



Think Inside the Triangle™

## NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

**Date/Time:** **Tuesday, August 20, 2024, 5:00 p.m.**  
(or as soon thereafter as possible)

**Location:** **Tracy City Hall, Council Chambers**  
**333 Civic Center Plaza, Tracy, CA. 95376**

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

***This meeting will be open to the public for in-person and remote participation pursuant to Government Code Section 54953(e)***

### **For Remote Public Comment:**

*During the Items from the Audience, 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: 2556 912 6787** and **Event Password: TracyCC**
  - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or 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 25569126787#8722922# Press \*3 to raise the hand icon to speak on an item.
  
- *Protocols for commenting via WebEx:*
  - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
    - *Listen for the Mayor to open “Items from the Audience/Public Comment”, 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 “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*

1. Call to Order
2. Actions, by Motion, of City Council pursuant to AB 2449, if any
3. Roll Call and Declaration of Conflicts
4. Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure*, adopted by Resolution No. 2019-240, and last amended by Resolution No. 2021-049, 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.
5. DISCUSSION ITEMS
  - 5.A. The City Council 1) discuss responses to the 2023-2024 San Joaquin County Civil Grand Jury’s Report titled: “City of Tracy: Public Trust Still Not Restored” Case No. 0323 and, upon conclusion, and 2) adopt a Resolution approving the final form of response letter and authorizing the City Manager and City Attorney to jointly execute and transmit the response letter to the presiding judge.
6. Council Items and Comments
7. Adjournment

**Posting Date: August 17, 2024**

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager’s Office at (209) 831-6000 at least 24 hours prior to the meeting.

Agenda Item 5.A

RECOMMENDATION

**The City Council 1) discuss responses to the 2023-2024 San Joaquin County Civil Grand Jury's Report titled: "City of Tracy: Public Trust Still Not Restored" Case No. 0323 and, upon conclusion, and 2) adopt a Resolution approving the final form of response letter and authorizing the City Manager and City Attorney to jointly execute and transmit the response letter to the presiding judge.**

EXECUTIVE SUMMARY

On June 17, 2024, the City received the 2023-2024 San Joaquin Civil Grand Jury's Final Report entitled "City of Tracy: Public Trust Still Not Restored" (see Attachment A). Pursuant to its press release, the Grand Jury conducted the investigation due to "continued disfunction among the elected officials of the Tracy City Council and made recommendations within the areas of the City Council, the City Attorney, and City Council hired staff".

California Penal Code §933.05 contains guidelines for responses to Grand Jury Findings and Recommendations. As stated in Penal Code § 933.05(a), the Respondent is required to "Agree," or "Disagree" in whole or in part, with each applicable Finding. Further, as stated in Penal Code §933.05(b), the Respondent is required to respond to each applicable Recommendation with one of four possible actions:

1. **The recommendation has been implemented**, with a summary regarding the implemented action.
2. **The recommendation has not yet been implemented**, but will be implemented in the future, with a timeframe for implementation.
3. **The recommendation requires further analysis**, with an explanation and the scope and parameters of an analysis or study, and a timeframe of no more than 6 months from October 1, 2024, for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable.
4. **The recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

Attachment C is a list of considerations to facilitate a discussion on the City Council's responses to each finding and recommendation for Section 1 of the Grand Jury Report. For Section 2 and Section 3, the City Manager and City Attorney have responded to each finding and recommendation, as reflected in the draft response letter in Attachment B.

The City Council's Response to the Civil Grand Jury's Findings and Recommendations is due to the Office of the Presiding Judge of the San Joaquin Superior Court, no later than September 15, 2024. Approval of this report satisfies the requirements of Penal Code § 933(c), which requires

the City Council to respond to the Civil Grand Jury Report no later than 90-days after the Grand Jury submits its final report.

### BACKGROUND AND LEGISLATIVE HISTORY

In June 2018, the Grand Jury released a report titled “San Joaquin County Municipality Ethics Policies” 2017-18 Case No. 0917 about its investigation of the ethics policies of San Joaquin County and the municipalities within its boundaries. The City’s response to the 2018 report stated that the City was committed to enacting a code of ethics in 2018. In 2019, the Grand Jury released a report titled “Tracy City Council: Restore the Public Trust”, which primarily focused on five topic areas: Ethics Policy, City Council Conduct, Council Vacancy Appointment Process, Impact of Executive Staff Separations, and Council Intrusion in City Operations. On June 17, 2024, the Grand Jury released a third report titled “City of Tracy: Public Trust Still Not Restored” focused on City Council dynamics, City Attorney Operations, and Council-Hired staff. As mentioned above, The City Council’s Response to the Civil Grand Jury’s Findings and Recommendations is due to the Office of the Presiding Judge of the San Joaquin Superior Court, no later than September 15, 2024. Approval of this report satisfies the requirements of Penal Code § 933(c), which requires the City Council to respond to the Civil Grand Jury Report no later than 90-days after the Grand Jury submits its final report.

### ANALYSIS

The Report’s subject matter and content are sensitive in nature as they relate to City Council’s relations and the Grand Jury’s perception of those relations and their impact on the public, the City as an organization, and its employees. To that end, staff will work with the Council body this evening to determine whether the City agrees or disagrees (wholly or partially) with the Findings and to confirm its support of the proposed responses to the Recommendations. (see Attachment B and Attachment C). Regardless of one’s agreement or disagreement with the Grand Jury’s Findings and Recommendations, the City understands that these conclusions were informed by the evidence the Grand Jury reviewed in the course of its investigation, including confidential testimony to which neither the City nor public have access.

### Section 1

To facilitate this discussion, staff requests that the City Council review and discuss the draft considerations presented in Attachment C for each Finding and Recommendation for Section 1. The City Council should have at least majority consensus on the language for each Finding and Recommendation, which the Council body can demonstrate through informal verbal consent or formal action by motion. If the City Council agrees with a Finding, no additional comments are required; however, under the Penal Code, an explanation is required if the City Council disagrees (wholly or partially) with a Finding. For each Recommendation, the City Council must select one of the following responses and provide additional explanation as noted below:

1. **The recommendation has been implemented**, with a summary regarding the implemented action.
2. **The recommendation has not yet been implemented**, but will be implemented in the future, with a timeframe for implementation.
3. **The recommendation requires further analysis**, with an explanation and the scope and parameters of an analysis or study, and a timeframe of no more than 6

months from October 1, 2024, for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable.

4. **The recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

### Section 2 and 3

In the draft Response letter, included in Attachment B, the City Manager and City Attorney provided potential responses for the Findings and Recommendations for Section 2 and Section 3 as they each relate to department level issues rather than the Council body. Under the Penal Code, the legislative body of the governing body must present a response to the presiding judge on all matters “under the control” of such governing body. As the administrative and legal operations of the City are indirectly under the control of the City Council through its exclusive power to appoint the City Manager and City Attorney, respectively, staff requests that the City Council review the draft responses and authorize the transmittal of such response as a part of the final letter to the presiding judge.

### Peer Review

Pursual to a formal motion by Councilmember Arriola (which was seconded by Mayor Young), the City Attorney has engaged outside legal counsel to perform an independent peer review of the proposed Responses for Section 2 and Section 3 in the draft letter that is provided in Attachment B, as well as the City Council Considerations for Section 1 provided in Attachment C. Patrick Donegan, with the firm of Best, Best & Krieger, LLP, will perform the requested peer review upon publication of this agenda item and his analysis will be added to the agenda packet if received in time to publish a supplemental agenda. At the will of the City Council, his analysis may be further updated should the City Council’s final responses change substantially from what is presented in the agenda packet. Also, Mr. Donegan will be available at the meeting, remotely, to answer any questions the City Council may have.

### Next Steps

The anticipation is that specific edits desired by the City Council may be finalized at the meeting itself. Staff recommends that, at the conclusion of the discussion, the City Council authorize, by Resolution, the City Manager and City Attorney to jointly sign and transmit a Response Letter in a form that accurately reflects the Council’s collective responses.

### FISCAL IMPACT

Staff does not anticipate any fiscal impacts as a result of the Grand Jury response preparation; however, the responses provided by the City may lead to requiring investment in professional services or other technical support that will help the City better address the issues identified in the Report.

### PUBLIC OUTREACH/ INTEREST

The residents and businesses in Tracy remain actively engaged and interested in the functions and effectiveness of its City. As such, staff will widely post and disseminate in social media and our website a copy of the final letter submitted to the Grand Jury for public review.

COORDINATION

The City Manager and City Attorney have coordinated to draft and prepare the initial responses for the City Council's consideration.

CEQA DETERMINATION

Review under the California Environmental Quality Act is not applicable for this report.

STRATEGIC PLAN

This is a routine operational item and is not related to any of the Council Strategic Priorities

ACTION REQUESTED OF THE CITY COUNCIL

The City Council 1) discuss responses to the 2023-2024 San Joaquin County Civil Grand Jury's Report titled: "City of Tracy: Public Trust Still Not Restored" Case No. 0323 and, upon conclusion, and 2) adopt a Resolution approving the final form of response letter and authorizing the City Manager and City Attorney to jointly execute and transmit the response letter to the presiding judge.

Prepared: Karin Schnaider, Assistant City Manager  
Arturo Sanchez, Assistant City Manager

Reviewed and Approved by: Midori Lichtwardt, City Manager  
Bijal M. Patel, City Attorney

Attachment A – 2023-2024 San Joaquin County Civil Grand Jury Report Case #0323  
Attachment B – Draft Response Letter  
Attachment C – City Council considerations for Section 1 of the Grand Jury's Findings and Recommendations

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# 2023- 2024 San Joaquin County Civil Grand Jury



## City of Tracy: Public Trust Still Not Restored

### Case #0323

#### Summary

The City of Tracy has been plagued with a city council that cannot form a civil, cohesive governing body willing to set aside differences and personal agendas for the benefit of City residents. The 2018-2019 Civil Grand Jury issued a report entitled “Restore the Public Trust”. That investigation highlighted the inability of the Tracy City Council to work together cohesively, manifested by unprofessional behavior towards each other during public meetings. In addition, a consistent 3/2 voting bloc existed leading to the termination or forced resignation of a City Manager, Assistant City Manager, and Police Chief. The unexplained departures of the City’s administrative leaders created an unstable working environment at City Hall.

The most significant recommendation in that report was for the Council to establish a Code of Conduct to guide them on how to work together more effectively and respectfully. To reduce the impact of a 3/2 voting bloc, a recommendation was made to require a supermajority council vote to approve the removal of the City Manager or the City Attorney. The supermajority vote requirement was approved as well as the adoption of a Code of Conduct. Although it has had numerous

21 revisions, the Code of Conduct has not led to improved relationships between Council members, nor  
22 has it had a positive impact on the effective leadership of the Council.

23 Unfortunately, the same problems noted in the 2018-2019 Grand Jury Report continue to exist today.  
24 The 2022-2023 Civil Grand Jury received a complaint regarding the continued personal animus  
25 between council members displayed openly and unprofessionally at council meetings. The source of  
26 many disagreements revolved around philosophical differences in Tracy's growth, leading to a lack  
27 of consistent vision of Tracy's future and distrust between council members and developers. History  
28 repeated itself as evidenced by the Council's actions that led to the May 2023 resignation of the City  
29 Manager. This resulted in a void in City management and leadership. As a consequence, there was a  
30 disruption in the efficient delivery of City services. The continuing vacant and temporary senior  
31 administrative positions have also led to inefficiency in serving and responding to the public.

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33 Adding to this disruption was an effort by the City Attorney to revamp City agreements and the  
34 format of staff reports. The City Attorney's inability to retain staff has resulted in significant delays  
35 in the work product from that office. These delays have increased public frustration in working with  
36 the City, resulting in project delays, increased costs, and a negative impact on the City of Tracy's  
37 reputation in the business community. This has resulted in a loss of business opportunities.

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39 Through its investigation, the 2023-2024 San Joaquin County Civil Grand Jury has identified  
40 opportunities for implementing changes that hopefully, this time, can ensure a more harmonious and  
41 productive City Council and improve the morale and efficiency of city staff.

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## 43 **Background**

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45 The City of Tracy has experienced significant growth of 8.38% since the 2020 census and is the  
46 second-largest city in San Joaquin County. Its proximity to the densely populated Bay Area has  
47 created opportunities to provide more affordable housing options. The availability of land has  
48 enabled the development of housing as well as growth in warehouse distribution centers.



49 The City of Tracy operates under the Council-Manager form of government, as outlined in the Tracy  
50 Municipal Code section 2.08.060. It designates the five-member City Council as the governing body  
51 of the City, vested with the authority to establish policy, adopt new laws, levy taxes, award  
52 contracts, and appoint the City Manager and City Attorney. Council members are limited to serving  
53 two four-year terms; the office of Mayor is limited to two two-year terms. The Mayor is the fifth  
54 member of the Council and presides over meetings and acts as a figurehead at various city functions.  
55 Council members are responsible to the people for the actions of local government. In the Council-  
56 Manager form of municipal government, the Council appoints the City Manager who is responsible  
57 for the day-to-day operations of City business. The City Attorney is also appointed by the Council  
58 and serves as the primary legal advisor to the City.

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### **Reason for Investigation**

61 The 2023-2024 Civil Grand Jury received complaints claiming unprofessional conduct and  
62 animosity by Council members, unprofessional conduct by the City Attorney, and a return of “power  
63 politics” resulting in public discord, resignations of senior staff, and low morale of City employees.

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### **Method of Investigation**

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#### **Materials Reviewed**

68 San Joaquin County 2018-2019 Civil Grand Jury Report, Tracy City Council: Restore the Public  
69 Trust, Case 0418

70 2019-2020 Civil Grand Jury Report, Follow-Up Report, Tracy City Council: Restore the Public  
71 Trust

72 City of Tracy Code of Conduct, October 15, 2019, revisions: July 21, 2020, February 10, 2021,  
73 October 19, 2021, and June 6, 2023

74 City of Tracy: Council Meeting Protocols and Rules of Procedure

75 City Council meeting videos and minutes

76 City of Tracy Municipal Code

77 Rosenberg’s Rules of Order

78 Executive staff performance reviews  
79 Executive staff employment contracts  
80 Online Archives: Tracy Press, The Stockton Record  
81 California League of Cities: Counsel and Council  
82 California League of Cities: Western City Magazine  
83 Institute for Local Government: Ethics and Transparency (AB1234)

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85 **Interviews Conducted**

86 Former and current City of Tracy elected and appointed officials, commissioners, and employees  
87 Tracy Citizens  
88 Residential/Commercial Developers  
89 San Joaquin County employee

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91 **Discussions, Findings, and Recommendations**

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93 **1.0 Discussion: City Council**

94 Through their unprofessional behavior and inability to work cohesively, members of the Tracy City  
95 Council have been unable to govern effectively and have failed the citizens of the city they have  
96 pledged to serve.

97

98 The City Council violated the Brown Act by posting and discussing personnel performance issues on  
99 an open Council agenda. The 2018 San Joaquin County Civil Grand Jury recommended: “City  
100 Manager and City Attorney should be shielded from power politics and shifting alliances by  
101 requiring a supermajority (4/1) vote for their termination”. This recommendation was accepted and  
102 implemented. In 2023, three members of the City Council attempted to change the ordinance  
103 requiring a supermajority vote to a simple majority vote to remove only the City Manager but were  
104 not successful. This resulted in another costly resignation.

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## Findings

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- 108 **F1.1:** Through their unprofessional behavior and inability to work cohesively, members of the  
109 Tracy City Council have been unable to govern effectively.
- 110 **F1.2:** Tracy City Council has violated the Brown Act in multiple ways: discussing personnel issues  
111 in an open meeting and posting personnel issues on an open Council agenda.
- 112 **F1.3:** Some Tracy City Council members have created a toxic work environment within City Hall  
113 by spreading accusations of corruption and alleged illegal activities by upper management  
114 staff and other Council members.
- 115 **F1.4:** Tracy City Council's behavior has resulted in poor morale within City Hall.
- 116 **F1.5:** The City Council created a void in city administration and leadership through the resignation  
117 of another City Manager. It should be noted that there have been six city managers and four  
118 city attorneys in the past five years.
- 119 **F1.6:** The unprofessional Council behavior during Council meetings has negatively impacted the  
120 City's reputation, affecting new business development and recruitment of potential city  
121 employees.
- 122 **F1.7:** Members of the City Council attempted to undermine the ordinance requiring a supermajority  
123 vote to remove the City Manager to a simple majority vote.
- 124 **F1.8:** There are no established measurable performance goals and objectives for the City Manager  
125 and City Attorney; therefore the City Council cannot conduct effective annual evaluations.
- 126 **F1.9:** Serving as Parliamentarian for Council meetings puts the City Attorney in a conflicting  
127 situation. Each decision by the Parliamentarian can be seen as partial to one side or the other.  
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## Recommendations

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- 130 **R1.1:** By October 1, 2024, members of the City Council need in-depth and continuous training on  
131 the understanding and the effective utilization of the City of Tracy Code of Conduct, City of  
132 Tracy Council Meeting Protocols and Rules of Procedures, and Rosenberg's Rules. Members  
133 of the City Council and the City Attorney should refer to the League of California Cities:  
134 Counsel and Council: A Guide to Building a Productive City <http://www.calcities.org/>

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**R1.2-R1.6:** By October 1, 2024, members of the City Council need in-depth and continuous training in understanding the requirements of the Brown Act.

**R1.7:** By October 1, 2024, City Council should approve an ordinance requiring a supermajority vote to modify any ordinance requiring a 4/1 vote. Additionally, a 90-day public notice to change this vote requirement ordinance should be mandatory.

**R1.8:** By October 1, 2024, the employment contracts for the City Manager and the City Attorney should require individual performance goals and objectives established within 90 days of hire. These goals and objectives should be evaluated annually.

**R1.9:** By October 1, 2024, if a Parliamentarian is deemed necessary at City Council meetings, the position should be held by an independent third party.

**2.0 Discussion: City Attorney**

The City Attorney determined it was necessary to correct past practices that did not, in her opinion, adequately provide legal protection to the city. These corrections would require a great deal of time. Compounding this problem are reports by city employees that the City Attorney mistrusts their ability to do their job. As a result, the City Attorney spends a significant amount of time reviewing and modifying work from various departments. It has been reported that the City Attorney has difficulty in delegating and prioritizing their department’s workload. This has caused delays in the timely processing of city work product.

City employees reported that they were publicly berated, belittled, and humiliated by the City Attorney. The City Attorney’s apparent lack of confidence in employees, and unsubstantiated accusations of illegal activities by employees have created an atmosphere of fear and low morale. This has resulted in the loss of numerous staff members which has impeded the provision of services for the citizens of Tracy.

## Findings

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- 164 **F 2.1:** Employees reported the work backlog created by updating past practices has negatively  
165 impacted the public because of delays in residential and/or commercial agreements with the  
166 City.
- 167 **F2.2:** The City Attorney’s difficulty in delegating and prioritizing the workload has caused a delay  
168 in the timely processing of City work products.
- 169 **F2.3:** Interviews with former employees indicated that the Tracy City Attorney’s office is  
170 understaffed compared to cities of similar population.
- 171 **F2.4:** The current Code of Conduct limits the hiring of outside legal counsel to only the City  
172 Attorney. This ties the hands of the City of Tracy when the City Attorney is not available to  
173 meet the duties of her office.
- 174 **F2.5:** Reported unprofessional behavior by the City Attorney in dealing with city staff has led to  
175 low morale and staff resignations.

## Recommendations

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- 178 **R2.1:** By October 1, 2024, an outside legal firm should be engaged to help expedite the current  
179 work backlog in the City Attorney’s office.
- 180 **R2.2:** By October 1, 2024, the office of the City Attorney should develop and utilize standardized  
181 agreements to streamline the review and approval processes.
- 182 **R2.3:** By October 1, 2024, the City of Tracy should budget for and hire additional City Attorney  
183 staff.
- 184 **R2.4:** By October 1, 2024, the Code of Conduct regarding the hiring of outside counsel should be  
185 amended to allow other city officials to hire outside counsel if the City Attorney is unable to  
186 perform their duties, or if the legal issue being addressed gives the appearance of a potential  
187 conflict of interest.
- 188 **R2.5:** By October 1, 2024, the City Attorney should be given training in personnel management.  
189 The City Attorney’s actions should be consistent with the League of California Cities:

190 Counsel and Council Guide: <https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel->  
191 [council-2022-ver4.pdf](https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel-council-2022-ver4.pdf)

192 In particular Principal 5:

193 *“The city attorney should conduct himself/herself at all times in a professional and dignified*  
194 *manner, interacting with all elected officials, city staff, members of the public, and the media*  
195 *with courtesy and respect.”*

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197 **3.0 Discussion: Council Hired Staff**

198 The City of Tracy's Human Resources Department (HR) has a grievance process for employees to  
199 file complaints. There is a potential conflict of interest in the process for employees who work for  
200 the City Attorney or the City Manager. If a grievance is filed against the City Attorney or the City  
201 Manager, HR does not have the authority to assist the employee because these positions are overseen  
202 by the City Council, not the HR department. If a complaint is filed against the City Attorney, the  
203 City Attorney has the sole authority to hire outside counsel for an investigation, if warranted. If this  
204 is not a conflict of interest, there is an appearance of one.

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206 **Findings**

207 **F3.1:** The City of Tracy does not have a clear process for filing complaints against council-hired  
208 staff.

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210 **Recommendations**

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212 **R3.1:** By December 31, 2024, the City of Tracy shall establish a confidential process for employee  
213 complaints against council-hired staff. The process should include a third-party vendor to  
214 assure complete confidentiality.

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## Glossary

- **City Council, Council, Council members:** For this report, these terms are interchangeable and generally refer to the entire five-member Tracy City Council, including the Mayor.
- **Council-Manager form of Government:** A form of municipal government in which the city manager functions as the chief executive of the city, overseeing the day-to-day operations of the city, and serving as the chief advisor to the city council.
- **Ethics Policy, Code of Conduct, Code of Ethics and Conduct:** A set of principles used to guide conduct and decision making. For this report these terms are interchangeable.
- **League of California Cities:** An association of cities within the state of California that provides education, research, support, and advocacy to member cities.
- **Power politics:** Political action by a person or group which makes use or is intended to increase their power or influence.
- **Supermajority:** In the case of the Tracy City Council, at least four out of five members
- **Voting Bloc:** In the case of the Tracy City Council, a group of votes, three to two, for a common agenda which dominates their voting pattern.

## Conclusion

The citizens of Tracy cannot fully enjoy the benefits of a well-run city government if basic standards of civil behavior are not adhered to. With the continued dysfunction amongst elected officials, the public is the ultimate victim. The City Council must abide by the Tracy City Council Code of Conduct if public trust can ever be restored.

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## Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911. 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929). This report was issued by the Grand Jury except for two members of the jury. These jurors were excluded from all parts of the investigation including interviews, presentations, deliberations, and the development and acceptance of the report.

## Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

*Note: If the responder is an elected official, the response must be sent within 60 days of receipt.* The Tracy City Council shall respond to all findings and recommendations. Mail or hand deliver a hard copy of the response to:

Honorable Gus C. Barrera II, Presiding Judge  
San Joaquin County Superior Court  
180 E Weber Ave, Suite 1306J  
Stockton, California 95202

Also, please email a copy of the response to Irving Jimenez, Staff Secretary to the Grand Jury, at [civilgrandjury@sjcourts.org](mailto:civilgrandjury@sjcourts.org)



Honorable Gus C Barrera II, Presiding Judge  
San Joaquin Superior Court  
180 East Weaver Ave, Suite 1306J  
Stockton, CA 95202

Re: Grand Jury Report: City of Tracy: Public Trust Still Not Restored 2023-2024 Case No. 0232

Honorable Judge Barrera:

This letter responds to the above-referenced Grand Jury Report in accordance with California Penal Code sections 933 and 933.05. The Tracy City Council has reviewed and thoughtfully considered the Grand Jury's Report. The responses contained in this letter have been approved by the Tracy City Council on August 20, 2024.

## **1.0 CITY COUNCIL**

### ***Findings***

***F1.1*** *Through their unprofessional behavior and inability to work cohesively, members of the Tracy City Council have been unable to govern effectively.*

The City **agrees or disagrees wholly or partially** with this finding.

***F 1.2*** *Tracy City Council has violated the Brown Act in multiple ways: discussing personnel issues in an open meeting and posting personnel issues on an open Council agenda.*

The City **agrees or disagrees wholly or partially** with this finding.

***F 1.3*** *Some Tracy City Council members have created a toxic work environment within City Hall by spreading accusation of corruption and alleged illegal activities by upper management, staff and other Council members.*

The City **agrees or disagrees wholly or partially** with this finding.

***F 1.4*** *Tracy City Council's behavior has resulted in poor morale within City Hall.*

The City **agrees or disagrees wholly or partially** with this finding.

***F 1.5*** *The City Council created a void in city administration and leadership through the resignation of another City Manager. It should be noted that there have been six city managers and four city attorneys in the past five years.*

The City **agrees or disagrees wholly or partially** with this finding.

**F 1.6** *The unprofessional Council behavior during Council meetings has negatively impacted the City's reputation, affecting new business development and recruitment of potential city employees.*

The City **agrees or disagrees wholly or partially** with this finding.

**F 1.7** *Members of City Council attempted to undermine the ordinance requiring a supermajority vote to remove the City Manager to a simple majority vote.*

The City **agrees or disagrees wholly or partially** with this finding.

**F 1.8** *There are no established measurable performance goals and objectives for the City Manager and City Attorney; therefore, the City Council cannot conduct effective annual evaluations.*

The City **agrees or disagrees wholly or partially** with this finding.

**F 1.9** *Serving as Parliamentarian for Council meetings puts the City Attorney in a conflicting situation. Each decision by the Parliamentarian can be seen as partial to one side or the other.*

The City **agrees or disagrees wholly or partially** with this finding.

### **Recommendations**

Select one of the following for each Recommendation:

1. **The recommendation has been implemented**, with a summary regarding the implemented action.
2. **The recommendation has not yet been implemented**, but will be implemented in the future, with a timeframe for implementation.
3. **The recommendation requires further analysis**, with an explanation and the scope and parameters of an analysis or study, and a timeframe of no more than 6 months from October 1, 2024, for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable.
4. **The recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

**R1.1** *By October 1, 2024, members of the City Council need in-depth and continuous training on the understanding and the effective utilization of the City of Tracy Code of*

*Conduct, City of Tracy Council meeting Protocols and Rules of Procedures, and Rosenberg's Rules. Member of the City Council and the City Attorney should refer to the League of California Cities: Counsel and Council: A Guild to Building a Productive City <http://www.calcities.org/>*

**R1.2-R1.6** By October 1, 2024, member of the City Council need in-depth and continuous training in understanding the requirements of the Brown Act.

**R1.7** *By October 1, 2024, City Council should approve an ordinance requiring a supermajority vote to modify any ordinance requiring a 4/1 vote. Additionally, a 90-day public notice to change this vote requirement should be mandatory.*

**R1.8** *By October 1, 2024, the employment contracts for the City Manager and the City Attorney should require individual performance goals and objectives established within 90 days of hire. These goals and objectives should be evaluated annually.*

**R1.9** *By October 1, 2024, if a Parliamentarian is deemed necessary at City Council meetings, the position should be held by an independent third party.*

## **2.0 Discussion: City Attorney**

### ***Findings***

#### 2.0 CITY ATTORNEY

***F2.1 Employees reported the work backlog created by updating past practices has negatively impacted the public because of delays in residential and/or commercial agreements with the City.***

**The City Attorney partially disagrees with this finding.**

The City Attorney has an ethical and professional duty to the City of Tracy to follow and promote the rule of law. The City Attorney consistently has implemented this duty by providing representation that encourages a culture of compliance with legal requirements. For the past year, the City Attorney's Office has closely collaborated with multiple departments, especially the City Manager's Office, to improve various forms as well as internal and external review and approval processes. The underlying desire, Citywide, has been to incorporate best practices while providing quality customer service to City applicants. As with all change management, there was a temporary transition period that created some difficulties, and City staff worked with relevant stakeholders throughout the process. Overall, these improvements positively serve the public (and the City) as they create clarity in expectations between the City and applicants, more enforceable documents, and greater certainty in deadlines for implementing public infrastructure.

With respect to any perceived backlog, as noted below, there is no significant backlog in the City Attorney's Office at this moment. The current City Attorney commenced her employment with the City of Tracy on April 25, 2022. Since that date, the City Attorney's Office has reviewed and executed more than 900 documents, which is double the number of documents that had been executed in the City the two years preceding her arrival. The City Attorney's Office is committed to providing timely and quality legal services to all City teams.

***F2.2 The City Attorney's difficulty in delegating and prioritizing the workload has caused a delay in the timely processing of City work products.***

**The City Attorney wholly disagrees with this finding.**

The City Attorney meets with staff within the City Attorney's Office on a weekly basis to assign, delegate and distribute work as appropriate. In addition to these formal meetings, she has multiple impromptu meetings and calls with staff to discuss and resolve pending matters. The City Attorney also engages outside counsel, as needed, to assist with various litigation matters and special counsel assignments, to ensure that timely and expert legal services are being rendered to all City teams.

As noted above, as of the date of this Response, the City Attorney's Office has no significant backlog with respect to documents/agreements that have been submitted by City staff for legal review, as the prior backlog has been diligently cleared. In addition to these document reviews, the City Attorney also ensures that the numerous deadlines for court filings and agenda publications (the City Attorney's Office reviews every item being published on agendas of the City Council, standing committees, and Planning Commission) are met. The City Attorney's Office has also resolved dozens of outstanding code enforcement citations, many of which predated the arrival of the current City Attorney. The City Attorney strives to utilize available resources to timely meet the City's legal needs, in the most cost-efficient manner possible.

***F2.3 Interviews with former employees indicated that the Tracy City Attorney's office is understaffed compared to cities of similar population.***

**The City Attorney agrees with this finding.**

***F2.4 The current Code of Conduct limits the hiring of outside legal counsel to only the City Attorney. This ties the hands of City of Tracy with the City Attorney is not available to meet the duties of her office.***

**The City Attorney wholly disagrees with this finding.**

The City of Tracy is a general law city and its powers derive from those granted by the State legislature. Government Code 41801 expressly states: "The city attorney shall advise the city officials in all legal matters pertaining to city business." This basic legal

requirement is codified in the Tracy Municipal Code under Section 2.10.010, which states:

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.

To the extent that there is a conflict of interest, the City Council retains the power to engage other legal counsel. This limited power cannot practically nor legally be delegated to individual City departments.

***F2.5 Reported unprofessional behavior by the City Attorney in dealing with city staff has led to low morale and staff resignations.***

**The City Attorney wholly disagrees with this finding.**

While the City has 500+ employees, the City Attorney has direct supervisory and hiring authority over only the four positions within the City Attorney's Office that report to her. Unless legal issues arise, the City Attorney has no involvement in the supervision or employment status of any other employee position in the City. As to employees within the City Attorney's Office, the reasons for resignations and/or separations from the City are confidential personnel matters that cannot be discussed in this public document. The City has a robust Human Resources Department, and all employees are encouraged to discuss their grievances with the Human Resources Department.

As discussed above, for the last year, there has been a collaborative effort at the executive level to incorporate best practices across disciplines by improving forms as well as internal and external review and approval processes. A period of transition can cause stress for individual employees throughout an organization, and, to the extent possible, the City Attorney has worked closely with the City Manager's Office to assist in managing these changes. The period of transition could have been further exacerbated by the period of instability that existed in the City Manager's position during 2023. Within this broader context, it is difficult to isolate any one employment condition as a cause for an employee's departure.

***R2.1 By October 1, 2024, an outside legal firm should be engaged to help expedite the currently work backlog in the City Attorney's office.***

**The recommendation has been implemented.**

As noted above, the City Attorney engages outside counsel, as needed, to assist with various litigation matters and special counsel assignments, to ensure that timely and expert legal services are being rendered to all City teams. The City Attorney's Office expects to issue a statewide Request for Proposals (RFP) for on-call legal services by the end of August 2024, as the prior RFP was done several years ago. This RFP will allow the City Attorney's Office to have access to more law firms practicing in the State, across various practice areas relevant to the needs of the City. The RFP will also request proposals from law firms seeking to serve as an outside Assistant City Attorney, in the event that a suitable in-house attorney is not found to fill the vacant position through the normal recruitment process.

***R2.2 By October 1, 2024, the office of the City Attorney should develop and utilize standardized agreements to streamline the review and approval processes.***

**The recommendation has been implemented.**

The City Attorney strongly believes in the efficiencies that stem from having standardized agreements. To this end, the City Attorney has created templates for various agreements that are routinely used by the City, such as professional service agreements, airport leases, and improvement agreements. These forms are now in the process of being converted to fillable PDF documents, to further streamline the review and approval processes. The City Attorney's Office will continue to develop additional templates, as appropriate. In addition to creating templates, the City Attorney has implemented a new procedure in which templated agreements (as long as no changes are being proposed to such forms) no longer have to come to the City Attorney's Office for initial "document review". This new procedure will greatly streamline internal approval processes.

***R2.3 By October 1, 2024, the City of Tracy should budget for and hire additional City Attorney staff.***

**The recommendation requires further analysis.**

In recent history, the City Attorney's Office has had 3 legal positions (City Attorney, Assistant City Attorney, and Deputy City Attorney) and 1 administrative position (Legal Secretary). In addition to improving forms and processes to help with the workload, in the Fall of 2023, the City Attorney recommended that the City Council create a new Paralegal position in the office. The City Council agreed with the recommendation, and this position is now filled by a paralegal with decades of experience. The addition of the new paralegal has provided significant assistance to the office. As there is currently a vacancy in a key position (Assistant City Attorney), the decision to budget for and hire additional staff is best determined once this key position is filled again. The City anticipates being able to make that decision within the next 6 months.

***R2.4 By October 1, 2024, the Code of Conduct regarding the hiring of outside counsel should be amended to allow other city officials to hire outside counsel if***

***the City Attorney is unable to perform their duties, or if the legal issue being addressed give the appearance of a potential conflict of interest.***

**The recommendation will not be implemented.**

As noted in Finding 2.4, the State has tasked the City Attorney of a general law city to provide all requisite legal services to all city officials and that requirement has been codified in the Tracy Municipal Code. To the extent that a conflict exists, the City Council, as a body, retains the power to engage separate legal counsel with respect to those specific matters in which a conflict exists. The City Council has exercised this power in the past.

Further, determination of whether the City Attorney is “able to perform their duties” is a contractual matter between the City Council and the City Attorney. The City Attorney has an employment contract with the City. This contract articulates the responsibilities of the City Attorney and the process by which the City Council, the other contracting party, may determine the City Attorney is failing to perform such responsibilities. Other City officials should not be involved in this contractual relationship.

Finally, granting other city officials the ability to hire outside counsel would create grave legal risks to the City. Precedence and consistency are critical in the implementation of legal practices. Multiple attorneys that are separately engaged and managed (outside of the City Attorney’s Office) would result in inconsistent agreements and legal practices on behalf of the City. The City Attorney’s essential responsibility of selecting and managing outside counsel is also identified by the League of Cities in its *Counsel and Council Guide*.

***R2.5 By October 1, 2024, the City Attorney should be given training in personnel management. The Attorney’s actions should be consistent with the League of California Cities: Counsel and Council Guide:***

***<https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel-council-2022-ver4.pdf>*** in particular Principal 5: “The city attorney should conduct himself/herself at all times in a profession and dignified manner, interacting with all elected officials, city staff, members of the public, and the media with courtesy and respect.”

**The recommendation has not yet been implemented.**

The City Attorney embraces opportunities to improve personnel management skills, especially as such training is not typically provided to practicing attorneys. The City Attorney will work with the Human Resources Department to identify suitable courses and begin to implement the recommended action by October 1, 2024 (to the extent such courses are available by then).

### **3.0 COUNCIL HIRED STAFF**

#### ***Finding***

***F3.1*** *The City of Tracy does not have a clear process for filing complaints against council hire-hired staff.*

#### **The City wholly disagrees with this finding.**

The City has several methods of receiving formal, informal, and anonymous complaints. It strives to respond to such complaints expeditiously. The City has an established process for employee complaints against all employees, including council-hired staff, through its Whistleblower Administrative Policy. In addition, the City of Tracy's "Whistleblower Hotline and Employee Protection Line" is monitored by a third-party vendor. Notwithstanding, the City will endeavor to provide additional employee training on the processes available.

#### ***Recommendation***

***R3.1*** *By December 31, 2024, the City of Tracy shall establish a confidential process for employee complaints against council-hired staff. The process should include a third-party vendor to assure complete confidentiality.*

#### **The recommendation has been implemented.**

As noted above, the City has several methods of receiving formal, informal, and anonymous complaints. It strives to respond to such complaints expeditiously. The City has an established process for employee complaints against all employees, including council-hired staff, through its Whistleblower Administrative Policy. In addition, the City of Tracy's "Whistleblower Hotline and Employee Protection Line" is monitored by a third-party vendor. However, the City will endeavor to provide additional employee training on the processes available.

Thank you for providing the City of Tracy opportunity to comment on this important report. Please let us know if additional information is required or if you have any questions.

Sincerely,

Midori Lichtwardt, City Manager

Bijal Patel, City Attorney



## CITY COUNCIL CONSIDERATIONS FOR SECTION 1 OF THE GRAND JURY'S FINDINGS AND RECOMMENDATIONS

### **1.0 CITY COUNCIL**

***F 1.1*** *Through their unprofessional behavior and inability to work cohesively, members of the Tracy City Council have been unable to govern effectively.*

The City Council has adopted a Code of Conduct and Meeting Protocols to facilitate a professional and productive Council Meeting. The Code of Conduct, Section 3.6: Code of Conduct Compliance and Enforcement, provides the framework for the Council to address actions by fellow Councilmembers and/or Commissioners that may be considered unprofessional or prohibit the City Council's ability to govern effectively.

***F 1.2*** *Tracy City Council has violated the Brown Act in multiple ways: discussing personnel issues in an open meeting and posting personnel issues on an open Council agenda.*

The City of Tracy, like all employers, is restricted in what information it can and should share regarding personnel matters. The City takes seriously its responsibility to respect the privacy rights of its current and former employees. The Brown Act affords certain protections of personnel matters and any written allegations of Brown Act violations have been formally addressed by the City Council.

***F 1.3*** *Some Tracy City Council members have created a toxic work environment within City Hall by spreading accusation of corruption and alleged illegal activities by upper management, staff and other Council members.*

The City of Tracy, like all employers, strives to foster a safe, respectful, and dignified workplace for its employees. It prides itself on having responsive and ethical professional staff. Staff will work to assure that additional and appropriate workplace training occurs.

***F 1.4*** *Tracy City Council's behavior has resulted in poor morale within City Hall.*

The City of Tracy strives to foster a workplace environment of dignity, respect, professionalism, and community. The City Council has adopted a Code of Conduct and Meeting Protocols to facilitate a professional and productive working environment for all city staff. The Code of Conduct, Section 4.1: Relationship/Communications with Staff, provides the framework for Council and staff interactions. In addition, Section 3.6: Code of Conduct Compliance and Enforcement, provides the framework for the Council to address actions by fellow Councilmembers and/or Commissioners that may be considered unprofessional.

***F 1.5*** *The City Council created a void in city administration and leadership through the resignation of another City Manager. It should be noted that there have been six city managers and four city attorneys in the past five years.*

The City of Tracy continues to work to recruit and retain professional staff committed to the City and its workforce.

***F 1.6*** *The unprofessional Council behavior during Council meetings has negatively impacted the City's reputation, affecting new business development and recruitment of potential city employees.*

The City recognizes that the public deserves to see and be served in a professional and dignified way. The City Council has adopted a Code of Conduct and Meeting Protocols to facilitate a professional and productive Council Meeting. The Code of Conduct, Section 3.6: Code of Conduct Compliance and Enforcement, provides the framework for the Council to address actions by fellow Councilmembers and/or Commissioners that may be considered unprofessional or prohibit the City Council's ability to govern effectively. The City endeavors to establish a thriving and growing community that attract new businesses and employees.

***F 1.7*** *Members of City Council attempted to undermine the ordinance requiring a supermajority vote to remove the City Manager to a simple majority vote.*

As a general law city, ordinances are adopted on a simple majority vote, unless a supermajority vote is otherwise required by State law. More research is required to verify that this finding is applicable to the City of Tracy.

***F 1.8*** *There are no established measurable performance goals and objectives for the City Manager and City Attorney; therefore, the City Council cannot conduct effective annual evaluations.*

The City Manager and City Attorney, each, is currently working with a consultant and the Council body to develop respective performance goals and objectives to ensure that a positive working relationship with clear expectations on both sides is established going forward.

***F 1.9*** *Serving as Parliamentarian for Council meetings puts the City Attorney in a conflicting situation. Each decision of the Parliamentarian can be seen as partial to one side or the other.*

Per League of California Cities: Understanding Your City's Departments, "The city attorney also may serve as the council's parliamentarian." The City Attorney is governed by the State Bar of California Rules of Professional Conduct, requiring attorneys to provide unbiased legal advice to their clients. The City is not aware of a structure in which the City Attorney is not the parliamentarian of the council body.

***R1.1*** *By October 1, 2024, members of the City Council need in-depth and continuous training on the understanding and the effective utilization of the City of Tracy Code of Conduct, City of Tracy Council meeting Protocols and Rules of Procedures, and Rosenberg's Rules. Member of the City Council and the City Attorney should refer to the League of*

*California Cities: Counsel and Council: A Guild to Building a Productive City*  
<http://www.calcities.org/>

The City Council receives in-depth and continuous training on the understanding and the effective utilization of the City of Tracy Code of Conduct, City of Tracy Council meeting Protocols and Rules of Procedures, and Rosenberg's Rules. In addition, new and existing City Councilmembers are encouraged to take trainings with League of California Cities, including Mayor and Council Academy and the Annual Conference.

The City Council reviews their Code of Conduct, Meeting Protocols, and Rosenberg's Rules during their biennial Strategic Retreats. The City Council may request reviews between these regularly scheduled trainings, as needed. For example, the City Councilmember recently completed a comprehensive review of the Code of Conduct and Meeting Protocols in May 2023. The City Council had previously requested a review of the Meeting Protocols and Code of Conduct to return in September 2024.

***R1.2-R1.6*** *By October 1, 2024, member of the City Council need in-depth and continuous training in understanding the requirements of the Brown Act.*

The City Council and staff are required to complete an in-depth and continuous training on the understanding of the Brown Act, with which the City Council complies. In addition, new and existing City Councilmembers are encouraged to take trainings with League of California Cities, including Brown Act and AB1234 trainings.

***R1.7*** *By October 1, 2024, City Council should approve an ordinance requiring a supermajority vote to modify any ordinance requiring a 4/1 vote. Additionally, a 90-day public notice to change this vote requirement should be mandatory.*

As a general law city, the authority for the City's powers are granted by State law, including the ability to adopt ordinances. More research is required to verify if this recommendation is suitable for the City of Tracy.

***R1.8*** *By October 1, 2024, the employment contracts for the City Manager and the City Attorney should require individual performance goals and objectives established within 90 days of hire. These goals and objectives should be evaluated annually.*

This recommendation is in progress.

***R1.9*** *By October 1, 2024, if a Parliamentarian is deemed necessary at City Council meetings, the position should be held by an independent third party.*

Per League of California Cities: Understanding Your City's Departments, "The city attorney also may serve as the council's parliamentarian." Staff is not aware of a structure in which the City Attorney is not the parliamentarian of the council. More research is required to verify that this finding is applicable to the City of Tracy.

RESOLUTION NO. 2024 - \_\_\_\_\_

- 1) **APPROVING THE RESPONSE LETTER TO THE SAN JOAQUIN COUNTY GRAND JURY REPORT “CITY OF TRACY: PUBLIC TRUST STILL NOT RESTORED” 2023-2024 CASE NO 0323; AND**
- 2) **AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO JOINTLY EXECUTE AND TRANSMIT THE RESPONSE LETTER TO THE PRESIDING JUDGE**

**WHEREAS**, On June 17, 2024, the San Joaquin County Civil Grand Jury released a 2023-2024 Report titled “City of Tracy: Public Trust Still Not Restored” Case No. 0323, and

**WHEREAS**, State law requires that the City Council respond to the Findings and Recommendations contained in the report, and

**WHEREAS**, The City Council reviewed the Findings and Recommendations and provided direction on the Responses at its meeting on August 20, 2024; and

**NOW, THEREFORE, BE IT RESOLVED**, That the City Council of the City of Tracy hereby approves the response letter to the San Joaquin County Civil Grand Jury’s Report “City of Tracy: Public Trust Still Not Restored” 2023-2024 Case No. 0323 in the form approved at the meeting and subsequently attached as Exhibit 1 and authorizes the City Manager and City Attorney to jointly execute and transmit such letter to the presiding judge on behalf of the City Council.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 20<sup>th</sup> day of August, 2024 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

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