

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

August 27, 2024, 7:00 p.m.

Tracy City Hall, 333 Civic Center Plaza, Tracy, CA.

1. Mayor Pro Tem Davis called the meeting to order at 7:00 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll call found Council Members Arriola, Bedolla, Evans, and Mayor Pro Tem Davis present. There was no declaration of conflicts. Mayor Young absent.
4. ITEMS FROM THE AUDIENCE – Frank Lozano expressed concerns regarding drivers speeding through crosswalks at Sycamore and Dove, by Wanda Hirsh School. There should be a stop sign at Dove, Raven and Sycamore. Need LED lights in crosswalk and lit stop signs that run on solar. Nine months of the year is a school zone and people are going too fast.

Robert Tanner stated since July 4 there have been six items in the Tracy Press dealing with fireworks. Hope the new City Council reviews the process of selling fireworks in town and makes it illegal totally. Fireworks put on by staff should be the only ones allowed. Safe and sane are not necessarily safe and sane. Need more stringent laws so Police can nail everyone.

Veronica Vargas stated the City has approved the Urban Forestry Plan but it does not address irrigation and replacement of trees. A lot of trees have been cut down especially on Corral Hollow and MacArthur and requested Council pass a resolution that for every tree taken down, replant three trees and allow some dollars to be attached for replacement and irrigation. Ms. Vargas also stated on 11th Street nothing went forward regarding crosswalks. Most inexpensive improvement a City can do is painting bike lanes green and painting the crosswalks. Make it a priority and Public Works has allocation to paint.

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.

Sekou Millington, Police Chief introduced the item and responded to questions.

Jose Silva, Police Lieutenant provided the staff report.

Council questions followed.

Arturo Sanchez, Assistant City Manager clarified that the direction provided appeared to have a clerical error because it said Items 1 and 2 but the report states Recommendations 1 and 1.1. There was no Recommendation 2 within

the Grand Jury Report. Staff was trying to be as responsive as possible to the report itself, but they had no Recommendation 2 spelled out.

There was no public comment.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Bedolla to adopt **Resolution 2024-140** approving the proposed recommendations as they appear in Attachment B to the staff report. Roll call found Council Members Arriola, Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Mayor Young absent.

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.

Midori Lichtwardt, City Manager provided the staff report.

Michel Bazinet stated his comments are directed at the Council majority running the show. In 20 years of coming to Council meetings he has never seen such pretension and shared his concerns regarding Council's behavior and not being accountable for actions and words.

Karin Schnaider, Assistant City Manager read out the findings, Council's consensus and responses for Findings F.1 to F.3 which were voted on at the August 20, 2024, Special Council meeting.

Ms. Schnaider announced Mayor Pro Tem Davis has provided additional responses for the Council to consider.

City Council made amendments to the responses approved at the August 20, 2024, Special Council meeting.

Bijal Patel, City Attorney and Patrick Donegan, Best Best & Krieger responded to Council questions.

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.*

Response to Finding F1.1 - The City Council disagrees partially with finding F1.1.

The City Council has adopted a Code of Conduct and Meeting Protocols to facilitate professional and productive Council Meetings. The Code of Conduct, Section 3.6 Code of Conduct Compliance and Enforcement, provides the

framework for the Council to address actions by fellow Council Members and/or Commissioners that may be considered unprofessional or prohibit the City Council's ability to govern effectively.

For meetings where four of the five Council Members were in attendance, the four City Council Members worked very well together. Although we disagreed on some items, we worked well and made great progress working together. The City Council has demonstrated its ability to govern effectively.

Some examples of good governance are the rectification for unusable shelter units, addressing homelessness, expanding housing for unsheltered, and assuring safety at El Pescadero Park by adopting legislation ensuring safe use of parks by youth by adopting a sensitive use policy. Other examples of good governance include the acceptance of the 16 acres of the Aquatic Center land; we established the first ambulance services in the City; as well as approved funding for the first regional fire training facility within the City.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola disagreed with the City Council's assessment of the finding and agreed with the statements in the Civil Grand Jury's finding.

Mayor Young absent.

***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.*

Response to Finding F1.2 - The City Council disagrees wholly with finding F1.2.

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 pertaining to personnel matters. In addition, any written allegations of Brown Act violations have been formally addressed by the City Council.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola agreed with the Grand Jury's Findings.

Mayor Young absent.

***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.*

Response to Finding F1.3 - The City Council disagrees wholly with finding F1.3.

To the extent that there is a perception of a toxic work environment, the City Council disagrees that more than one member created such an environment.

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.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola agreed with the Grand Jury's Findings.

Mayor Young absent.

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

Response to Finding F1.4 - The City Council disagrees wholly with finding F1.4.

The Council disagrees that the behavior of the Council body as a whole has resulted in poor morale within City Hall. There were multiple actions attributed to one member of the City Council that may have attributed to the poor morale. There are multiple reports, videos, and minutes that support the Council's position.

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 Council Members and/or Commissioners that may be considered unprofessional.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola disagreed with the Council's position and agrees with the findings in the Grand Jury Report.

Mayor Young absent.

***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.*

Response to Finding F1.5 - The City Council disagree wholly with finding F1.5.

The City Council did not create a void in the city administration and leadership as it appointed an Interim City Manager immediately following the resignation of the prior City Manager. The Interim City Manager at that time had served the City of

Tracy for more than 25 years and subsequently was permanently appointed by the City Council as City Manager.

This Council, on which the investigation is focused, has been intact since 2022, less than two years. Any references to previous Councils would be reflective of conduct not associated with this Council body. Only two City Managers have served under this Council body. No Council body should be expected to be responsible for any former City Councils' actions.

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

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola disagreed with the evaluation and agreed with the findings of the Grand Jury.

Mayor Young absent.

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.*

Response to Finding F1.6 - The City Council disagree partially with Finding F1.6.

The City Council disagrees partially as just one member has consistently demonstrated unprofessional behavior and has negatively impacted the City's reputation, affecting new business development and recruitment of potential City employees. This is part due to untrue accusations of racism against their fellow Council members and the City.

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 Council members 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.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola agreed with the findings of the Grand Jury Reports F1.6.

Mayor Young absent.

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.*

Response to Finding F 1.7 - The City Council disagrees wholly with finding F1.7.

The legislative body has a duty to act in the best interest of the community. It is clear that there were alliances between some Council Members, staff, and developers that would make it all but impossible to achieve a supermajority vote for dismissal.

As a general law city, ordinances are adopted on a simple majority vote, unless a supermajority vote is otherwise required by State law.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola stated he absolutely dissents to this especially for the fact that this language either explicitly or implicitly names him saying that he has an alliance to anyone. His alliance is only to the City of Tracy.

Mayor Young absent.

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.*

Response to Finding F1.8 - The City Council disagree partially with finding F1.8.

This current City Council was not aware of a standardized City practice developed under any past City Councils. Established measurable performance goals and objectives is preferred and ideal, however, lack of them does not prohibit a member of the Council body from effectively evaluating performance.

Prior to the publication of the Grand Jury Report, the City Manager and City Attorney began working with a consultant and the Council body to develop respective performance goals and objectives to ensure a positive working relationship with clear expectations on both sides is established going forward.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola partially disagreed and has no concerns effectively evaluating the City Manager and City Attorney.

Mayor Young absent.

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.*

Response to Finding F1.9 - The City Council disagrees wholly with finding F1.9.

The City Attorney is a neutral party serving at the pleasure of the Council. The City Attorney's duties as a Parliamentarian provide legal guidance. The City Attorney serves in an advisory capacity, cannot vote, and has no authority over any member of the Council.

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.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola disagreed partially. The Parliamentarian and City Attorney should be advisory only as it relates to this finding.

Mayor Young absent.

RECOMMENDATIONS:

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/>.*

Response to Recommendation R1.1 - The recommendation has been implemented.

The City Council receives ongoing and continuous training on these practices and no additional training is required by October 1, 2024.

More specifically during the City Council's term, it has received 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 Council members 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 Council member 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.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola stated he disagreed and would be voting that the recommendation has not been implemented and to implement it in the future.

Mayor Young absent.

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.*

Response to Recommendations R1.2 – R1.6 - The recommendation has been implemented.

The City Council receives ongoing and continuous training on these practices and no additional training is required by October 1, 2024.

More specifically during this City Council's term, the Council body has completed the required training on the understanding of the Brown Act. In addition, new and existing City Council members have access to and are encouraged to take additional trainings with League of California Cities and other associations, including Brown Act and AB1234 (Ethics) trainings.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola supported not being implemented and should be implemented in the future.

Mayor Young absent.

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.*

Response to Recommendation R1.7 - The City Council will not implement this recommendation.

As a general law city, the authority for the City's powers are granted by State law, including the ability to adopt ordinances. Absent on point authority to the contrary, divesting this Council or a future Council of its power to legislate pursuant to the prescribed powers in the Government Code is legally tenuous and may be subject to challenge. The Council retains its rights to change a super majority to a simple majority.

Council Member Arriola shared as it relates to Recommendation 1.7 he shares the same legal conclusion as Mr. Donegan however, as it relates to the second sentence and would be supporting implementation in the future of a 90 day public notice period to change the vote requirements for the recommendations that were implemented from Civil Grand Jury Reports.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola dissented with the Council recommendation.

Mr. Donegan provided suggested language.

Mayor Young absent.

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.*

Response to Recommendation R1.8 - This recommendation is implemented.

Prior to the publication of the Grand Jury Report, the City Manager and City Attorney's employment contracts already included the language to require individual performance goals and objectives and the requirement for an annual evaluation.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola stated up to the point where the goals and objectives have been finalized for both positions, his position would be to vote to implement this in the future.

Mayor Young absent.

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.*

Response to Recommendation R1.9 - The City Council will not implement this recommendation.

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.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to the above response.

Council Member Arriola stated as it relates to Recommendation 1.9 he would vote not to implement because it is not warranted, the position is advisory only.

Mayor Young absent.

2.0 CITY ATTORNEY AND 3.0 HIRED STAFF

Mayor Pro Tem Davis confirmed with Ms. Patel that in this section the responses come from the department and was she asking Council to give blessing to the language.

Ms. Patel responded as done on the previous item when there is operational issues or recommendations and findings specifically related to a department the practice across the City is to have deference to those departments to give their initial determinations on both the findings and recommendations. Procedurally, under the Penal Code the City Council as a body still has to adopt the overall statements to the extent that certain tweaks may be necessary, that should be discussed.

Council Member Arriola asked since Council has had an opportunity to review this for a second time now, was there disagreement with a majority of the proposed language for Sections *2.0 City Attorney and 3.0 Council Hired Staff* or can it be done in one vote.

Bijal Patel, City Attorney responded yes it can be done in one vote, Council does not need to read each one into the record.

Mayor Pro Tem Davis asked Council if they read through Section 2.0 and Section 3.0 and was there anything that needed to be addressed, and if not, she would be open to doing a blanket vote.

Council Member Bedolla responded yes, he read it and is good with going with staff's findings.

Council Member Evans agreed with Council Member Bedolla.

Council Member Arriola stated as it relates to Sections 2.0 related to *City Attorney* and 3.0 related to *Council Hired Staff* his position on each of the findings would be agree and his position on each of the recommendations would be to implement in the future.

City Council discussed including attachments or additional language to the response to the Grand Jury Report.

Mayor Pro Tem Davis read out alternative language to add to what has already been written to the response to the Grand Jury Report and requested an attachment.

Council Member Evans did not have any issues with Mayor Pro Tem Davis's language and attachments.

Council Member Arriola objected to the inclusion of Mayor Pro Tem Davis's language and attachments.

Council Member Bedolla asked for outside counsel's opinion on inclusion of the language and attachments.

Mr. Donegan in hearing the language he did not see much in the way of objection to those changes and if they effectuate Council's will as a whole, he recommends inclusion of the attachments.

Council discussion continued.

Council Member Evans read out a letter he requested to include with the response along with attachments.

Council Member Arriola objected to Council Member Evans comments and stated he did vote in support of the land exchange.

Ms. Patel responded to Council questions.

Council Member Bedolla was in agreement with providing attachments and asked if the Council would agree to include the attachments that do not compromise the legal position as a City and would Council be ok with staff sifting through them.

Mayor Pro Tem Davis was in support of Council Member Bedolla and Council Member Evans submitting all documents to be included in the Grand Jury Response to provide the Judge with more context and why they are coming to the conclusions.

Council Member Bedolla supported any Council Member submitting additional documents in the Grand Jury Response as long as it is made transparent.

Ms. Patel asked before submitting into the record would Council be ok with the City Attorney reviewing the documents to make sure there are no privileged documents or violations.

Council Members Bedolla, Evans and Mayor Pro Tem Davis agreed to allow the City Attorney and City Manager to review the documents.

Midori Lichtwardt, City Manager suggested language in the first paragraph of the letter to point to the attachments.

Mayor Pro Tem Davis stated she was ok with leaving out the language she suggested to add to the letter but wanted her attachment she had submitted at the August 20, 2024, special Council meeting to be included as an attachment to the letter.

Council Members Bedolla, Evans, and Mayor Pro Tem Davis agreed to include the following language to the response letter: For additional context to the City Council's responses found below, the City Council approved attachments individually prepared by Mayor Pro Tem Davis, Council Member Bedolla, and Council Member Evans to be included as a part of this response.

City Council shared their general comments related to the item.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Evans to adopt **Resolution 2024-141** 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. Roll call found Council Member Bedolla, Evans and Mayor Pro Tem Davis in favor; passed and so ordered. Council Member Arriola opposed. Mayor Young absent.

6. Council Items and Comments – Council Member Bedolla mentioned the Valley Link Board Meeting will be held here in Tracy on either September 15, 16 or 17 at 10:30 a.m. at the Transit Station. Any member of Council and the public is invited to listen.

Council Member Evans thanked all his colleagues on the dais stating this Council functioned just fine. This meeting alone is proof that a lot of what we are reading and responding to is just not reality.

Council Member Arriola wished everyone a happy Labor Day.

7. Adjournment – Time: 10:46 p.m.

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

The above agenda was posted at the Tracy City Hall on August 24, 2024. The above are action minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk