



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 27, 2024, 7:00 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: 2550 568 4694** 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 when prompted to provide an email address.
 - Join by phone by dialing +1-408-418-9388, enter 25505684694#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. 1) Discuss and approve a response letter to the San Joaquin County Civil Grand Jury's Report of "Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases In San Joaquin County: On The Back Burner Case #0318" and 2) Adopt a Resolution authorizing the City Manager to execute the letter and transmit it to the Presiding Judge.
 - 5.B The City Council 1) Continue discussion on 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, 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 24, 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

REQUEST

- 1) **DISCUSS AND APPROVE A RESPONSE LETTER TO THE SAN JOAQUIN COUNTY CIVIL GRAND JURY'S REPORT OF "SECOND LOOK: 2018-2019 SAN JOAQUIN COUNTY CIVIL GRAND JURY REPORT COLD CASES IN SAN JOAQUIN COUNTY: ON THE BACK BURNER CASE #0318"; AND**
- 2) **ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE LETTER AND TRANSMIT IT TO THE PRESIDING JUDGE**

EXECUTIVE SUMMARY

The 2023-2024 San Joaquin County Civil Grand Jury (Grand Jury) issued a report on its 2018-2019 investigation of "Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases in San Joaquin County: On the Back Burner Case # 0318", which in 2018 was initially prompted by media coverage and public interest in cold case investigations (2023-2024 "Second Look" & 2018-19 Report) (Attachment A). The 2023-2024 Grand Jury report is a status update of matters pertaining to law enforcement within the county, and in this particular case, it was the status of "Cold Case" investigations and determining the impact of the 2018-19 report. The 2018-19 Grand Jury report contained one finding and several recommendations, only one of which applied to the City of Tracy, "The Tracy City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report "Cold Cases in San Joaquin County: On the Back Burner" Case #0318, R1, R2, R8, and R10".

State law requires the governing body of an agency (unless the report otherwise names an elected officer) to respond to the Grand Jury's findings and recommendations within 90 days of receipt of the request. As the 2023-34 Grand Jury report relates to matters handled by the Police Department, which reports to the City Manager, the City Council is the governing body and would need to approve the final report. Typically, staff from the respective departments drafts responses to Grand Jury reports and presents them to the City Council for final approval prior to submitting them to the presiding judge of San Joaquin County Superior Court. In this item, staff requests that the City Council review the draft response letter and provide feedback to finalize it. This item further requests that Council authorize the City Manager to sign the final response letter and transmit it to the presiding judge.

DISCUSSION

The San Joaquin County Grand Jury's Report on Cold Cases was released on June 17, 2019. The Grand Jury's investigation entailed interviewing various administrative and investigative personnel from law enforcement agencies throughout San Joaquin County; conducting a cold case survey of various law enforcement agencies in San Joaquin County; and reviewing cold case materials pertaining to investigations. The Grand Jury also toured the California Department of Justice crime laboratory in Ripon. The 2018-2019 Report contained findings for several categories including Defining "Cold Cases" (1 Finding); Counting Cold Cases (2 Findings); Increasing Numbers of Cold Cases (3

Findings); Cold Case Staffing (4 Findings); Cold Case Funding (1 Finding); Cold Case Investigating (6 Findings); Cold Case Solving (5 Findings); and Contact with Cold Case Families. As well as ten (10) recommendations.

On June 17, 2024, the Grand Jury released a report titled "Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases in San Joaquin County: On the Back Burner Case # 0318" about its decision to take a second look at the 2018-2019 Cold Case Report and determine the status of its recommendations. Staff does not believe that the City provided a formal response to the applicable sections of the 2018-2019 Grand Jury report.

Section 933 of the Penal Code requires the governing body of the public agency that is the subject of a Grand Jury report to provide comments on the findings and recommendations regarding matters under its control within 90 days of the report being released.

Per Section 933.05 of the Penal Code, the responses to the findings and recommendations in a Grand Jury report must meet the following requirements:

"(a) For purposes of subdivision (b) of Section 933, **as to each grand jury finding**, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, **as to each grand jury recommendation**, the responding person or entity shall report one of the following 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 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. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor."

(Italics and bold added for emphasis.)

The Report's subject matter and content are highly sensitive because it speaks to the Police Department's (Department) policies, procedures and collaboration with fellow law enforcement agencies. The Chief of Police (COP), as the duly authorized and empowered professional designated by the City to implement public safety policies and procedures is the most appropriate person to determine if they agree or disagree (wholly or partially) with the findings and to confirm implementation the recommendations. Staff has prepared a draft response for review and adoption by the Council (Attachment B)

Staff requests that City Council review the initial draft letter, provide feedback, and authorize the City Manager, to whom the COP reports, to sign the letter so that the final response accurately reflects the City's response.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

That the City Council, by resolution, approve a response letter to the San Joaquin County Civil Grand Jury's report "Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases In San Joaquin County: On The Back Burner Case # 0318" And Authorize The City Manager To Execute and Transmit The Letter to the Presiding Judge

Prepared by: Sekou Millington, Chief of Police
Arturo Sanchez, Assistant City Attorney

Reviewed by: Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

- A – Grand Jury Report(s)
- B – Draft City of Tracy Response

2023 - 2024 San Joaquin County Civil Grand Jury



Second Look:

2018-2019 San Joaquin County Civil Grand Jury Report

Cold Cases in San Joaquin County: On the Back Burner Case # 0318

Summary

Every year, the San Joaquin County Civil Grand Jury, Law and Justice Committee is charged with reporting the status of and/or investigating matters pertaining to law enforcement, including police, juvenile justice, public protection, probation issues, and inspecting detention facilities within the county. This year's Civil Grand Jury determined the status of cold cases was also warranted. The 2018-2019 San Joaquin County had produced a report San Joaquin County Civil Grand Jury Report: Cold Cases in San Joaquin County: On the Back Burner Case # 0318. The Law and Justice Committee determined this report gave a thorough and accurate assessment of the status of cold case investigations in San Joaquin County. However, the Civil Grand Jury decided to take a "Second Look" at the current status of cold cases. The report made ten recommendations that all the law enforcement agencies agreed to implement or least partially implement. Complete copies of the original report, all follow up reports, and the agencies responses can be found on the San Joaquin County Civil Grand Jury website at <https://www.sjcourts.org/divisions/civil-grand-jury> .

Background

The 2018-2019 San Joaquin County Civil Grand Jury investigated the status of cold case investigations. They concluded that the County lacked leadership, staff, desire, and funding: what were called cold case units were basically nonexistent units.

The Civil Grand Jury found 8 items/areas of concern for cold case investigation:

- Definition of cold cases
- Counting cold cases
- Clearance rates
- Staffing
- Funding
- Investigating
- Solving cold cases in San Joaquin County
- Maintaining contact with family of cold case victims

Their investigation led to the following ten recommendations:

- R1 Each law enforcement agency in San Joaquin County develop a plan to define, prioritize, and digitally track cold case investigations no later than December 31, 2019. Prioritization will emphasize available physical evidence and utilize emerging DNA testing techniques.
- R2 Each law enforcement agency in San Joaquin County expands their definition of “cold case” to include missing persons with suspicious circumstances, and sexual assault (forcible rape and attempted rape), in addition to homicide no later than December 31, 2019.
- R3 The San Joaquin County Sheriff utilize budget options and staffing reassignments as necessary to provide the equivalent of at least three full-time Sheriff’s Detectives dedicated solely to cold case investigations no later than December 31, 2019.

- R4 The San Joaquin County District Attorney utilize budget options and staffing reassignments as necessary to provide the equivalent of at least two full-time District Attorney Investigators dedicated solely to cold case investigations no later than December 31, 2019.
- R5 The City of Stockton utilizes budget options and staffing reassignments as necessary to provide the equivalent of at least three full-time Police Detectives dedicated solely to cold case investigations no later than December 31, 2019.
- R6 The San Joaquin County District Attorney's Office develop a plan for a Cold Case Task Force to facilitate collaboration in investigating and prosecuting cold cases for all law enforcement agencies in San Joaquin County no later than December 31, 2019.
- R7 The San Joaquin County District Attorney's Office establish a Cold Case Task Force for all law enforcement agencies in San Joaquin County no later than March 31, 2020.
- R8 Each law enforcement agency in San Joaquin County signs a Partnership and Cooperation Agreement with the newly formed Cold Case Task Force no later than March 31, 2020.
- R9 The newly formed Cold Case Task Force partner with the regional CA-DOJ crime laboratories to facilitate the timely and necessary testing of all DNA evidence for cold case investigations no later than March 31, 2020.
- R10 Each law enforcement agency in San Joaquin County develops a procedure and practice for maintaining periodic contact with family members of cold case victims no later than March 31, 2020.

Reason for Investigation

The 2023-2024 San Joaquin County Civil Grand Jury Law and Justice Committee wanted to determine the status of cold case investigations in San Joaquin County today and assess/determine the impact of the 2018-2019 Civil Grand Jury report. Departmental presentations included an update of cold case investigations revealed very little progress.

Method of Investigation

The current Law and Justice Committee sent cold case surveys to all law enforcement agencies in the County to gauge the status of cold case investigations. The response to the surveys was disappointing and the various agency presentations made it clear not much had changed with one notable exception, the San Joaquin County Sherriff's Office.

Materials Reviewed

- 2018-2019 San Joaquin County Civil Grand Jury Report. "Cold Cases in San Joaquin County: On the Back Burner #0318"
- 2019-2020 San Joaquin County Civil Grand Jury Follow-up Report. "Cold Cases in San Joaquin County: On the Back Burner #0318"
- 2023-2024 San Joaquin County Civil Grand Jury Cold Case Surveys

Presentations

- Tracy Police Department
- Manteca Police Department
- Lodi Police Department
- Ripon Police Department

- Lathrop Police Department
- Stockton Police Department
- San Joaquin County Sheriff's Office
- San Joaquin County District Attorney's Office
- Escalon Police Department

Interviews Conducted

A total of seven people from three agencies involved with cold case investigations were interviewed.

Sites Visited

- San Joaquin County Sheriff's Office
- Escalon Police Department

Discussions, Findings, and Recommendations

When the 2018-2019 San Joaquin County Civil Grand Jury began their investigation of cold cases in San Joaquin County, they found that only three agencies claimed to have a dedicated or semi-dedicated cold case unit. They were the San Joaquin County Sheriff's Office, the Stockton Police Department, and the District Attorney's Office.

The Sheriff's Office had a cold case unit that consisted of two deputies and a sergeant. Upon further investigation it was discovered that due to staff vacancies, the two deputies and the sergeant were assigned to other units, leaving virtually no one to work on cold cases.

The Stockton Police Department's cold case unit consisted of one retired annuitant. He had limitations due to the number of hours he could work in a year. He also had not been recertified as a police officer and was restricted from performing certain duties.

The District Attorney's Office had two assigned cold case investigators. At the time, one investigator was on loan to the Tracy Police Department and the other was assigned duties unrelated to cold cases.

No other law enforcement agencies had any dedicated cold case unit or staff. Most cold cases were assigned to the Sheriff's Office.

After the 2018-2019 Civil Grand Jury released their report, there was consensus that cold cases had not received the attention and consideration they deserved and should be given a higher priority. Those who responded to the report agreed to either implement or partially implement the report recommendations pending budget approval, departmental reorganization, and availability of staffing and other resources.

San Joaquin County Sheriff's Office

The Sheriff's Office has formed a Cold Case Unit, consisting of (1) Lieutenant, (1) Sargeant, and (4) Detectives who also investigate "in-house" crimes, jail incidents, and officer involved shootings. Their definition of cold cases includes unsolved homicides, long-term missing persons, and violent sexual assaults. The SJCSO cold case database, that includes only SJCSO cases, which could be expanded to include all other law enforcement agencies in the County. All assigned staff regularly attend outside cold case schools and training. They keep up with the latest innovations in investigative technology and techniques, especially those specific to cold case investigations.

The SJCSO are aware of the Stockton Police Department's and the San Joaquin County District Attorney's cold case investigators, but do not have any formal or regular working relationship with

them. The Stockton Police Department (SPD) was not aware of the County Cold Case Task Force and was not sure how a task force would work or if it would be beneficial.

The Sheriff's Office should be commended for their follow through on the 2018-2019 Civil Grand Jury recommendations.

Stockton Police Department

The only improvement related to Cold Cases since the 2018-2019 Civil Grand Jury report is that the retired annuitant has been recertified as a peace officer and can now perform all investigating functions without relying on another officer. None of the Civil Grand Jury recommendations were implemented.

San Joaquin County District Attorney's Office (DA)

There has been little to no change in the DA's "Cold Case Unit" including the number of cold case investigators, and their time is divided among other responsibilities. The Chief Deputy District Attorney heading up the cold case unit is also assigned to prosecute current homicide cases.

The DA's office has no internal cold case database. Because cold cases are a low priority, funding for DNA and lab testing is limited.

Cold Case Task Force (TF)

The 2018-2019 Civil Grand Jury had proposed a county-wide TF with the District Attorney's Office as the lead agency. There is no county-wide TF. The core membership would have been the three largest agencies, the SJCSO, SPD, and the District Attorney's Office. All other agencies were encouraged to join. Members would share resources, information, and training which would result in everyone investigating cold cases using the same investigative techniques. All agencies would be on the same page and could step in for one another should the need arise. It would improve

communication and cooperation among agencies. A TF could also leverage their status to obtain agreements with outside laboratories much the same as Tracy Police Department does. Cold cases could also be distributed to other agencies lessening the load of the three main agencies.

Santa Clara County appears to have a well-functioning cold case task force that could be used as a model for San Joaquin County law enforcement agencies.

1.0 FINDINGS

F. 1.0: Overall, county law enforcement agencies failed to implement the 2018-2019 Civil Grand Jury recommendations. All agencies seemed set on continuing as they were, and are protective of their processes, their cases, and their procedures. The failure to implement the 2018-2019 recommendations came down to three factors:

- Lack of leadership
- Lack of desire
- Pandemic disruptions

During the period just after the 2018-2019 Civil Grand Jury there was a disruption of leadership in the Stockton Police Department and a new District Attorney was elected.

The police chief retired and a new chief was hired and faced many challenges to make the department his. It is obvious cold cases were not a priority as there were many improvements that could have been made. For example, hiring more retired annuitants, setting up a new database, using volunteers for data entry of non-sensitive information even having a volunteer to answer phones. He has now been on the job since 2022 and it is time to prioritize cold cases.

A new District Attorney was elected, and has been reorganizing his Office but has not prioritized the cold case unit.

The Pandemic delayed the implementation of recommendations; however, improvements could have been made such as purchasing equipment, setting up databases, and Zoom trainings related to cold

cases. The Sheriff's Office did manage to implement many of the recommendations in spite of the Pandemic.

With over 500 cold cases, it's time to get back on track and recommit to implementing those recommendations.

RECOMMENDATIONS

R. 1.0: By October 1, 2024, all Law Enforcement Agencies review and implement the recommendations from the 2018-2019 Civil Grand Jury Report "Cold Cases in San Joaquin County: On the Back Burner" Case #0318. (These recommendations can be found in the original Civil Grand Jury report and on pages 2 and 3 of this report).

R. 1.1: By October 1, 2024, the task force should be formed and implemented with the San Joaquin County Sheriff's office as the lead agency.

Conclusion

All of the law enforcement agencies agreed with the 2018-2019 Civil Grand Jury's Findings and Recommendations but did not implement them. The one exception, the San Joaquin County Sheriff's Office followed through on most of the recommendations.

Disclaimers

Civil Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Civil 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 Civil 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).

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.

The San Joaquin County Board of Supervisors shall respond to all findings and recommendations of this report and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318.

The Stockton City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R5, R8, and R10.

The Escalon City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R8, and R10.

The Lodi City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R8, and R10.

The Manteca City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R8, and R10.

The Ripon City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R8, and R10.

The Tracy City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R8, and R10.

The San Joaquin County District Attorney shall respond to all Findings, where applicable and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report “Cold Cases in San Joaquin County: On the Back Burner” Case #0318, R1, R2, R4, R6, R7, R8, R9 and R10, within 60 days of receipt of the report.

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 Mr. Irving Jimenez, Staff Secretary to the Civil Grand Jury, at civilgrandjury@sjcourts.org

San Joaquin County Grand Jury



Cold Cases in San Joaquin County:

On the Back Burner

2018 - 2019 Case #0318

Summary

The San Joaquin County 2018-2019 Civil Grand Jury investigated the various municipal and county law enforcement agencies throughout the County to determine the status of cold case investigations. This investigation was initiated as a result of recent media coverage and public interest in cold case investigations. Specifically, the Grand Jury sought to: (1) determine the number of cold case homicides, sexual assaults, and missing persons with suspicious circumstances, and (2) examine the staffing, funding, processes, and effectiveness of cold case investigations in San Joaquin County.

In the course of the investigation, various administrative and investigative personnel from law enforcement agencies throughout San Joaquin County were interviewed. The Grand Jury also conducted a cold case survey of various law enforcement agencies in San Joaquin County. In addition, numerous materials pertaining to cold case investigations were reviewed. The Grand Jury also toured the California Department of Justice crime laboratory in Ripon.

The following sections highlight the most significant findings and recommendations determined by the Grand Jury as a result of this investigation:

Major Findings

- There are more than 500 cold case homicides in San Joaquin County, including at least 12 homicide victims whose remains have never been positively identified. The exact

number of cold case homicides is unknown due to the lack of a consistent “cold case” definition and the lack of a digitized tracking system.

- Cold case homicide investigations in San Joaquin County rarely result in case closure, arrest or prosecution. This is a contributing factor to the increasing number of cold case homicides in San Joaquin County.
- There is insufficient staffing and funding for cold case investigations in San Joaquin County due primarily to financial limitations and lack of priority.

Major Recommendations

- The San Joaquin County Sheriff and the San Joaquin County District Attorney utilize budget options and staffing reassignments as necessary to provide the equivalent of at least three full-time Sheriff’s Detectives and at least two full-time District Attorney’s Investigators dedicated solely to cold case investigations no later than December 31, 2019.
- The City of Stockton utilize budget options and staffing reassignments as necessary to provide the equivalent of at least three full-time Police Detectives dedicated solely to cold case investigations no later than December 31, 2019.
- The San Joaquin County District Attorney’s Office establish a Cold Case Task Force and each law enforcement agency in San Joaquin County sign a Partnership and Cooperation Agreement with the Cold Case Task Force no later than March 31, 2020.
- Each law enforcement agency in San Joaquin County expand their definition of “cold case” to include missing persons with suspicious circumstances, and sexual assault (forcible rape and attempted rape), in addition to homicide no later than March 31, 2020.

Glossary

- **CA DOJ:** State of California Department of Justice
- **CODIS:** Combined DNA Index System; enables federal, state and local forensic laboratories to exchange and compare DNA profiles electronically, thereby linking serial violent crimes to each other and to known offenders.
- **Cold Case Accountability Act of 2020:** A change.org petition seeking new federal legislation to assist cold case investigations and support families of cold case victims.
- **County DNA Identification Fund 20737:** Fund that receives San Joaquin County share of Proposition 69 fees collected by courts for criminal offenses.
- **DNA:** Deoxyribonucleic acid; a chemical which is found in virtually every cell of the body and determines each individual’s hereditary characteristics.
- **DNA Phenotyping:** The prediction of physical appearance from DNA.
- **FamilyTreeDNA:** Company providing direct-to-consumer DNA testing for ancestry.

- **GEDmatch.com:** An open data personal genomics database and genealogy website.
- **Genetic Genealogy:** The combination of DNA analysis with traditional historical and genealogical research to study family history and identify persons.
- **Measure A:** Ballot measure approved by Stockton voters in 2013 authorizing a three-quarter cent sales tax to pay for law enforcement and other services.
- **NIJ:** National Institute of Justice; the research, development and evaluation agency of the U.S. Department of Justice.
- **Proposition 69:** State proposition passed in 2004 that allows for the collection of DNA samples from all felons and persons arrested for certain crimes.
- **Rand Corporation:** Nonprofit institution that helps improve policy and decision making through research and analysis.
- **Rapid DNA:** The fully automated process of developing a DNA profile from a reference sample cheek swab in less than two hours.
- **RapidHIT ID System:** Automated system that generates lab-quality forensic DNA profiles in less than 90 minutes.
- **SB 813:** State legislation approved in 2016 that eliminates the ten-year statute of limitations for sexual assaults and allows the prosecution of such crimes at any time.
- **Statute of Limitations:** Laws that set a maximum time after a crime for legal proceedings to be initiated.
- **STRmix:** Short tandem repeat technology; a forensic software used to aid in the analysis and interpretation of DNA mixtures.
- **US DOJ:** United States Department of Justice

Background

In April of 2018, Sacramento Police arrested Joseph James DeAngelo, 72, as a suspect in the notorious “Golden State Killer” criminal investigation. Investigators believe DeAngelo to be the serial killer responsible for committing at least 13 homicides and more than 50 rapes in California from 1974 to 1986. The arrest was made after investigators found DNA matches to DeAngelo’s third cousins through GEDmatch.com, a public genealogy website. This historic breakthrough in criminal investigatory techniques has fueled an ongoing fascination with high-profile, unsolved crimes by both the media and the general public. Such intense interest has only been enhanced by numerous subsequent arrests made in other previously unsolved homicide and sexual assault cases throughout the United States.

Commonly referred to as “cold cases,” these investigations typically refer to homicide or sexual assault cases that have never been solved, and for which there is no current active investigation or leads to pursue. Cases involving “missing persons with suspicious circumstances” are also commonly categorized as “cold cases” based upon the possibility of a serious felony or homicide having been committed.

Criminologists estimate that at least 200,000 homicides have gone unsolved in America since the 1960's. The national "clearance rate" for homicide today is approximately 64%, which translates to about a one in three chance that police won't identify a murderer. Estimates for unsolved homicides in California exceed 33,000 between 1980 and 2008. The California Attorney General's Office does not currently keep a list of unsolved or cold case homicides, thus leaving it up to individual police departments to track such cases themselves.

Reason for Investigation

As a result of recent media coverage and public interest in cold case investigations, the Grand Jury decided to investigate the various municipal and county law enforcement agencies throughout San Joaquin County to determine the following:

- The current number of cold cases for homicides, sexual assaults, and missing persons with suspicious circumstances
- The sufficiency of staffing and funding to fully investigate all such cold cases
- The current process and procedures for cold case investigations
- The current effectiveness in solving and closing cold case investigations

Method of Investigation

The following outlines the approach used in examining the current status of cold case investigations throughout San Joaquin County:

Materials Reviewed

- Online research pertaining to cold case investigations, both nationally and locally
- Municipal and county law enforcement agency websites in San Joaquin County
- Transcripts and notes from Grand Jury interviews of administrative and investigative personnel of various law enforcement agencies throughout San Joaquin County
- Cold case survey results from various law enforcement agencies throughout San Joaquin County
- Proposed Budget Reports from various law enforcement agencies throughout San Joaquin County
- Stockton Police Department Strategic Plan, 2017-2019
- Dr. Anthony Braga Report to the Stockton Police Department, 2006
- California Department of Justice website
- National Institute of Justice website
- Legislative Acts pertaining to DNA analysis, sexual assault kits, and statutes of limitations

Interviews Conducted

- Administrative personnel from various law enforcement agencies throughout San Joaquin County
- Investigative personnel from various law enforcement agencies throughout San Joaquin County

Site Visited

- California Department of Justice Central Valley Regional Laboratory in Ripon

Discussions and Findings

1.0 Defining “Cold Cases” in San Joaquin County

No universal definition of “cold case” currently exists. This is due in part to the fact that there is no universally accepted metric for when a case becomes “cold.” The National Institute of Justice (NIJ) defines a cold case as “any case whose probative investigative leads have been exhausted.” The definition of a cold case varies between law enforcement agencies. Such definitions have often been established by past practice, as opposed to by written policy.

The Grand Jury reviewed “cold case” definitions being utilized by numerous law enforcement agencies and determined that the following elements are those most commonly included in a cold case definition, whether by written policy or past practice:

- *Case status* – all known leads exhausted, statute of limitations not expired
- *Type of crime* – usually homicide, sometimes missing persons or sexual assault
- *Age of case* – may include a specific timeframe, but often nonspecific

San Joaquin County

Table 1 below was developed through interviews and surveys of various administrative and investigative staff from the municipal and county law enforcement agencies throughout San Joaquin County. Table 1 provides specific detail regarding whether the law enforcement agency currently has a cold case definition, whether that definition is from written policy or past practice, which crime categories are included in that definition, whether there is any time element involved, and the case status pertaining to active leads.

Table 1. Survey Responses on Cold Case Definition

| Facts Developed | DA | Escalon | Lathrop* | Lodi | Manteca | Ripon | Sheriff | Stockton | Tracy |
|---|----|---------|----------|------|---------|-------|---------|----------|-------|
| Agency has a cold case definition | Y | Y | NA | N | Y | Y | Y | N | Y |
| Definition by written policy | N | N | NA | N | N | N | N | N | N |
| Definition by past practice | Y | Y | NA | N | Y | Y | Y | N | Y |
| Definition includes homicide | Y | Y | NA | NA | Y | Y | Y | NA | Y |
| Definition includes missing persons with suspicious circumstances | N | Y | NA | NA | N | Y | Y | NA | Y |
| Definition includes sexual assault | Y | Y | NA | NA | N | Y | N | NA | Y |
| Definition has specific time element | N | >5yrs | NA | NA | N | N | >5yrs | NA | N |
| Definition includes no active leads | Y | Y | NA | NA | Y | Y | Y | NA | Y |

* Contracts with Sheriff Department for police services.

Y – Yes N – No NA – Not available > – Greater than

This investigation revealed that there are varying definitions, and even lack of definition, for “cold case” throughout San Joaquin County. No law enforcement agency in the County has a written policy defining “cold cases.” Statements obtained from interviews and surveys of various law enforcement agencies in San Joaquin County confirmed the detrimental impact of not having a clear cold case definition by written policy. For example, one agency reported that they could not state how many cold cases they had because they “don’t have a well-defined ‘cold case’ policy.” The Grand Jury also heard multiple reports of staff confusion pertaining to how and when an unsolved case becomes a “cold case.”

Finding

F1.0 There is inconsistency and confusion regarding what defines a “cold case” amongst the law enforcement agencies in San Joaquin County.

2.0 Counting Cold Cases in San Joaquin County

Obtaining an accurate count of the current number of cold case homicides, missing persons, and sexual assaults in San Joaquin County is problematic, largely due to the overall lack of clarity and consistency in defining “cold cases.” Statements obtained through interviews and surveys of law enforcement agencies in San Joaquin County confirmed the difficulty and confusion in both obtaining and maintaining accurate number counts of cold cases. For example, one agency reported they have no idea how many new cold cases they receive. In addition, the lack of a digitized system for tracking older cases has resulted in some cold cases not being counted. The Grand Jury learned that the lack of accurate numbers in counting and tracking cold cases in San Joaquin County is a contributing factor to the overall lack of priority for staffing, funding, and investigating cold cases.

Table 2 below shows cold case statistics that were obtained through interviews, surveys, and budget requests from the various law enforcement agencies in San Joaquin County.

Table 2. Cold Case Statistics from San Joaquin County

| Type of Crime | DA | Escalon | Lathrop* | Lodi | Manteca | Ripon | Sheriff | Stockton | Tracy |
|---|-------------------|---------|----------|------|---------|-------|---------|-------------------|-------|
| Homicide | 572 ¹ | 0 | NA | NA | 4 | 0 | 206 | >320 ² | 3 |
| Missing persons with suspicious circumstances | NA | 0 | NA | NA | NA | 0 | 82 | 3 ³ | 1 |
| Sexual assault | >200 ¹ | 2 | NA | NA | NA | 0 | NA | NA | 0 |
| Attempted murder of a Police Officer | NA | 1 | NA | NA | NA | NA | NA | NA | NA |
| Homicide with an unidentified victim | NA | 0 | NA | NA | 0 | 0 | 12 | 0 | 0 |

* Contracts with Sheriff Department for police services

1) District Attorney’s numbers are estimates for the entire county

2) Stockton estimate from 2015. This number has increased by an unknown amount since then.

3) There are an estimated 56 additional persons missing for more than ten years that are not currently classified as cold cases but remain open files with the Missing Persons Unit of the Stockton Police Department.

It should be emphasized that the accuracy of the statistics provided for each crime category in the Table 2 are impacted by several important variables, including:

- Homicide – lack of digitized system for tracking older cases resulting in estimates that do not include every unsolved case from decades past
- Missing Persons – not always considered a crime; not always considered a cold case
- Sexual Assault – not always considered a cold case; the recent elimination of the ten-year statute of limitations on sexual assault cases through SB 813 should impact this metric and bring needed focus to unsolved sexual assault cases

Findings

F2.0 There are more than 500 cold case homicides in San Joaquin County, including 12 homicide victims whose remains have never been positively identified. The exact number of cold case homicides is unknown due to the lack of a consistent written definition for “cold case” and the lack of a digitized tracking system.

F2.1 The lack of accurate numbers in counting and tracking cold cases in San Joaquin County is a contributing factor to the overall lack of priority for staffing, funding, and investigating cold cases.

3.0 Increasing Numbers of Cold Cases in San Joaquin County

Violent Crime in San Joaquin County

Statistics concerning the number of homicides and forcible rapes in San Joaquin County during the past decade show significant fluctuations. Crime statistics in San Joaquin County are most impacted by the amount of crime within the City of Stockton. Table 3 below shows the number of homicides and rapes in both Stockton and the rest of San Joaquin County from 2010 through 2015.

Table 3. Homicide and Rape Statistics in San Joaquin County

| Crime | Location | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Total |
|----------|----------------|------|------|------|------|------|------|-------|
| Homicide | Stockton | 49 | 58 | 71 | 32 | 49 | 49 | 308 |
| | Rest of County | 6 | 6 | 6 | 1 | 8 | 10 | 37 |
| | Total | 55 | 64 | 77 | 33 | 57 | 59 | 345 |
| Rape | Stockton | 107 | 90 | 90 | 91 | 134 | 135 | 647 |
| | Rest of County | 37 | 28 | 34 | 24 | 25 | 45 | 193 |
| | Total | 144 | 118 | 124 | 115 | 159 | 180 | 840 |

Homicide Clearance Rates

The national “clearance rate” for homicide was 64.1% as of 2015. Fifty years ago, it was more than 90%. “Clearance rate” is the term used by law enforcement to describe cases that end in arrest, or when a suspect has been identified but cannot be arrested due to death or other circumstances. Research identifies the following key contributing factors to the substantial increase in unsolved homicides in the United States:

- Stranger-on-stranger homicide
- Increased use of firearms in homicides
- Increased involvement of gangs or drugs
- Witness fear of retaliation
- Witness distrust of law enforcement

The nature of violent crime in America has changed over the decades. In the early 1960’s, the vast majority of homicide cases involved individuals who knew one another. By 1992, 53% of all murders occurred between strangers.

The FBI collects crime clearance statistics but doesn’t provide numbers by jurisdiction. That makes it difficult to assess the clearance rates of local law enforcement agencies. Table 3 shows that the number of homicides throughout San Joaquin County from 2010 through 2015 is 345. Assuming the national average clearance rate of 64% is applied, that leaves 124 unsolved homicides for that same period.

The Stockton Police Chief recently stated that 70% of the city’s homicides in 2018 were closed, which is a higher number than in previous years. While this improvement is commendable, it still leaves approximately ten of Stockton’s 33 homicides in 2018 unsolved.

Losing Ground

The reality in both America and in San Joaquin County is that the cumulative number of unsolved homicides is increasing each year. The primary factor in this equation is the decreased clearance rate for solving homicides. However, the lack of effective cold case investigations is also a contributing factor.

The Grand Jury found that cold case homicides in San Joaquin County are rarely solved or closed. Based upon interview and survey responses, as well as online research, the following is a complete listing of the known cold case homicide closures for the law enforcement agencies in San Joaquin County during the past five years:

- Stockton Police Department – two cases closed (both suspects deceased)
- Tracy Police Department – one case closed (suspect deceased)

In addition, there have been no known arrests or prosecutions involving cold case investigations in San Joaquin County during the past five years.

Each of the law enforcement personnel interviewed during this investigation confirmed that the cumulative number of cold case homicides is increasing each year. The San Joaquin County District Attorney's Office recently reported that their office and other law enforcement agencies continue to fall further behind each year on cold case homicide investigations.

Findings

F3.0 The total number of cold case homicides in San Joaquin County is increasing each year due primarily to the decreased clearance rate for solving homicides.

F3.1 Cold case homicide investigations in San Joaquin County rarely result in case closure, arrest or prosecution. This is a contributing factor to the increasing number of cold case homicides in San Joaquin County.

F3.2 Due to the current inconsistencies in both defining and counting cold cases involving missing persons with suspicious circumstances, and sexual assaults, there is insufficient information to clearly determine the extent to which the number of those unsolved cases may be increasing.

4.0 Staffing Cold Case Investigations in San Joaquin County

A Universal Challenge

Any legitimate discussion concerning law enforcement staffing must begin with acknowledging what has become a universal challenge for police agencies: hiring and retaining qualified officers. This problem has impacted the various law enforcement agencies in San Joaquin County, most notably the two largest agencies: the Stockton Police Department and the San Joaquin County Sheriff's Department.

Reduced to only 331 sworn officers in 2013, the Stockton Police Department was greatly aided through the passage of Measure A by voters that same year. This three-quarter cent sales tax provided funding for law enforcement. The result was a stated goal to increase the Stockton Police force to 485 officers by June of 2017. Despite continued challenges in both hiring and retaining qualified officers, the number of uniformed Stockton police officers totaled 466 as of March 2019. The Stockton Police Chief indicated it was hard to reach the budgeted maximum of 485 officers due to retirements, attrition and staff leaving for other jurisdictions.

The San Joaquin County Sheriff's Office has also faced the same continual challenge in both hiring and retaining qualified sheriff's deputies. The newly elected Sheriff recently confirmed both the shortage of sworn officers and the difficulty of finding qualified candidates to fill vacant positions.

Even the smaller law enforcement agencies within San Joaquin County reported that their main challenge in filling vacant positions is the inability to get qualified applicants through the required background investigation.

A Lesser Priority

Cold cases are typically some of the most difficult and complex cases to work. They require seasoned investigators and dedicated staff that are focused solely on cold cases as their first priority. Unfortunately, that is rarely the reality in law enforcement. A national cold case survey in 2012 found that only ten percent of responding agencies had dedicated cold case investigators.

This investigation revealed that there are currently only three individuals who are specifically assigned to investigate cold cases in San Joaquin County. None of these individuals is currently working on cold case investigations full-time. The current staffing of cold case investigators in San Joaquin County is as follows:

- Stockton Police Department – one retired detective working part-time (16-20 hours/week; maximum 960 hours/year)
- San Joaquin County Sheriff's Department – one full-time sergeant working less than 25% of the time on cold case investigations
- San Joaquin County District Attorney's Office – one full-time investigator working approximately 20%-30% of the time on cold case investigations

The present level of cold case staffing in the largest law enforcement agencies in this county cannot be expected to effectively investigate and solve cold cases. In fact, it is evident that cold case investigative work is often the lesser priority in their work assignments. Statements obtained through interviews and surveys of various law enforcement personnel confirmed both the frustration in juggling competing priorities, and the futility in working cold case assignments alone. The Grand Jury learned that there are a significant number of cold case homicides with the Stockton Police Department and San Joaquin County Sheriff's Department that have not been reviewed for many years due to insufficient staffing and lack of prioritization.

Assessing Options

The major law enforcement agencies in San Joaquin County need additional dedicated and experienced investigators for cold cases. Possible options for meeting this critical staffing need include the following:

- Transfer experienced staff from other assignments
- Hire additional qualified retirees (limited to part-time)
- Seek qualified volunteers

Interviews with administrative and investigative staff revealed that the Stockton Police Department needs at least three more full-time detectives to effectively manage and investigate the current

backlog of cold cases. The San Joaquin County Sheriff's Department has consistently made unsuccessful budget requests for additional cold case staffing, requesting from two to four additional full-time deputies. The San Joaquin County District Attorney's Office also made an unsuccessful budget request to add a Cold Case Investigator and an Investigative Assistant for 2018-2019.

Staffing a successful cold case investigative team may require utilizing all available options, especially considering budgetary restrictions and pension/benefit costs.

Casting a vision and building momentum through collaboration and successful investigations can generate enthusiasm that may appeal to retired detectives. As an example, the City of Walnut Creek Police Department successfully solved a cold case in 2011 and was energized to the point of "pushing for a volunteer squad, staffed by retired detectives, to update reports and apply new forensic analysis."

Findings

F4.0 There is insufficient staffing for cold case investigations in San Joaquin County, primarily within the San Joaquin County Sheriff's Department, the Stockton Police Department, and the San Joaquin County District Attorney's Office.

F4.1 There are a significant number of cold case homicides with the Stockton Police Department and the San Joaquin County Sheriff's Department that have not been reviewed in many years due to insufficient staffing and lack of prioritization.

F4.2 Law enforcement agencies in San Joaquin County continue to be challenged in hiring and retaining enough qualified officers to fill budgeted positions. This has been a contributing factor to insufficient staffing of cold case investigations.

F4.3 Providing experienced staffing for cold case investigations may require transferring staff from other assignments, hiring additional qualified retirees, or seeking qualified volunteers.

5.0 Funding Cold Case Investigations in San Joaquin County

Overview

A 2012 national cold case study by the Rand Corporation found that 56% of cold case investigations were funded through grants or supplemental agency funds. The same study found that only 20% of cold case investigations were being funded through established line items in the agency's budget. There are numerous factors contributing to the funding deficit for cold case investigations in America. Economic crises, critical humanitarian and justice issues, and unfunded pension liabilities are but a few of the major elements impacting today's budget priorities. In addition, the difficulty in quantifying a return on investment with cold case funding relative to active police investigations is another obstacle when competing for limited funds.

San Joaquin County

The Grand Jury found that funding for cold case investigative work has been insufficient for the law enforcement agencies in San Joaquin County primarily due to financial limitations and lack of priority. The interviews and surveys of law enforcement personnel consistently revealed a desire to accomplish more regarding cold case investigations. However, funding requests for additional cold case staffing, training, and technology have been routinely denied. This has been especially true for the three largest law enforcement agencies in San Joaquin County: the San Joaquin County Sheriff's Department, the Stockton Police Department, and the San Joaquin County District Attorney's Office. For example, the Sheriff's Department has unsuccessfully requested additional staffing for cold case investigations every year since 2011.

Responses from interviews and surveys consistently indicated the need for additional cold case staffing and training as the greatest priorities. Also mentioned were needed funding for technology improvements and for utilizing private laboratories to do additional testing of DNA evidence.

Funding Alternatives

Grant funding for cold case investigations has periodically been available through the National Institute of Justice, an agency of the United States Department of Justice (US DOJ). The Grand Jury learned that each of the three largest law enforcement agencies in San Joaquin County had attempted unsuccessfully to obtain such grants on one or more occasions in recent years. There was also a consensus amongst administrative staff that receiving grant money is helpful, but not sustainable to fund staffing year after year. However, research did reveal that the Sacramento County District Attorney's Office, Laboratory of Forensic Services, did successfully obtain a grant of \$336,293 in 2017 through the NIJ "DNA Capacity Enhancement and Backlog Reduction Program."

Another source of funding assistance might be the funds deposited annually into County DNA Identification Fund 20737 as a result of Proposition 69. The statute does not stipulate how the funds are to be disbursed at the local level. Currently, a Proposition 69 oversight committee meets

periodically to approve disbursement of collected funds for reimbursement of expenses incurred for DNA collection. The County portion of funds in 2017 was \$111,381. Such funds could possibly be used in a creative way to enhance DNA analysis and assist criminal investigations. One example is the Contra Costa County Sheriff's Office recently spent \$97,000 to purchase a RapidHIT ID System, a revolutionary technology to process DNA analysis in about 90 minutes.

In summary, all available funding options for cold case investigations should be utilized moving forward. Potential cost savings may be achieved by utilizing retired detectives working part-time, without benefits, at approximately one-third of the cost of a full-time, benefited employee.

Finding

F5.0 There is insufficient funding for cold case investigations in San Joaquin County, primarily for the San Joaquin County Sheriff's Department, the Stockton Police Department, and the San Joaquin County District Attorney's Office. The lack of sufficient funding is due primarily to financial limitations and lack of priority.

6.0 Investigating Cold Cases in San Joaquin County

Preparation

The following elements were identified through interviews and surveys as being essential to effective preparation for cold case investigations:

- Training specific to cold case investigations
- Organized computer database for cold cases

Cold case investigation is a specialized field that is presently benefiting from both rapid technological advances and emerging investigative techniques. Numerous opportunities exist for cold case and related training through such organizations as the US DOJ, the State of California Department of Justice (CA DOJ), and various other law enforcement institutes, agencies, and associations. The Grand Jury learned that present cold case investigative staff in San Joaquin County have had minimal opportunities to stay current through relevant cold case training events.

It remains commonplace in law enforcement for older cold case files dating back to the early 1990's and before to remain as paper files stored in boxes and binders. This is no different in San Joaquin County. The Grand Jury learned that such case files can range from a dozen pieces of paper to four full binders. Retrieving and reviewing such files is cumbersome and inefficient, though retention of paper files may be desirable for some cases. The lack of an organized computer database inhibits accurate and efficient tracking, evaluation, prioritization, and investigation of cold cases. The San Joaquin County Sheriff's Department acknowledged this challenge in their 2018-2019 Proposed

Budget request, indicating that cold cases prior to 1990 are not digitized, thus requiring any review or evaluation of the case and evidence to be done by hand.

Prioritization

The 2012 Rand Corporation study on cold case investigations listed the following factors as those most influential in the decision to reopen cold cases:

- New witness coming forward
- New DNA technology to test old physical evidence
- New evidence for DNA testing
- Other physical evidence
- New technology to test other physical evidence

The Rand study concluded that *“these responses strongly indicate that physical evidence is the major factor in decisions to reopen cold cases.”*

In their 2018-2019 Proposed Budget Request, the San Joaquin County District Attorney’s Office stated their desire to assist law enforcement agencies throughout the County by reviewing and triaging unsolved homicide cases. Their goal is to identify DNA evidence that has not been previously submitted for testing, and submit that evidence to the California Department of Justice crime labs for analysis. Current staffing levels and priorities prevent this level of assistance from the District Attorney’s Office.

The Grand Jury learned that some investigative staff at law enforcement agencies in San Joaquin County currently have no efficient or effective method of prioritizing which cold cases to investigate. Based upon interview results, the following prioritization methods are those being most utilized at present:

- Contact from family members of cold case victims
- Tips received/new information provided
- Random choice by the investigator
- Directed by supervisor

Many of the current methods being utilized to prioritize cold case investigations in San Joaquin County are inconsistent with the priority of physical evidence as emphasized by the 2012 Rand Corporation study. Neither do many of the current methods for prioritization align with the method of triaging physical evidence proposed by the District Attorney’s Office.

DNA Evidence (also see Appendix A)

The Grand Jury learned through interviews and surveys that there are significant numbers of cold case homicides in San Joaquin County with DNA evidence that could be tested using enhanced DNA technology now available. The exact number of cases with testable DNA evidence is unclear due to

the lack of effective tracking or evaluation methods. However, one estimate received by the Grand Jury indicated the number of such cases to be in the hundreds.

Limitations

Despite incredible advances in using DNA technology to identify persons, there are additional challenges presented to investigators of cold cases in San Joaquin County. The Grand Jury learned from multiple sources that the CA DOJ regional crime labs do excellent work; however, they are limited in the amount of staff time they can devote to evidence testing. This limitation was most apparent when involving cold cases where the chances of successful DNA testing results were less likely. Not only were the chances of approval for testing less likely for many cold cases, but the amount of time to receive a test result was often longer. Due to limited staff resources, the CA DOJ has policies in place that only allow them to analyze a minimal amount of DNA evidence based on their workloads and demands from law enforcement agencies throughout California. It is noteworthy that the Tracy Police Department's recent closure of a cold case homicide resulted from additional DNA testing by a private, nonprofit laboratory that was reportedly utilized due to testing limitations at the CA DOJ crime laboratory.

Another limitation in the investigation of cold case homicides in San Joaquin County is the significant percentage of cases involving street gangs. The Grand Jury learned that the number of cold case homicides involving street gangs is estimated to be as high as 50% in San Joaquin County. The significance of this reality does not pertain to a lesser demand for justice, but rather acknowledges that these cold cases present additional challenges, such as the lack of DNA or other physical evidence for testing, and the lack of available or willing witnesses to testify

Findings

F6.0 There is a need for additional training specific to cold case investigations for the law enforcement agencies in San Joaquin County.

F6.1 The lack of organized computer databases for cold cases is impeding the effective evaluation and investigation of cold cases in San Joaquin County.

F6.2 The methods for prioritization of cold case investigations in San Joaquin County are often ineffective, with insufficient emphasis placed on available physical evidence.

F6.3 The exact number of cold case homicides in San Joaquin County that have testable DNA evidence is unknown due to the lack of effective tracking and evaluation methods.

F6.4 There are limitations on the amount of physical evidence that the State of California Department of Justice crime laboratories will process for cold case investigations due to staffing and prioritization.

F6.5 Cold case homicides involving street gangs often present greater challenges due to the lack of testable DNA evidence and the lack of available or willing witnesses.

7.0 Solving Cold Cases in San Joaquin County

Elevation

Any successful path forward in solving cold cases in San Joaquin County must begin with elevating the priority of staffing and funding such investigations. The focus and priority of law enforcement on today and tomorrow must expand to include the past. By not investigating cold cases or seeking arrests and convictions, criminals are potentially being allowed to commit additional violent crimes.

Innovation (also see Appendix B)

Another key element to future success in solving cold cases in San Joaquin County will be the utilization of advanced technology and emerging techniques, including:

- STRmix DNA interpretive software
- Rapid DNA technology
- Genetic genealogy
- DNA phenotyping

These innovative techniques have assisted in solving cold cases throughout the United States.

Collaboration

A final critical component in the future success of solving cold cases in San Joaquin County will be the level of collaboration between all key members involved in the investigation and prosecution of such cases. This investigation revealed that there is presently a climate of isolation and frustration in attempting to investigate cold cases without the necessary assistance and support. Responses received from surveys and interviews revealed investigative staff want help in many areas, including: discussing case strategy, interviewing witnesses in the field, processing and serving warrants, obtaining legal advice, and testing of physical evidence.

This investigation confirmed the necessity of a cooperative and coordinated relationship between law enforcement agencies and the District Attorney's Office. The 2012 Rand Corporation study on cold case investigations emphasized the importance of cooperation between police and prosecutors in improving both the efficiency and the effectiveness of cold case investigations. The study indicated the benefit of having police consult with prosecutors beginning at case screening, to offer advice on whether the case is likely to produce a conviction and what kinds of evidence will be most compelling in court.

In their 2018-2019 Proposed Budget Request, the San Joaquin County District Attorney's Office expressed a clear desire to assist law enforcement partner agencies throughout the County with cold case investigations. However, the Grand Jury learned that there is presently minimal contact between the District Attorney's Office and cold case investigative staff.

There are many examples from nearby counties where the District Attorney's Office has taken a leadership role in coordinating and facilitating cold case investigations and prosecutions. A few of these counties include:

- Sacramento County – Cold Case Prosecution Unit
- Contra Costa County – Cold Case-Unsolved Homicide Unit
- Alameda County – Unsolved Crimes/DNA Cold Case Unit
- Santa Clara County – Cold Case Unit
- Solano County – Cold Case Unit

The desire for the San Joaquin County District Attorney's Office to form a Cold Case Task Force was a consistent request in both interviews and survey responses from law enforcement agencies throughout the County. Such a Cold Case Task Force is needed to provide a multitude of essential functions in cold case investigations, including:

- Establish a Mission Statement clearly defining "Cold Cases"
- Coordinate training specific to cold case investigations
- Provide legal assistance including case review, warrant processing, and prosecution
- Coordinate with CA DOJ crime laboratories for necessary testing
- Collaborate with other counties and law enforcement agencies for support
- Collaborate regarding advocacy for victim's families and witnesses

As one example of successful collaboration, the Santa Clara County District Attorney's Office joined with county law enforcement agencies to sign a Cold Case Partnership and Cooperation Agreement. The county crime laboratory also joined this partnership and made a commitment to handle DNA in an expedited manner. The District Attorney also asked every county law enforcement agency for access to unsolved homicide and sexual assault cases in order to assist with locating and submitting DNA evidence, interviewing witnesses, and conducting a comprehensive case evaluation.

Findings

F7.0 The elevation of cold case investigations as a priority is vital to the future success in investigating and solving cold cases in San Joaquin County.

F7.1 The utilization of innovative technology and emerging techniques is an essential element to the future success of investigating and solving cold cases in San Joaquin County.

F7.2 The level of collaboration between law enforcement agencies and the District Attorney's Office is a critical component to success in solving and prosecuting cold cases.

F7.3 There is minimal contact between the District Attorney's Office and cold case investigative staff in San Joaquin County due to lack of staffing and priority.

F7.4 There is universal support amongst law enforcement agencies in San Joaquin County for the District Attorney's Office to form a Cold Case Task Force to support cold case investigation and prosecution.

8.0 Maintaining Contact with Families of Cold Case Victims

The consequences of unsolved cold cases include victims without justice and families without answers. This painful reality is one driving force behind the proposed Cold Case Accountability Act of 2020. One aspect of this proposed legislation is a requirement for law enforcement agencies to provide regular updates in writing and in person to families of cold case victims.

The Grand Jury learned through interviews and survey responses that there is currently no consistent procedure or practice for law enforcement agencies in San Joaquin County to maintain periodic contact with the family members of cold case victims. Most contacts with victims' families are currently being initiated by family members, and often correspond to the victim's birthday or the anniversary of their death. Many law enforcement personnel refrain from initiating contact with families of cold case victims due to time constraints, the lack of any progress to report, or the potential to provoke emotional trauma. Perhaps a reasonable and sensitive response is that the family should be consulted regarding their desired frequency of contact. Such contacts could be handled by nonsworn personnel in order to minimize the time impact on investigative staff.

Victim Services is a program of the San Joaquin County District Attorney's Office that serves victims and their survivor family members of homicide, sexual assault, and other crimes. As stated on the District Attorney's website, "In California victims of crime have state constitutional standing and rights, guaranteeing that their voices will be heard." For many cold case victims, their voice is still being heard through their surviving family members.

Victims of Violent Crime of San Joaquin County is a nonprofit support group whose members are comprised primarily of surviving family members of unsolved murders. The group has held an annual vigil during the holiday season for the past twenty years. All of the surviving family members who gather at these vigils are ultimately seeking the same things: justice and closure. However, the Chief Executive of Victims of Violent Crime recognizes that in order for survivor family members to experience justice and closure, more cold case detectives are needed in San Joaquin County to investigate their cases.

Finding

F8.0 There is no consistent procedure or practice for law enforcement agencies in San Joaquin County to maintain periodic contact with the family members of cold case victims.

Recommendations

R1 Each law enforcement agency in San Joaquin County develop a plan to define, prioritize, and digitally track cold case investigations no later than December 31, 2019. Prioritization will emphasize available physical evidence and utilize emerging DNA testing techniques.

R2 Each law enforcement agency in San Joaquin County expand their definition of “cold case” to include missing persons with suspicious circumstances, and sexual assault (forcible rape and attempted rape), in addition to homicide no later than December 31, 2019.

R3 The San Joaquin County Sheriff utilize budget options and staffing reassignments as necessary to provide the equivalent of at least three full-time Sheriff’s Detectives dedicated solely to cold case investigations no later than December 31, 2019.

R4 The San Joaquin District Attorney utilize budget options and staffing reassignments as necessary to provide the equivalent of at least two full-time District Attorney Investigators dedicated solely to cold case investigations no later than December 31, 2019.

R5 The City of Stockton utilize budget options and staffing reassignments as necessary to provide the equivalent of at least three full-time Police Detectives dedicated solely to cold case investigations no later than December 31, 2019.

R6 The San Joaquin County District Attorney’s Office develop a plan for a Cold Case Task Force to facilitate collaboration in investigating and prosecuting cold cases for all law enforcement agencies in San Joaquin County no later than December 31, 2019.

R7 The San Joaquin County District Attorney’s Office establish a Cold Case Task Force for all law enforcement agencies in San Joaquin County no later than March 31, 2020.

R8 Each law enforcement agency in San Joaquin County sign a Partnership and Cooperation Agreement with the newly formed Cold Case Task Force no later than March 31, 2020.

R9 The newly formed Cold Case Task Force partner with the regional CA-DOJ crime laboratories to facilitate the timely and necessary testing of all DNA evidence for cold case investigations no later than March 31, 2020.

R10 Each law enforcement agency in San Joaquin County develop a procedure and practice for maintaining periodic contact with family members of cold case victims no later than March 31, 2020.

Conclusion

It has been said that cold cases are rife with challenges but also filled with rewards. However, this Grand Jury investigation revealed that cold case investigations in San Joaquin County have experienced minimal rewards due primarily to the lack of priority in staffing and funding such investigations. The Grand Jury has responded with a number of recommendations to improve the current state of cold case investigations in San Joaquin County.

In the end, investigating cold case homicides, missing persons, and sexual assaults is about doing what is right and just – for the victims, for their survivor family members, and for our community. As the Stockton Police Chief stated, “We think it’s so important that we have somebody assigned to these cases because we have hurting families who have never received closure.”

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).

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.

The San Joaquin County Board of Supervisors shall respond to all Findings and Recommendations, where applicable.

The Stockton City Council shall respond to all Findings and Recommendations R1, R2, R5, R8, and R10.

The Escalon City Council shall respond to all Findings and Recommendations R1, R2, R8, and R10. The Lodi City Council shall respond to all Findings and Recommendations R1, R2, R8, and R10.

The Manteca City Council shall respond to all Findings and Recommendations R1, R2, R8, and R10.

The Ripon City Council shall respond to all Findings and Recommendations R1, R2, R8, and R10.

The Tracy City Council shall respond to all Findings and Recommendations R1, R2, R8, and R10.

The San Joaquin County Sheriff shall respond to all Findings, where applicable and Recommendations R1, R2, R3, R8 and R10, within 60 days of receipt of the report.

The San Joaquin County District Attorney shall respond to all Findings, where applicable and Recommendations R1, R2, R4, R6, R7, R8, R9 and R10, within 60 days of receipt of the report.

Mail or hand deliver a hard copy of the response to:

Honorable Linda L. Lofthus, 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 Ms. Trisa Martinez, Staff Secretary to the Grand Jury, at grandjury@sjcourts.org

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Appendix A: DNA Evidence

DNA is the fundamental building block for an individual's entire genetic makeup. The DNA in a person's blood is the same as the DNA in their skin cells, saliva, and other biological material. Each person's DNA is unique, with the exception of identical twins. Therefore, DNA evidence collected from a crime scene such as a homicide or sexual assault, can implicate or eliminate a suspect. Old cases that were previously thought unsolvable may contain valuable evidence capable of identifying the perpetrator. DNA can also be used to analyze unidentified remains through comparison with DNA from relatives.

The Combined DNA Index System (CODIS) is a computer network that connects forensic DNA laboratories at the local, state, and national levels. When a DNA profile is developed from crime scene evidence and entered into CODIS, the database software searches thousands of convicted offender DNA profiles to determine a possible match. CODIS also has a missing persons index which contains DNA profiles of unidentified remains, as well as DNA profiles of relatives of those who are missing.

In 2004, California voters approved Proposition 69 to further expand DNA collection to include all persons arrested for a felony. The result has been that California now maintains the largest state DNA database in the country and the third largest in the world.

Although DNA is not the only forensic tool available for the investigation of unsolved cases, advancements in DNA testing and the success of the DNA database system have inspired law enforcement agencies throughout the country to reevaluate cases previously thought unsolvable. DNA testing has even been used to exonerate more than 350 inmates since 1989.

Appendix B: Innovative Techniques

STRmix is a recently developed forensic software that can resolve previously unresolvable mixed DNA profiles. STRmix software combines biological modeling and mathematical processes to achieve results not possible with traditional DNA methods. This new DNA technology was credited for a recent arrest and conviction involving the 2012 rape and homicide of an elderly Stockton woman. The investigation by the Stockton Police Department and the CA DOJ Forensics Services laboratory in Ripon continued until 2016, when new STRmix DNA interpretation software used by the laboratory conclusively identified the suspect's DNA on items from the crime scene. The CA DOJ laboratory had previously been unable to separate DNA mixtures of different people. However, STRmix looks at many more factors in DNA mixtures, allowing a suspect to be identified from a mixture of DNA from different people.

Rapid DNA technology has shortened the DNA test time from weeks to about ninety minutes by inserting a swab of DNA into a cartridge and putting that into a machine for analysis. In the past, law enforcement agencies had to send DNA samples to government labs and wait for test results,

which could take days or weeks. A federal bill passed in 2017 allows law enforcement agencies to use rapid DNA technology to perform real-time DNA testing at their booking stations immediately following arrests. These samples are then compared to profiles in CODIS for possible matches. The same technology has also been used to identify victims of the deadly Camp Fire in Butte County. The Contra Costa County Board of Supervisors recently authorized the Contra Costa Sheriff's Department to spend approximately \$97,000 to purchase the RapidHIT ID System to enhance their investigative operations.

Genetic genealogy is the innovative method used to identify and arrest the suspected Golden State Killer in 2018. Using an untouched Golden State Killer DNA sample from a Ventura County crime lab, the FBI created a profile to load onto the public genealogy website GEDmatch, a freely accessible ancestry database where people submit DNA to find relatives and determine lineage. A team led by retired Contra Costa County District Attorney Paul Holes and volunteer Genetic Genealogist Barbara Rae-Venter, dug as far back as the suspect's great-great-great grandparents' lineage to make progress. The team created multiple family trees, then narrowed down suspects through physical attributes of the killer gleaned from DNA, as well as information such as where the killer might have lived. After a DNA match with a second cousin, investigators were able to zero in on Joseph DeAngelo as their suspect.

Since the arrest of DeAngelo, many other cold cases have been solved using the same methods. In fact, Rae-Venter later trained the Sacramento County District Attorney investigators who were able to use same method of genetic genealogy and DNA analysis to arrest the NorCal Rapist, a serial rapist believed to have terrorized women in six counties starting in the 1990's. Sacramento County District Attorney Ann Marie Schubert stated that investigators were able to load the suspect's profile to GEDmatch and arrest the suspect ten days later.

There is even optimism that within a few years, most cold cases will be solvable with public data. GEDmatch contains data from more than 1.2 million individuals and is adding 1,000 to 2,000 genetic profiles each day. One geneticist estimates that profiles from three million Americans of European descent could identify 90% of people within this demographic.

Recently, FamilyTreeDNA, another prominent consumer DNA testing company, advised that it has granted the FBI limited access to its nearly two million genetic profiles. The immediate result of this decision is that it more than doubles the amount of genetic data that is already accessible to law enforcement through GEDmatch.

It should be acknowledged, however, that there is some opposition to utilizing genealogical databases to identify offenders. Such criticism is based upon privacy concerns and will no doubt result in future litigation and legislation of this issue.

DNA phenotyping is an additional innovative technology that is generating interest for cold case investigations. DNA phenotyping is an attempt to use forensic DNA technology to determine physical traits. It is an evolving science being utilized by such companies as Parabon Nanolabs. Computer technology is used to generate a sketch of a possible subject based solely on DNA found

at the scene of a crime. This is an emerging technique that may eventually provide valuable assistance in cold case investigations or identification of human remains.

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

Re: Grand Jury Report: "Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases In San Joaquin County: On The Back Burner Case # 0318"

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 above-referenced report directed that "The Tracy City Council shall respond to all Findings and Recommendations of this report R1 and R2 and the 2018-2019 Civil Grand Jury Report "Cold Cases in San Joaquin County: On the Back Burner" Case #0318, R1, R2, R8, and R10".

The Tracy City Council has reviewed and thoughtfully considered the Grand Jury's Report and Recommendations. The responses contained in this letter have been prepared by the Tracy Police Department and approved by the Tracy City Council on August 27, 2024.

Recommendations

2023-2024 Recommendations

R. 1.0: By October 1, 2024, all Law Enforcement Agencies review and implement the recommendations from the 2018-2019 Civil Grand Jury Report "Cold Cases in San Joaquin County: On the Back Burner" Case #0318.

The recommendation has been implemented.

As detailed further below under the 2018-2019 Recommendations section, the Tracy Police Department has reviewed and implemented the recommendations as appropriate.

R. 1.1: By October 1, 2024, the task force should be formed and implemented with the San Joaquin County Sheriff's office as the lead agency.

The recommendation has been implemented.

As explained in more detail in R8 below, the Tracy Police Department is a member agency via a memorandum of understanding with San Joaquin County (County).

2018-2019 Recommendations

R1 Each law enforcement agency in San Joaquin County develop a plan to define, prioritize, and digitally track cold case investigations no later than December 31,

2019. Prioritization will emphasize available physical evidence and utilize emerging DNA testing techniques.

The recommendation has been implemented.

The Tracy Police Department acknowledges and accepts the definition of “Cold Case” which was adopted by all San Joaquin County law enforcement agencies. The Tracy Police Department will prioritize and investigate “cold cases” based on new investigative leads or evidence. The Tracy Police Department maintains a digital list of all cold cases. These case files are maintained digitally by the Tracy Police Department. The list is also tracked by the General Investigation’s Sergeant and Records Supervisor in an excel spreadsheet.

R2 Each law enforcement agency in San Joaquin County expand their definition of “cold case” to include missing persons with suspicious circumstances, and sexual assault (forcible rape and attempted rape), in addition to homicide no later than December 31, 2019.

The recommendation has been implemented.

A cold case is an unsolved crime previously reported to a law enforcement agency and the agency determines investigative leads were exhausted. The initial investigation of the cold case failed to result in the identification of a suspect, arrest of a suspect, the referral of the case to the District Attorney’s Office and/or the filing of criminal charges by the District Attorney’s Office. Due to the passage of time, the development of evidence of other crimes, and/or the lack of further investigative leads, the law enforcement agency is no longer actively investigating the crime. These cases are deemed “open” investigations.

The Cold Case Task Force expanded “Cold Cases” to include unsolved homicides, missing person cases with suspicious circumstances, and sexual assaults (forcible and attempted rape), where no suspect was identified.

R8 Each law enforcement agency in San Joaquin County sign a Partnership and Cooperation Agreement with the newly formed Cold Case Task Force no later than March 31, 2020.

The recommendation has been implemented.

The Cold Case Task Force Partnership & Cooperation Agreement drafted by the previous San Joaquin County District Attorney’s Office was signed by the Tracy Police Department Chief, Sekou Millington, and became effective on March 31, 2020. Tracy Police Departments’ participation in the task force consists of submitting our “Cold Case” list to the San Joaquin County District Attorney’s Office and investigating our own “Cold Cases” as new leads or evidence exist.

R10 Each law enforcement agency in San Joaquin County develop a procedure and practice for maintaining periodic contact with family members of cold case victims no later than March 31, 2020.

The recommendation has been implemented.

Tracy Police Department's General Investigations Unit will conduct yearly audits of Cold Cases (Homicides, Sexual Assaults, Missing Persons) and revisit the cases to look for new leads. Detectives will contact the victim or the victim's family to keep them updated on any new information.

Thank you for providing the City of Tracy an 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
City of Tracy

RESOLUTION NO. 2024 - _____

APPROVING RESPONSE LETTER TO THE SAN JOAQUIN COUNTY GRAND JURY REPORT “SECOND LOOK: 2018-2019 SAN JOAQUIN COUNTY CIVIL GRAND JURY REPORT COLD CASES IN SAN JOAQUIN COUNTY: ON THE BACK BURNER CASE # 0318” AND AUTHORIZING THE CITY MANAGER TO EXECUTE LETTER AND TRANSMIT IT TO THE PRESIDING JUDGE

WHEREAS, On June 17, 2024, the San Joaquin Civil Grand Jury released a report titled “Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases in San Joaquin County: On the Back Burner Case # 0318”, 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 initial draft letter, provided feedback, and authorized the City Manager to sign the letter so that the final response accurately reflects the City’s response at its meeting on August 27, 2024;

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 “Second Look: 2018-2019 San Joaquin County Civil Grand Jury Report Cold Cases in San Joaquin County: On the Back Burner Case # 0318” and authorizes the City Manager to execute the response letter and transmit it to the presiding judge.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 27th day of August, 2024 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

Agenda Item 5.B

RECOMMENDATION

The City Council 1) continue discussion on 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, 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

Pursuant 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) continue discussion on 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, 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

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 block 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.

32
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.

38
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.

42

43 **Background**

44

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.

59

60

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.

64

65

Method of Investigation

66

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)

84

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

90

91 **Discussions, Findings, and Recommendations**

92

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.

105

106

107 **Findings**

- 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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129 **Recommendations**

- 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.

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Findings

- F 2.1:** 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.
- 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.
- F2.3:** Interviews with former employees indicated that the Tracy City Attorney’s office is understaffed compared to cities of similar population.
- F2.4:** The current Code of Conduct limits the hiring of outside legal counsel to only the City Attorney. This ties the hands of the City of Tracy when the City Attorney is not available to meet the duties of her office.
- F2.5:** Reported unprofessional behavior by the City Attorney in dealing with city staff has led to low morale and staff resignations.

Recommendations

- R2.1:** By October 1, 2024, an outside legal firm should be engaged to help expedite the current work backlog in the City Attorney’s office.
- 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.
- R2.3:** By October 1, 2024, the City of Tracy should budget for and hire additional City Attorney staff.
- 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 gives the appearance of a potential conflict of interest.
- R2.5:** By October 1, 2024, the City Attorney should be given training in personnel management. 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

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. 0323

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 27th day of August, 2024 by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk