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NON-CONFIDENTIAL MEMORANDUM

Via Electronic Mail Only

DATE: June 5, 2023

TO: Bijal Patel, City Attorney
 City of Tracy

FROM: Alex J. Mog, Special Counsel 

RE: **Review of Updates to City Council Code of Conduct & Meeting Protocols of Procedures**

On June 6, the Tracy City Council will consider changes to the City Council Code of Conduct (“Code of Conduct”) and the City Council Meeting Protocols and Rules of Procedures (“Meeting Protocols”). You have asked me to review the proposed changes to the Code of Conduct and Rules of Procedures for compliance with applicable law, including relevant sections of the California Government Code and Tracy Municipal Code. For the reasons discussed below, the proposed changes comply with applicable law.¹

CODE OF CONDUCT

City Attorney Appointment and Responsibilities

Section 1.4 of the Code of Conduct addresses the appointment and responsibilities of the City Attorney. Currently, the City Attorney’s listed responsibilities are limited, and the proposed changes would provide a more detailed description of the City Attorney’s responsibilities. The new listed responsibilities listed are consistent with applicable law.

The City of Tracy is a general law city. The role and duties of a city attorney in a general law city are specified in Government Code sections 41801-41805. Among other duties, it is the responsibility of a city attorney to “advise the city officials in all legal matters pertaining to city business” and “frame an ordinance or resolution required by the legislative body.”²

¹ Any changes not discussed in the memorandum are minor changes or corrections. A determination that a change to the Code of Conduct or the Meeting Protocols complies with applicable law does not necessarily mean it is the only possible way the documents could have been updated in compliance with applicable law.

² Gov. Code § 41801, 41802.

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The proposed changes to the Tracy City Attorney's responsibilities are consistent with the duties identified in the Government Code and comply with applicable law. This conclusion assumes that the City Attorney's duty to "review and approve all ordinances, resolutions, and related staff reports" shall be as to form and legality only, and not involve policy determinations. Additionally, the City Attorney's duties are further governed by applicable sections of the Tracy Municipal Code, including Tracy Municipal Code Section 2.10.010.

Mayor's Role in Agenda Setting

The proposed changes to the Code of Conduct eliminate existing section 2.2.9, which currently states that the Mayor coordinates with the City Manager in the development of agendas for City Council meetings.³

A mayor in a general law city, whether appointed or directly elected, is a member of the city council who serves as the presiding officer/chair of city council meetings.⁴ Government Code sections 40601-40605 establish the powers of a mayor, which are primarily to sign certain documents and administer oaths. If directly elected, a mayor also has the authority to make appointments to boards, commissions, and committees, subject to the approval of the city council.⁵ Other than the powers established by these sections of the Government Code, a mayor in a general law city has no additional powers or legal authority than any other member of the city council. Accordingly, eliminating section 2.2.9 does not interfere with the Mayor's statutory powers or responsibilities.

Nothing restricts the City Manager from discussing the development of the agenda with the Mayor or any other member of the City Council, subject to the restrictions of the Ralph M. Brown Act (the "Brown Act")⁶. Indeed, such discussions and coordination are common in many cities. However, nothing in state law requires the City Manager to coordinate the development of the agenda with the Mayor. Accordingly, the proposed deletion of Section 2.2.9 is consistent with applicable law.

Code of Conduct Compliance and Enforcement

The proposed update to Section 3.6 of the Code of Conduct would slightly change the process for censuring a member of the City Council. Under the existing procedures, requests to censure a member of the City Council are submitted to the City Manager. Thereafter, the City Manager must deliver a copy of the request to the City Council.

³ Changes to the process for the City Council to add items to the agenda are discussed later herein.

⁴ See Gov. Code § 34903.

⁵ See Gov. Code § 40605. Other statutes may restrict this authority for specific appointments.

⁶ Government Code section 54950 *et seq.*

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Before the City Council can take any action, the censure request must first be considered by a neutral mediator selected by the Presiding Judge of the San Joaquin County Superior Court, who shall conduct an investigation and prepare a written analysis and recommendation for the City Council. The proposed changes to Section 3.6 would assign the City Manager's current role in the censure process to the City Attorney.

The censure process contained in Section 3.6 is much more complicated and cumbersome than required by law. The City Council has a First Amendment right to censure its own members, and could adopt a much simpler process.⁷ For example, many cities have no adopted censure process and a proposed censure may be added to a future agenda by the council members in the same manner as any other agenda item. However, given that the City Council has chosen to adopt the process contained in Section 3.6, the proposed substitution of the City Manager with the City Attorney is consistent with applicable law.

Specifically, the censure process requires a request for the appointment of a neutral mediator to be submitted to the Presiding Judge of the San Joaquin County Superior Court. There does not appear to be any established process to request an appointment from the Presiding Judge other than through the submission of a legal filing in Superior Court. Only attorneys may submit such filings on behalf of legal entities like the City.⁸ Since the City Attorney serves as the City's legal counsel, the City Attorney is responsible for filing the necessary request in Superior Court.

Nothing prevents the City Council from simplifying the censure process to eliminate the role of the San Joaquin County Superior Court. However, if the City Council desires to maintain the current censure process, Section 3.6 must be updated to involve the City Attorney since the City Attorney is the only person capable of filing the required request for an appointment of a neutral mediator by the Presiding Judge on behalf of the City. The proposed changes to Section 3.6 are one possible way to address that deficiency.

Meeting Protocols

Removing Items from Agenda

Section 2.5 of the current Meeting Protocols provides that after the agenda is published for a City Council meeting, the City Manager retains the authority to remove items from

⁷ See *Houston Cmty. Coll. Sys. v. Wilson* (2002) 142 S. Ct. 1253, 1257. This case recognizes that that the right of a legislative body to censure one of its own members is a right dating back to common law, and that a censure does not violate the First Amendment rights of the public official censured. Some practitioners believe that this decisions means that any restrictions on a legislative body's ability to censure its own members is invalid. This memorandum does not address that issue.

⁸ See e.g. *Merco Constr. Engineers, Inc. v. Mun. Ct.* (1978) 21 Cal. 3d 724.

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the agenda. The proposed change to the Meeting Protocols would eliminate this authority of the City Manager for items placed on the agenda by the City Council. This change conforms with applicable law.⁹

The City of Tracy has a council-manager form of government.¹⁰ The City Council is the governing body of the City responsible for adopting laws and setting policy. The City Manager is the administrative head of the City, responsible for day-to-day operations and adopting policy. The City Council has the authority to define the powers and duties of the City Manager, which include those established by Tracy Municipal Code section 2.08.060.¹¹

The Brown Act requires a legislative body, or its designee, to post an agenda containing a brief general description of each item of business to be transacted or discussed at its meeting prior to the meeting.¹² Since an agenda identifies the items to be considered by the legislative body, arguably only a legislative body may remove items once the agenda is posted. However, neither the Brown Act nor any published court decisions explicitly identify a required process for removing posted agenda items. It is common in many cities for any item to be removed from the agenda only with a consensus of the city council.

While the City Manager understandably has considerable authority over the agenda, providing the City Manager with unlimited authority to remove Council-directed items would interfere with the City Council's authority as the City's governing body responsible for establishing law and policy. Under this scenario, the City Manager could conceivably prevent the City Council from adopting an ordinance it desired by continuously removing the item from the agenda. The proposed changes to Section 2.5 comply with the requirements of applicable law because they remove the City Manager's ability to unilaterally restrict the City Council from exercising its lawful authority.

City Attorney as Parliamentarian

The proposed changes to Section 2.8 of the Meeting Protocols identify the City Attorney as the "Parliamentarian" at City Council meetings with the responsibility of opining on any procedural issues. However, the Meeting Protocols do not explicitly specify the scope of the Parliamentarian's powers. In some legislative bodies, the Parliamentarian's formal opinions are merely advisory, while in other cases they are binding unless overturned by the chair and/or a majority of the legislative body.

⁹ Proposed changes to the Mayor's participation in development of the agenda are discussed above.

¹⁰ TMC § 2.08.010, 2.08.060.

¹¹ Gov. Code § 34852.

¹² Gov. Code § 54954.2.

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Section 5.15 of the Meeting Protocols provides that “Council meetings shall be conducted in accordance with the Rosenberg’s Rules of Order: Simple Parliamentary Procedures for the 21st Century unless otherwise specified herein.” Page 2 of that document explains the role of the meeting chair, which is the Mayor for City Council Meetings, by stating:

“While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.”

The City Council has the authority to establish its own meeting protocols, subject to the requirements of the Brown Act, and may define the powers of the Parliamentarian as it deems appropriate. Since the Meeting Protocols do not explicitly provide the Parliamentarian’s opinions with any sort of binding authority, this memorandum assumes they are merely advisory and that the Mayor shall make rulings regarding procedural issues, subject to the appeal provisions contained in Rosenberg’s Rules of Order and the Meeting Protocols. If the City Council desires to give the Parliamentarian’s opinion some level of binding authority, that should be specified in the Meeting Protocols.

Convening Closed Sessions.

The proposed update to the Meeting Protocols would amend section 3.2 to clarify that only the City Attorney is authorized to convene a closed session meeting of the City Council. Relatedly, Section 3.4 will be amended to provide that the City Attorney “shall” convene a closed session meeting when requested by the City Manager or City Council to discuss a matter that is permissible for discussion in closed session. Taken together, the changes to these sections make it a ministerial duty of the City Attorney to convene a closed session for allowable closed session topics when requested by the City Manager or City Council. The Meeting Protocols do not provide the City Attorney with the authority or discretion to refuse to schedule a closed session when requested, as long as the Brown Act allows the proposed item to be discussed in closed session.

The proposed changes to the Meeting Protocols for convening closed session do not violate any applicable laws.

Attendance in Closed Session.

The proposed changes to Section 3.4.5 of the Meeting Protocols require the City Attorney to be present at all closed sessions and to report out any reportable actions taken during closed session. The Brown Act requires the City Council to publicly report certain actions

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taken in closed session, but it does not identify a specific individual responsible for making the report.¹³ It is common for city attorneys to make such reports, and it is within the Council's authority to designate the City Attorney as the individual responsible for making the required reports.

Attendance during closed session meetings is limited to members of the City Council, individuals specifically identified in an applicable closed-session exception in the Brown Act, or other individuals if their presence is essential to City's ability to conduct its closed-session business.¹⁴ Although the City Attorney is not explicitly identified in every applicable closed-session exception, nothing in the Brown Act or other applicable law precludes the City Council from requiring the City Attorney from attending all closed sessions given the City Attorney's essential role as the City's legal advisor. However, this proposed change to Section 3.4.5 may be unintentionally overboard. While infrequent, there may be matters for which the City Council may not want the City Attorney in attendance, including, but not limited to, performance evaluations involving the City Attorney. The City Council may want to consider amending the proposed language to allow a majority of the City Council to excuse the City Attorney from attending a closed session.

Agenda Item Submission

Section 4.3 of the Meeting Protocols currently establishes the general procedures for Council members to request future agenda items. The proposed changes would add significant detail to those procedures, including regarding the timing of when requested items will be placed on a future agenda. The City Council has broad discretion to establish its process for members of the City Council to request future agenda items, and nothing in the proposed changes violates the Brown Act or any other applicable law.

Conduct of Meetings.

The proposed changes to Section 5 of the Meeting Protocols would further clarify the process for reordering agenda items. Under the current Meeting Protocols, the Mayor has the authority to reorder agenda items "unless a majority of the Council members object." The proposed changes maintain the Mayor's role as the decision-maker on the order of agenda items, but allows other members to request changes. Additionally, the proposed edits specify the process for a majority of the City Council to overturn the Mayor's decision. The proposed changes are consistent with applicable law.

Please contact me if you have any questions.

¹³ Gov. Code § 54957.1(a).

¹⁴ See *105 Ops. Cal. Atty. Gen. 89 (2022)*.

Mayor Nancy Young's comments and corrections for Item 3B - June 6, 2023

“Resolution to adopt amendments to the City Council’s A) Code of Conduct and B) Meeting Protocols and Rules of Procedures”

I am presenting in advance to Acting City Manager Lichtwardt and City Attorney Patel for opportunity to update. I am also presenting a copy to City Clerk Richardson for the record and to include copies for the council and public for reference as this item is addressed.

Note: When the Council undertakes amendment to policies that govern, we should be careful with the content especially given all that went into the creation and amendments to date of the documents and the many hours of discussion and consideration that was given for each section throughout the years. It’s important that we’re honoring past council government and the much community input that has already gone into these documents as we are thoughtfully amending and proposing elimination and/or expansion of roles/items as these affect and define the roles and positions of those who were elected and appointed; and not individuals themselves.

My recommendation was/is to further develop this item and give actual comparable examples of the content from the cities listed wherein information was taken: Brentwood, Livermore, Lodi, Manteca, Pleasanton, Stockton, and Walnut Creek. Usually, when comparable cities are used for any item of consideration, the Council is given attachments including a matrix that shows the comparisons. Not only did we not receive any attachments for reference, I’ve confirmed on two occasions by both the acting City Manager and Assistant City Manager that they did not work on the agenda item in developing the proposed amendments (as represented in the agenda Analysis), but rather the item was completely created by the City Attorney. This speaks to the lack of checks and balances of the item. Because the items included are so deeply expanded from the referenced Workshop 2/28/23 and has so many corrections and concerning changes, I strongly recommend that we continue this item and have another workshop on these documents to be able to properly address and evaluate each proposed amendment per section. Because we’ve set a deadline for Dec 31st of each odd year to review, we have plenty of time to do this correctly.

I will summarize my comments/concerns/corrections below as each needs addressing. As Mayor, I shouldn’t have to go into so much research and should be able to rely on professional input of staff. However, as an elected official entrusted to govern our City and look out for the best for our community, I have invested many hours in the following:

Code of Conduct

This document was to serve for the conduct purposes that was expressly focused for the City Council and interacting roles of the City Manager, City Attorney, and Commissions so that each would function in their proper lane.

While there are 5 sections 1.4, 2.1.6, 2.2, 2.3, 2.4 noted as "key additional changes", there are many more that have substantial amendments.

Section 1.3 City Manager Appointment, Powers and Duties

1. Bullet 3 – insert "City" before Council and "as a body" to read Neither the City Council, as a body, nor any of its members shall give orders to any subordinate...

(For consistency as is the first bullet of this section is revised)

2. Bullet 4 was crossed out in entirety, however the statement should be updated to exchange "Attorney" for "Manager" in both places as was the original intent that can be inferred from the summary first paragraph.

3. If we are adding clarification on role to the City Attorney, we should be consistent and consider adding (in whole or part)

2.08.060 - Duties and powers.

The City Manager shall be the administrative head of the government of the City under the direction and control of the Council except as otherwise provided in this chapter. He or she shall be responsible for the efficient administration of all the affairs of the City which are under his or her control. In addition to his or her general powers as administrative head, and not as a limitation thereon, it shall be his or her duty and he or she shall have the powers set forth in the following subsections:

(a) It shall be the duty of the City Manager and he or she shall have the power to see that all laws and ordinances of the City are duly enforced and that all franchises, permits, and privileges granted by the City are faithfully observed.

(b) It shall be the duty of the City Manager and he or she shall have the power to control, order, and give directions to all heads of departments and to subordinate officers and employees of the City through their department heads, to transfer employees from one department to another, and to consolidate or combine offices, positions, departments, or units under his or her direction.

(c) It shall be the duty of the City Manager and he or she shall have the power to appoint, remove and demote any and all officers and employees of the City, except the City Attorney and the City Treasurer.

(d) It shall be the duty of the City Manager and he or she shall have the power to exercise control over all departments of government of the City and over all appointive officers and employees thereof.

(e) It shall be the duty of the City Manager and he or she shall have the power to attend all the meetings of the Council unless excused therefrom by said Council.

(f) It shall be the duty of the City Manager and he or she shall have the power to recommend to the Council for adoption such measures and ordinances as he or she deems necessary or expedient.

(g) It shall be the duty of the City Manager and he or she shall have the power to keep the Council at all times fully advised as to the financial conditions and needs of the City.

(h) It shall be the duty of the City Manager and he or she shall have the power to prepare and submit the proposed annual budget and the proposed annual salary plan to the Council for its approval.

(i) It shall be the duty of the City Manager and he or she shall have the power to purchase all supplies for all of the departments or divisions of said City. No expenditure shall be submitted or recommended to the Council except on report or approval of the City Manager.

(j) It shall be the duty of the City Manager and he or she shall have the power to make investigations into the affairs of the City and any department or division thereof, and any contract or the proper performance of any obligations running to the City.

(k) It shall be the duty of the City Manager and he or she shall have the power to investigate all complaints in relation to matters concerning the administration of the City Government and in regard to the service maintained by public utilities in said City, and to see that all franchises, permits and privileges granted by the City are faithfully performed and observed.

(l) It shall be the duty of the City Manager and he or she shall have the power to exercise general supervision over all public buildings, public parks, and all other public property which are under the control and jurisdiction of the Council.

(m) It shall be the duty of the City Manager to devote full time to the duties of his or her office in the interests of the City.

(n) It shall be the duty of the City Manager and he or she shall have the power to perform such other duties and exercise such other powers as may be delegated to him or her from time to time, by ordinance or resolution or other action of the Council.

(o) The City Manager may attend any and all meetings of any other commissions or boards created by the Council, upon his or her own volition or upon direction of the Council. At any such meetings at which the City Manager attends, he or she shall be heard by such commissions and boards as to all matters upon which he or she wishes to address them.

(p) The City Manager shall at all times conduct himself or herself in accordance with the International City Management Association ("ICMA") Code of Ethics.

(Ord. 1114 § 1 (part), 2008: prior code § 2-2.106)

(Ord. No. 1175, § 1, 10-16-2012)

2.08.070 - Duties of others.

(a) The Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager.

(b) It shall be the duty of all subordinate officers, including the City Attorney and the City Treasurer, to cooperate with and assist the City Manager in administering the affairs of the City most efficiently, economically and harmoniously so far as may be consistent with their duties as prescribed by law and ordinances of the City.

(Ord. 1114 § 1 (part), 2008: prior code § 2-2.107)

(Ord. No. 1175, § 2, 10-16-2012)"

Section 1.4 City Attorney Appointment and Responsibilities

1. While this section was noted to add specific language to document the roles and responsibilities of the City Attorney, this section actually expanded the role. The Section of the TMC 12.08.40 that was left as the justification for the roles is a reference to the actual section eliminated from the summary of the role. It is however a part of bullet #4.

"12.08.040 - City attorney responsibility.

The City Attorney is responsible for approving as to form all subdivision improvement agreements and security, deferred improvement agreements, liability agreements and insurance, and all governing documents for a community apartment project, condominium, stock cooperative, or conversion.

(Ord. 934 C.S. § 1 (part), 1996: prior code § 12-2.104)"

2. Although other relevant references would be more helpful in determining these expanded roles, a more appropriate reference for the beginning paragraph is:

"2.10.010 - Office and appointment of the City Attorney.

The City Attorney shall be appointed by and serve at the pleasure of the City Council.

The City Attorney shall serve as legal counsel to the City government and all officers, departments, boards, commissions, and agencies thereof and shall have such other powers and duties as may be prescribed by state law and by ordinance or resolution of the City Council. In situations where the City Attorney determines there is a conflict in representation by that office, the City Council may authorize the retention or other legal counsel to represent one of the conflicting parties. The City Attorney shall appoint all other members of the City Attorney's Office.

(Ord. No. 1295 , § 2, 8-18-2020)”

Section 2.1 City Council Generally

1. 2.1.4 Clarify if City office or City employment is only for the City of Tracy.

2. 2.1.6 Should not be eliminated. This was the discussion of more than one meeting even with amendments proposed two years ago. This is purposely here and because it's inconsistent in practice doesn't mean it's not relevant now or for future Councils. Part of the problem with its current lack of use is because of the misinterpretation and lack of clarity that has arisen in the last year from the CAO. Perhaps this needs discussion to flesh out the intent. Section 3.4.6.1 was created as a further limitation to address a potential issue that may arise from 2.1.6. In the past discussion, it was decided the best place to add the amendment was to 3.4.6.

Section 2.2 Mayor and Mayor Pro Tem – Appointment, Power, and Duties

1. 2.2.1 Leave as originally is, but correct Pro Tern to Pro Tem. That is what's correct. It is the selection of the Mayor Pro Tem that is selected every 2 years in December. The mayor is directly elected in November and serves a 2-year term.

2. 2.2.2. Leave as originally is, but correct Pro Tern to Pro Tem. Or you can simply update the “one year term’ to a “two year term”.

3. 2.2.3. Leave in. This is relevant to the role of the Mayor itself and the role of the Mayor Pro Tem in the absence of the Mayor; not just in the meetings.

4. 2.2.9 Leave in. Also noted here to leave in section 2.5 of the Council Meeting Protocols and Rules of Procedure. First, this is an important role for the Mayor to perform and has been the role since the founding of roles for the Tracy City Council. In numerous cities and townships, if not all, even those with rotating mayors and presidents of Boards, the role of the Mayor (and leaders and presiding officers of Boards) has this role. It is an optional role section 2.5 of the Council Meeting Protocols and Rules of Procedure that includes the word “may” as it is determined by the Mayor if they have the time or desire to commit. Upon my tenure as Mayor, when asked by the City Manager, upon my election, I confirmed with the past City Manager that I would be taking on that role. Not only was I elected by the people to represent them with that as one of my roles, it is a role of the position for whomever holds this position that should always be available. Any leader who runs a meeting should be able to have input as to what they're

leading. Had this been active now, I'd not need to include such a lengthy addendum, but could have and should have been worked out prior to this item going on the agenda. Second, this role of the City Manager includes ability to remove an item from the agenda they are responsible for.

Original Section 2.3 Council Items – slated to be completely erased

1. This section is relevant and pertinent to the Code of Conduct inclusion due to its need for creation in 2018. Each of these were discussed and purposely placed.

2. Specifically if you look at section 2.3.2. "Under Council protocols and procedures, an item may be placed on the agenda if requested by two Council Members..." This is a checks and balance of the intent of the City Council as a body. We (the former Council) were educated by our past City Attorney on key words of "may" and "shall". It's important to note that we purposely included "may" in this instance to be clear that just because an item was asked by two Council Members did not guarantee that it would go on an agenda. The detailed update in 4.3 Council Meeting Protocols and Rules of Procedure clearly contradicts this section. The proposed expansion based on misinterpretation and misuse of this is contrary to this Code of Conduct that places the minority above the Council actions that should be followed through.

New Section 2.4 Action by Subject Matter Committees

1. 2.4.2 – 2nd bullet – What is considered a quorum?

2. 2.4.6 – Are there public minutes that the Council can read just as Planning Commission, etc?

Section 3.3 Conduct

1. 3.3.2 Are there any codes from TMC or State law you can reference here?

Section 3.4 Conflict of Interest

1. 3.4.6.1 – This section is fine as is, but it part of the clarity for Section 2.16

Section 3.6 Code of Conduct Compliance and Enforcement

1. 3.6.1 – It's important to note the change in role from the City Manager to the City Attorney. It should also refer to TMC or specific State law that substantiates this.

Section 4.1 Relationship/Communications with Staff

1. 4.1.1 – The last sentence should not be deleted. “A Council Member shall not initiate any project or study without the approval of the majority of the Council.” This is the checks and balances in this Code of Conduct document to match the actual conduct of concern that goes with the original section 5.11 of the Council Meeting Protocols and Rules of Procedures. (If you’re looking for the section it’s actually noted as original 5.10.1 which is incorrect, new 5.12.1) This also speaks to the fact that an individual councilmember can’t do this even from the dais without a second by another councilmember.

2. 4.1.6 Remove the suggested edit to add “at the City manager’s discretion.” This was purposefully discussed and not included in the past. A potential edit if desired could be instead, “When communicating with a department head, please copy the City Manager.”

Section 4.6 No Attorney-Client Relationship

1. How is “contracted to work” different than “engaged by the City Attorney to work”? Aren’t other attorneys contracted to the City?

Section 5.1. Citizen Boards, and Committees Generally

1. Leave in Committees (in title) as it is a relevant body and is included in 5.1.1 and subsequent sections.

2. Correct the paragraph:

Line 1 – Remove “Tracy” – no where else is Tracy used for the City Council

Line 2 – add “s” to Committees

Line 3 – after Municipal Code, insert “Ordinance”

Line 12 – Correct lower case “s” to capital “S” in Sustainability Commission

3. 5.1.3 – Suggest to delete this section - all but the last line. Take the last line, “The City Council has the inherent power to create advisory bodies” and insert in the paragraph above on the first line in the place of “The City Council establishes various” to read “The City Council has the inherent power to create advisory bodies: Citizen Boards, Commissions, and Committees through the Tracy Municipal Code Ordinance or by Resolution.”

4. 5.1.4 would become 5.1.3 – Plus leave as is with “committees” as is one of the relevant bodies as listed in 5.1.1.

5. 5.1.5 would become 5.1.5 - Plus leave as is with “committees” as is one of the relevant bodies as listed in 5.1.1.

6. 5.1.6 would become 5.1.7 - Plus leave as is with “committees” as is one of the relevant bodies as listed in 5.1.1.

7. 5.1.7 would become 5.1.8 – Leave in as this is still relevant.

Section 5.2 Citizen Board, Commission, and Committee Organization and Conduct

1. It's important to note that "commission" is a relevant body and exist from time to time and should remain in each of the sections of 5.2, 5.2.1, 5.2.2, 5.2.3, 5.2.4

Section 5.3 Board, Commission, and Committee Appointments

1. It's important to note that "commission" is a relevant body and exist from time to time and should remain in each of the sections of 5.3, 5.3.1, (note: it is left already in 5.3.2)

Section 5.4 Board, Commission, and Committee Vacancy and Selection/Appointment Processes

1. It's important to note that "commission" is a relevant body and exist from time to time and should remain in each of the sections of 5.4, the Resolution No. 2004-152 which includes it, and (note: it is left already in 5.4.1)

Section 5.5 Boards, Commissions, and Committees – Removal

1. Note: the title and the paragraph below is correct and leaves in "committee". – Just noting the inconsistency in the suggested amendments.

2. Isn't there something special about the Planning Committee and its creation versus any other body the City Council creates?

Council Meeting Protocols and Rules of Procedure

This document was amended from the original document of "Council Policies and Procedures" which was last updated in 2015 that predated the Code of Conduct and this newest Council Meeting Protocols and Rules Procedure that was created in 2019. The original document was to give overall guidance to the City Council and as these new one were developed was done with the expressed desire to hold its original integrity and intent while adjusting in sync with the new complimentary Code of Conduct. I was active in these original updates since 2012 and with every update to date and possess a lot of the historical context to its current form.

Section 1 – Purpose and Applicability

1. 1.2 In the event a conflict between these Protocols and the City of Tracy's Code of Conduct (Resolution No. 2021-146), Protocols shall control.

I understand why this is a suggested addition. However, the reason it was not included in the past is because every revision of each of the documents were careful to maintain the checks and balances in each so that they were always in compliment and confirmation, but never in conflict.

It is imperative that as each Council seeks to amend or revise either document, that they are both considered for consistency. Without the checks and balances, there could be the case that an undue focus be on the Council Meeting Protocols and Rules of Procedures having updates that outweigh the intent of the Code of Conduct and skew the balance the governance needs.

Section 2 Roles and Responsibilities at Council Meetings

1. 2.1 Mayor – What does “full” City Council mean?

2. 2.4 Sergeant-at-Arms – What does “full” City Council mean?

2.5 – City Manager –

A. Leave the last sentence in as was expressed in detail in the Code of Conduct 2.2.9. First, this is an important role for the Mayor to perform and has been the role since the founding of roles for the Tracy City Council. In numerous cities and townships, if not all, even those with rotating mayors and presidents of Boards, the role of the Mayor (and leaders and presiding officers of Boards) has this role. . It is an optional role in this section 2.5 that includes the word “may” as it is determined by the Mayor if they have the time or desire to commit. Upon my tenure as Mayor, when asked by the City Manager, upon my election, I confirmed with the past City Manager that I would be taking on that role. Not only was I elected by the people to represent them with that as one of my roles, it is a role of the position for whomever holds this position that should always be available

B. Remove this added line “unless the item has been placed on the agenda by the City Council pursuant to XXXX (a new section in this document)”. This is in **direct conflict** with the role of the manager and their ability to control the administration and workload of staff. **It is verified and expressed in several locations:**

1. Code of Conduct – 2.2.9 – Which is suggested by City Attorney to remove.

2. Code of Conduct – Entire Section 2.3 is slated for deletion! - Specifically if you look at section 2.3.2. “Under Council protocols and procedures, an item may be placed on the agenda if requested by two Council Members...” This is a checks and balance of the intent of the City Council as a body created.

3. Council Meeting Protocols and Rules of Procedures – 4.3 (Original content) – completely overwritten to make up a new rule to include date specific and complexities of “time-sensitive” that sets to overrule the Council direction by a minority. This practice instituted this year by the City Attorney has usurped Council actions and City Manager, which in essence has violated the City Manager-City Council form of government placing the power of our governance in the hands of two (the minority) to overrule the business at hand, moving their personal items and agendas ahead of that that has been vetted through the normal process that should be in motion.

4. Council Meeting Protocols and Rules of Procedures – 5.11 (original) that is now listed as past 5.10.1 and updated 5.12.1. This section is in fact left intact. This is the original content that was

placed prior to original 4.3.1 that added the clarity to "time-sensitive" – an item that I, as councilmember, requested to be added to the procedures. What has been expanded in 4.3 is not at all what I intended when I made that requested amendment.

With these three deletions, you remove ALL checks and balances between the documents and only have a new order of things that is anti-democratic.

Section 2.8 City Attorney

1. Keep in "either in writing or verbally" – It is accountability.
2. It's difficult to follow the changes as much of the paragraph was not in the original text, but is added and then crossed out. This gives a misinterpretation of what is actually being removed. I had to review the original document and it ends after Protocols on line 5.
3. Define Parliamentary role and what that covers in a meeting...and how that is different than current role as Attorney.

Section 3.2 – Special Meetings

1. Why does the role of the Attorney calling a Special Closed Session need expansion? Leave the original type as it's most relevant and correct. (see below)

Section 3.4 Closed Sessions - Recommend delete entire section - Unnecessary expansion of City Attorney Role

3.4.1.1. – When requested by the City Manager to discuss a matter... - The City Manager has a right to call a closed session, so that role can call the meeting and include the City Attorney to discuss whatever. It doesn't mean the City Attorney needs to call the meeting.

3.4.1.2 – If in fact the "City Council" has requested a Special Closed session be called as the majority of the Council has the right to call a closed session, so the role of the majority can call the meeting.

3.4.1.3 – This is already the role of the City Attorney to "call a special meeting for the sole purpose of convening a closed session in accordance with the Brown Act (Section 36807)

3.4.5. – The Presiding Officer shall report out in public session....

1. There is a direct conflict to change the wording to "The City Attorney shall attend all closed sessions and". This is a transfer of power from the Mayor/Presiding Officer and gives to the attorney who may be conflicted and cannot attend every closed session. First of all, it says shall

and not may. Not all closed sessions involve the City Attorney. She may herself be the subject of a closed session for various reasons including personnel and liability. When we are discussing our other employee: City Manager, especially in regarding personnel, it is not the role of the City Attorney to be included. This, therefore should remain as is currently written.

Section 3.6 Emergency Meetings –

1. What does Section 54956.5 say?
2. Why remove “as may be amended from time to time”?

Section 4.3 Agenda and Submission

1. This section should remain as the original type. There are numerous issues with this as was already stated in my notes for 2.5 City Manager (notes started at B)

B. Remove this added line “unless the item has been placed on the agenda by the City Council pursuant to XXXX (a new section in this document)”. This is in **direct conflict** with the role of the manager and their ability to control the administration and workload of staff. **It is verified and expressed in several locations:**

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With these three deletions, you remove ALL checks and balances between the documents and only have a new order of things that is anti-democratic.

Section 4.3 options – Could eliminate altogether and:

1. Add 4.3.2 right after Section 5.5 as 5.5.1
2. Add 4.3.1 and 4.3.1.1 as a part of 5.11 (orig)...now 5.12.1

Section 5.6 Orders of Business.

1. What other city of our size has this? This is acknowledged as a request in special circumstances from all councilmembers. In an effort to equate every council member with the Presider of the meeting, it encourages extra discussion to extend the already lengthy agendas and promotes independence instead of unity as the Council needs to move forward. There is purpose in one being elected as the mayor of this City.

New section 5.8.1

1. Line 5 – instead of crossing out maximum, it should be replaced with “overall”, because that is the intent.
2. Line 6, leave “maximum”. This was instituted in 2013 after much deliberation. This is the intent and should stay so that the Council can be more efficient with time for the business of the City. Traditionally, this has been for announcements and items that should not take long. If it is already midnight, we must be able to curtail the length of items not on the agenda.

Section 5.12.1 (originally 5.11, not 5.10.1) – this is the original foundation for 4.3 and the others noted prior for Code of Conduct. This is how the Council fairly moved forward with requests for discussion.

Correction beginning at proposed 5.12

1. The entire numbering from 5.12.1 – 5.19 is off and I had to refer to the original document. This proves a challenge for the public to be able to follow when the information doesn't match.

Section 5:16 (new) Parliamentary Procedures

1. Since the City Attorney is the Parliamentarian for the City Council Meeting, does that mean the City Attorney is the Parliamentarian for all the Commissions, Boards?

Section 6 Conduct of the Public

1. Should add the new Brown Act and other updated language

2. 6.1.4. – Keep the deleted line for transparency. We should acknowledge there are exceptions.

3 6.3. Rules of Decorum – in the last sentence, consider inserting “or any such reasonable positive time” before “shall be considered a disruption”