.04, 2) amendments to several existing classifications to reflect modifications to job duties; and 3) reallocation of a current Management Analyst I/II in the Finance Department to a Financial

Analyst I/II, effective Fiscal Year 2022-23. - Resolution 2023-064

authorized the amendment to the City's Classification Plans and Master Salary Schedule and reallocation of a current Management Analyst I/II to a Financial Analyst I/II.

- 1.D Adopt a resolution approving Amendment No. 2 to the Professional Services Agreement with Mark Thomas and Company, Inc. to (1) augment the scope for the Project Approval, Environmental Document, and Plans, Specifications and Estimates for Modification of I-205 and I-580/Mountain House Existing Interchanges, CIP Nos. 73146 and 73147, and (2) increase the contract amount by an additional \$1,493,855 for a new total not-to-exceed amount of \$6,181,579. – Resolution 2023-065 approved Amendment No. to Professional Services Agreement with Mark Thomas and Company, Inc.
- 1.E Adopt a resolution approving the Final Subdivision Map for Tract No. 4156 Tracy Village Neighborhood 1. - Resolution 2023-066 approved the Final Subdivision Map for Tract No. 4156 Tracy Village Neighborhood 1.
- 1.G Adopt a resolution authorizing the 1) appropriation of \$600,000 from Measure V (Fund 107) as one-time funding to the Parks and Recreation Department for the purchase of equipment to maintain and operate Legacy Fields, 2) Authorizing the Budget Officer to amend the City's position control roster for FY22/23, and 3) appropriation of \$80,000 from Measure V (Fund 107) as prorated funding to fund the Parks and Recreation Department for staffing, maintenance, and operations to maintain and operate Legacy Fields for the remainder of FY22/23. – Resolution 2023-067 authorized the appropriation of \$600,000 from Measure V (Fund 107), authorized the amendment to the City's position control roster for FY22/23 and appropriated \$80,000 from Measure V (Fund 107) as prorated funding to fund the Parks and Recreation Department for operating Legacy Fields.
- 1.F Adopt a resolution approving the formation and bylaws for an Environmental Sustainability Commission.

Council Member Arriola, Karen Moore and Mary Mitracos pulled the item for discussion.

Karin Schnaider, Assistant City Manager provided the staff report.

Council Member Arriola pulled the item to confirm the new commission will have the ability to propose new ordinances to the Council and the opportunity to review and provide proposals related to a climate action plan.

Karen Moore pulled the item to recommend adding two students to the make-up of the commission, would like to see mentoring of students and someone from the School District. Need to get different segments of the community involved and suggested to expand to an eight-member committee.

Mary Mitracos pulled the item to thank Council for the commission. Planning Commission members are paid for meeting attendance and some of the other commissions also. Is there going to be a stipend offered to the

Environmental Sustainability Commission. Ms. Mitracos added in the bylaws it refers to the commission reviewing Park names and asked if that was correct as it is a duty of the Parks and Community Services Commission.

Robert Tanner asked if the commission gets paid and where are the meetings going to be held.

Jenny Wood thanked Council for voting for the commission. This commission is the next step to make the Environmental Sustainability Action Plan happen and asked how the Environmental Commission fits under the Utilities Department.

Motion was made by Council Member Arriola and seconded by Council Member Bedolla to adopt the Resolution.

Ms. Schnaider requested to strike from Section E.3 of the bylaws that the functions of the Vice Chair not related to Parks Commission to be part of the motion.

Council Member Bedolla agreed with the friendly amendment to strike that portion from Section E.3.

Council questions and comments continued.

Brian MacDonald, Parks and Recreation Director responded to questions.

Council Member Arriola made a friendly amendment to add two youth seats to the commission. Mayor Pro Tem Davis and Council Member Bedolla supported the friendly amendment.

Council Member Arriola clarified his motion to adopt the Environmental Sustainability Commission, and two youth representative voting members.

Ms. Schnaider asked Council to define youth, up to a certain grade or age.

Ms. Schnaider summarized Council's direction: Two voting youth that are considered students up to and including their senior graduating year for terms of one year that are voting members.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to adopt **Resolution 2023-068** approving the formation and bylaws of an Environmental Sustainability Commission of the City of Tracy, striking the sentence from Section E.3 of the bylaws, and adding two voting youth that are considered high school students up to and including their senior graduating year for terms of one year that are voting members and residents of Tracy. Roll call found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Gabriela Machuca stated during a Planning Commission meeting input was given regarding the Westside Market property and keeping that property as public space. Ms. Machuca suggested converting it into a public space and shared suggestions of other uses for the property that would complement the Grand Theatre and would be better than a housing project.

Karen Moore stated one of largest homeless population is people of her peers who are being squeezed out of retirement money. See other cities giving people at a certain age free garbage disposal, gives something to think about because we are struggling. Ms. Moore shared she will eventually have to leave this City, that is called gentrification and does not know how the City can take care of our seniors.

Pat Howell apologized to the Mayor on behalf of many Tracy residents regarding comments made by the public about the Mayor at a meeting. Ms. Howell asked the City Manager to present to the Council publicly and legally implications that the City may experience due to the dismissal by the Council of the proposal to study and set policy on Diversity, Equity and Inclusion. Additionally, Ms. Howell would like the City Manager to present to the Council any legal implications and any explanations that might be needed on the vote in the previous meeting that denied Surland payments for infrastructure in their new home community.

Farhad Aziz stated he is trying to put an addition on the back of his house and shared his concerns regarding the cost to connect to the City water and sewer.

Robert Tanner stated Council needs to get the Aquatics Park started, get the 16 acres and \$10 million and get it done. Mr. Tanner was glad the vote on the bonds for Ellis were two to two so did not pass and referred to a comment made by the Mayor regarding potholes. The bond is for Ellis subdivision and cannot be used anywhere else unless it is a main road that goes into Ellis. There are potholes on 10<sup>th</sup>, 11<sup>th</sup> and in south Tracy that need to get filled.

James Young congratulated Mayor Young on her invitation from the Vice President of the United States to attend an intimate evening at her private residence and thanked Dotty Nygard who started a Go Fund Me and for making it happen.

Rosario Arulappan stated he lived in Ellis and shared concerns regarding the intersection of Corral Hollow and Valpico. The intersection sees a lot of big trucks daily and at nighttime it is completely dark. There are a lot of accidents. More people moving into Ellis and Tracy Hills so they travel and traffic is increasing.

Alice English stated she pulled public records requests on travel expenses. Last year there was a conference in Washington D.C. and shared concerns on charges made by the Mayor for rental car and valet. Tracy should not be paying for a rental car that is not used for business.

Burnell Shull spoke about not being able to speak at the last meeting and felt the Mayor violated her freedom to speak and the Brown Act. Suggested planting trees in potholes and they will get them fixed right away.

### 3. REGULAR AGENDA

- 3.A Planning Commission recommends that the City Council conduct a public hearing and, upon conclusion, introduce an Ordinance 1) certifying an Environmental Impact Report (EIR) and adopt a Mitigation Monitoring and Reporting Program (MMRP) and findings of fact and a statement of overriding considerations (together, CEQA Findings) for the annexation and future development of industrial buildings on the 191.18-acre property located at the northeast corner of Grant Line and Paradise Roads (Assessor's Parcel Numbers 213-170-14, -24, -25, -26, -27, and -48, collectively the Property) in accordance with the California Environmental Quality Act (CEQA); 2) amending the Northeast Industrial (NEI) Specific Plan to add the Property to the NEI Specific Plan area with a land use designation of Light Industrial (SPA22-0003); 3) approving the rezoning of the Property to Northeast Industrial Specific Plan Zone (AP20-0003); and 4) approving the submittal of a petition to the San Joaquin County Local Agency Formation Commission (LAFCo) for annexation of the Property to the City of Tracy – **At request of applicant the item was continued to June 6, 2023**
- 3.B Staff recommends that the City Council 1) receive an update on the status of the background clearance process applicable to Cannabis Business Permit holders and 2) provide direction on whether to change current policy and code requirements impeding completion of the process.

Sekou Millington, Police Chief introduced Miguel Contreras, Police Lieutenant who provided the staff report and responded to questions.

Council clarifying questions followed.

Matthew Eaton, HDL Companies responded to questions.

Zoe Schreiber, Garden of Eden suggested Council push staff to adjust the City's definition to the State's definition and in the likelihood that that doesn't happen they can work with Lieutenant Contreras to obtain more information on a federal level. However, the issuance of DCC license demonstrates the people who have been issued those licenses are eligible for licensing.

Deanna Garcia spent a lot time since 2018 and money to get to where they are today. Asked Council to help them move forward to the finish. Have been following process and abiding by the guidelines and offering solutions, asked Council to follow the Police Department's opinion and action of going by the State definition. Turned in their Community Benefit a while ago and there is a hold up from the City and cannot move forward.

Dennis Chan, Tracy Cannabis Collective stated they started the process in 2018 and requested Council instruct staff to do what is needed for them to move forward and let the qualified cannabis businesses open. Have already submitted and signed the Community Benefit Agreement.

Michelle Trew, Tracy Cannabis Collective asked for help to move forward, have been diligent following the process and abiding by the guidelines and offering solutions. Ms. Trew asked Council to pass recommended solutions. They have already completed and passed three background checks – HDL, DCC live scan and Bureau of Security Investigative Services DOJ and FBI checks.

Kimberly Cargile stated it has been a long process, have worked with Council to craft the ordinance and to date have spent over \$500,000 and are ready to open. Owners have gone through DOJ and FBI background checks, and asked Council to allow applicants to move forward who have DOJ and FBI background check with the Department of Cannabis Control. Also, have signed Community Benefit Agreement and looking forward to City Attorney executing it. The main ask is to get open as soon as possible.

Michaela Toscas, Expire Positive LLC urged Council to pass a resolution to accept the Department of Cannabis Controls livescan, Federal and State background check process to meet the requirements of the City of Tracy's background checks and direct staff to execute the approved Community Benefit Agreement and allow businesses to open. Urged Council to amend the ordinance to make ownership definitions consistent with the state and allow the provisional operation of the community-based operators that have already passed the CUP and the state livescan process to help open their business before it is too late.

Karen Moore shared her use of cannabis oils for sleep and aches and pains and looks forward to having a retail store in town. Thanked Council for listening to these people and has been advocating for this industry.

James Young shared his experiences with use of cannabis oils to help aches and pains. Cannabis people are pleading and begging with Council to help them out. Spoke about having to drive to Manteca for cannabis, and the City losing tax money. Do the right thing to help open up these businesses.

Joe Devlin, Altamont Wellness stated they submitted their application in December 2020, have CUP, State license, and building permit and are about 3 weeks away from construction. Put a lot of money in this effort. To open there has to be resolution for background check requirements and Community Benefit Agreement. Mr. Devlin urged Council to accept the state standard for background check requirements and provide direction to solve the community benefit.

Alex Monceaux stated the City needs a new consultant and shared his concerns regarding HDL. The state has already been doing livescans. Mr. Monceaux stated he walked away from opening in Tracy, and the City has lost manufacturers and distributors and suggested going beyond just changing language, get rid of requirement altogether, can add to the annual permit. Let them open up, get money coming in because we have been paying HDL for seven years.

Council comments and questions continued.

Council Member Arriola moved to change current policy and code requirements to mimic state requirements related to the background clearance process for cannabis business permit holders. Mayor Young seconded the motion.

Midori Lichtwardt, Acting City Manager responded the item is an informational item and staff is looking for consensus on if there was any change in direction to propose in the ordinance staff is bringing back – extension of business permits and renewal terms we are bringing back at the next meeting.

Police Chief Millington summarized Council's direction to accept the report and permit staff to come back with a clear path forward for those businesses who meet the requirements currently which we have more than three. The standards are different, staff would look at a state standard as opposed to our current standard.

City Council provided the following input to staff regarding whether to change current policy and code requirements impeding completion of the process:

Council Member Evans supported ongoing conversations about how to make this work but is not in support of making that adjustment as proposed here. In support of those that are qualified under the current requirements finding a path forward to ensuring they can get their doors open expeditiously. Whatever the remaining process is would like to see that which is what is being brought back. Policy as stands should stay in place.

Council Member Arriola supported changes to mimic state requirements which would include the changes to the definitions for ownership to include 20%.

Council Member Bedolla stated he is looking to do best with the current policy as is.

Mayor Young agreed with Council Member Arriola's comment regarding mimicking the state. Would like to see staff bring back a very clear path and options. If there is an option to keep it the same and make some other changes to open doors that is fine but need very clear path forward without blockades.

Mayor Pro Tem Davis stated there are three or more meeting existing requirements that are written in the ordinance so inclined to stay with existing policy as is and would like to see those who have met the threshold to move forward as quickly and responsibly as possible via vetting system. Also continue to pursue access so we can get real time updates through state and federal. In agreement with everyone else for to staff come back with a path forward but is not willing to make blanket change without seeing what other paths are available. Let people who have already met our



requirements move forward, but is not willing to make a change on existing policy.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to receive the update on the status of the background clearance process applicable to Cannabis Business Permit holders. Roll call found all in favor; passed and so ordered.

3.C Staff recommends that the City Council introduce an ordinance of the City of Tracy amending Tracy Municipal Code Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, "Fireworks".

Sekou Millington, Police Chief introduced Mario Ysit, Police Lieutenant who provided the staff report and responded to questions.

Council clarifying questions followed.

Don Pascarella, TNT Fireworks supported increasing the fines, defined dangerous fireworks and commended Council for taking action and stated illegal fireworks are the biggest competitor for nonprofits.

Alice English asked how Police can find violators when they are not doing it in front of their house. What happens for other occasions/events where there are fireworks.

Burnell Shull asked what can be done about people shooting off guns instead of fireworks and shared an experience of someone shooting off a gun.

Council questions and comments continued.

Adrienne Richardson, City Clerk reads the title of the proposed ordinance.

**ACTION:** Motion was made by Council Member Bedolla and seconded by Council Member Arriola to waive the reading of the full text and introduce an ordinance amending Tracy Municipal Code Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, "Fireworks". Roll call found all in favor; passed and so ordered.

3.D Staff recommends that the City Council receive a report on City Council's FY 2022-2023 Operating Budget for travel and related expenses.

Karin Schnaider, Assistant City Manager and Sara Cowell, Finance Director presented the item and announced Items 3.D and 3.E will be read together.

Council asked clarifying questions.

Karen Moore referred to Section B, Item 11 stating the language needs to be clarified regarding expenses that do not reflect a direct business benefit. Document has a lot of red lines and suggested moving it to another meeting.

Alice English spoke about the Mayor's travel from January 16-20, shared concerns regarding some of the Mayor's travel expenses, was glad Council is having the discussion and think all travel should come to Council.

James Young spoke about Ms. English targeting the Mayor and asked if staff is providing the information for free, at home or in their time or city time. How many hours does it take to pull the information and how much does it cost the City.

Council Member Arriola referred to Section B, #9 and suggested the following language: most economy level but allowing aisle and window. Council Member Evans supported the language.

Council questions and discussion continued.

Ms. Schnaider summarized Council's consensus on the changes to the proposed Policy for Reimbursement for Travel and Expenses for Elected and Appointed Officials:

- First paragraph: *and officials appointed by the City Council including appointed City Council...*
- Adopt travel budget annually as part of the annual budget which would be a May-June timeline. Can preapprove other additional travel at that time for out-of-state besides what is approved. This is a process and does not require language.
- No additional changes to Section A on authorized expenses when it came to the reasonable time.
- Section A, #8 remove: *and present a certificate*
- Section D, #1 add to end of third sentence: *and does not require selection of a middle seat.*
- Resolution has language that the City Manager and City Attorney must confer with each other in the event of ambiguity. Staff can add this to Section J along with the following final step: In the event of ambiguity or a disagreement about whether an expense is eligible for reimbursement then the City Council should make the final determination.

**ACTION (Item 3.D):** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to receive a report on the City Council's FY 2022-2023 Operating Budget for travel and related expenses. Roll call found all in favor; passed and so ordered.

**ACTION (Item 3.E):** Motion was made by Council Member Arriola and seconded by Council Member Bedolla to adopt a **Resolution 2023-069** approving 1) Rescinding Resolution 2021-140, which adopted and amended the Policy for Reimbursement for travel and expenses for elected and appointed officials; and 2) Adopting a new Policy

for Reimbursement for Travel and Expenses for elected and Council-appointed officials. Roll call found all in favor; passed and so ordered.

3.E Staff recommends that the City Council 1) rescind Resolution 2021-140, which adopted and amended the Policy for Reimbursement for Travel and Expenses for Elected and Appointed Officials; and 2) approve a resolution adopting a new Policy for Reimbursement for Travel and Expenses for Elected and Council-Appointed Officials. – Item was read and included with Item 3.D.

3.F Staff recommends that the City Council appoint, by motion, a subcommittee of two Councilmembers, and an alternate, to interview applicants to fill one term vacancy on the Tracy Parks and Community Services Commission.

Adrienne Richardson, City Clerk provided the staff report.

Council comments followed.

There was no public comment.

**ACTION:** Motion was made by Council Member Evans and seconded by Council Member Arriola to appoint a Council subcommittee of Council Member Evans and Council Member Bedolla and Council Member Arriola as alternate to interview applicants to fill one term vacancy on the Tracy Parks and Community Services Commission. Roll call found all in favor; passed and so ordered.

3.G Staff recommends that the City Council appoint, by motion, Rosario Arulappan and Pio Fernandez to serve two (2) of the three (3) expired terms beginning March 1, 2023 and ending February 28, 2026 to the City of Tracy Measure V Residents' Oversight Committee.

Adrienne Richardson, City Clerk provided the staff report.

Council subcommittee member Mayor Pro Tem Davis announced the subcommittee's recommendation for the Measure V Residents' Oversight Committee.

Alice English thanked Council on Rosario Arulappan's behalf as he had left Council Chambers.

Rosario Arulappan returned to Council Chambers and stated it is an honor to be part of the committee and thanked the Council subcommittee consisting of Mayor Pro Tem Davis and Council Member Evans.

**ACTION:** Motion was made by Council Member Evans and seconded by Council Member Arriola to appoint Rosario Arulappan and Pio Fernandez to serve two of the three expired terms beginning March 1, 2023, and ending February 28, 2026 to the

City of Tracy Measure V Residents' Oversight Committee. Roll call found all in favor; passed and so ordered.

4. ITEMS FROM THE AUDIENCE – Karen Moore announced Saturday, April 22 at 9:00 a.m. is the Earth Day tree planting in Frank Hoyt Park and community clean up in Cecilian Park.
5. STAFF ITEMS – Midori Lichtwardt, Acting City Manager provided the following updates:
  - Caltrans will have significant on-ramp and lane closures for Interstate 205 as Phase 2 of the I-205 Smart Corridor Project. Most notable will be a six-week closure of the Grant Line Road on-ramp to westbound I-205, scheduled to begin Tuesday, April 25. Eastbound & westbound Grant Line Road traffic will be directed north to use the Naglee Road/Pavilion Parkway on-ramp as the detour. Staff will be sharing Caltrans' traffic advisories with detour maps and reminders this week, including the website link where you can learn more about the project.
6. COUNCIL ITEMS – Council Member Arriola reported on the City Leader Summit in Sacramento last week. Wished everyone a happy Earth Day and looked forward to travelling with Mayor Pro Tem Davis to Washington D.C. for the Federal lobbying trip.

Council Member Evans wished his son a happy Birthday who turned 17 yesterday and announced there is a ribbon cutting at North Elementary on Thursday at 4:45 p.m.

Council Member Bedolla stated he will be submitting a more detailed report on things he has attended between boards, commissions, community events. Also joined colleagues at National League of Cities Congressional Cities Conferences and City Leaders Summit. Council Member Bedolla shared there have been a lot of public record requests and every once and a while he reads through them as they provide a different perspective than we see in the Tracy Press or in Council Chambers and called attention to PRA request 23-95. It sheds a lot of information on behavior we are seeing from our higher elected and appointed officials. Under the sake of oversight and concern wanted to share that.

Mayor Young reported on the League of California Cities City Leaders Summit she attended last week.

Mayor Pro Tem Davis reported on the League of California City Leaders Summit she attended last week and will submit a report to the Clerk. Attended Ms. Rowena's 100<sup>th</sup> birthday at the Elk's Lodge. Congratulated Imperial Spice on the opening of their restaurant. Congratulated Tracy Little League on their first crab feed fundraiser, and Steve Abercrombie did Brighter Christmas D.A.R.E. fundraiser for his birthday.

7. ADJOURNMENT – Time: 12:04 a.m., Wednesday April 19, 2023.

**ACTION:** Motion was made by Council Member Arriola and seconded by Council Member Evans to adjourn. Roll call found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on April 14, 2023. The above are action minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

Agenda Item 1.B

RECOMMENDATION

**Staff recommends that the City Council waive the second reading and adopt an ordinance authorizing an amendment to the contract between the City Of Tracy and the California Public Employees' Retirement System Plan to provide public service credit for Peace Corps, Americorps Vista, or Americorps Services for all local miscellaneous members and all local Police members, pursuant to Government Code section 20471.**

EXECUTIVE SUMMARY

This item for consideration by the City Council approves an amendment to the contract with the California Public Employee Retirement System (CalPERS) to allow for City of Tracy employees in the CalPERS local miscellaneous group and local Police group to purchase public service credit for volunteer service time in the Peace Corps, AmeriCorps Vista or AmeriCorps Service. In addition, staff is recommending that the City Council authorizes an Ordinance amending the California Public Employees' Retirement System Plan to provide Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps Vista, or AmeriCorps Service) for all local miscellaneous members and all local Police members. The proposed Ordinance was introduced at a regular meeting of the Tracy City Council on April 4, 2023.

BACKGROUND AND LEGISLATIVE HISTORY

California Public Employees' Retirement Law permits public agencies and their employees to participate in the California Public Employees' Retirement System (CalPERS). The City's retirement contract with CalPERS covers two classifications of employees (1) Police safety and (2) Miscellaneous (non-sworn) employees. The Public Employees' Retirement Law includes optional provisions an agency may contract through CalPERS retirement contract. Addition of optional benefits to a CalPERS retirement contract requires an amendment to the CalPERS retirement contract. The timing and steps to amend the City's CalPERS retirement contract are dictated by CalPERS and the California Government Code as follows:

1. Approval of the Resolution of Intention is required to initiate the final contract amendment. **(Resolution 2023-062, adopted 4/4/2023)**
2. Introduction and first reading of the Ordinance. **(Introduced on 4/4/2023)**
3. Second reading and adoption of the Ordinance. Pursuant to Government Code Section 20471, a 20-day period between the adoption of the Resolution of Intention and the adoption of the final Ordinance is required.
4. The contract amendment becomes effective 30 days after the adoption of the ordinance.

ANALYSIS

Human Resources conducted a review of optional benefits offered through the California Public Employees' Retirement System. As a recruitment enhancement tool, staff recommends inclusion of Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps Vista, or AmeriCorps Service) to recognize City employees who served in the Peace Corps, AmeriCorps Vista or AmeriCorps Service by allowing the employee to purchase up to three years of public service credit for service in this capacity. The City's CalPERS contract currently provides a similar benefit for employees with prior military service.

### FISCAL IMPACT

There is no fiscal impact to the current budget associated with approval of this action. The majority of cost for purchase of service credit time under Section 21023.5 is born by the employee at the time-of-service credit purchase with a nominal cost to the City. Actual costs to the City will emerge in future CalPERS valuations approximately two (2) years from the date of service credit purchase.

### STRATEGIC PLAN

This agenda item supports the City's Governance Strategy and Business Plan, and specifically implements the following goals and objectives:

#### Governance Strategy

- Goal 1: Further develop an organization to attract, motivate, develop, and retain a high-quality, engaged, high-performing, and informed workforce.
- Objective 1b: Affirm organizational values.

### ACTION REQUESTED OF THE CITY COUNCIL

Waive the second reading and adopt an ordinance authorizing an amendment to the contract between the City Of Tracy and the California Public Employees' Retirement System Plan to provide public service credit for Peace Corps, Americorps Vista, or Americorps Services for all local miscellaneous members and all local Police members, pursuant to government code section 20471.

Prepared by: Necy Lopez, Deputy City Clerk

Reviewed by: Adrienne Richardson, City Clerk  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Acting City Manager

#### Attachments:

- Attachment A: Ordinance
- Attachment B: CalPERS Amendment to Contract

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_**

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**AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF TRACY AND THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN TO PROVIDE PUBLIC SERVICE CREDIT FOR PEACE CORPS, AMERICORPS VISTA, OR AMERICORPS SERVICES FOR ALL LOCAL MISCELLANEOUS MEMBERS AND ALL LOCAL POLICE MEMBERS, PURSUANT TO GOVERNMENT CODE SECTION 20471.**

**WHEREAS**, The Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said contract; and

**WHEREAS**, The Government Code sets forth procedures to amend this contract; and

**WHEREAS**, One of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of an ordinance to approve an amendment to said contract; and

**WHEREAS**, The following is a statement of the proposed change: To provide Section 21023.5 Public Service Credit for Peace Corps, AmeriCorps Vista, or AmeriCorps Service for local miscellaneous members and local police members; and

**WHEREAS**, A Resolution of Intention (Resolution # 2023-XXX) to approve the Public Employees' Retirement System contract amendment was adopted on April 4, 2023; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2.** That an amendment to the contract between the City Council of the City of Tracy and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked as Exhibit, and by such reference made part hereof as though herein set out in full.

**SECTION 3.** That the Mayor of the City of Tracy is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Tracy.



**SECTION 4. CEQA Determination.** The City Council finds and determines this Ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

**SECTION 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 6. Effective Date.** This ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption, and prior to the expiration of twenty (20) days from the passage thereof shall be published one in the Tri-Valley Herald, a newspaper of general circulation, published and circulated in the City of Tracy and thenceforth and thereafter the same shall be in full force and effect.

**SECTION 7. Publication.** The City Clerk is directed to publish this ordinance in a manner required by law.

**SECTION 8. Codification.** This Ordinance shall not be codified in the Tracy Municipal Code.

\*\*\*\*\*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 4th day of April 2023, and finally adopted on the 2<sup>nd</sup> day of May, 2023, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:  
ABSTENTION: COUNCIL MEMBERS:

\_\_\_\_\_  
NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Date of Attestation: \_\_\_\_\_

**EXHIBIT**

California  
Public Employees' Retirement System

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**AMENDMENT TO CONTRACT**

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Tracy

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1948, and witnessed September 8, 1948, and as amended effective January 1, 1960, June 1, 1972, November 1, 1972, March 19, 1974, July 1, 1978, February 1, 1983, September 1, 1983, May 3, 1985, January 18, 1991, June 30, 1997, November 16, 1997, June 1, 2000, January 1, 2004, January 1, 2005, January 1, 2006, October 1, 2006, July 2, 2010, December 17, 2010, July 16, 2016, and December 16, 2016, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 20 are hereby stricken from said contract as executed effective December 16, 2016, and hereby replaced by the following paragraphs numbered 1 through 20 inclusive:
  1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local police members entering membership in the police classification on or prior to July 2, 2010, age 55 for classic local police members entering membership for the first time in the police classification after July 2, 2010, age 55 for classic local fire members and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after January 10, 1948, making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

### **NO ADDITIONAL EXCLUSIONS**

6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment before and not on or after October 1, 2006, shall be determined in accordance with Section 21354 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 55 Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment on or after October 1, 2006, and not entering membership for the first time in the miscellaneous classification after December 17, 2010, shall be determined in accordance with Section 21354.4 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2.5% at age 55 Modified).
9. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership in the miscellaneous classification after December 17, 2010, shall be determined in accordance with Section 21354 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 55 Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Supplemental to Federal Social Security).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member entering membership in the police classification on or prior to July 2, 2010, shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

12. The percentage of final compensation to be provided for each year of credited current service as a classic local police member entering membership in the police classification after July 2, 2010, shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
14. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
15. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members only.
  - b. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local safety members only.
  - c. Section 20965 (Credit for Unused Sick Leave) for local fire members entering membership on or prior to May 3, 1985, only.
  - d. Section 20475 (Different Level of Benefits). Section 20965 (Credit for Unused Sick Leave) is not applicable to classic local fire members entering membership for the first time with this agency in the fire classification after May 3, 1985.

Section 21363.1 (3% @ 55 Full formula) is applicable to classic local police members entering membership for the first time with this agency in the police classification after July 2, 2010.

Section 21354 (2% @ 55 Modified formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010.
  - e. Section 20903 (Two Years Additional Service Credit).
  - f. Section 21024 (Military Service Credit as Public Service).

- g. Section 20042 (One-Year Final Compensation) for classic local miscellaneous members entering membership on or prior to December 17, 2010, and classic local safety members.
  - h. Section 20516 (Employees Sharing Additional Cost):

From and after July 16, 2016, 3% for local miscellaneous members in the Confidential Mid-Managers Unit.

From and after July 16, 2016, 3% for local police members in the Tracy Police Management Association.

From and after July 16, 2016, 3% for local fire members in the Confidential Mid-Managers Unit.

From and after December 16, 2016, 3% for local police Members in the Tracy Police Officers Association.
  - i. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service) for local miscellaneous members and local police members only.
- 16. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on February 1, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 17. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 18. Public Agency shall also contribute to said Retirement System as follows:

  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
  - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

- c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
19. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
  20. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF TRACY

BY \_\_\_\_\_  
MELODY BENAVIDES, CHIEF  
PENSION CONTRACTS AND PREFUNDING  
PROGRAMS DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:  
\_\_\_\_\_

\_\_\_\_\_  
Clerk

PLEASE DO NOT SIGN "EXHIBIT ONLY"

PLEASE DO NOT SIGN "EXHIBIT ONLY"

Agenda Item 1.C

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution awarding a public contract to H.B. Restoration, Inc., in the amount of \$62,980, for the City Hall Common Area Painting 2023, with a not-to-exceed budget of \$72,427 and authorizing the City Manager to approve any change orders up to the contingency amount of \$9,447 if needed.**

EXECUTIVE SUMMARY

Staff recommends that the City Council award a public contract to H.B. Restoration, Inc., in the amount of \$62,980 for the City Hall Common Area Painting 2023, with a not-to-exceed budget of \$72,427 and authorize the City Manager to approve change orders up to the contingency amount of \$9,447 if needed.

BACKGROUND AND LEGISLATIVE HISTORY

Tracy City Hall was built in the early 2000's and has not been repainted since. The public areas of City Hall will be painted; this includes the hallway to the north of the building in front of Finance and Planning counter, the open area to the south, Council Chambers, the public restroom, Room 109 and 203, and the upstairs open areas in front of Human Resources and City Managers offices.

The Operations Division staff prepared the plans and specifications and released the bid on February 27, 2023. A mandatory pre-bid walk through was held on March 16, 2023, with nine prospective bidders attending. Bids were received and publicly opened on March 30, 2023, at 2:00 pm with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
NBR Painting & Coating	\$151,814.25
Color New Co.	\$211,000
H.B. Restoration Inc.	\$62,980
Ayala Painting	\$98,101
Yoda Painting	\$108,000
Anchor Singh Painting	\$69,000
Primal Paint Inc.	\$69,700

ANALYSIS

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, H.B. Restoration, Inc. is responsible. The bidder has the appropriate contractor's license in active standing with the State of California and has completed similar projects for other agencies.



The total estimated cost of this project, if awarded to the lowest bidder, is as follows:

CONSTRUCTION BID	\$ 62,980
CONTINGENCY (15%)	\$ 9,447
 TOTAL PROJECT COST	 \$ 72,427

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount of \$9,447 for this project, which is 15% of the public contract cost.

The areas will be painted with similar or same color scheme as already established. Work will occur during the City of Tracy regularly scheduled off Friday and weekends to reduce impact on residents and staff.

#### FISCAL IMPACT

The total estimated project cost is \$72,427. Sufficient funds exist within the Building Maintenance fund FY23 operating budget to fund the contract with H.B. Restoration, Inc.

#### STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety Strategic Priority.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution awarding a public contract to H.B. Restoration, Inc., in the amount of \$62,980, for the City Hall Common Area Painting 2023, with a not-to-exceed budget of \$72,427 and authorizing the City Manager to approve any change orders up to the contingency amount of \$9,447 if needed.

Prepared by: David Murphy, Assistant Director of Operations

Reviewed by: James A. Jackson, Director of Operations & Utilities  
Sara Cowell, Director of Finance  
Karin Schnaider, Assistant City Manager  
Riana Daniel, Deputy City Attorney

Approved by: Midori Lichtwardt, Acting City Manager

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

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**AWARDING A PUBLIC CONTRACT TO H.B. RESTORATION, INC., IN THE AMOUNT OF \$62,980, FOR THE CITY HALL COMMON AREA PAINTING 2023, WITH A NOT-TO-EXCEED BUDGET OF \$72,427, AND AUTHORIZING THE CITY MANAGER TO APPROVE ANY CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$9,447 IF NEEDED**

**WHEREAS**, under this contract the public areas of City Hall will be painted, which includes the hallway to the north of the building in front of Finance and Planning counter, the open area to the south, Council Chambers, the public restroom, Room 109 and 203, and the upstairs open areas in front of Human Resources and City Managers offices; and

**WHEREAS**, the Operations Division staff prepared the plans and specifications and released the bid on February 27, 2023, and a mandatory pre-bid walk through was held on March 16, 2023, with nine prospective bidders attending; and

**WHEREAS**, bids were received and publicly opened on March 30, 2023, at 2:00 pm with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
NBR Painting & Coating	\$151,814.25
Color New Co.	\$211,000
H.B. Restoration Inc.	\$62,980
Ayala Painting	\$98,101
Yoda Painting	\$108,000
Anchor Singh Painting	\$69,000
Primal Paint Inc.	\$69,700

; and

**WHEREAS**, H.B. Restoration, Inc. of Rio Vista, CA, was the apparent lowest bidder; and

**WHEREAS**, the bid analysis indicates the bid is “responsive” and the bidder is “responsible,”; and

**WHEREAS**, the Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council; and

**WHEREAS**, the recommended contingency amount for this project is \$9,447; and now, therefore, be it

**RESOLVED:** That the City Council hereby awards a public contract to H.B. Restoration, Inc., in the amount of \$62,980, for the City Hall Common Area Painting 2023, with a not-to-exceed budget of \$72,427 and authorizing the City Manager to approve any change orders up to the contingency amount of \$9,447 if needed.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 2, 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

---

NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Agenda Item 1.D

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution: 1) Authorizing the acceptance of a grant award from Health Plan of San Joaquin in the amount of \$1.2 million to partially fund the construction and operation of the Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter, CIP 71112); and 2) Appropriating \$1.2 million of the total grant funds to the Mobility and Housing Department, Homeless Services Division.**

EXECUTIVE SUMMARY

This item provides Council with an opportunity to receive a grant award in the amount of \$1.2 million from Health Plan of San Joaquin for the Tracy Interim Shelter Site project (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter). This grant is funded by Health Plan of San Joaquin County and is in support of providing additional housing options within specific geographic areas that do not currently have projects that support those experiencing homelessness and who are also Medi-Cal beneficiaries.

BACKGROUND AND LEGISLATIVE HISTORY

*Project Background*

The Tracy Interim Shelter Site project (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter) was authorized in August 2022 under an emergency shelter declaration to advance the needs to house the unsheltered in Tracy. On August 16, 2022, staff recommended that City Council reject the single bid received for the Temporary Emergency Housing Shelter Project on Arbor Avenue, Site Improvements Construction Package 2 (renamed Phase 2), CIP 71112, and authorize staff to re-advertise the project and rebid of the project. As this created a delay, the City Council adopted Resolution No. 2022-121 ("Resolution"), which reaffirmed an emergency shelter crisis as the City of Tracy continues to experience an increasing number of unsheltered individuals. Under this authorization, the City Manager entered into a five-year lease agreement for Modular Units and an Administration Unit, that will provide approximately 48 beds for individuals; and a one-year lease for generators. This project has been renamed Phase 3 of the Temporary Emergency Housing Shelter. In addition, the City Manager purchased eight Custom Containers to provide approximately 39 beds for individuals. This project has been renamed Phase 4 of the Temporary Emergency Housing Shelter.

On September 27, 2022, Health Plan of San Joaquin met with the City's Homeless Services team to discuss shelter services as a result, Health Plan of San Joaquin requested a proposal outlining the funding needs for the Tracy Interim Shelter Site project (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter). On September 29, 2022, the City submitted a proposal for grant funds to support the funding of this project; and subsequently, the City was notified of the award in the amount of \$1.2 million to fund. This is the first time that the City of Tracy has been awarded funding from Health Plan of San Joaquin.

**ANALYSIS AND DISCUSSION**

The Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter) project is part of the overall shelter campus project, parts of which are in various phases of design, development, and/or construction. This grant funding will be used to cover capital expenses, including the eight custom container units, existing modulars, and operating costs that will ultimately house up to 38 individuals. This project is intended to provide a site for those seeking shelter within the City limits. To that end, the City of Tracy will collaborate with the Health Plan of San Joaquin to provide additional resources and support to the City’s unsheltered population as they are housed. Approval of this item will accept the grant.

**FISCAL IMPACT**

The Mobility and Housing Department, Homeless Services Division will receive \$1.2 million in grant funds from the Health Plan of San Joaquin to fund the Tracy Interim Shelter Site. The \$1.2 million grant is to be appropriated to the FY2022-23 Homeless Services division operating budget. No City match is required.

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<b><u>Revenue Sources</u></b>	<b><u>Health Plan of San Joaquin</u></b>
Modulars (Phase 3 first year)	\$192,931
Custom Containers (Phase 4)	\$701,756
Operating (Supplies, Fuel) (Phases 3 and 4 first year)	\$305,313
<b>Total Committed</b>	<b>\$1,200,000</b>

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**CEQA DETERMINATION**

A CEQA determination is not required of this item.

**STRATEGIC PLAN**

This agenda item supports City Council’s Homelessness Strategic Plan.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt a resolution: 1) Authorizing the acceptance of a grant award from Health Plan of San Joaquin in the amount of \$1.2 million to partially fund the Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter) and 2) Appropriating \$1.2 million of the total grant funds to the Mobility and Housing Department, Homeless Services Division.

Prepared by: Virginia Carney, Homeless Services Manager

Reviewed by: Adriana Castaneda, Director of Mobility and Housing  
Sara Cowell, Director of Finance  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Acting City Manager

ATTACHMENTS

Attachment A – City of Tracy MOU Health Plan of San Joaquin



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
HEALTH PLAN OF SAN JOAQUIN  
AND  
CITY OF TRACY**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into the 21th day of April 2023 by and between the SAN JOAQUIN COUNTY HEALTH COMMISSION, operating and doing business as HEALTH PLAN OF SAN JOAQUIN (HPSJ), a local initiative established under Section 5-7100 of the Ordinance Code of San Joaquin County, with a principal place of business at 7751 South Manthey Road, French Camp, CA 95231-9802 and City of Tracy, (Business Partner), with a principal place of business at 333 Civic Center Plaza Tracy, CA. 95376.

The purpose of this agreement is to establish guidelines for a cooperative working relationship between HPSJ and City of Tracy for successful implementation of incentive payments linked to the Housing and Homelessness Incentive Program (HHIP).

Whereas, in accordance with the American Rescue Plan Act (ARPA) of 2021, DHCS developed a Medi-Cal Home and Community-Based Services (HCBS) Spending Plan detailing a series of initiatives to enhance, expand and strengthen HCBS in California. The Housing and Homelessness Incentive Program (HHIP) is one of the HCBS Transition Initiatives and is intended to support the delivery and coordination of health and housing services for Medi-Cal members statewide. HHIP is intended to bolster housing and homelessness-focused efforts and investments at local levels, with the aim of building or expanding capacity and partnerships to connect Medi-Cal members to needed housing services and achieving progress in reducing and preventing homelessness.

Whereas, DHCS established required submissions and deliverables for managed care plans in participating counties to identify current state, priorities, investments, and monitor progress for HHIP; and will be distributing incentives for plans to oversee and administer payment for HHIP project(s); and

Whereas, as part of efforts to meet HHIP program priorities and measures, HPSJ will partner with local partners and organizations which deliver housing, or supportive services to Medi-Cal members who are homeless or at risk of homelessness.

Whereas, the City of Tracy business partner provides housing, or supportive services to address homelessness or housing insecurity for HPSJ Medi-Cal members.

Whereas business partners project(s) have been identified as an investment activity based the business partner's HHIP initial project submission.

Whereas, HPSJ is responsible for oversight and administration of payments to the provider consistent with the terms of the HHIP.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1) EFFECTIVE DATE AND TERM

- a. This MOU shall be effective April 21, 2023 and will continue through and including March 31, 2024 or dates determined by the Department of Health Care Services (DHCS), unless otherwise terminated by either party to this MOU as prescribed in paragraph 8.

2) SCOPE OF WORK

- a. The business partner is responsible for the implementation of and compliance with the project description as set forth in their HHIP Program application, which is attached as Exhibit A and incorporated here by reference, including reporting of incremental achievement of milestones and objectives. The business partner shall promptly notify the plan of any material change in information submitted in support of the project(s) or the HHIP program application, including changes in organizational leadership, business operations, and financial standing. The plan is responsible for overseeing the project(s), specifically to monitor and verify milestone achievement and administering payments consistent with the terms of the project(s) or the HHIP program application, any terms imposed as a condition of state or federal approval of the HHIP program, and any subsequent DHCS guidance related to HHIP.

3) RESPONSIBILITIES OF BUSINESS PARTNER

City of Tracy shall provide the following:

- a. Assist HPSJ in identifying key details for investments including but not limited to populations served, services and activities, community needs, required funding, lead entities, milestones, and timing.
- b. Commit to identified HHIP projects, complete required application and documents and accept incentive funding for specified investments in support of the provision of housing and homelessness related services to HPSJ Medi-Cal members.
- c. Utilize HHIP incentive funding solely for identified and agreed upon investments and activities and for carrying out project activities and milestones as set forth in approved projects.



- d. Cooperate and facilitate engagement and implementation activities in support of HHIP program goals and measures.
- e. Perform tasks necessary to projects or milestones for HHIP. The business partner shall document and provide HPSJ with information necessary to demonstrate incremental progress in for HHIP program goals and measures in a file or format as specified by HPSJ.
- f. Promptly notify HPSJ of any material change in information including changes in organizational leadership, business operations, and financial standing.
- g. Make efforts to establish data sharing agreements as applicable to enable timely exchange of member information and delivery of services.
- h. Business partner shall ensure eligibility to receive the funds and non-duplication with other federal or state funding sources.
- i. Agree to comply with all applicable state and federal laws and regulations, MOU requirements, DHCS guidance, including All Plan Letters (APLs) and Policy Letters (PLs), and contractual terms and conditions as imposed by DHCS.
- j. Business partner shall make all premises, facilities, equipment, books, records, papers, and contracts, computer systems available for inspection, examination or copying for purposes of an audit or monitoring.

4) RESPONSIBILITIES OF HPSJ

HPSJ shall provide the following:

- a. Support partnerships between social service agencies, counties, and public health agencies, and public and community-based housing agencies in support of the following HHIP program goals and as efforts to address homelessness.
- b. Oversee project(s), including monitoring and verifying milestone achievement and administering payments consistent with the terms of the project(s) or the HHIP submission, and any subsequent state, federal, or DHCS guidance.
- c. Collect and evaluate information related to the business partner's project(s) for the purposes of ensuring progress toward the business provider's goals and objectives, program achievement and reporting to DHCS.
- d. HPSJ will report to the DHCS on the project status in accordance with required HHIP submissions and deliverables and as required by DHCS.
- e. HPSJ is responsible for the administration of HHIP funds as set forth in section 5 below.

5) FUNDING

- a. HPSJ will make incremental payments on agreed upon projects or investments as outlined in Exhibit A. HPSJ will initiate processing of payments to the business partner upon receipt of MOU, all required documents, and updates.
- b. The specified projects will be deemed complete and fully funded only when milestones as set forth in approved project(s) have been met.
- c. There is no guarantee of funding. This program may be subject to recoupment for reasons including but not limited to: failure to participate, failure to engage in minimum level of efforts, or any overpayment as identified by HPSJ.
- d. The plan may adjust milestone measurement and related payments as needed and may delay payment for non-reporting or non-compliance with program terms. The plan will not make any milestone payment until all past due reporting is complete.
- e. Proposed funding as outlined within Exhibit A is based on information known and available to HPSJ and may be modified in accordance with payments made by DHCS and new developments.

6) LIAISON

The plan and business partner will each designate a liaison(s) to serve as a point of contact of activities performed related to this MOU.

7) MOU MONITORING

The plan and business partner will meet on a mutually agreed upon frequency, or upon request to monitor the performance of parties' responsibilities related to this MOU.

8) REPRESENTATIONS

Both parties to this MOU make the following representations, which are agreed to be material to and form a part of the inducement for this MOU:

- a. HPSJ and the City of Tracy have the support staff and facilities necessary to provide the services described in this MOU; and
- b. HPSJ and the City of Tracy have the expertise and authority to provide the services described above.

9) ASSIGNMENT

This MOU is not assignable

10) COMPENSATION

Each party will be responsible for its own costs and fees.

11) INDEMNIFICATION

Each party agrees that it shall indemnify, defend and hold harmless the other party, its agents, elected officials, officers, volunteers, authorized representatives, and employees from any and all losses, liabilities, costs, expenses, charges, damages, claims, liens, and causes of actions, or whatsoever kind of nature, including, but not limited to, reasonable attorney's fees, which are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault, or negligence, whether active or passive, of said party or said party's officers, agents, employees, or authorized representatives, which relates in any manner to this Agreement, any work to be performed by said party arising from the operation of this Agreement, of any authorized delegated to said party under this Agreement, except those injuries or damages that are the result of willful acts or the sole negligence of the other party, its officers, agents, or employees.

12) TERMINATION

This MOU may be terminated for the following reasons:

- a. **For Cause.** If any party materially breaches the terms of this Agreement, the other party shall have the following alternative remedies:
  - i. Immediately terminate the Agreement.
  - ii. All other remedies provided by law.
- b. **For Convenience.** Either party to this Agreement may for any reason or no reason terminate this Agreement at any time by giving the other party thirty (30) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.
- c. **Non-Appropriation.** HPSJ reserves the right to terminate this MOU in the event insufficient funds are appropriated or budgeted for this MOU in any fiscal year. Upon such termination, thirty (30) days written notice will notify parties that such an action is required by the HPSJ.

If this Agreement is completely or partially terminated, the records or data relating to the work terminated shall be transferred to HPSJ within five working days and be permanently removed from business partner's electronic system.

13) NOTICES

Notices to be given by one party to the other under this MOU shall be given in writing by email, personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

**If to Business Partner, to:**

Attn: Virginia Carney  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA. 95376  
eMail: [virginia.carney@cityoftracy.org](mailto:virginia.carney@cityoftracy.org)

**If to HPSJ, to:**

Attn: Chief Compliance Officer  
Health Plan of San Joaquin  
7751 South Manthey Road  
French Camp, CA 95231-9802  
eMail: [PrivacyOfficer@hpsj.com](mailto:PrivacyOfficer@hpsj.com)

14) SOLE AGREEMENT

This document, including all attachments hereto, contains the entire MOU between the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this MOU. No oral promise, modification, change or inducement shall be effective or given any force or effect.

15) MODIFICATIONS OF AGREEMENT

This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

16) CONFIDENTIALITY

- a. The plan and provider collaboration in support of project(s) may require the exchange of confidential or proprietary information (“Confidential Information”) as may be identified by either party. The plan and provider agree to abide by processes and requirements applicable to the exchange of either’s respective confidential information, in accordance with applicable state or federal law. Business Partner shall adhere to all HIPAA regulations outlined in HIPAA Business Associate Agreement.
- b. The parties shall comply and require its officers, employees, agents, and/or subcontractors to comply with the provisions of Welfare and Institutions Code Section 10850 which requires the confidentiality of applications and records concerning individuals receiving public social services to insure that:
  - i. The applications and records of all individuals made or kept by a public officer or agency in connection with the administration of the provisions of the Welfare and Institutions Code relating to any form of public social services for which grants in aid are received by the State or Federal Government will be confidential and will

not be open to examination for any purpose not directly connected with the administration of public social services or as required by law; and

- ii. No person will publish or disclose, or use or permit, or cause to be published, disclosed, or used, any confidential information pertaining to an applicant or recipient of public social services.
- iii. The parties shall inform all officers, employees, agents and/or subcontractors of the above requirements and that any person knowingly and intentionally violating the provisions of State law is guilty of a misdemeanor.

17) GOVERNING LAW

Both parties shall observe and comply with all applicable County, State and Federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

18) NONDISCRIMINATION

The parties agree to be bound by the law related to Nondiscrimination in State and Federally Assisted Programs.

19) CONFLICTS OF INTEREST

Both parties shall observe and comply with all Government Codes and the following:

- a. The parties have read and are aware of the provisions of Sections 1090 et seq. and 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees and agree to be bound thereby. The parties certify that they are unaware of any financial or economic interest of any public officer or employee relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the parties may immediately terminate this Agreement by giving written notice thereof.
- b. The parties certify that its employees and officers of its governing body shall avoid any actual or potential conflicts of interest and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefits which either directly or indirectly arises from this Agreement.
- c. The parties shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose that could result in private gain or that gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family or business ties.

20) SIGNATURE AUTHORITY

Each party represents that they have full power and authority to enter into and perform this MOU, and the person signing this MOU on behalf of each party has been properly authorized and empowered to enter into this MOU

*[Signatures to Follow]*

IN WITNESS TO WHICH, each party to this Agreement has signed this MOU upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this MOU.

**San Joaquin County Health Commission,  
dba Health Plan of San Joaquin**

**City of Tracy**

**By:**

**By:**

**Name:**

**Name:**

**Title:**

**Title:**

**Date:** Click or tap to enter a date.

**Date:**

[reminder of this page left blank intentionally]

**EXHIBIT A**

<b>Business Partner (Legal Name)</b>	City of Tracy
<b>Business Partner Tax Identification Number:</b>	94-6000442
<b>Copy of W-9 (Y/N)</b>	Y
<b>Project Name &amp; Description:</b>	Arbor Avenue Shelter Site Interim Shelter site to include 5 modular buildings, 4 of which are dormitory in nature with one administrative building which will house operations and support services.
<b>Project Timeline/Milestones</b>	<b>August – September 2022:</b> Groundwork to prepare for Arbor Avenue site. <b>September 2022:</b> Solicitation of provider/operator for Arbor Avenue site. <b>October 2022 – November 2022:</b> Additional work to resolve additional fuel costs, fencing, lighting, gravel and operators. <b>November 4, 2022:</b> Opening of Arbor Avenue site. <b>Quarter 3 2023:</b> Selection of bid job for permanent site and additional lighting, final touches, and fencing. <b>Quarter 4 2023:</b> Anticipate final shipping containers and construction efforts
<b>Proposed Funding:</b>	\$1,200,000
<b>Distribution of Proposed Funding:</b>	Quarter 2 2023: \$1,200,000



**TRACY CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

---

**1) AUTHORIZING THE ACCEPTANCE OF A GRANT AWARD FROM HEALTH PLAN OF SAN JOAQUIN IN THE AMOUNT OF \$1.2 MILLION TO PARTIALLY FUND THE CONSTRUCTION AND OPERATION OF THE TRACY INTERIM SHELTER SITE (RENAMED PHASE 3 AND PHASE 4 OF THE TEMPORARY EMERGENCY HOUSING SHELTER, CIP 71112); AND 2) APPROPRIATING \$1.2 MILLION OF THE TOTAL GRANT FUNDS TO THE MOBILITY AND HOUSING DEPARTMENT, HOMELESS SERVICES DIVISION**

**WHEREAS**, on September 27, 2022, the City of Tracy Homeless Services Manager met with the Health Plan of San Joaquin and discussed the housing needs of the unsheltered throughout the City, and the Health Plan of San Joaquin requested a proposal for the Tracy Interim Shelter Site; and

**WHEREAS**, on September 27, 2022, the City of Tracy submitted a proposal and budget to the Health Plan of San Joaquin in the amount of \$1.2 million dollars; and

**WHEREAS**, on September 29, 2022, Health Plan of San Joaquin notified the City of Tracy that the proposal submitted was selected for grant funding; and

**WHEREAS**, the Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter) project is part of the overall shelter campus project, parts of which are in various phases of design, development, and/or construction; and

**WHEREAS**, the grant funding will be used to cover capital expenses, including the eight custom container units, existing modulars, and operating costs that will ultimately house up to 38 individuals, and the project is intended to provide a site for those seeking shelter within the City limits; and

**WHEREAS**, the City of Tracy will collaborate with the Health Plan of San Joaquin to provide additional resources and support to the City's unsheltered population as they are housed; and

**WHEREAS**, City match is not required; now therefore be it

**RESOLVED:** That the City Council hereby accepts the grant award from Health Plan of San Joaquin in the amount of \$1.2 million to partially fund the construction and operation of the Tracy Interim Shelter Site (renamed Phase 3 and Phase 4 of the Temporary Emergency Housing Shelter, CIP 71112); and be it

**FURTHER RESOLVED:** That the City Council hereby appropriates \$1.2 million of the total grant funds to the Mobility and Housing Department, Homeless Services Division.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on  
May 2, 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

\_\_\_\_\_  
NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Agenda Item 1.E

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution (1) accepting public improvements as complete in accordance with the Off-Site Improvement Agreement for California Highway Patrol Building constructed by Tracy CHP Partners, LLC, a California Limited Liability Company, (2) authorizing the City Engineer to release performance and payment bonds, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office.**

EXECUTIVE SUMMARY

Tracy CHP Partners, LLC, a California Limited Liability Company (Developer), has completed public improvements for California Highway Patrol Building in accordance with the Offsite Improvement Agreement (Agreement), project plans, and specifications. The Developer has completed all work required to be done in accordance with the Agreement and has requested acceptance of the public improvements. Staff recommends City Council accept the improvements as completed to enable the City to file Notice of Completion and release the Developer's bonds.

BACKGROUND AND LEGISLATIVE HISTORY

On May 19, 2020, City Council approved the Offsite Improvement Agreement (Agreement) California Highway Patrol Building. This project is generally located on Pescadero Avenue, east of MacArthur Boulevard.

BKF Engineers, Inc. prepared the improvement plans entitled "Offsite Improvement Plans for California Highway Patrol." The improvement plans were approved by the City Engineer, and bonds were provided by Developer to assure completion of public improvements. The estimated cost of public improvements are as follows:

<u>Cost Breakdown:</u>	
Roadway Improvements	\$ 259,469
Water	\$ 154,770
Storm Drainage	\$ 201,300
Sanitary Sewer	\$ <u>13,750</u>
Total	\$ 629,289

The Developer has completed all work required to be done in accordance with the Agreement and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreement and City specifications and plans. A Notice of Completion should now be filed by the City Clerk, to be recorded at San Joaquin County Recorder's Office. Subsequently, performance and materials and labor bonds may be released per Tracy Municipal Code 12.36.080. The project carries a one-year warranty bond for all public improvements.

City granted public access and utility easements to Developer for the two driveway approaches crossing the City East Side Channel. These easements are recorded at the San Joaquin County Recorder's Office as Document Nos. 2020-121482 and 2020-120381.

There were no public right of way dedications required of this project.

#### FISCAL IMPACT

All improvements were completed by the Developer in accordance with the Offsite Improvement Agreement and there is no fiscal impact associated with this action.

#### COORDINATION

Project construction activities were coordinated with City of Tracy Public Works and Utilities Department.

#### CEQA DETERMINATION

Not applicable during construction.

#### STRATEGIC PLAN

This agenda item is consistent with the Council approved Public Safety and Economic Development Goals.

#### ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, (1) accept the public improvements as complete in accordance with the Offsite Improvement Agreement for California Highway Patrol Building; and (2) authorize the City Engineer to release the performance and payment bonds, and (3) authorize the City Clerk to file Notice of Completion with the San Joaquin County Recorder's office.

Prepared by: Leisser Mazariegos, Associate Engineer

Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Director of Development Services  
Sara Cowell, Finance Director  
Karin Schnaider, Assistant City Manager  
Nancy Ashjian, Assistant City Attorney

Approved by: Midori Lichtwardt, Acting City Manager

#### ATTACHMENTS

Attachment A – Location Map

# Attachment A

## Location Map



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

(1) ACCEPTING PUBLIC IMPROVEMENTS AS COMPLETE IN ACCORDANCE WITH THE OFFSITE IMPROVEMENT AGREEMENT FOR CALIFORNIA HIGHWAY PATROL BUILDING CONSTRUCTED BY TRACY CHP PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY; AND

(2) AUTHORIZING THE CITY ENGINEER TO RELEASE PERFORMANCE AND PAYMENT BONDS; AND

(3) AUTHORIZING THE CITY CLERK TO FILE NOTICE OF COMPLETION WITH SAN JOAQUIN COUNTY RECORDERS OFFICE.

WHEREAS, on May 19, 2020, the City Council approved an Offsite Improvement Agreement (Agreement) with CHP Partners, LLC, a California Limited Liability Company (Developer) for construction of public improvements associated with California Highway Patrol Building; and

WHEREAS, BKF Engineers, Inc. prepared the improvement plans entitled "Offsite Improvement Plans for California Highway Patrol." The improvement plans were approved by the City Engineer, and bonds were provided by Developer to assure completion of public improvement; and

WHEREAS, Developer furnished performance, payment, and warranty bonds assuring completion of the work. The estimated cost of the improvements is as follows:

Roadway Improvements	\$ 259,469
Water	\$ 154,770
Storm Drainage	\$ 201,300
Sanitary Sewer	\$ 13,750
Total	\$ 629,289; and

WHEREAS, the Developer has completed all work required to be done in accordance with the Agreement and has requested acceptance of the public improvement; and

WHEREAS, the City Engineer has inspected the completed work and recommends acceptance of all the improvements completed in accordance with the Agreement; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby accepts the public improvements as complete in accordance with the Offsite Improvement Agreement for California Highway Patrol Building constructed by Tracy CHP Partners, LLC; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Engineer to release the performance and payment bonds in accordance with the terms of the Agreement; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Clerk to file Notice of Completion with San Joaquin County Recorder’s Office.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 2<sup>nd</sup> day of May 2023, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:  
ABSTENTION: COUNCIL MEMBERS:

\_\_\_\_\_  
NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST:

\_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Agenda Item 1.F

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution: (1) awarding a construction contract to B&M Building Inc., of Rancho Cordova, California, in the amount of \$158,610 for the Water Treatment Plant HVAC Replacement – Blower Building Project, CIP 75171, (2) authorize a not-to-exceed budget of \$206,193, and (3) authorize the City Manager to approve change orders up to the contingency amount of \$23,792, if needed.**

EXECUTIVE SUMMARY

City staff requests that the City Council award a construction contract for CIP 75171, the Water Treatment Plant HVAC Replacement – Blower Building Project, to B&M Builders, Inc. of Rancho Cordova, California, in the amount of \$158,610, authorize a not-to-exceed amount of \$206,193, and authorize the City Manager to approve change orders up to the contingency amount of \$23,792, if needed.

BACKGROUND AND LEGISLATIVE HISTORY

CIP 75171, Water Treatment Plant HVAC Replacement – Blower Building Project, was established as an emergency maintenance project funded by the Water Operations budget for FY 2022-2023. This project will replace a failing cooling system that protects electrical equipment from overheating in the blower building. Failure of this electrical system could lead to unanticipated plant shutdowns.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on February 17, 2023, and February 24, 2023. Bids were received and publicly opened on March 14, 2023, at 2:00 p.m. with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
B&M Builders, Inc., Rancho Cordova, CA	\$158,610
GCJ, Inc., Stockton, CA	\$214,280
Bel Air Mechanical, Inc., Martinez, CA	\$225,000
Saboo, Inc., Brentwood, CA	\$291,510
A&B Mechanical, Inc., Livermore, CA	\$324,370

ANALYSIS

Bid analysis indicates that the lowest monetary bid is responsive and the bidder, B&M Builders Inc., of Rancho Cordova, CA, is responsible. The bidder has the appropriate contractor's license in active standing with the State of California and has completed similar projects.

The total estimated cost of this project, if awarded to the lowest bidder, is as follows:

Construction Bid	\$158,610
Construction Management (10%)	\$ 15,861
Design Support During Construction (5%)	\$ 7,930
Contingency (15%)	\$ 23,792
Total Project Cost	\$ 206,193



Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount of \$23,792 for this project, which is 15% of the construction contract cost.

#### FISCAL IMPACT

The total estimated project cost is \$206,193 and will be funded by CIP 75171, Water Treatment Plant HVAC Replacement – Blower Building, which has a current available budget of \$315,500.

#### COORDINATION

Engineering Staff coordinated with the Utilities Water Operations Division.

#### CEQA DETERMINATION

The project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, which pertains to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing facility.

#### STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority.

#### ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, (1) award a construction contract to B&M Builders, Inc. of Rancho Cordova, CA, in the amount of \$158,610, (2) authorize a not-to-exceed amount of \$206,193 and (3) authorize the City Manager to approve change orders up to the contingency amount of \$23,792, if needed.

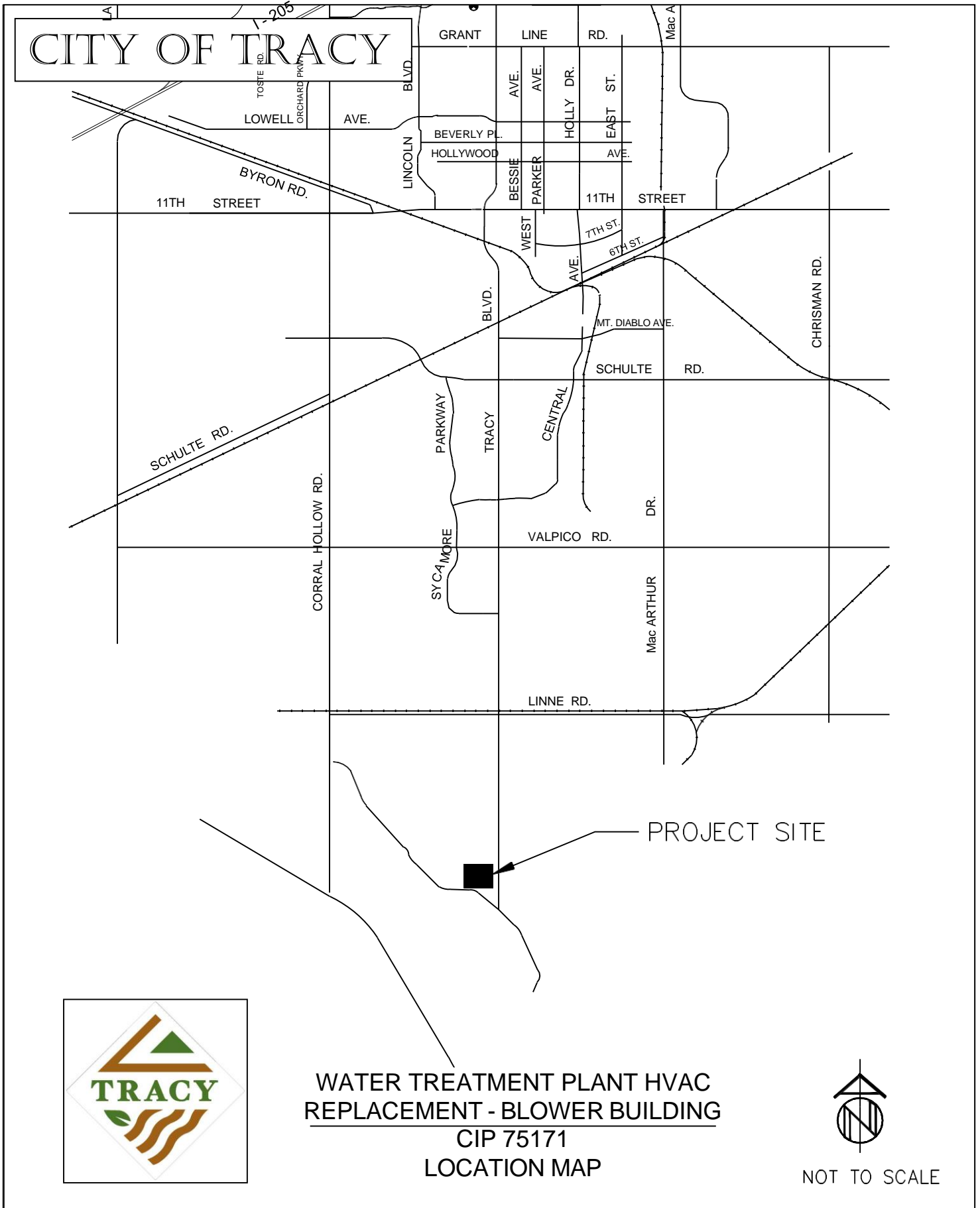
Prepared by: Ilene Macintire, PE, Senior Civil Engineer

Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Stephanie Reyna-Hiestand, Assistant Director of Utilities  
James Jackson, Director of Operations & Utilities  
Karin Schnaider, Assistant City Manager  
Nancy Ashjian, Assistant City Attorney

Approved by: Midori Lichtwardt, Acting City Manager

#### ATTACHMENTS

Attachment A – Location Map



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

- 1) **AWARDING A CONSTRUCTION CONTRACT TO B&M BUILDERS, INC. OF RANCHO CORDOVA, CALIFORNIA, IN THE AMOUNT OF \$158,610 FOR THE WATER TREATMENT PLANT HVAC REPLACEMENT – BLOWER BUILDING PROJECT, CIP 75171; AND**
- 2) **APPROVING A NOT-TO-EXCEED BUDGET OF \$206,193; AND**
- 3) **AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$23,792, IF NEEDED.**

**WHEREAS**, the Water Treatment Plant HVAC Replacement – Blower Building Project, CIP 75171 is an approved project; and

**WHEREAS**, engineering staff prepared the plans and specifications and advertised the project for competitive bids on February 17, 2023, and February 24, 2023. Bids were received and publicly opened in City Hall Room 203/Teleconference at 2:00 p.m. on March 14, 2023, with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
B&M Builders, Inc., Rancho Cordova, CA	\$158,610
GCJ, Inc., Stockton, CA	\$214,280
Bel Air Mechanical, Inc., Martinez, CA	\$225,000
Saboo, Inc., Brentwood, CA	\$291,510
A&B Mechanical, Inc., Livermore, CA	\$324,370; and

**WHEREAS**, B&M Builders, Inc., of Rancho Cordova, California, was the apparent lowest bidder with the bid analysis indicating the bid is “responsive” and the bidder is “responsible;” and

**WHEREAS**, the City Council has authorized a not-to-exceed budget of \$206,193; and

**WHEREAS**, the Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the recommended contingency amount for this project is \$23,792, approved by City Council; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy, by resolution, hereby award a construction contract to B&M Builders, Inc. of Rancho Cordova, California, in the amount of \$158,610; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy, approves a not-to-exceed amount of \$206,193; and be it

**FURTHER RESOLVED:** That the City Council of the City of Tracy, authorizes the City Manager to approve change orders up to the contingency amount of \$23,792, if needed.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on the 2<sup>nd</sup> day of May 2023 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

---

NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Agenda Item 1.G

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution authorizing the (1) submittal of an Allocation Request for the Low Carbon Transit Operation Program, (2) execution of Certifications and Assurances, and (3) authorizing the City Manager to execute funding documents with the California Department of Transportation (Caltrans) for allocation of the FY 2022-23 LCTOP funds for the following project: Free Student Fares, in the amount of \$75,684.**

EXECUTIVE SUMMARY

The Low Carbon Transit Operations Program (LCTOP) is one of several State funding programs that are part of the Transit, Affordable Housing, and Sustainable Communities Program established by the California Legislature in 2014. The City of Tracy is eligible to receive \$75,684 from the program. Staff recommends utilizing these funds to continue to provide free bus rides to students for the 2023-24 school year.

BACKGROUND AND LEGISLATIVE HISTORY

The LCTOP is one of several State funding programs that are part of the Transit, Affordable Housing, and Sustainable Communities Program established by the California Legislature in 2014 (SB 862). The LCTOP was created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving designated Disadvantaged Communities (DAC).

The LCTOP is administered by Caltrans in coordination with the California Air Resource Board (CARB) and the State Controller's Office (SCO). Funds are distributed based on prior use of State Transit Assistance (STA) funds with 50% to the regional agencies, and the other 50% to local transit operators. The San Joaquin Council of Governments (SJCOG) receives the regional apportionment for San Joaquin County. For the FY 2022-23 LCTOP funding cycle, the City of Tracy is eligible to receive \$3,284 in a direct allocation as a transit operator. In addition, SJCOG's regional allocation of \$1.9 million will be allocated among the transit providers with the City of Tracy receiving \$72,400. This provides a total LCTOP allocation of \$75,684.

Because the LCTOP administration and reporting requirements are disproportionately onerous in relation to the relatively small direct allocations to transit operators, LCTOP funds were pooled to benefit larger, regional projects undertaken by San Joaquin RTD and the San Joaquin Regional Rail Commission. This LCTOP funding cycle, however, continues SJCOG's practice of providing a larger allocation for small transit operators and, therefore, a larger project and greater benefit to the community with the same reporting requirements.

ANALYSIS

Staff proposes to utilize the City's FY 2022-23 allocation of \$75,684 in LCTOP funds to continue the student fare subsidy program. The fare subsidies will continue to provide free transit fares to students for a one-year period beginning July 1, 2023 and ending June 30, 2024, or until

fund are fully expended. An on-going marketing program will promote the project, with a focus on disadvantaged communities in the City. To complete the application process and receive LCTOP funds, the City is required to submit several supporting documents approved by the City Council, (Attachment A):

1. An "Authorized Agent" form to designate the City Manager, and/or designee, as signatory on any documents associated with obtaining and managing LCTOP funds.
2. The "Certification and Assurances" which contain general conditions of the LCTOP program as well as some additional cost principles and record retention requirements that are standard for other State-funded projects.
3. Project Allocation form acknowledging the City of Tracy as the Lead Agency and SJCOG as the Contributing Sponsor of LCTOP funds.
4. A Resolution adopted by Council approving all of the submittals on behalf of the LCTOP program.

Accepting and utilizing these funds will allow continued promotion of the use of public transit by students in an effort to build lifelong transit riders by removing a barrier to access and providing a means of transportation, especially for low-income and disadvantaged communities.

#### FISCAL IMPACT

A total \$75,684 in LCTOP funds will be used as additional revenue to offset fares in the Transit Fund. There is no matching requirement and there is no impact to the General Fund.

#### STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's Strategic Plans.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing the (1) submittal of an Allocation Request for the Low Carbon Transit Operation Program, (2) execution of Certifications and Assurances, and (3) authorizing the City Manager to execute funding documents with the California Department of Transportation (Caltrans) for allocation of the FY 2022-23 LCTOP funds for the following project: Free Student Fares, in the amount of \$75,684.

Prepared by: Ed Lovell, Transit Manager

Reviewed by: Adriana Castaneda, Mobility and Housing Director  
Sara Cowell, Director of Finance  
Riana Daniel, Deputy City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Acting City Manager

Attachments: A - FY22-23 LCTOP Allocation Request Signature Pages



**Attachment A**

**FY 2022-2023 LCTOP**

**Authorized Agent**

**AS THE** Mayor  
(Chief Executive Officer/Director/President/Secretary)

**OF THE** City of Tracy  
(Name of County/City/Transit Organization)

I hereby authorize the following individual(s) to execute for and on behalf of the named Regional Entity/Transit Operator, any actions necessary for the purpose of obtaining Low Carbon Transit Operations Program (LCTOP) funds provided by the California Department of Transportation, Division of Rail and Mass Transportation. I understand that if there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself. I understand the Board must provide a resolution approving the Authorized Agent. The Board Resolution appointing the Authorized Agent is attached.

Michael Rogers, City Manager OR  
(Name and Title of Authorized Agent)

Midori Lichtwardt, Assistant City Manager OR  
(Name and Title of Authorized Agent)

Karin Schnaider, Assistant City Manager OR  
(Name and Title of Authorized Agent)

Adriana Castaneda, Mobility and Housing Director OR  
(Name and Title of Authorized Agent)

Nancy Young Mayor  
(Print Name) (Title)

\_\_\_\_\_  
(Signature)

Approved this Choose an item. day of Choose an item., Click



## FY 2022-2023 LCTOP Certifications and Assurances

**Lead Agency:** City of Tracy

**Project Title:** Free Student Fares

**Prepared by:** Ed Lovell, Transit Manager

The California Department of Transportation (Caltrans) has adopted the following Certifications and Assurances for the Low Carbon Transit Operations Program (LCTOP). As a condition of the receipt of LCTOP funds, Lead Agency must comply with these terms and conditions.

### **A. General**

1. The Lead Agency agrees to abide by the current LCTOP Guidelines and applicable legal requirements.
2. The Lead Agency must submit to Caltrans a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

### **B. Project Administration**

1. The Lead Agency certifies that required environmental documentation is complete before requesting an allocation of LCTOP funds. The Lead Agency assures that projects approved for LCTOP funding comply with Public Resources Code § 21100 and § 21150.
2. The Lead Agency certifies that a dedicated bank account for LCTOP funds only will be established within 30 days of receipt of LCTOP funds.
3. The Lead Agency certifies that when LCTOP funds are used for a transit capital project, that the project will be completed and remain in operation for its useful life.
4. The Lead Agency certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.
5. The Lead Agency certifies that they will notify Caltrans of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
6. The Lead Agency must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
7. Any interest the Lead Agency earns on LCTOP funds must be used only on approved LCTOP projects.
8. The Lead Agency must notify Caltrans of any changes to the approved project with a Corrective Action Plan (CAP).





## FY 2022-2023 LCTOP

9. Under extraordinary circumstances, a Lead Agency may terminate a project prior to completion. In the event the Lead Agency terminates a project prior to completion, the Lead Agency must (1) contact Caltrans in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.

### C. Reporting

#### 1. The Lead Agency must submit the following LCTOP reports:

- a. **Annual Project Activity Reports October 27<sup>th</sup> each year.**
  - b. **A Close Out Report within six months of project completion.**
  - c. **The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of LCTOP funds. A copy of the audit report must be submitted to Caltrans within six months of the close of the year (December 31) each year in which LCTOP funds have been received or expended.**
  - d. **Project Outcome Reporting as defined by CARB Funding Guidelines.**
  - e. **Jobs Reporting as defined by CARB Funding Guidelines.**
2. Other Reporting Requirements: CARB develops and revises Funding Guidelines that will include reporting requirements for all State agencies that receive appropriations from the Greenhouse Gas Reduction Fund. Caltrans and project sponsors will need to submit reporting information in accordance with CARB's Funding Guidelines, including reporting on greenhouse gas reductions and benefits to disadvantaged communities.

### D. Cost Principles

1. The Lead Agency agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
2. The Lead Agency agrees, and will assure that its contractors and subcontractors will be obligated to agree, that:
  - a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allow ability of individual project cost items and
  - b. Those parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving LCTOP funds as a contractor or sub-contractor shall comply with



## FY 2022-2023 LCTOP

Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3. Any project cost for which the Lead Agency has received funds that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by the Lead Agency to the State of California (State). All projects must reduce greenhouse gas emissions, as required under Public Resources Code section 75230, and any project that fails to reduce greenhouse gases shall also have its project costs submit to repayment by the Lead Agency to the State. Should the Lead Agency fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the Lead Agency from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

### **A. Record Retention**

1. The Lead Agency agrees and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the Lead Agency, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion. All accounting records and other supporting papers of the Lead Agency, its contractors and subcontractors connected with LCTOP funding shall be maintained for a minimum of three (3) years after the "Project Closeout" report or final Phase 2 report is submitted (per ARB Funding Guidelines, Vol. 3, page 3.A-16), and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the Lead Agency, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the Lead Agency pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the Lead Agency's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the Lead Agency's contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times



## FY 2022-2023 LCTOP

during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the Lead Agency shall furnish copies thereof if requested.

- 3. The Lead Agency, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

### F. Special Situations

Caltrans may perform an audit and/or request detailed project information of the project sponsor’s LCTOP funded projects at Caltrans’ discretion at any time prior to the completion of the LCTOP.

I certify all of these conditions will be met.

\_\_\_\_\_  
*(Print Authorized Agent)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

TRACY CITY COUNCIL

RESOLUTION NO. 2023-

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**AUTHORIZING THE (1) SUBMITTAL OF AN ALLOCATION REQUEST FOR THE LOW CARBON TRANSIT OPERATION PROGRAM, (2) EXECUTION OF CERTIFICATIONS AND ASSURANCES, AND (3) AUTHORIZING THE CITY MANAGER TO EXECUTE FUNDING DOCUMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR ALLOCATION OF THE FY 2022-23 LCTOP FUNDS FOR THE FOLLOWING PROJECT: FREE STUDENT FARES, IN THE AMOUNT OF \$75,684**

**WHEREAS**, the City of Tracy is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) for transit projects; and

**WHEREAS**, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

**WHEREAS**, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

**WHEREAS**, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

**WHEREAS**, the City of Tracy wishes to delegate authorization to execute these documents and any amendments thereto to the City Manager or his designee; and

**WHEREAS**, the City of Tracy wishes to implement the following LCTOP project(s) listed above; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy that the fund recipient ("City") approves and agrees to comply with all conditions and requirements set forth in the Certification and Assurances and the Authorized Agent documents and applicable statutes, regulations and guidelines for all LCTOP funded transit projects; and be it

**FURTHER RESOLVED:** That that the City Council of the City of Tracy authorizes the City Manager or designee to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation; and be it

**FURTHER RESOLVED:** That that the City Council of the City of Tracy authorizes the submittal of the following project nomination and allocation request to the Department in FY22-2023 LCTOP funds:

Project Name:	Free Student Fares
Amount of LCTOP funds requested:	\$75,684

Short description of project:	Fare subsidy for students during promotional periods in the City of Tracy
Benefit to a Priority Populations:	Free fares for students to encourage ridership on the fixed-route bus system.
Amount to benefit Priority Populations:	\$37,842
Contributing Sponsors:	San Joaquin Council of Governments

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 2, 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

---

NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Agenda Item 1.H

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution: (1) awarding a construction contract to GCJ, Inc., of Stockton, California, in the amount of \$2,349,496 for the Police Multipurpose Reality Based Training Facility Project, CIP 71110, with a not-to-exceed budget of \$3,171,821 and (2) authorize the City Manager to approve change orders up to the contingency amount of \$469,900, if needed.**

EXECUTIVE SUMMARY

City staff requests that the City Council award a construction contract for CIP 71110, the Police Multipurpose Reality Based Training Facility Project, to GCJ, Inc., of Stockton, California, in the amount of \$2,349,496, with a not-to-exceed amount of \$3,171,821 and authorize the City Manager to approve change orders up to the contingency amount of \$469,900, if needed.

BACKGROUND AND LEGISLATIVE HISTORY

CIP 71110, the Police Multipurpose Reality Based Training Facility Project, was established by Resolution No. 2019-116 as a new project in the FY 2019/2020 Budget to replace a failing modular classroom structure that included a small office. The new facility will provide 4,226 square feet of interior open training space, providing a larger more flexible temperature and light controlled indoor space for a variety of training purposes, including classroom instruction, reality-based training exercises and 1,270 square feet of covered exterior space.

The City of Tracy established the Tracy Police Firearms Training Facility in the 1950's in its current location at a former rock quarry, south of the Tracy Municipal Airport. The City has supported the facility's improvements over the years. The site has previously provided an opportunity to generate direct and indirect financial revenue when opened to other law enforcement agencies for training use. The new structure will allow the Tracy Police Department to provide large group classroom training to current Tracy law enforcement officers, simulated nighttime conditions by controlling the light levels within the building, access to the interior of the building for tactical and other vehicles to be utilized in simulated training scenarios, will include a dedicated area for virtual reality training systems, and provide vertical interior clearance for practice with and use of drones. The new facility will provide opportunities to host various types of training to other law enforcement agencies and has the potential of generating revenue in the future.

Engineering staff prepared the plans and specifications and advertised the project for competitive bids on February 17, 2023, and February 24, 2023. Bids were received and publicly opened on March 23, 2023, at 2:00 p.m. with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
GCJ, Inc., Stockton, CA	\$2,349,496
Diede Construction, Inc., Woodbridge, CA	\$2,796,985
CWS Construction Group, Inc., Novato, CA	\$3,574,640
Saboo, Inc., Brentwood, CA	\$3,974,370

ANALYSIS

Bid analysis indicates that the lowest monetary bid is responsive, and the bidder, GCJ, Inc. of Stockton, California is responsible. The bidder has the appropriate contractor’s license in active standing with the State of California and has completed similar projects in the City of Tracy.

The total estimated cost of this project, if awarded to the lowest bidder, is as follows:

Construction Bid	\$ 2,349,496
Construction Management (10%)	\$ 234,950
Design Support During Construction (5%)	\$ 117,475
Contingency (20%)	\$ 469,900
<b>Total Project Cost</b>	<b>\$ 3,171,821</b>

Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount of \$469,900 for this project, which is 20% of the construction contract cost.

FISCAL IMPACT

The total estimated project cost is \$3,171,821 and will be funded by CIP 71110, Police Multipurpose Reality Based Training Facility Project. CIP 71110 has a current available budget of \$3,331,022 as follows:

Asset Forfeiture	\$ 250,000
General Projects	\$ 2,947,225
TIMP - Public Safety	\$ 133,797
<b>Total Available Budget</b>	<b>\$ 3,331,022</b>

COORDINATION

Engineering staff coordinated with the Tracy Police Department and the Operations & Utilities Department.

CEQA DETERMINATION

The project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15303, which pertains to the new construction or conversion of small structures, which identified exemptions for construction of limited numbers of new or small facilities or structures, not-to-exceed 10,000 square feet in an urbanize areas on sites zone for such uses.

STRATEGIC PLAN

This agenda item supports the City of Tracy’s Public Safety Strategic Priority.

ACTION REQUESTED OF THE CITY COUNCIL

That City Council, by resolution, (1) award a construction contract to GCJ, Inc., of Stockton,

California, in the amount of \$2,349,496 with a not-to-exceed amount of \$3,171,821, and (2) authorize the City Manager to approve change orders up to the contingency amount of \$469,900, if needed.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer

Reviewed by: Koosun Kim, PE, City Engineer / Assistant Director of Development Services  
Jaylen French, Director of Development Services  
Sara Cowell, Finance Director  
Sekou Millington, Chief of Police  
Nancy Ashjian, Assistant City Attorney  
Karin Schneider, Assistant City Manager

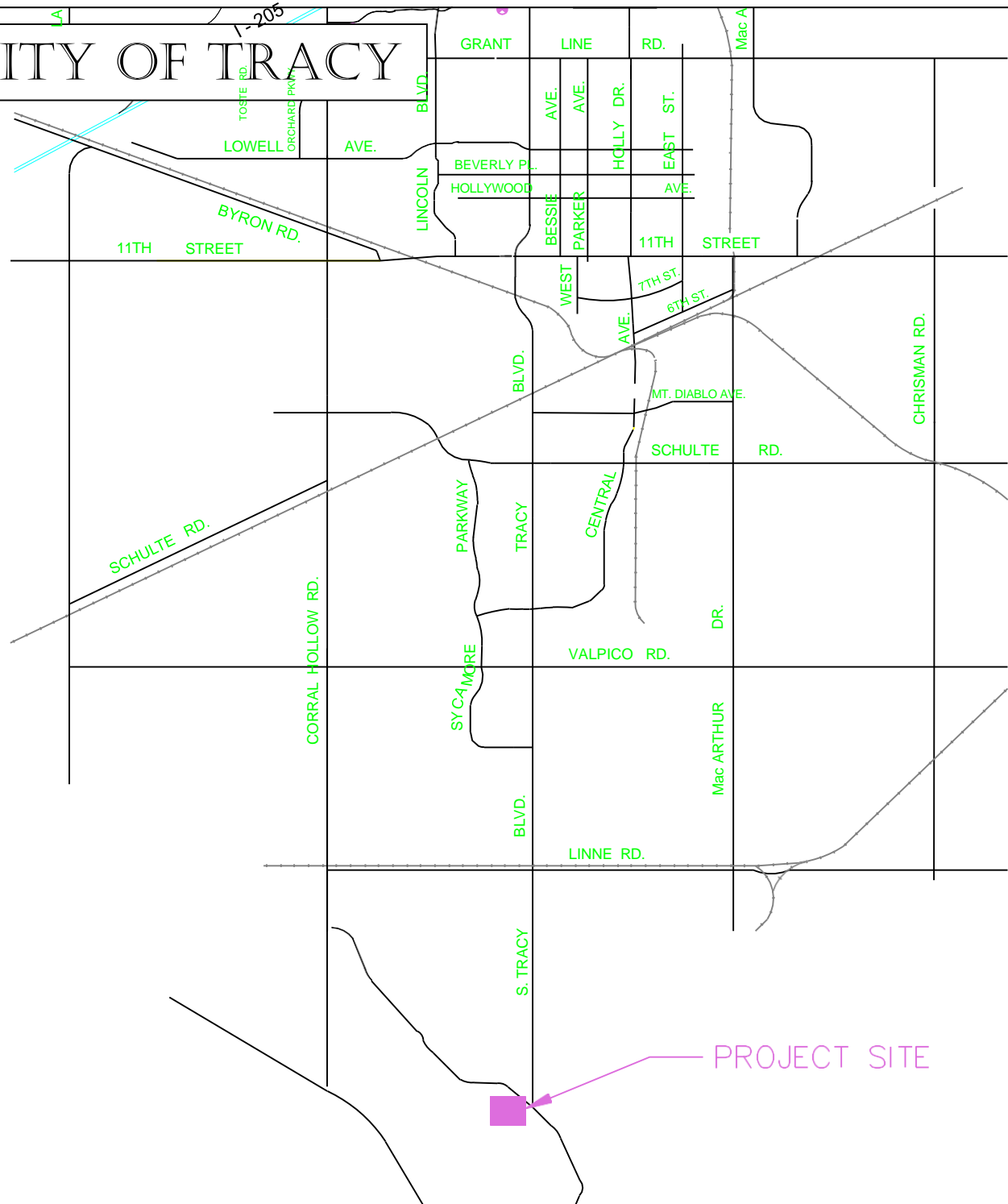
Approved by: Midori Lichtwardt, Acting City Manager

#### ATTACHMENTS

Attachment A – Location Map



# CITY OF TRACY



**POLICE MULTIPURPOSE REALITY BASED  
TRAINING FACILITY**  


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**CIP 7110**  
**LOCATION MAP**



NOT TO SCALE

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2023-\_\_\_\_\_

- (1) AWARDING A CONSTRUCTION CONTRACT TO GCJ, INC., OF STOCKTON, CALIFORINA, IN THE AMOUNT OF \$2,349,496 FOR THE POLICE MULTIPURPOSE REALITY BASED TRAINING FACILITY PROJECT, CIP 71110, WITH A NOT-TO-EXCEED BUDGET OF \$3,171,821 AND
- (2) AUTHORIZING THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$469,900, IF NEEDED.

**WHEREAS**, the Police Multipurpose Reality Based Training Facility Project, CIP 71110 was approved by the Tracy City Council under Resolution No. 2019-116; and

**WHEREAS**, engineering staff prepared the plans and specifications and advertised the project for competitive bids on February 17, 2023, and February 24, 2023. Bids were received and publicly opened in City Hall Room 203/Teleconference at 2:00 p.m. on March 23, 2023, with the following results:

<u>Contractor</u>	<u>Bid Amount</u>
GCJ, Inc., Stockton, CA	\$2,349,496
Diede Construction, Inc., Woodbridge, CA	\$2,796,985
CWS Construction Group, Inc., Novato, CA	\$3,574,640
Saboo, Inc., Brentwood, CA	\$3,974,370; and

**WHEREAS**, GCJ, Inc. of Stockton, California, was the apparent lowest bidder; and

**WHEREAS**, the bid analysis indicates the bid is "responsive" and the bidder is "responsible;" and

**WHEREAS**, the Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council; and

**WHEREAS**, the recommended contingency amount for this project is \$469,900; and

**WHEREAS**, the total estimated project cost is \$3,171,821, which includes:

Construction Bid	\$ 2,349,496
Construction Management (10%)	\$ 234,950
Design Support During Construction (5%)	\$ 117,475
Contingency (20%)	\$ 469,900
Total Project Cost	\$ 3,171,821; and

**RESOLVED:** That the City Council of the City of Tracy awards a construction contract to GCJ, Inc. of Stockton, California for the police multipurpose reality-based training facility project, CIP 71110, in the amount of \$2,349,496 with a not-to-exceed amount of \$3,171,821; and be it

**FURTHER RESOLVED:** That City Council authorizes the City Manager to approve change orders up to the contingency amount of \$469,900, if needed.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on 2<sup>nd</sup> day of May 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

\_\_\_\_\_  
 NANCY D. YOUNG  
 Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
 ADRIANNE RICHARDSON  
 City Clerk and Clerk of the Council of the  
 City of Tracy, California

Agenda Item 1.1

RECOMMENDATION

**Staff recommends that the City Council adopt a resolution amending the City's Operating and Capital Budget for the Fiscal Year ending June 30, 2023, and authorize the Budget Officer to amend the City's position control roster for FY2022-23.**

EXECUTIVE SUMMARY

On June 24, 2022, Council adopted the Fiscal Year (FY) 2022-23 Operating and Capital Budget. This report provides an update of the City's current financial performance, for Third Quarter (Q3), through March 31, 2023. This financial summary identifies Q3 General Fund revenue and expenditure actuals and encumbrances, minor amendments to the FY 2022-23 budget.

BACKGROUND AND LEGISLATIVE HISTORY

Quarterly, staff prepares a report to the City Council on the year-to-date revenues and expenditures as compared to the amended budget. This report provides an update and summary of the City's current financial performance, for FY 2022-23 Third Quarter (Q3) through December 31, 2022, and requests that Council amend revenue and expenditures for the FY 2022-23 budget.

ANALYSIS

As of March 31, 2023, the General Fund expenditures are approximately 61% of the approved operating budget. General Fund revenues collected in Q3 (as of March 31, 2023), reflect approximately 56% of estimated revenues. City revenues tend to lag a quarter behind, and many revenues will appear low or zero as a result. For example, General Fund revenues in Property Tax, as well as VLF/Property Tax, are distributed in December and April and will appear in the second and fourth quarter reports. The City's Sales Tax are one-quarter in arrears and will appear after the second quarter, and first quarter collections represent advances from the State based on prior year collections, not necessarily actual collection by the State. General Fund revenues in Franchise Fees and Business Licenses are typically reported in the third and fourth quarter of the fiscal calendar.

The chart below reviews year-to-date revenues and expenditures as compared to the amended budget as of March 31, 2023 (Third Quarter-Q3). For comparison, FY 2021-22 Q3 actuals are also provided.

**FY 2022-23 General Fund Budget to Actuals**

<u>REVENUES</u> (in thousands)	<u>FY 21/22</u> <u>Q3</u>	<u>FY 22/23</u> <u>Adopted</u>	<u>FY 22/23</u> <u>Amended</u>	<u>FY 22/23</u> <u>Q3</u>	<u>% of</u> <u>Budget</u>
Property Tax	\$ 15,548	\$ 31,090	\$ 31,090	\$ 16,643	54%
Sales Tax	37,582	69,680	69,680	37,756	54%
Sales Tax Measure V	8,982	14,770	14,770	5,411	37%
Other Taxes	1,725	2,870	2,870	1,847	64%
Other Revenues	13,236	19,579	20,035	15,767	79%
<b>TOTAL REVENUES</b>	<b>\$ 77,073</b>	<b>\$ 137,989</b>	<b>\$ 138,445</b>	<b>\$ 77,424</b>	<b>56%</b>
<u>EXPENDITURES</u> (in thousands)					
Personnel	\$ 33,060	\$ 53,986	\$ 55,032	\$ 38,484	70%
Purchased Services and Supplies	10,855	40,163	43,190	29,634	69%
Utilities	1,488	2,395	2,396	1,956	82%
Capital	31	304	677	349	52%
Debt	-	2,672	2,672	1,658	62%
Net Transfers In/(Out)	4,185	12,452	12,452	(704)	-6%
<b>TOTAL EXPENDITURES</b>	<b>\$ 49,619</b>	<b>\$ 111,972</b>	<b>\$ 116,419</b>	<b>\$ 71,377</b>	<b>61%</b>
<b>Total Change in Net Position</b>	<b>\$ 27,454</b>	<b>\$ 26,017</b>	<b>\$ 22,026</b>	<b>\$ 6,047</b>	

**FY 2022-23 Third Quarter (Q3) Operating Budget Augmentations**

The following table is a summary of all recommended Q3 budget augmentations for FY 2022-23. They are listed by department, with General and Non-General Fund totals separated, and categorized as one time or on-going expenses.

<b>Department</b>	<b>Description</b>	<b>General Fund</b>	<b>Other Fund</b>	<b>One Time</b>	<b>On Going</b>
Mobility & Housing - Airport	Contract Services	\$22,000	\$18,000	\$40,000	
Operations & Utilities	Contract Services & Supplies	\$345,000	\$1,897,000	\$1,742,000	\$500,000

**Total:    \$367,000    \$1,915,000    \$1,782,000    \$500,000**

General Fund Non-Personnel Augmentations

Department	Description	General Fund	One Time	On Going
Mobility & Housing - Airport	Contract Services	\$22,000	\$22,000	
Operations & Utilities	Contract Services & Supplies	\$345,000	\$345,000	
<b>Total:</b>		<b>\$367,000</b>	<b>\$367,000</b>	

Mobility & Housing – The Mobility & Housing Department is requesting to increase the Airport divisions contract services to repair the roof at the Skyview main hangar and will need an increase from the general fund subsidy for this portion of the costs.

Operations & Utilities – The Operations & Utilities Department is requesting to increase the Operations contract services and supplies for pump repairs, electrical supplies, and maintenance.

Other Fund Non-Personnel Augmentations

Department	Description	Funding Source	One Time	On Going
Mobility & Housing - Airport	Contract Services	Internal Service	\$18,000	
Operations & Utilities	Contract Services & Supplies	Water	\$1,397,000	\$500,000
			\$1,415,000	\$500,000
<b>Total:</b>			<b>\$1,915,000</b>	

Mobility & Housing – The Mobility & Housing Department is requesting to increase the Airport divisions contract services to repair the roof at the Skyview main hangar, this cost is being split between general fund and the building maintenance internal service fund.

Operations & Utilities – The Operations & Utilities Department is requesting to increase the Water operations contract services and supplies for chemicals, and one time funding for increases to water purchases.

Non-Budgetary-Personnel Amendments:

Staff is making the following recommendations to amend FY2022-23 Position Control Roster; however, the requests do not require a budget augmentation:

- (1) Management Analyst I/II – Mobility & Housing is requesting to delete (1) Economic Development Analyst and re-allocate funding to add (1) Management Analyst I/II to the Economic Development division. This item does not require a budget augmentation.
- (2) Management Analyst I/II – Operations & Utilities is requesting to delete (1) Water Resources and Compliance Manager and re-allocate funding to add (1) Management Analyst I/II to the Utilities division. This item does not require a budget augmentation.

FISCAL IMPACT

Quarterly, staff prepares a report to the City Council on the year-to-date revenues and expenditures as compared to the amended budget as of March 31, 2023 (Third Quarter Q3). Staff is recommending amendments to the City Operating and Capital Budget for FY 2022-23. The FY 2022-23 proposed budget appropriations of \$385,000 are from the general fund.

**SUMMARY OF NEW BUDGET AUGMENTATIONS**  
**FOR (Q3) FY 2022-23**

Department	General Fund	Other Fund	One Time	On Going
Mobility & Housing - Airport	\$22,000	\$18,000	\$40,000	
Operations & Utilities	\$345,000	\$1,897,000	\$1,742,000	\$500,000
	<u>\$367,000</u>	<u>\$1,915,000</u>	<u>\$1,782,000</u>	<u>\$500,000</u>

STRATEGIC PLAN

This agenda item supports the City’s Governance Strategic Priority, with Goal 2: Ensure short and long-term fiscal health.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council, by resolution, amend the City's Operating and Capital Budget for the Fiscal Year ending June 30, 2023, and authorize the Budget Officer to amend the City's position control roster for FY2022-23.

Prepared by: Felicia Galindo, Budget Officer  
Reviewed by: Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Acting City Manager



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2023-

**AMEND THE CITY'S OPERATING AND CAPITAL BUDGET FOR FISCAL YEAR ENDING JUNE 30, 2023 AND AUTHORIZE THE BUDGET OFFICER TO AMEND THE CITY'S POSITION CONTROL ROSTER FOR FY2022-23.**

**WHEREAS**, The City Council, on June 24, 2022, adopted the FY 2022-23 Operating and Capital Budget for the City of Tracy, and

**WHEREAS**, Based upon a review of revenues and expenditures, the City Manager has prepared and proposed additional amendments to the FY 2022-23 budget, and

**WHEREAS**, The Mobility & Housing Department will be getting a one-time funding for contract services for a consultant to repair the roof at the Skyview main hangar, and

**WHEREAS**, The Operations & Utilities Department will be getting an increase to contract services and supplies for pump repairs, electrical supplies, chemicals, and one-time funding for increases to water purchases, and

**WHEREAS**, The Budget Officer will be deleting (1) Economic Development Analyst and adding (1) Management Analyst I/II to the Mobility & Housing position control roster, and

**WHEREAS**, The Budget Officer will be deleting (1) Water Resources and Compliance Manager and adding (1) Management Analyst I/II to the Operations & Utilities position control roster, and

**WHEREAS**, The City Council has considered information related to these matters, as presented at a public meeting of the City Council, including any supporting documents and reports by City staff, and any information provided during that public meeting, and

**WHEREAS**, The City Council has reviewed the level of budgeting control needed by the City Manager to ensure efficiency in managing the operations of the City, including the authorization of budget transfers between funds; now, therefore, be it

**RESOLVED:** That the City Council of the City of Tracy hereby adopts the Amended Operating and Capital Budget for Fiscal Year 2022-23 as evidenced by the attached summaries and authorize the Budget Officer to amend the City's position control roster for FY2022-23.

\* \* \* \* \*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on May 2, 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

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NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Attachment A: Amended Operating and Capital Budget for Fiscal Year 2022-23

## Amended Operating and Capital Budget for Fiscal Year 2022-23

FY 2022-23 General Fund Budget to Actuals

<u>REVENUES</u> (in thousands)	<u>FY 21/22</u> <u>Q3</u>	<u>FY 22/23</u> <u>Adopted</u>	<u>FY 22/23</u> <u>Amended</u>	<u>FY 22/23</u> <u>Q3</u>	<u>% of</u> <u>Budget</u>
Property Tax	\$ 15,548	\$ 31,090	\$ 31,090	\$ 16,643	54%
Sales Tax	37,582	69,680	69,680	37,756	54%
Sales Tax Measure V	8,982	14,770	14,770	5,411	37%
Other Taxes	1,725	2,870	2,870	1,847	64%
Other Revenues	13,236	19,579	20,035	15,767	79%
<b>TOTAL REVENUES</b>	<b>\$ 77,073</b>	<b>\$ 137,989</b>	<b>\$ 138,445</b>	<b>\$ 77,424</b>	<b>56%</b>
<u>EXPENDITURES</u> (in thousands)					
Personnel	\$ 33,060	\$ 53,986	\$ 55,032	\$ 38,484	70%
Purchased Services and Supplies	10,855	40,163	43,190	29,634	69%
Utilities	1,488	2,395	2,396	1,956	82%
Capital	31	304	677	349	52%
Debt	-	2,672	2,672	1,658	62%
Net Transfers In/(Out)	4,185	12,452	12,452	(704)	-6%
<b>TOTAL EXPENDITURES</b>	<b>\$ 49,619</b>	<b>\$ 111,972</b>	<b>\$ 116,419</b>	<b>\$ 71,377</b>	<b>61%</b>
<b>Total Change in Net Position</b>	<b>\$ 27,454</b>	<b>\$ 26,017</b>	<b>\$ 22,026</b>	<b>\$ 6,047</b>	

SUMMARY OF NEW BUDGET AUGMENTATIONS FOR (Q3) FY 2022-23

<b>Department</b>	<b>General Fund</b>	<b>Other Fund</b>	<b>One Time</b>	<b>On Going</b>
Mobility & Housing - Airport	\$22,000	\$18,000	\$40,000	
Operations & Utilities	\$345,000	\$1,897,000	\$1,742,000	\$500,000
	<u><b>\$367,000</b></u>	<u><b>\$1,915,000</b></u>	<u><b>\$1,782,000</b></u>	<u><b>\$500,000</b></u>

Agenda Item 1.J

RECOMMENDATION

**Staff recommends that the City Council waive the second reading and adopt an ordinance of the City of Tracy amending Tracy Municipal Code Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, “Fireworks”.**

EXECUTIVE SUMMARY

The proposed amendments to the Tracy Municipal Code will update Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, “Fireworks”. The amendments will increase the fines for the first offense from \$100 to \$750 and from \$200 to \$1,000 for the second offense and any additional offenses thereafter. The proposed Ordinance was introduced at a regular meeting of the Tracy City Council on April 18, 2023.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy (City) prohibits the possession, sale, or discharge of dangerous fireworks, as defined by the Tracy Municipal Code (TMC) Section 3.04.010, and California Health and Safety Code (HS Code) Section 12505, within City limits. The City allows the possession, sale, and discharge of “safe and sane fireworks”, as defined by TMC Section 3.04.010, within City limits, only during the time frames specified in TMC Section 3.04.030. State law provides for certain criminal penalties for the possession, sale, and discharge of dangerous fireworks under HS Code Sections 12700-12706.

The TMC currently provides that violations of Chapter 3.04, “Fireworks”, may be prosecuted by the City as a misdemeanor, and in the alternative, the City may issue administrative citations in the amounts of \$100, \$200, and \$500. Over the last several years, the City has experienced a significant increase in the possession and discharge of dangerous fireworks in violation of the HS Code and TMC Section 3.04.030, as well as the possession and discharge of safe and sane fireworks outside of the permissible time periods specified in TMC Section 3.04.030. To further deter the possession and discharge of dangerous as well as illegal safe and sane fireworks, the City seeks to increase the fine amounts for administrative citations for relevant violations.

ANALYSIS

The proposed amendments to 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, is to further deter the possession and discharge of dangerous as well as illegal safe and sane fireworks. The City seeks to increase the fine amounts for administrative citations for relevant violations and to clarify that administrative citations may be issued for safe and sane fireworks discharged outside the permissible time periods.

The increased fines in first and second offenses is to dissuade community members from displaying illegal fireworks by increasing the amounts of administrative citations to \$750 for the first violation, and \$1,000 for the second violation and additional violations thereafter. These are the maximum fine amounts allowed by State law for general law cities. It is the intent of the City to reasonably regulate the possession and discharge of dangerous and safe and sane fireworks

outside the permissible time periods within the City to protect the public health, safety, and general welfare of its residents. This ordinance is consistent with Council's priority of public safety.

#### FISCAL IMPACT

This item has no direct fiscal impact. There may be undetermined costs associated with staff and enforcement time of the proposed amendments. Each call for service related to the proposed amendments will be absorbed within existing operations' and budgets.

#### PUBLIC OUTREACH/INTEREST

The proposed ordinance was presented to the Chief of Police after enforcement efforts have shown to not affect the high call volumes for displaying illegal fireworks.

#### COORDINATION

Preparation of this item involved coordination between the Police Department and the City Attorney's Office.

#### CEQA DETERMINATION

That the City Council hereby finds and determines, after independent review and consideration, as supported by substantial evidence in the record and for the reasons set forth in this Ordinance, and, each as a separate and independent basis, that the actions authorized by this Ordinance are exempt from additional review and analysis under the California Environmental Quality Act ("CEQA") and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.) under CEQA Guidelines Section 15307 (Protection of Natural Resources), Section 15308 (Protection of the Environment), and/or Section 15061(b)(3) (Common Sense Exemption), and/or Section 15321 (Enforcement Actions). Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

#### STRATEGIC PLAN

This item relates to the City Council's strategic plan in the area of Public Safety

#### ACTION REQUESTED OF THE CITY COUNCIL

Waive the second reading and adopt an ordinance authorizing the amending of the Tracy Municipal Code Sections 3.04.010, 3.04.030, and 3.04.130 to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, "Fireworks".

Prepared by: Necy Lopez, Deputy City Clerk

Reviewed by: Adrienne Richardson, City Clerk  
Riana Daniel, Deputy City Attorney

Attachments: A: Ordinance

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
CITY ATTORNEY’S OFFICE

**TRACY CITY COUNCIL**

**ORDINANCE NO.** \_\_\_\_\_

**AMENDING TRACY MUNICIPAL CODE SECTIONS 3.04.010, 3.04.030, AND 3.04.130 TO INCREASE THE FINE AMOUNTS FOR ADMINISTRATIVE CITATIONS ISSUED FOR VIOLATIONS OF CHAPTER 3.04, “FIREWORKS”**

**WHEREAS**, the City of Tracy (City) prohibits the possession, sale, or discharge of dangerous fireworks, as defined by the Tracy Municipal Code (TMC) Section 3.04.010, and California Health and Safety Code (HS Code) Section 12505, within City limits; and

**WHEREAS**, the City allows the possession, sale, and discharge of “safe and sane fireworks”, as defined by TMC Section 3.04.010, within City limits, only during the time frames specified in TMC Section 3.04.030; and

**WHEREAS**, State law provides for certain criminal penalties for the possession, sale, and discharge of dangerous fireworks under HS Code Sections 12700-12706; and

**WHEREAS**, the TMC currently provides that violations of Chapter 3.04, “Fireworks”, may be prosecuted by the City as a misdemeanor, and in the alternative, the City may issue administrative citations in the amounts of \$100, \$200, and \$500; and

**WHEREAS**, over the last several years, the City has experienced a significant increase in the possession and discharge of dangerous fireworks in violation of the HS Code and TMC Section 3.04.030, as well as the possession and discharge of safe and sane fireworks outside of the permissible time periods specified in TMC Section 3.04.030; and

**WHEREAS**, to further deter the possession and discharge of dangerous as well as safe and sane fireworks, the City seeks to increase the fine amounts for administrative citations for relevant violations; and

**WHEREAS, Exhibit A** reflects proposed amendments to TMC Sections 3.04.010, 3.04.030, and 3.04.130 to clarify that administrative citations may be issued for safe and sane fireworks discharged outside the permissible time periods; and

**WHEREAS, Exhibit A** increases the amounts of administrative citations to \$750 for the first violation, and \$1,000 for the second violation and additional violations thereafter, to further deter illegal fireworks activity and to hold responsible parties accountable; and

**WHEREAS**, it is the intent of the City to reasonably regulate the possession and discharge of dangerous and safe and sane fireworks outside the permissible time periods within the City to protect the public health, safety, and general welfare of its residents; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Full Text.** The City Council hereby approves the Amendments to Chapter 3.04, “Fireworks” of the Tracy Municipal Code, which are specifically described on **Exhibit A**.

**SECTION 3. CEQA Determination.** That the City Council hereby finds and determines, after independent review and consideration, as supported by substantial evidence in the record and for the reasons set forth in this Ordinance, and, each as a separate and independent basis, that the actions authorized by this Ordinance are exempt from additional review and analysis under the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.) under CEQA Guidelines Section 15307 (Protection of Natural Resources), Section 15308 (Protection of the Environment), and/or Section 15061(b)(3) (Common Sense Exemption), and/or Section 15321 (Enforcement Actions). Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

**SECTION 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 5. Effective Date.** This ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 6. Publication.** The City Clerk is directed to publish this ordinance in a manner required by law.

**SECTION 7. Codification.** This ordinance shall be codified in the Tracy Municipal Code.

\*\*\*\*\*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 18th day of April 2023, and finally adopted on the \_ day of \_\_\_\_\_, 2023, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:  
ABSTENTION: COUNCIL MEMBERS:

\_\_\_\_\_  
NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Date of Attestation: \_\_\_\_\_



## NOTICE AND DIGEST

### **AMENDING TRACY MUNICIPAL CODE SECTIONS 3.04.010, 3.04.030, AND 3.04.130 TO INCREASE THE FINE AMOUNTS FOR ADMINISTRATIVE CITATIONS ISSUED FOR VIOLATIONS OF CHAPTER 3.04, "FIREWORKS"**

This Ordinance (Ordinance) amends Chapter 3.04, "Fireworks" to increase the fine amounts for administrative citations issued for violations of Chapter 3.04, "Fireworks." The Ordinance will increase the fine amounts for administrative citations to \$750 for the first violation, and \$1,000 for the second violation or additional violations thereafter. The Ordinance will provide the City with a stronger mechanism for deterring illegal firework activity throughout City limits.

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## Chapter 3.04 FIREWORKS<sup>1</sup>

### 3.04.010 Definitions.

"*Dangerous fireworks*" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment and any fireworks classified as such as defined by Sections 12505 and 12561 of the Health and Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6, pertaining to dangerous fireworks which are hereby incorporated by reference. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party poppers or snap caps.

"*Fireworks sales stand*" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of safe and sane fireworks.

"*Nonprofit organization*" means the applicant is a local nonprofit organization which shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes as defined by Section 501(c) of the Internal Revenue Code of the United States. A local nonprofit organization must have its principal and permanent meeting place within the City of Tracy, or be within a one-mile radius of the city limits of the City Tracy, or be a school with a student body that includes City of Tracy residents and is within the Tracy Unified School District or the Jefferson School District. Non- school organizations that have their principal meeting place outside the City limits as allowed above, must show documented proof that a majority of its members are City of Tracy residents. The organization must have nonprofit status and have been organized and established for a minimum of two continuous years preceding the filing of the application for permit. The organization must have a bona fide membership of at least twenty (20) members who reside in the City, which will be verified each year. The organization must also provide direct and regular community services and benefits to the residents of the City.

"*Principal and permanent meeting place*" means a location that serves as the nonprofit organization's primary, fixed site for meetings.

"*Private property*" means any real property, place, or premises (including, but not limited to, residential, commercial, or industrial) whether occupied on a temporary or permanent basis, whether or not occupied as a dwelling, and whether owned, leased, or rented, or used with or without compensation, including, but not limited to, a home, yard, garage, apartment, condominium, hotel or motel room, or other dwelling unit, or a warehouse, hall, or meeting room.

"*Public display of fireworks*" means an entertainment feature where the public or private group is admitted or permitted to view the display or discharge of dangerous fireworks.

"*Responsible party*" includes, but it is not limited to:

- (1) The person(s) who owns, rents, leases, or otherwise has possession of the private property;

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<sup>1</sup>Editor's note(s)—Former Ch. 3.04, entitled "Fire Protection and Fire Prevention" §§ 3.04.010—3.04.170 was repealed by Ord. No. 1116, effective Mar. 5, 2008, which derived from: Prior code §§ 3-1.102—3-1.112, 3-1.201—3-1.204 and Ord. Nos. 1100 and 1111.

- 
- (2) The person(s) in immediate control of the private property; and
  - (3) The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the possession, sale, or discharge of dangerous fireworks or safe and sane fireworks outside the permissible time periods specified in this Chapter.

If the private property is rented or leased, the landlord or lessor is not covered by this chapter unless he or she falls within the category of persons described under paragraph 2 or 3 of this definition. A landlord or lessor can only be held responsible under paragraph 3 of this definition if he or she has knowledge that dangerous fireworks (including a public display) are being possessed at, or discharged on the private property without obtaining a permit therefor as provided in section 3.04.020 of this Code.

"*Safe and sane fireworks*" also known as "state-approved fireworks" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment and any fireworks which do not come within the definition of "dangerous fireworks" or "exempt fireworks" as defined by Section 12505 of the Health and Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6, pertaining to "safe and sane fireworks" which are hereby incorporated by reference. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party poppers or snap caps.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1215, § 1, 5-3-2016; Ord. No. 1263, § 1, 9-18-2018; Ord. No. 1297, § 1, 10-20-2020)

### **3.04.020 Public displays; permits required.**

- (a) Notwithstanding the prohibitions on dangerous and safe and sane fireworks set forth in this chapter, this section shall not prohibit public display of fireworks which may be allowed upon issuance of a permit therefore under the provisions of the Health and Safety Code of the State of California. This chapter also does not prohibit the use by railroad or other transportation agencies, for signal purposes or illumination, of torpedoes, flares or fuses; nor the sale or use of blank cartridges for theatrical or ceremonial purposes, athletic events, or military ceremonies or demonstrations.
- (b) Fireworks display permits are required to conduct a public display of fireworks as required by local and state regulations. Permit application shall be made not less than sixty (60) days prior to the scheduled date of the display. The permit application shall be in accordance with the California Fire Code and the National Fire Protection Association codes and standards 1123 and 1124 and include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways and other lines of communication; the lines behind which the audiences will be restrained; and the location of nearby overhead obstructions. At the time of permit application, the City Manager or designee shall be consulted regarding reasonable conditions or requirements for standby personnel and fire apparatus. Fireworks display permits shall only be granted to licensed pyrotechnic operators.
- (c) Fireworks display permits may be secured by application to the City Manager or designee. The City Manager or designee may deny issuance of such permits, provided such denial is reasonably based on public health and safety concerns, including, but not limited to, an application for another event to be held on the same date as that requested has been previously filed or approved, and the other event is so close in time and location to the event proposed as to cause undue traffic congestion or to place the City in a position of being unable to meet the needs for Fire, Police or Public Works services for both events. Any decision regarding such permits may be appealed to the City Council as set forth in section 1.12.020 of this Code.
- (d) A public display of fireworks may also require a special events permit pursuant to chapter 4.40 of this Code.

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- (e) The fireworks display permit fee, requisite deposits, time of payment, and insurance requirements shall be set by resolution of the City Council.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.030 Sale, discharge, time limit, dangerous fireworks.**

- (a) Subject to the permitting provisions of this chapter, the California Fire Code, the provisions of the State Fireworks Law, Sections 12500 through 12726 of the Health and Safety Code of the State of California and any regulations promulgated thereunder, safe and sane fireworks may be discharged within the City limits of the City of Tracy during the period from noon and ending at 10:00 p.m. on the twenty-eighth day of June through the third day of July and from noon to midnight on the fourth of July, each year.
- (b) It is unlawful and shall be a misdemeanor to possess, sell or discharge dangerous fireworks within the City of Tracy.
- (c) In the alternative, the City may issue administrative citations pursuant to chapter 1.28 of this Code.
  - (1) An administrative citation may be issued to any person or responsible party for violating subsections (a) or (b) of this section.
  - (2) A responsible party need not be present at the time safe and sane fireworks are discharged outside the permissible time periods specified in subsection (b) of this section, or when dangerous fireworks are possessed, sold, or discharged for the City to issue an administration citation.
  - (3) Nothing in this Section shall be intended to limit any of the penalties provided for in this chapter or the California Health and Safety Code or Penal Code.
- (d) Safe and sane fireworks may only be sold between the hours of 12:00 p.m. and 8:00 p.m. on June 28, between 8:00 a.m. and 8:00 p.m. from June 29 through July 3, and 8:00 a.m. and 9:00 p.m. on July 4.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018; Ord. No. 1297, § 1, 10-20-2020)

### **3.04.040 Permit to sell and store safe and sane fireworks.**

- (a) The City Council shall establish, by resolution, the process by which the City will issue annual permits to sell safe and sane fireworks and the conditions to protect health, safety, aesthetics, and such other conditions the City Council finds reasonably necessary that applicants must satisfy to receive the permits.
- (b) The City Council shall establish, by resolution, an application fee for the lottery to be eligible for an annual permit to store or sell safe and sane fireworks.
- (c) It is unlawful for any person to engage in the sale or distribution of safe and sane fireworks within the City of Tracy without first having secured an operational fire permit and a temporary use permit to do so from the City Manager or designee.
- (d) It is unlawful to store safe and sane fireworks within the City of Tracy without first having secured an operational fire permit and a temporary use permit to do so from the City Manager or designee.
- (e) The annual permit fee for the sale of safe and sane fireworks shall be set by resolution of the City Council and payable prior to permit issuance.
- (f) A temporary use permit and City business license is required pursuant to this Code.

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- (g) Lottery awardees and alternates, as defined by the process set forth in a Council resolution pursuant to section 3.04.050(b), may apply for an operational fire permit prior to the end of April of each year.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.050 Maximum number of safe and sane fireworks permits issued—Selection procedure.**

- (a) The maximum number of permits to sell safe and sane fireworks, which the City may issue during any one calendar year, shall not exceed one permit for each 10,000 resident population or portion thereof. No more than one safe and sane fireworks stand can be operated under each permit. Only nonprofit organizations, as defined in this chapter, are eligible for such permits.
- (b) City Council shall provide, by City Council resolution, a process for a lottery to determine which nonprofit organizations, including alternates, will be eligible to apply for an annual permit to sell and store safe and sane fireworks.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.060 Applications for safe and sane fireworks sales permit lottery.**

Applications for the lottery to be eligible to apply for a permit to store or sell safe and sane fireworks may be filed during normal business hours from November 1st of each year up to and including the first Thursday of December of the same year, at which time the filing period for that year will close. All applications shall be submitted in writing to the City Manager or designee, on forms provided by the City and meet the following conditions:

- (a) The applicant is a nonprofit organization as defined in this chapter. Each nonprofit organization shall establish status as a 501(c) tax-exempt organization and provide a certificate of good status from the California Secretary of State and an entity status letter showing good status with the California Franchise Tax Board at the time of application. The letters shall be dated within sixty (60) days of application. The letters are required to be submitted with the application and if not submitted, the application will be rejected.
- (1) Public school organizations shall provide current written verification of an affiliation from the school each year. Public school organizations shall establish status as a 501(c) tax-exempt organization as a separate entity from the school and must possess a nonprofit identification number.
- (2) Each nonprofit organization may file an application for one sales permit for which there is only one tax ID number.
- (b) The nonprofit organization must possess a nonprofit identification number. However, a given identification number may not be used by more than one organization. Should the City Manager or designee determine that more than one organization has submitted the same nonprofit identification number, the City Manager or designee shall notify the organizations in writing and give each of them the opportunity to correct the situation prior to the deadline provided in this section to ensure compliance with this section. If such compliance is not achieved, none of the affected nonprofit organizations shall be eligible to receive a permit.
- (c) Applications shall be signed by two (2) bona fide officers of the eligible nonprofit organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state laws, administrative regulations, and all requirements of this Code and the permit if permission to operate a safe and sane fireworks stand is granted to the organization, and both:

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- (1) Has not been found by any court of competent jurisdiction or City administrative hearing officer to be in violation of any civil or criminal, local, state or federal law relating to fireworks within twenty-four (24) calendar months prior to the organization's submittal of an application for a permit to sell safe and sane fireworks, and
  - (2) Has not had a permit to sell safe and sane fireworks revoked within twenty-four (24) calendar months prior to the organization's submittal of an application for a permit to sell.
- (d) (1) Should the City Manager or designee determine that a lottery awardee does not satisfy these requirements or otherwise comply with requirements of this Chapter, the lottery awardee's application shall be denied.
- (2) If an awardee is found to have falsified or misrepresented its status as an eligible organization as defined by this Chapter, or provided false information on the approved application, the organization will be ineligible to apply for a safe and sane fireworks sales permit for a period of two (2) years.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1215, § 2, 5-3-2016; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.070 Documents and fees required for fireworks sales permit issuance.**

- (a) In addition to all other requirements contained in this chapter, each lottery awardee shall comply with each of the following requirements:
  - (1) Apply for an operational fire permit to store or sell safe and sane fireworks on a form approved by the City Manager or designee with the required permit fee as established by City Council resolution paid prior to permit issuance.
  - (2) State of California Fire Marshal's firework retail license.
  - (3) Provide proof of a temporary sellers permit from the State Board of Equalization.
  - (4) Sign a form provided by the City, whereby the lottery awardee agrees to indemnify and hold harmless the City, its officers, employees, volunteers and agents from any and all claims, damages, demands, liability, costs, losses, and expenses, including, without limitation, court costs and reasonable attorneys' fees arising out of or in connection with the permittee's sale of safe and sane fireworks, except such loss or damage which was solely caused by the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, or agents.
  - (5) Furnish to the City proof of coverage by a policy of public liability and property damage insurance. The policy shall provide limits of bodily injury and property damage liability of not less than five million dollars (\$5,000,000.00) combined single limit for each occurrence annually as payment for damages to persons or property which may result from or be caused by the public sale or storage of safe and sane fireworks, or any negligence on the part of the permittee or his or her agents, servants, employees or subcontractors relating thereto.
  - (6) Obtain a temporary use permit from the City of Tracy and provide any other information as may be required by the City Manager or designee.
  - (7) A site plan of the fireworks sales stand area, to scale, shall be provided. The site plan shall include site location, fireworks sales stand location, parking areas, access to and from the fireworks sales stand area, all equipment to be used at the fireworks sales stand and the locations for the equipment, location of trash area, location of trailer parking area, and any additional information as requested by the City Manager or designee, in compliance with the operational fire permit requirements.

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- (b) The City Manager or designee may revoke, immediately and without notice or hearing, the safe and sane fireworks sales permit of any organization when any of the provisions of this Code, the Health and Safety Code, the Uniform Fire Code, the California Code of Regulations, or any other applicable law or regulation are violated. The decision of the City Manager, or designee, shall be final.
  - (c) Revocation of any permit will be effective for that calendar year.
  - (d) Permits for retail sales of safe and sane fireworks issued pursuant to the provisions of this section are not transferable to any other person or organization and are issued for the purpose of operating a single safe and sane fireworks sales booth at the approved location. The permit may be used only by the organization to which it is issued.
  - (e) Each applicant that has been granted a permit shall have no less than two (2) members of its sales staff attend an operator safety seminar approved and supervised by the City Manager or designee.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011)

### **3.04.080 Operation of safe and sane fireworks stand only by permittee.**

- (a) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the safe and sane fireworks sales stand for which the permit is issued, whether by agreement, assignment or otherwise. Violations will result in the immediate loss of the organization's permit.
- (b) It is unlawful for any nonprofit organization to pay any consideration to any person for selling or otherwise participating in the sale of safe and sane fireworks at such fireworks sales stand, except the hiring of a night watchman or security officer.
- (c) Each fireworks sales stand must have a minimum of one adult twenty-one (21) years of age or older in attendance and in charge thereof while safe and sane fireworks are stored therein.
- (d) No person may sleep in or remain in the fireworks sales stand after close of business.
- (e) All unsold safe and sane fireworks must be removed from the fireworks sales stand during nonsale hours and stored in a centrally located, locked metal container or other secure and fire-safe structure during nonsale periods. Each permittee shall provide a storage location and container for storage of its stand's fireworks. The container shall be approved by the City Manager or designee and located in an M-1 or M-2 zoned location approved by the Development and Engineering Services Director and the City Manager or designee. Such storage shall comply with all requirements of this Code, including applicable additional permit requirements. Permittees may satisfy these storage requirements through the use of a safe and sane fireworks wholesaler, provided such wholesaler also complies with all requirements of this Code, including additional permit requirements.
- (f) Each fireworks sales stand must have on duty at all times during the sales period at least one salesperson who attended the City of Tracy operator safety seminar, required pursuant to section 3.04.070.
- (g) Permittees shall require all persons who appear to be under the age of thirty (30) years to provide proof of age and shall make no sales of safe and sane fireworks to persons younger than eighteen (18) years of age.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.090 Requirements of safe and sane fireworks sales stand.**

All retail sales of safe and sane fireworks shall be made from within a temporary fireworks sales stand only, and sales from any other building or structure are hereby prohibited. Safe and sane fireworks sales stands are subject to the following requirements:

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- (a) No fireworks sales stand shall be put in place by the permittee any earlier than 8:00 a.m. on June 20 of each year, provided there is no sale or storage of safe and sane fireworks prior to the time periods set forth in section 3.04.030.
  - (b) No fireworks sales stand shall be located within twenty-five (25) feet of any building or structure, within five (5) feet of any curb line, or within 100 feet of any gasoline pump.
  - (c) A minimum of 100 feet shall be maintained from any building used as a school, day care, hospital, place of detention, public garage or place of assembly that can accommodate 300 or more occupants and the fireworks sales stand.
  - (d) A minimum of twenty (20) feet of separation shall be provided between the fireworks sales stand and the parked vehicles of the public.
  - (e) No fireworks sales stand shall interfere with required site access, circulation, fire lanes or fire hydrants.
  - (f) No weeds or other combustible materials are permitted within twenty-five (25) feet of any fireworks sales stand.
  - (g) No generators shall be allowed within twenty-five (25) feet of any fireworks sales stand.
  - (h) Smoking and the consumption of alcoholic beverages shall not be allowed within fifty (50) feet of any fireworks sales stand and "No Smoking" signs shall be displayed on and in the fireworks sales stand.
  - (i) Each fireworks sales stand shall be provided with two (2), two and one-half (2.5) gallon pressurized water-type fire extinguishers, or two (2) 2A10BC dry chemical/powder-type fire extinguishers, in good working order, and easily accessible for use.
  - (j) The permit to sell safe and sane fireworks shall be displayed in a prominent place within the fireworks sales stand and shall at all times be visible to members of the public.
  - (k) Fireworks sales stands shall be either twenty-four (24) or thirty-two (32) feet long by eight (8) feet wide. Fireworks sales stands twenty-four (24) feet in length shall have two (2) exits and a maximum occupancy of six (6) people. Firework sales stands thirty-two (32) feet in length shall have three (3) exits and a maximum occupancy of eight (8) people.
  - (l) All fireworks sales stands shall be built and maintained in accordance with the safety requirements of the City prior to opening for business.
  - (m) All unsold safe and sane fireworks and accompanying litter shall be cleared from the location by 5:00 p.m. on July 5, and the fireworks sales stand shall be removed from the temporary location by 12:00 p.m. on July 9 of each year. If the permittee does not remove the fireworks sales stand and/or clean the sales site as required, the City may do so, or cause the same to be done, and the reasonable cost thereof shall be charged against the permittee.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.100 Locations for discharge.**

- (a) It shall be unlawful and a misdemeanor to discharge any dangerous or safe and sane fireworks, on public, semipublic or private open areas such as parking lots, vacant properties, or open commercial or industrial areas, except in those areas approved by the City Manager or designee as provided in section 3.04.020 of this chapter.
- (b) It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any safe and sane fireworks, or to permit the ignition, explosion or projection thereof, upon or over or onto the property of another



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without his or her consent, or to ignite, explode, project, or otherwise fire or make use of, any safe and sane fireworks within ten (10) feet of any residential dwelling or other structure.

- (c) It is unlawful for any person to discharge any safe and sane fireworks within 100 feet of a fireworks sales stand.
  - (d) When discharging safe and sane fireworks, a water source must be within 100 feet of the discharge location.
- (Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.110 Sales and use by minors.**

- (a) It is unlawful for any person under the age of eighteen (18) to sell, or handle for sale, any classification of fireworks.
- (b) It is unlawful for any person under the age of eighteen (18) to purchase or be allowed to purchase any classification of fireworks.
- (c) It is unlawful for any person having the care, custody or control of a minor under the age of eighteen (18) to permit such minor to discharge, explode, fire, or set off any safe and sane fireworks, as defined herein, unless such minor does so under the direct supervision of a parent or guardian, or such other person having care, custody or control of such minor.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.120 State law.**

The provisions of this chapter are in addition to applicable state and federal law, including, but not limited to, the State Fireworks Law (California Health and Safety Code, Sections 12500 through 12726), the State Fireworks Regulations (Title 19, California Code Regulations, Chapter 6), the California Fire Code and any and all other state or federal laws or regulations pertaining to the sale or use of fireworks.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.130 Violation.**

Any violation of any of the provisions of this Chapter may be prosecuted as a misdemeanor, and may be enforced by any of the methods provided in chapter 1.04 of this Code. If an administrative citation is issued for a violation of the Chapter, the penalty amounts shall be as follows:

- (1) \$750 for the first violation; and
- (2) \$1,000 for the second violation and any other violations thereafter.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

### **3.04.140 Enforcement.**

Sworn Peace Officers and other City staff with training in the powers of arrest and designated by the Police Chief or Fire Chief are authorized to enforce this chapter pursuant to section 3.04.130, above.

(Ord. No. 1158, § 1, 5-17-2011; Ord. No. 1162, § 1, 10-4-2011; Ord. No. 1263, § 1, 9-18-2018)

Agenda Item 3.A

RECOMMENDATION

**Staff recommends that Council (1) adopt a Resolution of Intention of the City Council of the City of Tracy declaring its intention to increase wastewater rates, (2) set a public hearing date for June 20, 2023, and (3) authorize staff to proceed with mailing notices to all property owners within the City, as required by Proposition 218.**

EXECUTIVE SUMMARY

In 2019, the City contracted with Raftelis to perform a Wastewater rate study for the purpose of establishing a proposed five-year rate schedule. On April 18, 2023, Council conducted a workshop to review the rate study. During the workshop, two rate scenarios were presented to Council. Based upon feedback received during the workshop, Council motioned to proceed with Scenario 2 (defined below) wastewater rate increase, to sufficiently fund the wastewater operations and maintenance expenses, and address the debt coverage ratio.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy Operations and Utilities Department provides wastewater service to over 23,000 residential, commercial and industrial customers located within city limits. The City's wastewater system consists of a Wastewater Treatment Plant (WWTP) on 54 acres, treatment ponds on 67 acres, 465 miles of collection pipelines, 26,000 lower sewer laterals, and over 10 booster and lift stations throughout the City.

The City of Tracy maintains a wastewater collection system which collects wastewater from inside buildings, houses, apartments, and other facilities throughout the City and transports it via underground pipes to its WWTP. The WWTP treats an average of 9.8 million gallons of wastewater per day from its customers. The WWTP also receives wastewater from other sources such as septage haulers, RVs from residents, and local business. The City also services one industrial customer that maintains its own collection system and one septage receiving station.

The City's Wastewater rates were last adjusted 10 years ago in 2013, the costs to treat the City's wastewater have increased since 2013 and require the implementation of rate adjustments to sufficiently fund wastewater operations and maintenance expenses, debt service payments, and capital expenditures while adequately funding reserves for capital improvements and achieving debt

coverage requirements.

In 2019, the City contracted with Raftelis to perform a Wastewater rate study for the purpose of establishing a proposed five-year rate schedule. The study conducted a cost-of-service analysis that establishes a nexus between the cost to serve Wastewater customers and the rates charged to customers, per Proposition 218.

On April 18, 2023, during a Council Workshop, staff presented the City Council with two separate scenarios of rate increases that would address the Operations and Utilities Department's infrastructure needs and address the debt coverage ratio.

### ANALYSIS

The goals and objectives of the rate study included developing a financial plan for the City's Wastewater enterprise that supports the City's Wastewater operating and capital programs, prudently maintains an adequate level of fund reserves in future years and maintains the long-term financial stability of the Wastewater enterprise. The study also develops Wastewater rates that recover the City's costs of providing Wastewater service, are fair and equitable to all customer classes, comply with the legal requirements of Proposition 218, and to the extent possible, minimize the impact on customers.

In preparing the rate study, Raftelis worked closely with City staff to develop a Wastewater financial plan. The plan estimates annual revenues, operations and maintenance expenses, debt service payments, capital expenditures and reserve funding. The overall purpose of the financial plan is to determine annual wastewater rate revenues required to achieve sufficient cash flow, maintain adequate reserves, and meet debt coverage requirements.

The Wastewater Enterprise is required to meet debt service coverage requirements on its outstanding wastewater certificates of participation. The required debt coverage ratio is 1.20, meaning that the Wastewater fund's net operating revenues (total revenues, less operating expenses) must amount to at least 1.20 times the amount of annual debt service. Failure to meet debt service coverage results in a technical default, which without foreseeable action (such as implementing rate increases), could result in a downgrade of credit rating, higher costs for future debt issuance, or even denial of credit. In 2022, after a review of the City's 2004 Wastewater bonds by Moody's Investors Service, the City received a downgrade of the Wastewater Enterprise's credit rating from A1 to A2. The adoption of rate increases with identification of a multi-year strategy could lead to an upgrade in the credit rating.

The City has an operating reserve to provide funds to meet ongoing cash flow requirements related to operating expenses. The current operating reserve target

is equal to 30 percent of the annual operating and maintenance expenses and two percent for capital reserve.

On April 18, 2023, Council conducted a workshop to review the wastewater rate study conducted by Raftelis. During the workshop, Council was presented with two rate scenarios that meet debt service coverage requirements. Scenario one is the minimum rate increase to meet the required debt coverage ratio. Scenario two meets the required debt coverage ratio and allows for funding of Capital projects to begin sooner. Based upon feedback received during the workshop, staff recommends rate scenario two.

Proposed Revenue Adjustments - Two Scenarios

	FY 2024	FY 2025	FY 2026	FY2027	FY2028	Total
	August 1	July 1	July 1	July 1	July 1	
Scenario 1	40.5%	16%	9%	9%	8%	82.5%
Scenario 2	45%	11%	9%	9%	8%	82%

The proposed rates for Scenario 2 are shown below.

## Wastewater Rates – Scenario 2

- Proposed MFR charge is a **per dwelling** charge.
- Average dwelling units per apartment complex is 7

Customer Class	Current	FYE 2024	FYE 2025	FYE 2026	FYE 2027	FYE 2028
<b>Fixed Charges</b>						
Single Family Residential	\$34.00	\$48.05	\$53.34	\$58.14	\$63.37	\$68.44
Multi-Family Residential (per Dwelling Unit)	\$28.75	\$4.05	\$4.50	\$4.90	\$5.34	\$5.77
Commercial I	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.11
Commercial II	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.11
Commercial III	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.11
<b>Volumetric Rate</b>						
Single Family Residential	NA	NA	NA	NA	NA	NA
Multi-Family Residential (per Dwelling Unit)		\$4.38	\$4.86	\$5.29	\$5.77	\$6.23
Commercial I	\$1.98	\$3.52	\$3.91	\$4.26	\$4.65	\$5.02
Commercial II	\$2.91	\$6.26	\$6.95	\$7.57	\$8.26	\$8.92
Commercial III	\$4.89	\$10.21	\$11.33	\$12.35	\$13.46	\$14.54
Industrial (Leprino)	As shown earlier	\$1.29	\$1.43	\$1.56	\$1.70	\$1.84
Septage (\$ / hcf)		\$75.89	\$110.05	\$122.15	\$133.15	\$145.13

The impact to utility customers in year one of rate scenario 2 is an increase of \$14.05 per month to single family residential customers and a decrease of \$9.06 per month to multi-family residential customers. Multi-family residential customers will also see a decrease to their bill in scenario 2 because the rate is now in

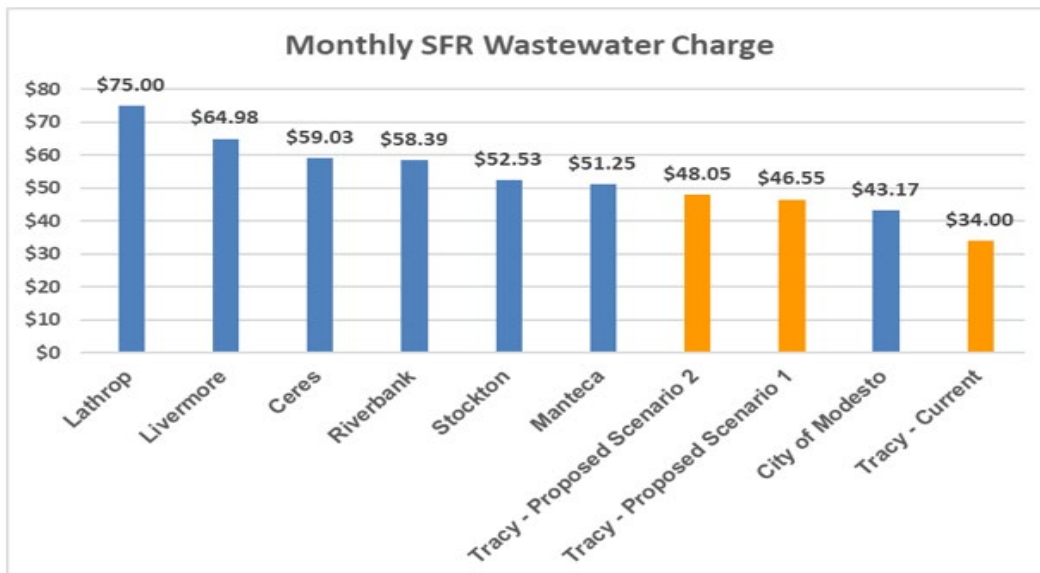
proportion to their use and assumed strength. Commercial customers bills are increasing because their wastewater strength (defined as the concentration of biochemical oxygen demand and total suspend solids) have been revised upwards to reflect the latest best practices and known concentrations at the WWTP. The chart below depicts the monthly bill impacts in year one of rate scenario 2.

## Monthly Bill Impacts – Scenario 2

Customer Class	Average Sewer Flow per Account or Dwelling Unit	Average No. of Dwelling Units	Current Monthly Bill	Total Proposed Monthly Bill	Dollar Difference	Percent Difference	No. of Accounts
Single Family Residential	8.5		\$34.00	\$48.05	\$14.05	41.3%	23,970
Multi-Family Residential	5.3	7.0	\$201.25	\$192.19	-\$9.06	-4.5%	610
Commercial I Average Use	57		\$141.47	\$227.98	\$86.51	61.1%	390
Commercial II Average Use	137		\$428.13	\$886.64	\$458.51	107.1%	313
Commercial III Average Use	49		\$267.11	\$524.99	\$257.88	96.5%	63

### Comparison of Surrounding Single Family Wastewater Bills

The chart below compares the City’s current single family residential Wastewater rate, proposed rates for scenarios one and two to the Cities of Modesto, Manteca, Stockton, Riverbank, Ceres, Livermore and Lathrop. The City’s current Wastewater rate is the lowest in the surrounding area and in proceeding with rate scenario two, the rate would continue to be on the lower range for the surrounding area.



The City provides a Low-Income Rate Assistance (LIRA) program for qualified utility customers. The total amount of the discount is \$26.05, with \$2.55 of that being directly applicable to the Wastewater rate. The LIRA program is funded through the City's General fund. Over the last year, the City has partnered with PG&E and is now able to auto-enroll qualified customers into the LIRA program. This partnership has resulted in an increase in the number of households receiving the discount, from 1,275 households to 5,100 households.

Proposition 218 requires notification to the affected ratepayers of any proposed increase in fees or charges for property-related services. Notice to property owners must be sent out a minimum of 45 days prior to conducting a public hearing to increase rates. Pursuant to Proposition 218, the City Council may not impose rate increases if written protests are presented by a majority of the property owners on which the fee is imposed.

If Council authorizes staff to distribute notices to property owners notifying them of the proposed rate increase, notices will be sent through United States Postal Services and a public hearing will be scheduled a minimum of 45 days after notices have been distributed. Prior to the public hearing, staff will conduct public outreach and education including publicity of the City's website and social media, informational booth at farmers market, a dedicated email address and an open house. At the conclusion of the public hearing, the protest ballots will be tabulated and presented to City Council for consideration. The public hearing will be set for June 20, 2023.

#### FISCAL IMPACT

The City's Wastewater utility relies almost entirely on customer revenues to sustain its operations. The proposed rate increases will generate revenue to fund operational and infrastructure needs and continue to provide reliable high-quality Wastewater services. The proposed rates will also allow the City to achieve its required debt coverage ratio minimum of 1.20, which is essential to maintain or improve a strong credit rating and the financial health of the Wastewater fund.

#### PUBLIC OUTREACH/ INTEREST

Staff has planned public outreach and education strategies scheduled to begin in tandem with the proposition 218 notices being distributed to property owners. Outreach includes an open house, informational booth during farmers market, dedicated email address for resident questions, and answers to frequently asked questions on the City's website.

#### COORDINATION

Coordination between the Finance and Operations and Utilities Departments in conjunction with Raftelis allowed for the completion of the Wastewater Rate study.

STRATEGIC PLAN

This item supports the Governance strategic priority goal 2.6 by ensuring short and long-term fiscal health through the completion of a Wastewater rate study.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that Council, by resolution, (1) approve a Resolution of Intention of the City Council of the City of Tracy to increase wastewater rates, (2) set a public hearing date for June 20, 2023, and (3) authorize staff to proceed with mailing notices to all property owners within the City, as required by Proposition 218.

Prepared by: Sara Cowell, Director of Finance

Reviewed by: Nancy Ashjian, Assistant City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Acting City Manager

Attachments:

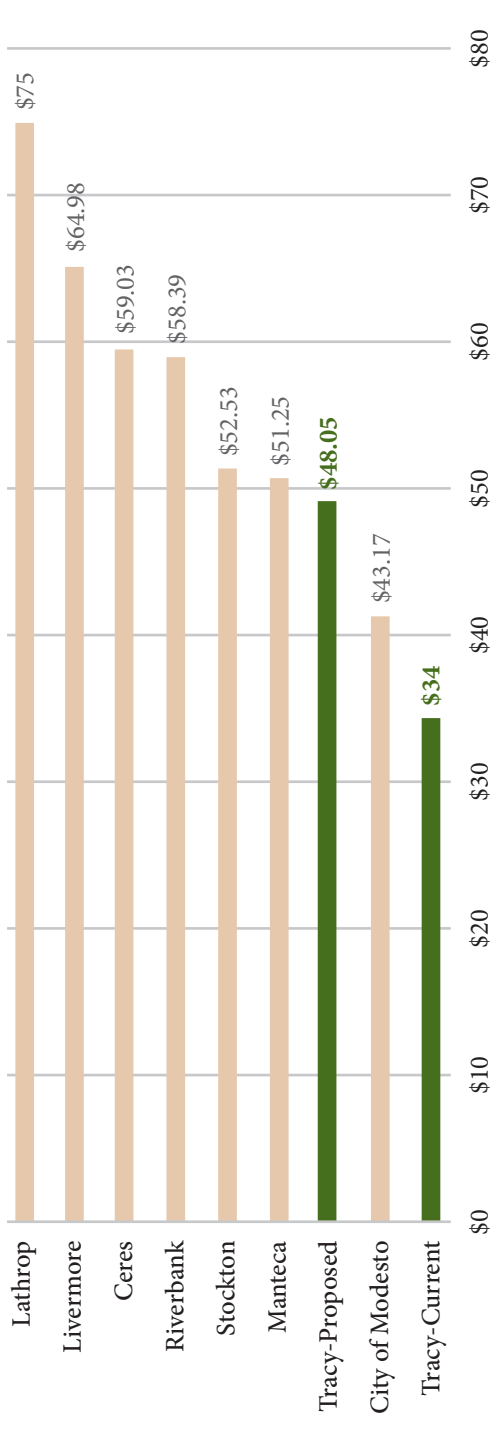
A - Draft Mailing Notice to Property Owners



City of Tracey City Clerk's Office  
333 Civic Center Plaza  
Tracy, CA 95376

# Tracy Wastewater (Sewer) Rates Compared to Neighboring Cities

## Monthly Single Family Residential (SFR) Wastewater Charge



### How Do I Protest the Proposed Wastewater (Sewer) Rate Increase?

**You have the right to protest the proposed rate increases.** The protest must be in writing, and it must be submitted by either the property owner or a current ratepaying tenant. It must include the property service address, assessor's parcel number, and the eligible individual's (property owner or tenant's) name and original signature. Written protests may be submitted by mail or in person to the Tracy City Clerk at the City Clerk's Office, 333 Civic Center Plaza, Tracy, CA 95376, or during the Public Hearing on Tuesday, June 20, 2023. All protests must be received (not mailed) before the conclusion of this Public Hearing.

Only one written protest per affected property will be counted. Telephone, e-mail, and fax protests will not be accepted. For your convenience, you may opt to use the protest form below. Written protests must be received by the City Clerk prior to the conclusion of the Public Hearing. The Clerk will not accept or consider any protest received after the conclusion of the Public Hearing.

At the Public Hearing on June 20, the City Council will accept and consider all written protests and hear all oral comments

### Optional protest form. *Formulario de protesta opcional.*

If you wish to use this form as your protest, please fill out and mail in a stamped envelope to:  
*Si desea utilizar este formulario como su protesta, por favor, complételo y envíelo por correo o preséntelo en persona a:*

**Tracy City Clerk, City Clerk's Office, 333 Civic Center Plaza, Tracy, CA 95376. All protests must be received prior to the conclusion of the Public Hearing on June 20, 2023.** *Si desea utilizar este formulario como protesta, réllénelo y envíelo por correo o preséntelo en persona a: Tracy City Clerk, City Clerk's Office, 333 Civic Center Plaza, Tracy, CA 95376. Todas las protestas deben ser recibidas antes de la conclusión de la audiencia pública en 20 junio 2023.*

(Print your full name / Escriba su nombre completo)

I, \_\_\_\_\_, protest the proposed water rate increase.  
Yo, \_\_\_\_\_, protesto contra la propuesta de aumento de tarifas de aguas.

I am the:  Property Owner  Ratepayer (Customer)  
Soy el:  Dueño de la propiedad  Contribuyente (Cliente)

Property Address: \_\_\_\_\_  
Dirección de la propiedad: \_\_\_\_\_

Assessor's Parcel Number (APN): \_\_\_\_\_  
Número de Parcela del Tasaador (APN, por sus siglas en inglés): \_\_\_\_\_

Signature: \_\_\_\_\_  
Firma \_\_\_\_\_



## Notice of Public Hearing

Notificación de Audiencia Pública



Scan for City Council Meetings  
Reuniones del Ayuntamiento

7 p.m. Tuesday, June 20, 2023 | 7 p.m. martes, 20 de junio de 2023  
City of Tracy Council Chambers | Cámaras del Consejo de la Ciudad de Tracy  
333 Civic Center Plaza, Tracy, CA 95376

## Proposed Wastewater (Sewer) Rate Increases

Propuesta de Aumento de las Tarifas de Aguas Residuales (Alcantarillado)





## Please Take Notice That

The Tracy City Council will conduct a Public Hearing to consider proposed rates for wastewater (sewer) services. Sewer rates were last increased 10 years ago. If adopted, the proposed rate adjustments would become effective on August 1, 2023, with annual rate increases through 2028.

All those interested are invited to appear at the time and place of the Public Hearing (7 p.m. June 20, 2023, in the Tracy Council Chambers at 333 Civic Center Plaza, Tracy, CA 95376), to give oral or written testimony or to submit written protests regarding the proposed rate adjustments. The City Council will hear and consider oral testimony and written materials submitted regarding the proposed rate increases at the Public Hearing. The City Council has the authority to adjust the proposed rate increases in response to oral testimony and written materials submitted for consideration, provided that any adjustments cannot increase rates beyond those listed in this Notice.

### Overview of the City's Wastewater (Sewer) Services

The City's Utilities Department maintains, repairs, and operates Tracy's water, wastewater, and stormwater infrastructure in an efficient and cost-effective manner while preserving the environment and ensuring the health, safety, and economic vitality of our community.

### What is Wastewater?

Wastewater, sometimes referred to as sewage, is water that has been impacted from ordinary living processes, including household, commercial, and industrial uses. It is essentially "used" water, containing materials and particles that would negatively impact people and the environment if left untreated. Wastewater entering a treatment plant is also called "influent," and treated wastewater is called "effluent."

As with most municipalities in California, the City's collection and storm drain systems are separate. Wastewater flows from the drains and toilets of homes and businesses to the wastewater treatment plant via the collection system, and stormwater flows directly to local waterways, untreated.

**The Wastewater Collection System:** The City's wastewater collection system serves a population of about 97,000 people in Tracy's 26-square-mile service area. The system serves 25,800 single-family and multi-family residential connections and 766 commercial, industrial, and institutional customers.

### Components of the Wastewater Collection System:

- 465 miles of gravity sewers (approximately 1,500 line segments) ranging in size from 4 to 42 inches in diameter to transport the wastewater to the pump stations
- 3,100 manholes
- 9 pump stations
- 10 miles of force mains ranging in size from 4 inches to transport the wastewater from the pump stations
- 26,150 wastewater (sewer) laterals, which are the pipes that carry water and waste from homes and businesses to the public wastewater main line

### Wastewater Treatment Plant

The City's Wastewater Treatment Plant (WWTP) treats collected wastewater (sewage) to federal and state standards so it may be discharged safely to surface waters, like Old River. The WWTP removes solids and

pollutants, breaks down organic matter, and restores the oxygen content of the treated wastewater. The City meets or exceeds stringent state and federal standards for treating and recycling wastewater to be used as nonpotable water for landscape irrigation and dust control at construction sites.

### Why is a Wastewater (Sewer) Rate Increase Needed?

The Tracy City Council will consider rate changes that will affect the sewer rate on your utility bill. The last wastewater (sewer) service rate increase was 10 years ago in 2013. The City charges these rates to its wastewater (sewer) customers in order to fund the cost of safe and reliable wastewater operations. The costs include operating and maintaining the wastewater (sewer) system, rehabilitating in system infrastructure, and paying off debt used to rehabilitate the system.

The City is considering wastewater (sewer) rate adjustments in 2023 for Fiscal Years 2024-2028 due to inflation and rising costs of operations, maintenance, and environmental and regulatory compliance. Per State law, revenues generated from sewer rate increases must only be used to fund the actual costs to operate and maintain the system including infrastructure projects and the cost of debt to finance capital improvement projects.

With help from an independent consultant, a rate study was performed to assess the revenue needs. The proposed rates are determined based on the projected revenue needed to fund:

- Operations and maintenance expenses: labor, supplies, chemicals, electricity, etc.
- Capital: large projects to repair/replace pipes and treatment plant processing equipment
- Debt service to pay back loans
- Reserve funding



The enclosed rate recommendations were presented to the Tracy City Council on April 18, 2023. A video of the meeting is available on the City's website. The Cost of Service Study also is available on our website at [www.cityoftracy.org](http://www.cityoftracy.org) under "2023 Wastewater Rate Study." Scan this code to be taken directly to the web page.

You are receiving this Notice in compliance with Proposition 218, which requires the City to inform property owners and wastewater customers that proposed rate increases are being considered.

### What Happens if We Do Not Raise Rates

If rates are not raised, the City would need to review the pressing needs of our aging systems and prioritize those that are most critical to ensure public and environmental health. These investments are needed now. Deferring until later will only guarantee higher costs and possible increased regulatory oversight by permitting agencies. We would be forced to defer major infrastructure projects, which would, in turn, leave our existing systems vulnerable in the following ways.

- More frequent service disruptions caused by failed facilities
- Infrequent maintenance of pipelines potentially impacting service
- Critical capital projects go unfunded
- City won't meet its debt coverage requirements
- Emergency Reserves are depleted
- Increased costs for emergency construction
- City's ability to secure grants and other funding sources may be limited

## Proposed Wastewater (Sewer) Rates

Customer Class   Clase de cliente	Current Actual	FYE 2024 Año fiscal 2024	FYE 2025 Año fiscal 2025	FYE 2026 Año fiscal 2026	FYE 2027 Año fiscal 2027	FYE 2028 Año fiscal 2028
Fixed Charges   Cargos Fijos						
Single Family Residential <i>Residencia unifamiliar</i>	\$34.00	\$48.05	\$53.34	\$58.14	\$63.37	\$68.44
Multi-Family Residential <i>Residencia multifamiliar</i>	\$28.75	\$4.05	\$4.49	\$4.90	\$5.34	\$5.77
Commercial I	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.10
Commercial II	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.10
Commercial III	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.10
Commercial III	\$28.75	\$27.46	\$30.48	\$33.22	\$36.21	\$39.10
Volumetric Rate   Tarifa Volumétrica						
Single Family Residential <i>Residencia unifamiliar</i>	NA	NA	NA	NA	NA	NA
Multi-Family Residential <i>Residencia multifamiliar</i>	\$4.38	\$4.86	\$5.29	\$5.77	\$6.23	\$6.23
Commercial I	\$1.98	\$3.52	\$3.91	\$4.26	\$4.65	\$5.02
Commercial II	\$2.91	\$6.26	\$6.95	\$7.57	\$8.26	\$8.92
Commercial III	\$4.89	\$10.21	\$11.33	\$12.35	\$13.46	\$14.54
Commercial III	\$4.89	\$10.21	\$11.33	\$12.35	\$13.46	\$14.54
Industrial (Leprino)	As shown earlier	\$1.29	\$1.43	\$1.56	\$1.70	\$1.84
Industrial (Leprino)	As shown earlier	\$1.29	\$1.43	\$1.56	\$1.70	\$1.84
Septage (\$ / hcf)		\$75.89	\$110.05	\$122.15	\$133.15	\$145.13

\*Proposed Multi-Family Residential charge is per dwelling unit

\*Average dwelling units per apartment complex is 7z

\*hcf = hundred cubic feet

\*La tasa residencial multifamiliar propuesta es por unidad de vivienda.

\*La media de unidades de vivienda por complejo de apartamentos es de 7

\*hcf significa = cien pies cúbicos

## Sample Bill

The following table provides the estimated Utility bill for wastewater (sewer) on average, per customer class, for the first year of the proposed rate change effective August 1, 2023.

Customer Class Clase de cliente	Average Sewer Flow per Dwelling Unit (Ccf) Caudal medio de alcantarillado per cuenta o unidad de vivienda (Ccf)	Average No. of Dwelling Units Número medio de viviendas	Current Monthly Bill Factura mensual actual	Total Proposed Monthly Bill Total de la factura mensual propuesta	\$ Difference \$ Diferencia
Single Family Residential   <i>Residencia unifamiliar</i>	8.5		\$34.00	\$48.05	\$14.05
Multi-Family Residential   <i>Residencia multifamiliar</i>	5.3	7.0	\$201.25	\$192.19	-\$9.06
Commercial I Average Use   <i>Comercial I Uso medio</i>	57		\$141.47	\$227.98	\$86.51
Commercial II Average Use   <i>Comercial II Uso medio</i>	137		\$428.13	\$886.64	\$458.51
Commercial III Average Use   <i>Comercial III Uso medio</i>	49		\$267.11	\$524.99	\$257.88
<b>Leprino</b>			<b>Yearly Bill</b>	<b>Yearly Bill</b>	<b>Yearly Difference</b>
Leprino			\$381,357	\$397,083	\$15,726

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL  
RESOLUTION 2023-\_\_\_\_\_

- (1) APPROVING A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF TRACY TO INCREASE WASTEWATER RATES;
- (2) SETTING A PUBLIC HEARING DATE FOR JUNE 20, 2023; AND
- (3) AUTHORIZING STAFF TO PROCEED WITH MAILING NOTICES TO ALL PROPERTY OWNERS WITHIN THE CITY, AS REQUIRED BY PROPOSITION 218.

**WHEREAS**, The City of Tracy’s Operations and Utilities Department provides wastewater service to over 23,000 residential, commercial and industrial customers located within City limits; and

**WHEREAS**, The City maintains a wastewater collection system that collects wastewater from inside buildings, houses, apartments, and other facilities throughout the City and transports it to the City’s wastewater treatment plants; and

**WHEREAS**, The City’s wastewater rates were last adjusted in 2013 and since then the costs to treat the City’s wastewater have increased substantially and require the implementation of rate adjustments to sufficiently fund the wastewater operations and maintenance expenses, and address the debt coverage ratio; and

**WHEREAS**, In 2019, the City contracted with Raftelis Financial Consultants, Inc to perform a wastewater rate study for the purpose of establishing a proposed five-year rate schedule (“Study”). The Study conducted a cost-of-service analysis that establishes the nexus between the cost of serving wastewater customers and rates charged to customers, as required by Proposition 218. The final Study is available on the City’s website under “2023 Wastewater Rate Increase”; and

**WHEREAS**, On April 18, 2023, staff presented the City Council with two separate scenarios of rate increases that would address the Operations and Utilities Department’s infrastructure needs. The first scenario presented offered a 40% increase in year one and tapered down to 8% by year five. The second scenario presented offered a 45% increase in year one, but also tapered down to 8% by year five, and included a slightly lower total increase over the five years at issue

Proposed Revenue Adjustments - Two Scenarios

	FY 2024	FY 2025	FY 2026	FY2027	FY2028	Total
	August 1	July 1	July 1	July 1	July 1	
Scenario 1	40.5%	16%	9%	9%	8%	82.5%
Scenario 2	45%	11%	9%	9%	8%	82%

; and

**WHEREAS**, During the April 18 workshop, the City Council decided to proceed with the Scenario 2 rate increase; and

**WHEREAS**, The proposed rate change will help ensure the health and safety of the community while protecting the City's financial health; and

**WHEREAS**, The City Council intends to adopt the wastewater rates proposed under Scenario 2 following the procedures required by Proposition 218, article XIII D, section 6 of the California Constitution.

**NOW, THEREFORE**, the City Council of the City of Tracy hereby resolves as follows:

1. The foregoing recitals are true and correct; and
2. The City Council hereby declares its intention to increase wastewater rates throughout the City to sufficiently fund the wastewater operations and maintenance expenses, debt services; and
3. The City Council hereby initiates proceedings to adopt the wastewater rates recommended by the Study; and
4. The City Council hereby sets the 20th day of June 2023 at 7:00 pm at the Chamber of the City Council, City Hall, 333 Civic Center Plaza, Tracy, California, as the time and place for a public hearing ("Public Hearing") on the proposed wastewater rates; and
5. City staff is hereby instructed to provide notice of the proposed wastewater rates in conformity with Proposition 218, including notice of how affected property owners and ratepayers may protest the proposed rate increase; and
6. At the Public Hearing, the City Council shall consider all objections or protests, if any, to the proposed rate increases, and any person shall be permitted to present written or oral testimony. Although only written protests qualify as a formal vote against the rate increase, the City Council welcomes all community input during the Public Hearing; and
7. At the conclusion of the Public Hearing, all protests submitted will be tabulated in conformity with Proposition 218; and
8. A majority protest exists if protests are submitted in opposition to the proposed wastewater rates by a majority (50% plus 1) of property owners and wastewater service customers; and
9. If there is a majority protest against the adoption of wastewater rates, the City Council shall not adopt the proposed rates, as required by Proposition 218.

\*\*\*\*\*

The foregoing Resolution 2023-\_\_\_\_\_ was adopted by the Tracy City Council on 2<sup>nd</sup> day of May 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

---

NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Agenda Item 3.B

RECOMMENDATION

**Staff recommends that the City Council discuss and provide direction on the proposed 1) bylaws for Tracy's Homelessness Advisory Committee and the Finance Committee and 2) modifications to the City Council's Meeting Protocols to reflect the delegation of increased authority to these standing Committees.**

EXECUTIVE SUMMARY

On March 16, 2021, the City Council approved Resolution 2021-033 establishing Tracy's Homelessness Advisory Committee (THAC); no Committee bylaws were adopted with this action. On February 7, 2023, the City Council approved Resolution 2023-027 establishing the Finance Committee; no Committee bylaws were adopted with this action. Staff is proposing bylaws for both City Council Committees, as well as modification of the City Council's Meeting Protocols and Rules of Procedure (Meeting Protocols) to reflect Action by Subject Matter Committees. If directed, staff will return with resolutions to approve the bylaws and modifications to Meeting Protocols.

BACKGROUND AND LEGISLATIVE HISTORY

On March 16, 2021, the City Council approved Resolution 2021-033 to create a standing City Council committee titled the Tracy Homelessness Advisory Committee (THAC). The approving resolution set the meetings of the THAC to be quarterly. As the City continues its multi-pronged approach to address homelessness, the THAC has been meeting more frequently than quarterly, through special meetings. At the February 16, 2023 City Council meeting, Mayor ProTem Davis requested that the THAC meetings change from quarterly meetings to monthly meetings. This item was seconded by Councilmember Bedolla. In addition, staff has evaluated whether THAC, and any other standing committee of the City Council, should have more prescribed roles in the review of agenda items, rather than serving as advisory bodies, as is currently identified in the City Council's Meeting Protocols and Rules of Procedure.

On May 19, 2020, the City Council adopted the FY 2020-21 Operating and Capital Budget and formed an ad-hoc subcommittee of the City Council to discuss the fiscal health of the City in light of the pending COVID-19 pandemic (Resolution 2020-067). After several extensions of the ad-hoc subcommittee, on February 7, 2023, the City Council adopted Resolution 2023-027 to form a standing committee of the City Council to be named Finance Committee. Staff has prepared draft bylaws of the Finance Committee that align with those of the THAC.

ANALYSIS AND DISCUSSION

The City Council has formed two standing subject matter Committees, Tracy Homelessness Advisory Committee and Finance Committee. Committees are essential to the effective operation of legislative bodies. Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions. Committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action for the Council. Committees are authorized and

directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

During the establishment of the Finance Committee bylaws following the approval of the Committee in February, it was ascertained that the Tracy Homelessness Advisory Committee had not adopted bylaws. This agenda item has draft bylaws for both Committees. Unlike City Commissions where the bodies are residents of Tracy, the Finance Committee and THAC are made up of two City Councilmembers who are also governed by the City Council Code of Conduct and Meeting Protocols. Staff is recommending that the Meeting Protocols are amended to address the Actions of the Subject Matter Committees so that their actions are recognized by the City Council rules.

### **Tracy Homeless Advisory Committee**

Below is a summary of the key provisions of the Bylaws for the THAC. The basic framework is based on the original Council action forming this Committee.

#### Purpose:

The stated purpose of the committee is as follows:

- 1.1. To implement the Tracy Homelessness Strategic Plan including the possible amendment of such plan
  - 1.1.1. This Strategic Plan provides a framework to target resources to manage and decrease homelessness
    - GOAL 1: Increase Housing Options in Tracy
    - GOAL 2: Increase Access to Coordinated Support Services for People Experiencing Homelessness
    - GOAL 3: Develop Action Plans for Engaging with People Experiencing Homelessness
    - GOAL 4: Enact Specific Strategies for Vulnerable Subpopulations Experiencing Homelessness
- 1.2. To address homelessness in the City of Tracy
- 1.3. The Tracy Homeless Advisory Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to overall jurisdictional purpose of the Committee.

#### Makeup:

The makeup of this Committee would consist of two (2) City of Tracy Councilmembers; appointed annually per the City Council's appointment procedures. The Committee would be supported by the Mobility and Housing Department (or such other department deemed appropriate by the City Manager). It is recommended that the Committee meet monthly on the 3<sup>rd</sup> Thursday of the month and hold special meetings, as needed, to fulfill the role of the Committee.

#### Necessity:

The City Council recognizes that a shelter crisis exists and forming a standing Council Homelessness Advisory Committee will facilitate an opportunity to evaluate options to address the current homelessness crisis. To be successful, the Tracy Homelessness Strategic Plan will require broad community support for expanding data collection, sharing data, and using accurate data as a planning tool. The City of Tracy and its elected officials should continue to

sponsor community meetings to build public support, consensus, and commitment to the plan and to create a sense of urgency about these time sensitive strategies. Since it is a perennial plan, quarterly meetings to report on progress and challenges will keep momentum going and allow for mid-course adjustments as needed. The community's support will be vital in affirming the Strategic Plan so that all stakeholders understand and fulfill their specific roles.

## **Finance Committee**

Below is a summary of the key provisions of the Bylaws for the Finance Committee.

### Purpose:

- A. PURPOSE
1. The purpose of the Committee is to provide policy guidance as it relates to the development of a multi-year fiscal sustainability plan to address the City's fiscal health and long-term planning.
  2. The Finance Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of the Committee.
  3. The Committee may develop and recommend budget strategies and fiscal policies related to: revenue enhancement, cost containment, and use of other revenue sources, such as Measure V and/or General Fund Reserves, keeping in mind planned recreational amenities.
  4. The Committee will aid the City Council in fulfilling its fiduciary responsibilities to oversee the financial activities and financial condition of the City of Tracy and its jurisdiction may include the review, discussion, and input on the following areas:
    - 4.1.1. Annual audits and compliance reporting
    - 4.1.2. Annual and quarterly budget updates, augmentations, and forecast
    - 4.1.3. Long-term planning, including but not limited to
      - 4.1.3.1. City revenues and expenses, including related fee and tax studies
      - 4.1.3.2. Deferred maintenance and capital planning
      - 4.1.3.3. Long-term liabilities, debt, and other finance planning
  5. The Committee will not have jurisdiction to discuss any budget approaches that would require good faith bargaining with labor groups.

### Makeup:

The makeup of this Committee would consist of two (2) City of Tracy Councilmembers; appointed annually per the City Council's appointment procedures. The Committee would be supported by the Finance Department. It is recommended that the new Committee meet monthly on the 3<sup>rd</sup> Wednesday of the month and hold special meetings, as needed, to fulfill the role of the Committee.

Necessity:

Found in many agencies around the country, a Finance Committee acts in an advisory capacity on issues pertaining to financial impacts, sustainability practices, and legislative mandates that impact the fiscal health and the well-being of the City and its residents.

**Amendment to City Council Meeting Protocols**

In order to facilitate the role and responsibilities of the Committees, it is recommended that the City Council Meeting Protocols address actions allowed by Subject Matter Committees. Below is the recommended language for both the Committee bylaws (Section B) and the Meeting Protocols (Section 2), which will return on May 16, 2023 as part of global amendments to the Meeting Protocols.

**B. Action by Subject Matter Committees -**

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item:

The Committee may, by a vote of the consensus of the members present, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. the Committee was not able to approve any recommended action
3. Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
4. Reject, by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.



6. With respect to an informational item, following discussion and consideration, a Committee shall take one of the following actions:
  - 6.1. Receive the informational report, by consensus vote, without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council, by consensus vote;
  - 6.3. Request, by consensus vote, from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

Staff is seeking direction from the City Council of the draft bylaws and proposed amendments for the City Council Meeting Protocols related to the subject matter committees formed by the City Council. Based on the direction given by the City Council at this meeting, staff will return action items for both at the next City Council meeting.

#### FISCAL IMPACT

This is an administrative item and the fiscal impacts of implementing the proposed actions would be absorbed by the existing budgets of the City departments.

#### STRATEGIC PLAN

This agenda item supports the City Council's 2021-2023 Governance Strategic Priority, and specifically implements the following goal:

Goal 1: Model good governance, teamwork, and transparency.

#### RECOMMENDATION

Staff recommends that the City Council discuss and provide direction on the proposed 1) bylaws for Tracy's Homelessness Advisory Committee and the Finance Committee and 2) modifications to the City Council's Meeting Protocols to reflect the delegation of increased authority to these standing Committees.

Prepared by: Karin Schnaider, Assistant City Manager

Reviewed by: Sara Cowell, Finance Director  
Nancy Ashjian, Assistant City Attorney

Approved by: Midori Lichtwardt, Acting City Manager

#### ATTACHMENTS

Attachment A – Tracy Homeless Advisory Committee By Laws  
Attachment B – Finance Committee By Laws

# ATTACHMENT A

Tracy Homelessness Advisory Committee By Laws  
City of Tracy  
Page 1 of 5

## BYLAWS OF THE TRACY HOMELESSNESS ADVISORY COMMITTEE BYLAWS CITY OF TRACY, CALIFORNIA

**WHEREAS**, The City desires to form a standing committee of the Tracy City Council to continue the work begun by the previous Ad Hoc Homelessness Advisory Committee, to be named the Tracy Homelessness Advisory Committee (Committee); and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, The City Council recognize that a shelter crisis exists and forming a Council Homelessness advisory committee will facilitate an opportunity to evaluate options to address the current homelessness crisis; and

**WHEREAS**, On February 16, 2021 the Tracy City Council voted to approve the Tracy Homelessness Strategic Plan; and

**WHEREAS**, On March 16, 2021 the Tracy City Council voted to approve Resolution 2021-033 form a standing Council committee entitled Tracy Homelessness Advisory Committee; and

**WHEREAS**, the Committee is authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

**NOW, THEREFORE**, these Bylaws govern the conduct of the Tracy Homelessness Advisory Committee meetings and the transaction of its affairs.

### 1. PURPOSE

The stated purpose of the committee is as follows:

- 1.1. To implement the Tracy Homelessness Strategic Plan including the possible amendment of such plan
  - 1.1.1. This Strategic Plan provides a framework to target resources to manage and decrease homelessness
    - GOAL 1: Increase Housing Options in Tracy
    - GOAL 2: Increase Access to Coordinated Support Services for People Experiencing Homelessness
    - GOAL 3: Develop Action Plans for Engaging with People Experiencing Homelessness
    - GOAL 4: Enact Specific Strategies for Vulnerable Subpopulations Experiencing Homelessness
- 1.2. To address homelessness in the City of Tracy
- 1.3. The Tracy Homeless Advisory Committee shall have initial jurisdiction over any item

assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to overall jurisdictional purpose of the Committee.

2. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item:

The Committee may, by a vote of the consensus of the members present, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. The Committee was not able to approve any recommended action
3. Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
4. Reject by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and Brown Act.
6. With respect to an informational item, following discussion and consideration, Committee shall take one of the following actions:
  - 6.1. Receive the informational report by majority vote without forwarding the report to the full City Council;
  - 6.2. Receive the informational report and forward the report onto the full City Council by consensus vote;
  - 6.3. Request by consensus vote from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further

consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

### 3. ROLE AND RESPONSIBILITIES

The role of the Tracy Homelessness Advisory Committee is to provide quarterly updates to the full City Council as part of the regular agenda, to inform City Council members and the public; and the multi-year fiscal sustainability plan will be presented to the City Council by the Finance Director for the body's review and approval.

### 4. MEMBERSHIP GUIDELINES

1. **Membership.** The Tracy Homelessness Advisory Committee shall consist of two (2) City Councilmembers.
2. **Term.** Each member shall serve a one-year term; selected as part of the City Council's annual appointment process outlined in the Council's Code of Conduct.
3. **Attendance.** If a member of the Tracy Homelessness Advisory Committee fails to attend four (4) regular meetings in any calendar year, his or her position on the Tracy Homelessness Advisory Committee shall automatically become vacant. For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting.

### 5. QUORUM

A quorum of the Tracy Homelessness Advisory Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Tracy Homelessness Advisory Committee to hold a meeting.

Meetings of the Committees may be noticed as a Special Meeting of the City Council if a majority of the members of the Council plan to attend and participate as part of the Committee.

### 6. OFFICERS

1. The officers of the Tracy Homelessness Advisory Committee shall be:
  - 1.1. The Chairperson and
  - 1.2. The Vice-Chairperson.
2. The Chairperson shall:
  - 2.1. Preside at all regular and special meetings.
  - 2.2. Rule on all points of order and procedure during the meetings.

### 7. DUTIES OF THE COMMITTEE

1. Review, discuss, and provide direction to facilitate in the preparing and presenting of accurate, timely, and meaningful information and recommendations to address homelessness within Tracy to the Council from City staff
2. Monitor the finances related the Homeless Division
3. Develop an annual work plan and presentation to the City Council
4. Review and update from time to time, as necessary policies related to addressing the unsheltered population
5. The following key metrics should be used to evaluate the effectiveness of this Plan:
  - 5.1. Increase in the number of affordable housing units dedicated to people who are experiencing homelessness
  - 5.2. Decrease in homelessness in the community—including in key subpopulations such as families, veterans, and people who are chronically homeless
  - 5.3. Decrease in the number of persons who become homeless for the first time
  - 5.4. Decrease in the average and median length of time persons remain homeless
  - 5.5. Decrease in the percentage of persons who return to homelessness
  - 5.6. Increase in the percentage of adults who gain or increase employment or nonemployment cash income over time
  - 5.7. Increase in the percentage of persons who exit to or retain permanent housing

#### 8. MEETINGS

1. Regular meetings of the Tracy Homelessness Advisory Committee shall be held on the 3rd Thursday of each month and shall begin at 7:00 p.m.
2. If the scheduled date of a regular meeting conflicts with a holiday period, staff shall reschedule that meeting to be conducted within that month.
3. Any regular meeting may be adjourned, or any item on the agenda continued to the next or any subsequent regular meeting of the Tracy Homelessness Advisory Committee, by a majority of the quorum. If a meeting is adjourned or an item is continued to a special meeting to be held on a date other than a regular meeting date, the time, place, and date of such special meeting shall be specified in the motion for adjournment or continuance.
4. All meetings are subject to the Brown Act as set forth in Government Code Sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and distributed in accordance with the current City Council meeting procedures and the Brown Act.
5. All meetings shall be conducted in accordance with the current City Council meeting procedures.

#### 9. FUNDING

Any funding necessary for operation of the Tracy Homelessness Advisory Committee shall be included in the City of Tracy budget, which shall be approved by the City Council.

10. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Committees shall follow all applicable City administrative policies and procedures.

11. STAFF LIAISON

The Tracy Homelessness Advisory Committee shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material presented to the Committee in support of, or in opposition to, any question before the Committee.
2. Sign all meetings minutes and resolutions upon approval.
3. Prepare and distribute agendas and agenda packets.

12. ADOPTION

This document, as adopted by City Council, on May 2, 2023, by Resolution 2023-XX, and shall serve as the Bylaws for the Tracy Homelessness Advisory Committee.

## ATTACHMENT B

Finance Committee By Laws  
City of Tracy  
Page 1 of 5

### BYLAWS OF THE FINANCE COMMITTEE BYLAWS CITY OF TRACY, CALIFORNIA

**WHEREAS**, The City desires to form a standing committee of the Tracy City Council to continue the work begun by the previous Ad Hoc Fiscal Sustainability Subcommittee, to be named the Finance Committee (Committee); and

**WHEREAS**, Committees are essential to the effective operation of legislative bodies; and

**WHEREAS**, Committee membership enables members to develop specialized knowledge of the matters under their jurisdictions; and

**WHEREAS**, Committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action for the Council; and

**WHEREAS**, the Finance Committee is authorized and directed to ascertain, study, and analyze all facts relating to any subjects or matters within their jurisdiction, and shall report to and submit recommendations to the City Council for action.

**NOW, THEREFORE**, these Bylaws govern the conduct of the Finance Committee meetings and the transaction of its affairs.

#### A. PURPOSE

1. The purpose of the Committee is to provide policy guidance as it relates to the development of a multi-year fiscal sustainability plan to address the City's fiscal health and long-term planning.
2. The Finance Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of the Committee.
3. Approaches may include, but are not limited to, budget strategies and fiscal policies, related revenue enhancement, cost containment, and use of other revenue sources such as Measure V and/or General Fund Reserves, keeping in mind planned recreational amenities.
4. The Committee will aid the City Council in fulfilling its fiduciary responsibilities to oversee the financial activities and financial condition of the City of Tracy and its jurisdiction may include the review, discussion, and input on the following areas:
  - 4.1.1. Annual audits and compliance reporting
  - 4.1.2. Annual and quarterly budget updates, augmentations, and forecast
  - 4.1.3. Long-term planning, including but not limited to
    - 4.1.3.1. City revenues and expenses, including related fee and tax studies

- 4.1.3.2. Deferred maintenance and capital planning
- 4.1.3.3. Long-term liabilities, debt, and other finance planning

- 5. The Committee will not have jurisdiction to discuss any budget approaches that would require good faith bargaining with labor groups.

B. Action by Subject Matter Committees -

The assigned subject matter Committee shall have initial jurisdiction over any item assigned to it by the City Council as well as any items being advanced by the City Manager that implement or relate to the overall jurisdictional purpose of such Committee and may take any of the following actions with respect to the assigned item:

The Committee may, by a vote of the consensus of the members present, decide to postpone, continue, or table an item on the agenda. On any item on an agenda, the Committee may allow for an informational presentation by City staff relating to the item. With respect to an action item, and after discussion and consideration of the item, the Committee may take one of the following actions:

- 1. Vote by consensus to approve the recommendation of staff or the originator of the proposed action item and forward the recommendation onto the full Council. The Committee may, as a condition of approval, request additional information to be presented for consideration when the full Council hears the item.
- 2. Fail to approve any recommended action, in which case the item shall not be forwarded to the full City Council; provided that the City Council shall have jurisdiction to place the item on the agenda for a future City Council meeting, in accordance with the requirements of the Meeting Protocols for agenda setting, if no action was taken on the item due to any one of the following reasons:
  - 2.1. Due to the cancellation of a Committee meeting or
  - 2.2. Due to lack of a quorum, or
  - 2.3. the Committee was not able to approve any recommended action
- 3. Propose by a consensus vote of those present one or more alternative recommendation(s) be forwarded to the full City Council for consideration and final action. The Committee may request additional information to be presented for consideration when the full Council hears the item.
- 4. Reject by a consensus vote, jurisdiction over the action item and refer the action item back to the City Council with a recommendation for reassignment to another appropriate subject-matter committee.
- 5. Request, by consensus vote, additional, specified information from staff or the originator of the proposed action item. The action item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols and the Brown Act.
- 6. With respect to an informational item, following discussion and consideration, Committee shall take one of the following actions:
  - 6.1. Receive the informational report by majority vote without forwarding the report to the full City Council;



- 6.2. Receive the informational report and forward the report onto the full City Council by majority vote;
- 6.3. Request by consensus vote from staff or the originator of the proposed informational item. The item may be continued or rescheduled for further consideration at the soonest feasible date available, allowing time for appropriate notice pursuant to the Meeting Protocols.

C. ROLE AND RESPONSIBILITIES

The role of the Finance Committee is to provide quarterly updates to the full City Council as part of the regular agenda, to inform City Council members and the public; and the multi-year fiscal sustainability plan will be presented to the City Council by the Finance Director for the body's review and approval.

D. MEMBERSHIP GUIDELINES

1. **Membership.** The Finance Committee shall consist of two (2) City Councilmembers.
2. **Term.** Each member shall serve a one-year term; selected as part of the City Council's annual appointment process outlined in the Council's Code of Conduct.
3. **Attendance.** If a member of the Finance Committee fails to attend four (4) regular meetings in any calendar year, his or her position on the Finance Committee shall automatically become vacant. For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting.

E. QUORUM

A quorum of the Finance Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Finance Committee to hold a meeting.

Meetings of the Committees may be noticed as a Special Meeting of the City Council if a majority of the members of the Council plan to attend and participate as part of the Committee.

F. OFFICERS

1. The officers of the Finance Committee shall be:
  - 1.1. The Chairperson and
  - 1.2. The Vice-Chairperson.
2. The Chairperson shall:
  - 2.1. Preside at all regular and special meetings.
  - 2.2. Rule on all points of order and procedure during the meetings.

G. DUTIES OF THE COMMITTEE

1. Review, discuss, and provide direction to facilitate in the preparing and presenting of accurate, timely, and meaningful financial statements to the Council from City staff
2. Monitor the finances of the City
3. Develop an annual work plan and presentation to the City Council
4. Review and update from time to time, as necessary the financial policies
5. Be familiar with, approve, and review periodically the organization's annual budget; Ensuring that the financial elements of the City are in accord with the City Council's Strategic Priorities
6. Set long-range financial goals along with financial strategies to achieve them
7. Develop policies and plans for financial awareness in cooperation with other public and private agencies
8. Provide recommendations to the City Council on such matters that may be referred to the City Council by the community

H. MEETINGS

1. Regular meetings of the Finance Committee shall be held on the 3th Wednesday of each month and shall begin at 7:00 p.m.
2. If the scheduled date of a regular meeting conflicts with a holiday period, staff shall reschedule that meeting to be conducted within that month.
3. Any regular meeting may be adjourned, or any item on the agenda continued to the next or any subsequent regular meeting of the Finance Committee, by a majority of the quorum. If a meeting is adjourned or an item is continued to a special meeting to be held on a date other than a regular meeting date, the time, place, and date of such special meeting shall be specified in the motion for adjournment or continuance.
4. All meetings are subject to the Brown Act as set forth in Government Code Sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and distributed in accordance with the current City Council meeting procedures and the Brown Act.
5. All meetings shall be conducted in accordance with the current City Council meeting procedures.

I. FUNDING

Any funding necessary for operation of the Finance Committee shall be included in the City of Tracy budget, which shall be approved by the City Council.

J. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Committees shall follow all applicable City administrative policies and

procedures.

K. STAFF LIAISON

The Finance Committee shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material presented to the Committee in support of, or in opposition to, any question before the Committee.
2. Sign all meetings minutes and resolutions upon approval.
3. Prepare and distribute agendas and agenda packets.

L. ADOPTION

This document, as adopted by City Council, on May 2, 2023, by Resolution 2023-**XX**, and shall serve as the Bylaws for the Finance Committee.

Agenda Item 3.C

RECOMMENDATION

**The Planning Commission recommends that the City Council Introduce an Ordinance 1) determining that the Project is categorically exempt from the California Environment Quality Act, pursuant to CEQA guidelines Section 15061(B)(3), and 2) Approving amendments to Sections 10.08.3196(b) and (d) of the Tracy Municipal Code to expand the definition of youth center and to establish buffers between Cannabis Uses and (a) Sensitive Uses and (b) Residential Uses**

EXECUTIVE SUMMARY

The Planning Commission is recommending that City Council adopt an ordinance amending sections of the City's Zoning Ordinance to add restrictions on where cannabis storefront retailers can operate in Tracy. The proposed ordinance would amend sections 10.08.3196(b) and (d) of the Tracy Municipal Code to change the definition of "youth center" to include additional land uses as sensitive uses, and require a minimum distance between cannabis storefront retailers, and require that buildings containing cannabis retailers be located at least 50 feet from property zoned for residential uses.

BACKGROUND AND LEGISLATIVE HISTORY

California allows local governments to regulate commercial cannabis activities in their respective jurisdictions. On December 3, 2019, the City Council adopted Ordinance 1277 (codified as Tracy Municipal Code (TMC) Chapter 6.36), establishing permitting regulations for commercial cannabis activity in the City of Tracy (City), which regulations require applicants to obtain a Cannabis Business Permit. In addition, the City Council adopted Ordinance 1278 (codified as TMC Section 10.08.3196) requiring a Conditional Use Permit (CUP) in order to establish a retail site (dispensary) in the City. The consideration and approval of Cannabis Business Permits (CBPs) are outside the purview of the Planning Commission, while Cannabis Conditional Use Permits (CUPs) can solely be granted by the Planning Commission. Planning Commission decisions on Cannabis CUPs are appealable to the City Council.

Seventeen CBPs have been issued including 11 dispensaries and 6 non-dispensaries. To date, 12 applications for Cannabis CUPs have been filed and nine have been acted upon by the Planning Commission, including eight approvals and one denial. A large percentage of the cannabis businesses are proposed locations within the City's "Downtown" or Central Business District (CBD) zone, and within close proximity to one another. As of February 2023, of the 12 Cannabis CUP applications, six are in the CBD zone. Of those six applications, three have been approved by the Planning Commission, two are pending public hearings, and one was denied by the Planning Commission. All the Cannabis CUPs within the CBD Zone are for storefront dispensaries.

The City Council and Tracy residents have raised the issue of cannabis business concentration in the Downtown at various City Council meetings in 2022. At the September 6, 2022 City Council meeting, the City Council considered an urgency ordinance, sponsored by the now Mayor Pro Tem Davis and Councilmember Bedolla, that would place a temporary moratorium on the issuance of further Cannabis CUPs. The Council did not adopt the urgency ordinance at

the meeting. Subsequently, at the September 14, 2022 Planning Commission hearing, three CUP applications were on the agenda, all of which were in the Downtown. During each hearing, various parties expressed concerns regarding overconcentration of dispensaries downtown, concerns about allowing dispensaries downtown, and concern regarding proximity to existing businesses that have a significant number of children as customers. The Planning Commission approved the applications but expressed a desire to re-evaluate the City's zoning regulations and requested staff to return with potential changes to TMC Chapter 10.08.3196 related to where cannabis businesses could locate.

On October 26, 2022, Planning Commission held a workshop to re-evaluate the zoning regulations for cannabis and requested additional information (via research of regulations in other cities/counties) on how best to regulate locations of storefront retailers, including buffers between cannabis businesses and sensitive uses, between two cannabis businesses, density of cannabis businesses, and the definition of "youth center," so that each of these matters could be discussed for proposed amendments to the zoning regulations. A matrix of cannabis regulations in other jurisdictions and a table of other definitions of "youth centers" are included in **Attachment A**.

On April 12, 2023, the Planning Commission conducted a public hearing to consider a recommendation to City Council on an ordinance amending the definition of "youth center" to include additional land uses as sensitive uses, require a minimum distance between cannabis storefront retailers, a minimum distance between cannabis storefront retailers and sensitive uses. At the hearing, the Planning Commission also added language to the proposed ordinance to require that buildings containing cannabis retailers be located at least 50 feet from property zoned for residential uses. By unanimous vote, the Planning Commission recommended adoption of the ordinance.

## ANALYSIS

Any proposed amendments to TMC Chapter 10.08.3196 would apply to applicants/businesses that have not yet been permitted through the CBP and CUP processes as of the effective date of the implementing ordinance. **Attachment B** is a chart showing the permit status of each of the Cannabis Business Permit holders.

The proposed changes to the zoning ordinance are shown in ~~striketrough~~ and underline format. The proposed amendments are drafted with the intent that the regulations be applied toward storefront (retail) dispensaries.

The proposed amendments are based upon analysis and information gathered by staff from various sources, and from the Planning Commission. As noted above, staff gathered and analyzed data from 20 other jurisdictions, as reflected in **Attachment A**. In addition, the following zoning elements were specifically discussed by Planning Commission on October 26, 2022, and on April 4, 2023:

- Proposed definition of Youth Center: new definition excludes the exception that existed for businesses that provide services primarily to children (such as dance studios, martial arts studios, and music schools whose clientele is more than 50% children). The new definition would now include those uses in the definition of "youth centers", thereby making the available locations for cannabis retailers more restrictive.
- Buffers between cannabis storefront retailers and sensitive uses.

- Buffers between cannabis businesses (there is no current buffer required between cannabis businesses). The proposed ordinance would require 600 feet between retail storefront retailers.
- Buffers between cannabis business and zoning districts that allow residential uses. The proposed ordinance would require the structure containing the dispensary be located 50 feet from a residential zone district.

#### FISCAL IMPACT

Applicants for both Cannabis Business Permits and Conditional Use Permits are required to pay application processing fees. Additionally, revenues from operating cannabis business would accrue to the City in accordance with locally established tax rates and from the individual Community Benefit Agreements for each operator.

#### PUBLIC OUTREACH / INTEREST

Interested parties and applicants were notified of this hearing. To date, there have been numerous meetings, workshops, and hearings to create the cannabis program in Tracy.

#### COORDINATION

Preparation of this staff report and agenda item required coordination between the Police Department, City Attorney's Office, and the Development Services Department.

#### CEQA DETERMINATION

CEQA Guidelines Section 15061(b)(3) is the "common sense exemption that CEQA only applies to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." In this case, the action at hand is a zone text amendment, establishing a new definition of youth centers as they relate to cannabis, and/or modifying the possible allowable locations for cannabis storefront retailers, by way of changing buffer zone requirements for such businesses. The change in code language itself does not have the possibility of causing a significant effect to the environment. When any future cannabis business conditional use permit applications are reviewed, the appropriate site-specific CEQA analyses will be completed for each individual application.

#### STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety and Quality of Life Strategic Priorities.

#### ACTION REQUESTED OF THE CITY COUNCIL

The Planning Commission recommends that the City Council adopt an ordinance 1) determining that the project is categorically exempt from the California Environment Quality Act, pursuant to CEQA guidelines Section 15061(b)(3), and 2) approving amendments to Sections 10.08.3196(b) and (d) of the Tracy Municipal Code to expand the definition of youth center and to establish buffers between Cannabis Uses and (a) Sensitive Uses and (b) Residential Uses.

Prepared by: Bill Dean, Assistant Director of Development Services

Reviewed by: Jaylen French, Development Services Director  
Sara Cowell, Finance Director  
Sekou Millington, Chief of Police  
Bijal Patel, City Attorney  
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, Acting City Manager

ATTACHMENTS

Attachment A — Matrix identifying cannabis regulations of other cities and counties  
Attachment B — Table of Current Permit Holder Data

Attachment A

Jurisdiction	Distance between Cannabis and Sensitive Use	Distance between cannabis uses	Distance to residential	List of sensitive uses	Youth Center Definition	How many allowed (Streetfront dispensaries)	How many allowed- other	Population	Dispensaries per capita
Colfax	600'	none	none	School, church, park, library, day care center, or youth center in existence at the time the permit is issued.	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	1	2 Cultivation, 2 Distribution, 2 non-volatile manufacturing, 2 Testing Labs, 2 Microbusiness	1,995	1/1,995
Conati	600'	600'	100'	"Significant public interest" includes, but is not limited to, potential health or safety impacts, potential conflicts with neighboring uses, unique characteristics of the proposed site, unique characteristics of the proposed operations, and/or other factors that, in the city council's discretion, warrant rejection of application(s).	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	7	Zoning Board/Council	7,584	1/2,528
Marysville	600' from School/Youth Center and 400' from Library	250'	500'	School, residential, park, library, day care center, or youth center	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities. It also includes playgrounds and other areas specifically designed to be used by children which are equipped with playground equipment designed for athletic activities such as baseball, softball, soccer, or basketball. Any similar facility located on a public or private school grounds, or on city, county or state parks. This definition shall not include private facilities that include, but are not limited to, indoor or outdoor swimming pools, tennis courts, racquetball courts, ping-pong tables, table tennis, or similar sports of serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.		Resolution required to establish	12,476	1/6,238
Clearlake	600'	N/A	N/A	Schools and Youth-oriented facilities	YOUTH-ORIENTED FACILITY shall mean a public or private school (K-12), licensed daycare facilities, public parks, or a "youth center" as defined by state law as any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	3	Delivery-only limited by Council decision	16,685	1/5,561
Dixon	1000'	500'	1000'	School, church, residential, park, library, day care center, or youth center	Youth-oriented establishments which are characterized by any or all of the following: (a) the establishment advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors; or (b) the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors, or any boys' club, girls' club, or similar youth organization.	2	Development Agreement and CUP required	18,988	1/9,494
Martinez	600'	1000'	none	School, day care, youth center	none	2	1 each, manufacturing, distribution, testing, non-storefront	36908	1/18,454
El Centro	600'	Development Agreement	50'	School, park, day care center, or youth center	Youth center means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	2 or as otherwise established by resolution	unspecified	44,322	1/22,166
Santa Barbara	600'	1000'	N/A	Schools and Youth-oriented facilities	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	Council decision	Council decision	88,665	1/22,166
Merced	600'-1000', varies based on type of cannabis business	none	none	School, day care, youth center, library or public park	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades with over ten (10) or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).	5	CUP	89058	1/27,812
San Leandro	1000'	Zoning limited	500'	School, residential, library, youth center, park and recreation facilities and places of religious worship	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	CUP/Zoning Board/Council	CUP/Zoning Board/Council	91,008	1/90,336
Tracy	600'	none	none	School, day care center, youth center	none	11	Zoning/CUP	94,538	1/8,594
Berkeley	600' from elementary school, or a City-operated community center or state park, and 1000' from a middle school or high school.	600'	Neighborhood Compatibility Standard	Schools, City-operated community center or skate park	Schools, City-operated community center or skate park	2 approved through Community Development/Community Commission	23 approved through Community Development/Community Commission	124,321	1/62,161
Valejo	600'	Zoning limited with CUP/MUP	Zoning dependent	Schools and Youth-oriented facilities	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	CUP/MUP	CUP/MUP	126,090	1/11,463
Alameda County	1000'	5 miles in unincorporated east county and 1 mile between a county dispensary and any adjacent city dispensary	none	School, licensed child or day care facility, public park or playground, drug recovery facility, recreation center.	"Youth-populated area" means any parcel in the county that is occupied by a school for pre-K to 12th grade students, licensed child or day care facility, public park or playground, or public recreation center.	5	10 cultivation, 14 combined, testing/none limited	149,506	1/29,901



Santa Rosa	600'	600'	600'	600'	Schools, playgrounds, and youth centers	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	CUP	CUP/MUP	178,127	1/11,875
Stockton	600'	1000'	300'	300'	School, day care, park/recreational area, youth facility, religious facility and drug/alcohol treatment facility  § 80.080 - Profit. The dispensary shall not profit from the sale or distribution of marijuana. Any member, representative, or agent who provides to the dispensary (should only be an agent necessary to cover overhead costs and operating expenses. Retail sale of medical marijuana that violate California law or this chapter are expressly prohibited. § 81.040 - Industrial cultivation of medical marijuana. A. Any use or activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.	none	14	Cannabis Lottery/CUP	322,889	1/23,035
Oakland	600'	N/A	300'	300'		"Youth Center" means a community or recreation facility that primarily serves persons eighteen (18) years or younger.	8/year	8/year	440,846	1/95,720
Sacramento	600'	If less than 600', CUP required	If less than 300', CUP required		School, substance abuse rehab centers, youth-oriented facility	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	40	CUP	518,037	1/12,851
San Jose	1000'	500' - 1000'	300'	300'	Public Library, Public Park, Recreation Center, School, Day Care Center Youth Center and/or Residential zoning, Permanent Supportive Housing, Alcoholism or Drug Abuse Recovery or Treatment Facility	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	1-3/business	1-3/business	1,013,240	1/92,113
Los Angeles	700'	700'	700'	700'	"Sensitively Use" means an Alcoholism or Drug Abuse Recovery or Treatment Facility, Day Care Center, Public Library, Public Park, School, and/or Permanent Supportive Housing.	"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.	1/50,000	1/7,500	3,893,986	1/16,361



## CITY OF TRACY CANNABIS CUP APPLICATIONS

CBP No.	CBP Approval Date	CBP Expiration Date	Application No.	Project Title	Site Address and/or APN	Zone	Applicant	Applicant Contact Information	Applied	Status	PC Hearing Date
CBPA20-0020	6/21/2021	6/21/2023	CUP21-0008	Cannabis Dispensary (Chronic, for Doctor's Choice)	2179 W GRANT LINE RD 21456002	GHC	DOCTOR'S CHOICE MODESTO LLC	Shan Bal	10/11/21	Approved	Approved by PC 4/13/22
CBPA20-0013	6/21/2021	6/21/2023	CUP21-0009	Cannabis Dispensary (The Cake House, for Community Veterans)	316 & 320 W ELEVENTH ST 23504005 & 23504006	GHC	Community Veterans of Tracy LLC	Daniel Wise	11/08/21	Approved	Approved by PC 10/12/22
CBPA20-0032	6/21/2021	6/21/2023	*** CUP22-0001	Cannabis Dispensary (Megan's Organic Market, for MOM TR)	104 TENTH ST 23505406	CBD	MOM TR INC	Megan Souza	03/01/22	Denied	Denied by PC 9/14/22
CBPA20-0017	3/3/2022	3/3/2024	CUP22-0003	Cannabis Dispensary (Dr. Greenthumb's)	951 CENTRAL AVE 23505607	CBD	JIVA TCY LLC	Raj Pottabathni	03/08/22	Approved	Approved by PC 9/14/22
CBPA20-0034	3/3/2022	3/3/2024	CUP22-0004	Cannabis Dispensary (Eden Wellness, for GOE Tracy, LLC)	2420 W GRANT LINE RD 23860037	GHC	Mike Souza	Mike Souza	03/10/22	Approved	Approved by PC 10/12/22
CBPA20-0021	3/3/2022	3/3/2024	CUP22-0006	Cannabis Dispensary (Tracy Cannabis Collective, for C.H.C.C)	85 TENTH ST 23517110	CBD	C.H.C.C. INC.	Michelle Trew CEO	03/25/22	Approved	Approved by PC 9/14/22
CBPA20-0014	6/21/2021	6/21/2023	CUP22-0007	Cannabis Dispensary (Culture for Inside the Culture Triangle)	22 E TENTH ST 23517202	CBD	INSIDE THE CULTURE TRIANGLE, INC.	Devon Julian	05/04/22	Under Staff Review	N/A
CBPA20-0022	3/3/2022	3/3/2024	CUP22-0008	Delivery Only Cannabis Dispensary (Higher Elevation)	487 E SIXTH STREET 23519015	M-1	MICHAELA TOSCAS	Michaela Toscas	04/28/22	Approved	Approved by PC 01/25/23
CBPA20-0012	3/3/2022	3/3/2024	CUP22-0009 D22-0031	Cannabis Dispensary (Altamont Wellness)	239 W ELEVENTH STREET 23311303	CBD	JOSEPH DEVLIN	Joseph Devlin	05/02/22	Approved	Approved by PC 8/24/22
CBPA20-0024	3/3/2022	3/3/2024	CUP22-0012	Cannabis Dispensary (Embarc Tracy, for Resp. & Comp. Retail)	2706 PAVILION PKWY 110 21229047	PUD	RESPONSIBLE AND COMPLIANT RETAIL TRACY, LLC	John Ngu	06/29/22	Approved	Approved by PC 9/28/22
CBPA20-0008	3/3/2022	3/3/2024	CUP22-0013 D22-0030	Cannabis Dispensary (Manzanita of Tracy LLC)	60 E TENTH ST 23517204	CBD	MANZANITA OF TRACY LLC	Jeff Linden	08/15/22	Under Staff Review	N/A
CBPA20-0001	3/3/2022	3/3/2024	CUP22-0017	STUIZY Tracy Cannabis Dispensary (Authentic Tracy)	775 W CLOVER RD 21418016	GHC	AUTHENTIC TRACY LLC	Cyrus Pai	11/03/22	Under Staff Review	N/A
<b>TOTAL NUMBER OF CANNABIS-RELATED CONDITIONAL USE PERMIT APPLICATIONS RECEIVED</b>											
<b>12</b>											

\*Ordinance 1328 adopted 07/05/22 tolled the expiration date of each permit by 1 year.

\*\*CUPs expire 12 months after date of issuance.

\*\*\*Applicant rescinded the appeal of the CUP denial

TRACY CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_

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**AN ORDINANCE 1) DETERMINING THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3), AND 2) AMENDING SECTIONS 10.08.3196(B) AND (D) OF THE TRACY MUNICIPAL CODE TO EXPAND THE DEFINITION OF YOUTH CENTER AND TO ESTABLISH BUFFERS BETWEEN CANNABIS USES AND (A) SENSITIVE USES AND (B) RESIDENTIAL USES**

**WHEREAS**, the Tracy Municipal Code (TMC) Section 10.08.3196, Cannabis Uses, establishes zoning regulations for commercial and personal cannabis activity in the City of Tracy (City); and

**WHEREAS**, TMC Section 10.08.3196 establishes relevant definitions for the purposes of regulating cannabis business locations and requires cannabis establishments to obtain a conditional use permit (CUP); and

**WHEREAS**, TMC Section 10.08.3196(b) defines “youth center” as “any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to: private youth membership organizations or clubs, social service teenage club facilities, video arcades where ten (10) or more video games or game machines or devices are operated, and where minors are legally permitted to accept services, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or in City, county, or state parks. This definition shall not include any private gym, martial arts, yoga, ballet, music, art studio or similar studio of this nature, nor shall it include any athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations;” and

**WHEREAS**, TMC Section 10.08.3196(d) establishes location requirements for commercial cannabis uses; and

**WHEREAS**, on September 19, 2017, the City Council adopted Ordinance 1240 prohibiting outdoor cultivation, commercial cultivation and manufacturing, and sales and delivery of cannabis; and

**WHEREAS**, on July 25, 2018, the Planning Commission recommended that the City Council adopt an ordinance amending the TMC Section 10.08.3196 to allow up to two medical

cannabis non-storefront (delivery only) dispensaries to operate in the City's industrial zones; and

**WHEREAS**, on September 18, 2018, the proposed ordinance amending TMC Section 10.08.3196 to allow up to two medical cannabis non-storefront (delivery only) dispensaries to operate in the City's industrial zones was presented to the City Council for discussion; and

**WHEREAS**, on February 5, 2019, the City Council directed staff to draft an ordinance amending TMC Section 10.08.3196 to allow up to two storefront dispensaries with the possibility of increasing the number of dispensaries to three to operate in the City's industrial zones and possibly commercial zones; and

**WHEREAS**, on September 3, 2019, the City Council directed staff to draft an ordinance amending the TMC Section 10.08.3196 to allow up to four storefront dispensaries; and

**WHEREAS**, on December 3, 2019, City Council adopted Ordinance 1278 amending TMC Section 10.08.3196 to allow up to four storefront dispensaries; and

**WHEREAS**, on December 3, 2019, the City Council also adopted Ordinance 1277 (codified as TMC Chapter 6.36) establishing permitting regulations for commercial cannabis activity in the City of Tracy (City), which regulations require applicants to obtain a Cannabis Business Permit; and

**WHEREAS**, on January 21, 2020, April 21, 2020, May 19, 2020, June 2, 2020, July 7, 2020, July 21, 2020, the City Council met to discuss the cannabis business permit guidelines and procedures which included adopting Ordinance 1293 to amend Chapter 6.36 of the TMC with regards to cannabis cultivation permit requirements, and adoption of Resolution 2020-137 to finalize and adopt the Cannabis Business Permit Application Procedures and Guidelines; and

**WHEREAS**, on September 7, 2021, the City Council directed staff to prepare an ordinance amending the cannabis regulations so as to allow one storefront retailer (dispensary) per 10,000 population; and

**WHEREAS**, on October 19, 2021, the City Council adopted Ordinance 1318 amending the cannabis regulations so as to allow one storefront retailer (dispensary) per 10,000 population up to a maximum of eleven storefront retailers (dispensaries); and

**WHEREAS**, seventeen Cannabis Business Permits have been issued, including 11 dispensaries and 6 non-dispensaries; and

**WHEREAS**, on April 13, 2022, the Planning Commission conducted a public hearing and approved an application for Conditional Use Permit for a commercial cannabis uses, specifically a storefront retailer (dispensary) (application number CUP21-0008); and

**WHEREAS**, on August 24, 2022, the Planning Commission conducted a public hearing and approved an application for Conditional Use Permit for a commercial cannabis uses, specifically a storefront retailer (dispensary) (application number CUP22-0009); and

**WHEREAS**, on September 14, 2022, the Planning Commission conducted public hearings on three applications for Conditional Use Permits for commercial cannabis uses,

specifically storefront retailers (dispensaries) (application numbers CUP22-0001, CUP22-0003, CUP22-0006); and

**WHEREAS**, on October 12, 2022, the Planning Commission conducted a public hearing and approved applications for Conditional Use Permit for commercial cannabis uses, specifically storefront retailers (dispensaries) (application numbers CUP21-0009 and CUP22-0004); and

**WHEREAS**, seven of the applications heard by Planning Commission on April, 2022, August 24, 2022, September 14, 2022, and October 10, 2022 were within the City's Downtown district, or within close proximity to one another; and

**WHEREAS**, at the September 6, 2022, City Council meeting, the City Council considered an urgency ordinance, sponsored by the now Mayor Pro Tem Davis and Councilmember Bedolla, that would place a temporary moratorium on the issuance of further Cannabis CUPs; and

**WHEREAS**, the City Council did not adopt the urgency ordinance at the meeting; and

**WHEREAS**, during the Planning Commission public hearings on September 14, 2022, various parties expressed concerns regarding a perceived overconcentration of dispensaries downtown, concerns about allowing dispensaries downtown at all, and concern regarding their proximity to other existing businesses that have a significant number of customers that are children; and

**WHEREAS**, during the same public hearings on September 14, 2022, the Planning Commission expressed a desire to re-evaluate the zoning regulations and requested staff to return with potential changes to TMC Section 10.08.3196, related to where cannabis businesses could locate and potential changes to the definition of youth center; and

**WHEREAS**, on October 26, 2022 the Planning Commission conducted a workshop regarding the zoning regulations for cannabis and requested additional information (via research of regulations in other cities/counties) how to best regulate locations of cannabis businesses, including buffers between cannabis businesses and sensitive uses, between two cannabis businesses, density of cannabis businesses, and the definition of "youth center", so that each of these matters could be discussed for proposed amendments to the zoning regulations; and

**WHEREAS**, on April 12, 2023, the Planning Commission conducted a public hearing regarding the proposed amendments to TMC Section 10.08.3196, establishing buffers between cannabis businesses and sensitive uses as well as between two cannabis businesses and expanding the definition of "youth center", as such amendments are reflected in this Ordinance; and

**WHEREAS**, at the hearing, the Planning Commission also added language to the proposed ordinance to require that buildings containing cannabis retailers be located at least 50 feet from property zoned for residential uses; and

**WHEREAS**, by unanimous vote, the Planning Commission recommended adoption of the proposed ordinance; and

**WHEREAS**, the Planning Commission's recommendation was based upon a determination that the proposed Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(B)(3) pertaining to activities that do not have the potential for causing a significant effect on the environment; and

**WHEREAS**, on May 2, 2023, the City Council conducted a public hearing regarding the proposed amendments to TMC 10.08.3196 and considered the Planning Commission's recommendation to adopt such amendments.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Amendment of Section 10.08.3196(b).** Section 10.08.3196(b), Cannabis Uses, of the Tracy Municipal Code is hereby amended to read as follows (with additions underlined, and deletions in ~~striketrough~~):

"Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to: private youth membership organizations or clubs, youth-focused instructional facilities, such as dance studios, martial arts studios, music studios or other recreational facilities that cater primarily to children (where the programming/schedule has more than 50 percent of their classes structured for children under the age of 18), social service teenage club facilities, video arcades where ten (10) or more video games or game machines or devices are operated, and where minors are legally permitted to accept services, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or in City, county, or state parks. ~~This definition shall not include any private gym, martial arts, yoga, ballet, music, art studio or similar studio of this nature, nor shall it include any athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.~~

**SECTION 3. Amendment of Section 10.08.3196(d).** Section 10.08.3196(d), Location Requirements, of the Tracy Municipal Code is hereby amended to read as follows (with additions underlined and deletions in ~~striketrough~~):

(d) Location Requirements.

- (1) Any commercial cannabis use shall be located at least 600 feet away from another ~~any parcel containing commercial cannabis use~~ and any of the following sensitive uses as of the date the conditional use permit is issued: school, day care center, or youth center; and

- (2) If located on separate parcels, the distance between the commercial cannabis use shall be measured from the ~~outer boundaries of the~~ parcel on which a sensitive use exists, to the ~~closest~~ structure containing a cannabis use, and
- (3) If located on the same parcel, the distance between the structures containing the cannabis use and any sensitive use shall be at least 600-feet; and
- (4) Whether located on the same or separate parcels, the distance between commercial cannabis uses shall be measured from the structures containing the commercial cannabis uses; and
- (5) Any commercial cannabis use shall be at least 50-feet from a zone district that permits residential uses, except for zone districts that permit commercial cannabis storefront retailers (dispensaries). The 600-foot distance shall be measured from the building containing the commercial cannabis use to the nearest residential zone district boundary, and
- (6) If more than one application for a Cannabis CUP is proposed concurrently, then the application first deemed complete shall be first acted upon by the Planning Commission.

**SECTION 4. CEQA Determination.** The City Council finds that this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(B)(3) pertaining to activities that do not have the potential for causing a significant effect on the environment.

**SECTION 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 6. Effective Date.** This ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 7. Publication.** The City Clerk is directed to publish this ordinance in a manner required by law.

**SECTION 8. Codification.** This Ordinance shall be codified in the Tracy Municipal Code.

\*\*\*\*\*

Ordinance \_\_\_\_\_

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The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 2<sup>nd</sup> day of May 2023, and finally adopted on the \_\_ day of \_\_\_\_\_, 202\_, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:  
ABSTENTION: COUNCIL MEMBERS:

\_\_\_\_\_  
NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Date of Attestation: \_\_\_\_\_



## **NOTICE AND DIGEST**

### **AN ORDINANCE AMENDING SECTIONS 10.08.3196(b) and (d) OF THE TRACY MUNICIPAL CODE TO EXPAND THE DEFINITION OF YOUTH CENTER AND TO ESTABLISH BUFFERS BETWEEN PROPOSED CANNABIS USES AND (A) SENSITIVE USES AND (B) EXISTING CANNABIS USES**

The Ordinance amends Tracy Municipal Code Section 10.08.3196 to establish buffers between cannabis businesses and sensitive uses and residential uses as well as between two cannabis businesses and expand the definition of “youth center” to include additional public and private facilities within the definition.

Agenda Item 3.D

RECOMMENDATION

**Staff recommends that the City Council introduce an Ordinance of the City of Tracy:**

**1) Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to toll the expiration date of each existing commercial cannabis business permit for an additional six months; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and**

**2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).**

EXECUTIVE SUMMARY

Chapter 6.36 of the Tracy Municipal Code (TMC) establishes regulations for commercial cannabis activities in the City of Tracy (Cannabis Program). Pursuant to this Chapter, applicants must obtain a Cannabis Business Permit, after completing a fingerprinting and background security clearance process along with other application requirements. The City's Cannabis Program has been delayed because the City has been denied clearance to access federal databases for completed security clearances on "owners", as defined in the TMC. On March 7, 2023, Mayor Young and Councilmember Arriola directed, through a motion made pursuant to the City Council's Meeting Protocols and Rules of Procedure, (Council Motion), the City Manager to return to the City Council with an Ordinance for applicants to complete the requirements of the application process within a sufficient time period and to simplify the Cannabis Business Permit renewal process. This staff report responds to that Council Motion.

Specifically, the proposed Ordinance amends:

- 1) TMC Section 6.36.012 to modify the definition of owner as related to commercial cannabis; and
- 2) TMC Section 6.36.040 to clarify language within the code related to the number of allowable storefront retailers; and
- 3) TMC Section 6.36.080 to toll the expiration of existing Cannabis Business Permits (Permits) for an additional 6 months to provide existing Permit holders adequate time to establish and become operable prior to expiration of the Permits; and
- 4) Modifies the permit renewal process outlined in TMC Section 6.36.100.

BACKGROUND AND LEGISLATIVE HISTORY

California allows local governments to regulate commercial cannabis activities in their respective jurisdictions. On December 3, 2019, the City Council adopted Ordinance 1277 (codified as Tracy Municipal Code (TMC) Chapter 6.36), establishing permitting regulations for commercial cannabis activity in the City of Tracy (City), which regulations require applicants to obtain a Cannabis Business Permit. In addition, the City Council adopted Ordinance 1278 (codified as TMC Section 10.08.3196), in order to establish a retail site (dispensary) in the City.

During a series of meetings (January 21, 2020, April 21, 2020, May 19, 2020, June 2, 2020, July 7, 2020, and July 21, 2020), the City Council discussed the cannabis business permit guidelines and procedures. Through the meetings, the City Council adopted Ordinance 1293 to amend

Chapter 6.36 of the TMC with regards to cannabis cultivation permit requirements and adopt Resolution No. 2020-137 adopting the Cannabis Business Permit Application Procedures and Guidelines. On November 18, 2021, the City Council adopted an Ordinance amending the cannabis regulations to allow one storefront retailer (dispensary) per 10,000 population, but allowed the current cohort to proceed, which totals eleven storefront retailers (dispensaries). On June 7, 2022, the City Council introduced an Ordinance amending Chapter 6.36.080 tolling the expiration of cannabis business permit for an additional 12 months, which was approved on July 5, 2022, via Ordinance 1328. On March 7, 2023, the City Council, by motion action, directed staff to prepare an amendment to TMC Section 6.36 to address background check procedures. On April 18, 2023, the City Council received an informational item related to background check procedures.

### **Background Check Requirements and Procedures**

Sections 6.36.50 and 6.36.150 of the Tracy Municipal Code (TMC) establish procedures for the application of a Cannabis Business Permit (CBP), which includes background check regulations for both employees and owners of CBP in the City of Tracy (City). The City has desired to obtain both State and Federal criminal records of owners of cannabis businesses through “Live Scan” fingerprinting. This has proven difficult as the City still has not been granted access to the Federal databases. And, while the California State Department of Cannabis has access to these federal databases, they conduct checks for a lower standard of ownership than that required by the City of Tracy.

Under Chapter 6.36 of the TMC, both owners and employees of a cannabis business are required to obtain some level of background check as a part of the process of obtaining a CBP in the City.

#### Rules Applicable to Owners

“Owner” is defined in TMC Section 6.36.012 as follows:

"Owner" means any of the following:

- (1) A person with an aggregate ownership interest of five (5) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.
- (2) The chief executive officer and the members of the board of directors of the entity engaging in the cannabis business.
- (3) An individual who will be participating in the direction, control, or management of the person applying for a City cannabis business permit.

While the City’s definition of a cannabis “owner” is comparable to that of the State definition, it differs significantly with respect to the percentage of ownership, as the State defines “owners” to be persons with an aggregate owner interest of 20 percent or more, whereas the City defines “owners” to be persons with an aggregate owner interest of 5 percent or more. Below is the relevant statute:

Cal. Code Regs. Title 4, § 15003 - Owners of Commercial Cannabis Businesses

(a) An applicant for a commercial cannabis license or a licensee shall disclose all owners of the commercial cannabis business. An owner of the commercial cannabis business includes all of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the commercial cannabis business, unless the interest is solely a security, lien, or encumbrance. For purposes of this section, "aggregate" means the total ownership interest held by a single person through any combination of individually held ownership interests in a commercial cannabis business and ownership interests in an entity that has an ownership interest in the same commercial cannabis business. For example, a person who owns 10 percent of the stock in a commercial cannabis business as an individual shareholder and 100 percent of the stock in an entity that owns 10 percent of the stock in the same commercial cannabis business has a 20 percent aggregate ownership interest in the commercial cannabis business.

(2) An individual who manages, directs, or controls the operations of the commercial cannabis business, including but not limited to:

(A) A member of the board of directors of a nonprofit.

(B) A general partner of a commercial cannabis business that is organized as a partnership.

(C) A non-member manager or managing member of a commercial cannabis business that is organized as a limited liability company.

(D) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust.

(E) The chief executive officer, president or their equivalent, or an officer, director, vice president, general manager or their equivalent.

(b) If the commercial cannabis business is owned in whole or in part by an entity and the entity includes individuals who manage, direct, or control the operations of the commercial cannabis business, as described in subsection (a)(2)(E), those individuals shall also be disclosed as owners.

(c) If available evidence indicates that an individual qualifies as an owner, the Department may notify the applicant or licensee that they must either disclose the individual as an owner and submit the information required by Section 15002 or demonstrate that the individual does not qualify as an owner.

As outlined in the California Business and Professions Code 26057 and California Code of Regulations 15017, the Cannabis industry is regulated by local and state agencies.

Section 6.36.050(a)(i)(D) of the TMC details the background check requirements for owner applicants of a CBP in the City:

D. Background checks. For each of the interested parties:

1. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.
2. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense charged, the offense convicted, the sentence, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.
3. Consent to fingerprinting and a criminal background investigation.

Rules Applicable to Employees

The City requires all employees of cannabis businesses to obtain an employee permit. To obtain such a permit, employees must clear a background check process. The applicable requirement is set forth in TMC Section 6.36.150:

Section 6.36.150 – Cannabis Employee Permit required

(c) (vi.) The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the Police Chief or designee(s).

(d) The Police Chief or designee(s) shall review the application for completeness, shall conduct a background check to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant has ever been convicted of any of the offenses enumerated in California Business and Professions Code Section 26057(b)(4).

ANALYSIS AND DISCUSSION FOR BACKGROUND CHECKS

As evident in the provisions above, the City has more stringent background check requirements for “owners” of cannabis businesses than for employees of such businesses.

Live Scan is an inkless, electronic system for obtaining fingerprints. The data is transmitted directly to the relevant law enforcement databases. Live Scan reports all or part of a person's “Summary Criminal History Record,” which is the criminal record kept by the California Department of Justice. This criminal history includes arrests, charges, dispositions, convictions, dismissals, diversions, identifying info (including fingerprints), “in custody” status if the person is in jail or prison, and a history of applications for certain licenses. If the requesting agency has permission, the Live Scan report can also include a person's “Federal Record.”

Because Live Scans are based on fingerprints and not only on name, birth date, and demographic information, they will not give false positives, making them much more accurate than traditional background checks that are name based. Additionally, Live Scan reports can also give the requester subsequent notification if the person is later arrested or convicted of a crime. While the TMC is silent on this issue, the City Council made a policy decision early in the cannabis program to require applicants to obtain Live Scan fingerprinting so as to provide the

Tracy Police Department (PD) both their State of California and Federal Criminal Records. Having both would provide the City maximum information about the criminal history, if any, of owners, particularly since the industry has entities that operate across multiple jurisdictions. However, obtaining access to the Federal databases has proven to be very difficult.

In accordance with the Council's Motion, the proposed Ordinance includes a change of the TMC ownership definition for commercial cannabis, to match the California Department of Cannabis Control (DCC) State definition, because this would remove existing barriers, and allow the current cohort to move forward with no further issues. If enacted by the City Council, here is a summary of the key impacts to the City's process:

- Changing City definition of ownership to match the DCC, including:
  - Definition of ownership percentage from 5% or more to the State's 20% or more aggregate owner interest definition.
  - Owner backgrounds would go through the DCC. Tracy PD does not receive background data and the DCC cannot share the Live Scan results.
  - Please note this is not an automatic approval path forward for all current applicants. As of 04-25-23, 5 of the 11 Cannabis Businesses are not currently listed with the DCC.
  - The DCC requires the completion of a local permitting process first and then meeting the state standards for operation (State background).

If the Ordinance is not adopted fully as drafted, then the City would proceed with the existing TMC code requirements. Under this scenario, the City's process would be as follows:

1. Cannabis Business Owner completes the HdL initial background check. This has already been completed during the initial application submittal.
2. Owners review the State DCC ownership requirements and submit to DCC Live Scan, which encompasses Federal and State databases. Owners must comply with the State ownership definition as it aligns with Tracy PD.
3. Owners request a copy of their Live Scan criminal record and share it with Tracy PD. The request for a copy of the owner's State criminal record can be done at Tracy PD.
4. A review of the DCC business license, ownership status, and criminal record will be completed by PD staff.
5. PD staff will then submit a memorandum regarding the findings to the Office of the Chief of Police.
6. A letter detailing the background findings will then be submitted to the applicant, City Attorney's Office, and Development Services.

**Under this scenario (where the Ordinance is not adopted as drafted), not all current applicants would be cleared under the TMC requirements.** Based on current ownership information, Tracy PD believes that 3 of the applicants currently registered with the DCC also meet the TMC requirements for fingerprinting and background checks. However, due to the passage of time, this ownership information needs to be updated for all applicants.

## ANALYSIS AND DISCUSSION FOR OTHER TMC 6.36 AMENDMENTS

### Clarifying Language Regarding Number of Retail Dispensary Permits.

Through the various City Council actions, the City Council approved a total of 11 retail dispensary Permits. At the same time, through Section 6.36.040, the City Council set a maximum threshold of one (1) such dispensary Permit per every 10,000, individuals living within the City. To avoid confusion, staff proposes to add a clarifying clause to the introduction of that section to note that the threshold does not apply to any Permits issued prior to April 2022 (by which date, all of the initial 11 Permits had been issued). The proposed ordinance language is as follows:

**SECTION 2. Amendment of Section 6.36.040.** Section 6.36.040, Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted, is amended to read as follows (with additions underlined, and deletions in ~~strike through~~):

(b) Subsequent to the issuance of any permits occurring prior to April 2022, a maximum of one retailer – storefront (dispensary) permit may be issued for every 10,000 individuals living within the City of Tracy. For the purposes of this subsection, the total population of the City shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the cannabis business permit is issued. No new permit may be issued to authorize a retailer – storefront (dispensary) use if the number of such permits already issued equals or exceeds the total number authorized pursuant to this subsection.

### Tolling the Expiration of Cannabis Business Permits

Under TMC Section 6.36.080, each Cannabis Business Permit issued expires 12 months after the date of issuance. The City Council extended the expiration date for each Cannabis Business Permit by 12 months on July 5, 2022, by Ordinance 1328, to ensure the ability to comply with ordinance requirements including background check requirements.

Three Cannabis Business Permits are set to expire on June 21, 2023. Prior to operating a cannabis business, the TMC requires applicants to complete a background check (TMC Section 6.36.050). The proposed Ordinance will facilitate Permit holders to have additional time to establish and become operable prior to the expiration of the Permits.

The first four provisional Cannabis Business Permits were issued June 21, 2021, with an initial expiration date of June 20, 2022, which was tolled via Ordinance 1328 to June 21, 2023. The next 13 were issued March 3, 2022, with an expiration date of March 2, 2023, which was tolled via Ordinance 1328 to March 3, 2024. One renewal application has been received to date. In order to assist the current Permit holders in their ability to establish and become operable prior to expiration of the Permits, this Ordinance proposes amending Section 6.36.080, Expiration of Cannabis Business Permits, to toll the expiration of all current Permits by an additional 6 months.

Below is the proposed Ordinance language pertaining to tolling showing changes in underline (new language) and strike-through (deleted language).

### **Section 6.36.080 Expiration of Cannabis Business Permits**

Each Cannabis Business Permit issued pursuant to this chapter shall expire twelve (12) months after the date of its issuance, except that the expiration date of any cannabis business permit issued prior to May 2022 shall be tolled for an additional ~~twelve (12)~~ eighteen (18) months from the date of issuance of any such permit. Cannabis business permits may be renewed as provided in section 6.36.100.

### **Modifying the Cannabis Business Permit Renewal Requirements**

On December 3, 2019, City Council adopted Ordinance 1277 to create Chapter 6.36 of the TMC, establishing local regulations for commercial cannabis activity in Tracy. Amendments to Chapter 6.36 have been made on June 2, 2020, July 7, 2020, October 19, 2021, and June 7, 2022.

Chapter 6.36 provides that Cannabis Business Permits expire 12 months after issuance (which, as noted above, has been tolled by an additional 12 months and staff proposes to toll for an additional 6 months). An application for renewal of the Permit could be made per the Ordinance to the City prior to expiration with the caveat that the business was established and operational prior to expiration date, had been awarded a Conditional Use Permit (CUP) by the Planning Commission under Chapter 10.08.3196 of the TMC and had met other applicable conditions of approval.

Section 6.36.100 of the TMC sets forth renewal requirements for Permits, which are intended as a mechanism to annually ensure cannabis businesses are in good standing with local regulations. Section 6.36.100(b) indicates that Permit holders must provide the same information as existing applicants. As such, staff proposes that specified key provisions of the original application process be required for the renewal process. These key provisions include information about the Permit holder, ownership structure, insurance compliance and standing with the State licensing. New background checks and fingerprinting would be required as well. The remainder of the provisions of the renewal requirements as well as the City's authority to withhold a renewal would not change with this Ordinance.

Below is the proposed Ordinance language pertaining to renewals showing changes in underline (new language) and ~~strike-through~~ (deleted language).

### **6.36.100 Renewal Applications.**

- (a) An application for renewal of a cannabis business permit shall be filed at least 60 calendar days prior to the expiration date of the current permit.
- (b) ~~The renewal application shall contain all the information required under this chapter and the procedures established by City Council resolution.~~ The renewal application shall provide the information required under Sections 6.36.050(a)(i) and (ii)(D)-(F), updated from any prior information provided to the City.



- (c) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this chapter.
- (d) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
  - i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred.
  - ii. The application is filed less than 60 days before its expiration.
  - iii. The cannabis business permit is suspended or revoked at the time of the application.
  - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit and is diligently pursuing either a discretionary permit or building permit, or is in construction.
  - v. The permittee fails to or is unable to renew its State License.
- (e) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.
- (f) If a renewal application is denied, a person may file a new application pursuant to this chapter no sooner than one (1) year from the date of the rejection.
- (g) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

#### FISCAL IMPACT

There is no direct negative fiscal impact associated with Council's consideration of this agenda item, as the Cannabis Business program is already in the existing Budget.

The establishment of the cannabis businesses in the City of Tracy, once operational, will generate revenue as they are required to pay permit processing fees, monetary benefits through Community Benefits Agreements and local sales taxes.

#### PUBLIC OUTREACH / INTEREST

This agenda item relates to the cannabis program which has undergone significant public input through City Council and Planning Commission meetings. This agenda item presents another opportunity for interested parties to participate.

### COORDINATION

The agenda item involved coordination between the Departments of Development Services, Finance, Police, the City Manager's office, as well as the City Attorney's Office.

### CEQA DETERMINATION

This Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3) which pertains to projects that have no potential to cause a significant effect on the environment, as each individual permit issued under this Ordinance will be required to complete CEQA review.

### STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety and Quality of Life Strategic Priorities.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council introduce an Ordinance of the City of Tracy:

- 1) Amending Tracy Municipal Code Sections: (A) 6.36.012 to modify the definition of owner for commercial cannabis; (B) 6.36.040 to add clarifying language; (C) 6.36.080 to toll the expiration date of each existing commercial cannabis business permit for an additional six months; and (D) 6.36.100 to modify the cannabis business permit renewal requirements; and
- 2) Determining that the Project is categorically exempt from the California Environment Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(B)(3).

Prepared by: Miguel Contreras, Police Lieutenant  
Bill Dean, Assistant Director of Development Services  
Victoria Lombardo, Senior Planner

Reviewed by: Jaylen French, Development Services Director  
Sekou Millington, Chief of Police  
Sara Cowell, Director of Finance  
Karin Schnaider, Assistant City Manager  
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, Acting City Manager

### ATTACHMENTS

Attachment A – Ordinance Amending Sections 6.36.012, 6.36.040, 6.36.080, and 6.36.100 of the Tracy Municipal Code

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_**

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**AN ORDINANCE 1) AMENDING TRACY MUNICIPAL CODE SECTIONS: (A) 6.36.012 TO MODIFY THE DEFINITION OF OWNER FOR COMMERCIAL CANNABIS; (B) 6.36.040 TO ADD CLARIFYING LANGUAGE; (C) 6.36.080 TO TOLL THE EXPIRATION DATE OF EACH EXISTING COMMERCIAL CANNABIS BUSINESS PERMIT FOR AN ADDITIONAL SIX MONTHS; AND (D) 6.36.100 TO MODIFY THE CANNABIS BUSINESS PERMIT RENEWAL REQUIREMENTS; AND 2) DETERMINING THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, PURSUANT TO CEQA GUIDELINES SECTION 15061(B)(3)**

**WHEREAS**, on December 3, 2019, the City Council adopted Ordinance 1277 (codified as Tracy Municipal Code, Chapter 6.36) establishing permitting regulations for commercial cannabis activity in the City of Tracy (City), which regulations require applicants to obtain a Cannabis Business Permit; and

**WHEREAS**, the Tracy Municipal Code (TMC) Section 10.08.3196, Cannabis Uses, also establishes zoning regulations for commercial cannabis activity in the City of Tracy (City); and

**WHEREAS**, through a series of meetings (January 21, 2020, April 21, 2020, May 19, 2020, June 2, 2020, July 7, 2020, July 21, 2020), the City Council discussed the cannabis business permit guidelines and procedures; and

**WHEREAS**, through the meeting the City Council adopted Ordinance 1293 to amend Chapter 6.36 of the TMC with regards to cannabis cultivation permit requirements and Resolution No. 2020-137 to adopt the Cannabis Business Permit Application Procedures and Guidelines; and

**WHEREAS**, effective November 18, 2021, Ordinance 1318 further amended the cannabis regulations so as to allow one storefront retailer (dispensary) per 10,000 population up to a maximum of eleven storefront retailers (dispensaries); and

**WHEREAS**, seventeen Cannabis Business Permits have been issued, including 11 dispensaries and 6 non-dispensaries; and

**WHEREAS**, the Planning Commission has heard nine Cannabis CUP applications since April 2022; and

**WHEREAS**, seven of the Cannabis CUP applications heard by Planning Commission were for locations within the City's Downtown district, or within close proximity to one another; and

**WHEREAS**, at the September 6, 2022 City Council meeting, the City Council considered an urgency ordinance, sponsored by the now Mayor Pro Tem Davis and Councilmember Bedolla, that would place a temporary moratorium on the issuance of further Cannabis CUPs; and

**WHEREAS**, the City Council did not adopt the urgency ordinance at the meeting; and

**WHEREAS**, during the Planning Commission public hearings on September 14, 2022, various parties expressed concerns regarding a perceived overconcentration of dispensaries downtown, concerns about allowing dispensaries downtown at all, and concern regarding their proximity to other existing businesses that have a significant number of customers that are children; and

**WHEREAS**, during the same public hearings on September 14, 2022, the Planning Commission expressed a desire to re-evaluate the zoning regulations and requested staff to return with potential changes to TMC Section 10.08.3196, related to where cannabis businesses could locate and potential changes to the definition of youth center; and

**WHEREAS**, on October 26, 2022 the Planning Commission conducted a workshop regarding the zoning regulations for cannabis and requested additional information (via research of regulations in other cities/counties) how to best regulate locations of cannabis businesses, including buffers between cannabis businesses and sensitive uses, between two cannabis businesses, density of cannabis businesses, and the definition of “youth center,” so that each of these matters could be discussed for proposed amendments to the zoning regulations; and

**WHEREAS**, on April 12, 2023, the Planning Commission heard an Ordinance amending Sections 10.08.3196(b) and (d) of the TMC to expand the definition of youth center and to establish buffers between proposed cannabis uses and sensitive uses; and

**WHEREAS**, at that meeting, the Planning Commission added a buffer requirement from residential uses as well and recommended that the City Council approve the proposed Ordinance; and

**WHEREAS**, TMC Section 6.36.080 provides that Cannabis Business Permits shall expire twelve months after the date of issuance; and

**WHEREAS**, TMC Sections 6.36.050 and 6.36.150 require that all interested parties and employees of a cannabis business undergo fingerprint based background checks; and

**WHEREAS**, in order for the City to conduct fingerprint-based background checks, the Department of Justice (DOJ) must authorize the City to have access to such criminal history information; and

**WHEREAS**, due to the delay in obtaining DOJ approval, the City Council desires to amend TMC Section 6.36.012 to change the definition of “owner” for commercial cannabis to align with the State of California definition; and

**WHEREAS**, due to the delay in obtaining DOJ approval, the City Council desires to amend TMC Section 6.36.080 to toll the expiration of existing cannabis business permits issued twelve months; and

**WHEREAS**, tolling the expiration of existing cannabis business permits six months will allow permit holders additional time to comply with the requirements under Chapter 6.36 to operate a cannabis business within the City; and

**WHEREAS**, TMC Section 6.36.100 establishes cannabis business permit renewal requirements; and

**WHEREAS**, the existing regulations require submittal of application materials for renewal that are duplicitous with initial cannabis business permit application requirements, creating an undue administrative burden on both applicants and City staff in order to timely process renewal applications; and

**WHEREAS**, the City retains the ability to deny applications for renewal that would be unchanged as a result of this ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals/Findings.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

**SECTION 2. Amendment of Section 6.36.012.** "Owner" as defined in Section 6.36.012 is amended to read as follows (with additions underlined, and deletions in ~~strike through~~):

"Owner" means any of the following:

- (1) A person with an aggregate ownership interest of ~~five (5)~~ twenty (20) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.
- (2) The chief executive officer and the members of the board of directors of the entity engaging in the cannabis business.
- (3) An individual who will be participating in the direction, control, or management of the person applying for a City cannabis business permit.

**SECTION 3. Amendment of Section 6.36.040.** Section 6.36.040, Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted, is amended to read as follows (with additions underlined, and deletions in ~~strike through~~):

(b) Subsequent to the issuance of any permits occurring prior to April 2022, a maximum of one retailer - storefront (dispensary) permit may be issued for every 10,000 individuals living within the City of Tracy. For the purposes of this subsection, the total population of the City shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the cannabis business permit is issued. No new permit may be issued to authorize a retailer - storefront (dispensary) use if the number of such permits already issued equals or exceeds the total number authorized pursuant to this subsection.

**SECTION 4. Amendment of Section 6.36.080.** Section 6.36.080, Expiration of Cannabis Business Permits, of the Tracy Municipal Code is hereby amended to read as follows (with additions underlined, and deletions in ~~strike~~through):

Each cannabis business permit issued pursuant to this chapter shall expire twelve (12) months after the date of its issuance, except that the expiration date of any cannabis business permit issued prior to May 2022 shall be tolled for an additional ~~twelve (12)~~ eighteen (18) months from the date of issuance of any such permit. Cannabis business permits may be renewed as provided in section 6.36.100.

**SECTION 5. Amendment of Section 6.36.100.** Section 6.36.100, Renewal Applications, of the Tracy Municipal Code is hereby amended to read as follows (with additions underlined and deletions in ~~strike~~through):

**6.36.100 Renewal Applications.**

- (a) An application for renewal of a cannabis business permit shall be filed at least-sixty (60) calendar days prior to the expiration date of the current permit
- (b) ~~The renewal application shall contain all the information required under this chapter and the procedures established by City Council resolution.~~ The renewal application shall provide the information required under Sections 6.36.050(a)(i) and (ii)(D)-(F), updated from any prior information provided to the City.
- (c) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this chapter.
- (d) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
  - i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred;
  - ii. The application is filed less than sixty (60) days before its expiration.
  - iii. The cannabis business permit is suspended or revoked at the time of the application.
  - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit and is diligently pursuing either a discretionary permit or building permit, or is in construction.
  - v. The permittee fails to or is unable to renew its State License.
- (e) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.
- (f) If a renewal application is denied, a person may file a new application pursuant to this chapter no sooner than one (1) year from the date of the rejection.
- (g) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

**SECTION 6. CEQA Determination.** The City Council finds that this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with

CEQA Guidelines Section 15061(B)(3) pertaining to activities that do not have the potential for causing a significant effect on the environment.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 8. Effective Date.** This Ordinance shall become effective upon the thirtieth (30<sup>th</sup>) day after final adoption.

**SECTION 9. Publication.** The City Clerk is directed to publish this Ordinance in a manner required by law.

**SECTION 10. Codification.** This Ordinance shall be codified in the Tracy Municipal Code.

\* \* \* \* \*

The foregoing Ordinance \_\_\_ was introduced at a regular meeting of the Tracy City Council on the 2<sup>nd</sup> day of May 2023, and finally adopted on the \_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

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NANCY D. YOUNG  
Mayor of the City of Tracy, California

ATTEST: \_\_\_\_\_  
ADRIANNE RICHARDSON  
City Clerk and Clerk of the Council of the  
City of Tracy, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**AN ORDINANCE AMENDING THE FOLLOWING SECTION OF TRACY MUNICIPAL CODE CHAPTER 6.36 (COMMERCIAL CANNABIS): A) 6.36.012 TO MODIFY THE DEFINITION OF OWNER FOR COMMERCIAL CANNABIS; B) SECTION 6.36.040 TO ADD CLARIFYING LANGUAGE REGARDING THE NUMBER OF ALLOWABLE STOREFRONT RETAILERS; C) SECTION 6.36.080 TOLLING THE EXPIRATION DATE OF EACH EXISTING COMMERCIAL CANNABIS BUSINESS PERMIT FOR AN ADDITIONAL 6 MONTHS, AND D) SECTION 6.36.100 TO MODIFY REGULATIONS FOR RENEWAL OF CANNABIS BUSINESS PERMITS.**

The Ordinance (Ordinance) amends various sections of Tracy Municipal Code Chapter 6.36 (Commercial Cannabis), that in the aggregate removes existing barriers for applicants to complete the requisite security clearance process, tolls existing permits for an additional 6 months, and simplifies the renewal process. Specifically, the following Sections of Tracy Municipal Code are being amended through this Ordinance: a) 6.36.012 to modify the definition of owner for commercial cannabis; b) 6.36.040 to add clarifying language regarding the number of allowable storefront retailers; c) 6.36.080 tolling the expiration date of each existing commercial cannabis business permit for an additional 6 months, and d) 6.36.100 to modify regulations for renewal of cannabis business permits.