

December 21, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 7:07 p.m. and led the Pledge of Allegiance.

The invocation was given by Pastor Tim Heinrich, Crossroads Baptist Church.

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel, and Mayor Ives present.

1. CONSENT CALENDAR - Following the removal of items 1-J by Andrew Malik, Director of Development and Engineering Services, and item 1-H by a member of the audience, it was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Regular meeting minutes of October 19, 2010, closed session minutes of December 7, 2010, and special meeting minutes of December 7, 2010, were approved.
 - B. Award a Construction Contract in the Amount of \$108,543.30 for the Sidewalk, Curb & Gutter Repairs (ADA Improvements - FY10-11) - CIP 73122, to Nor-Cal Concrete of Suisun, California, and Authorize the Mayor to Execute the Construction Contract – Resolution 2010-200 awarded the construction contract.
 - C. Acceptance of the Patterson Pass Water Booster Pump Station Replacement Project - CIP 75097, and the Valpico Road Pressure Monitoring Station - CIP 75098, Completed by Conco West Inc., of Manteca, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-201 accepted the project.
 - D. Approve a List of City of Tracy Projects for San Joaquin Council of Government's One Voice Trip to Washington D.C., for Congressional Funding Appropriation Requests – Resolution 2010-202 approved the list of Tracy projects.
 - E. Approval of and Authorization for Mayor to Sign the 2010 Drainage Agreement Between the City of Tracy and the West Side Irrigation District – Resolution 2010-203 authorized the Mayor to sign the agreement.
 - F. Adopt Resolution Approving the Annual Report on Development Impact Fee Revenues and Expenditures, and Making Findings as to Unexpended Funds – Resolution 2010-204 approved the annual report.
 - G. Adopt Resolution Approving a Property Tax Sharing Agreement Between the County of San Joaquin and the City of Tracy – Resolution 2010-205 approved the agreement.

- I. Acceptance of the City of Tracy's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2010 – Resolution 2010-206 accepted the report.

- H. ADOPTION OF A RESOLUTION DESIGNATING MUNISERVICES AS AN AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS - Mr. Tanner asked what percentage of the tax recovery would MuniServices receive for their fee. Mr. Zane Johnston, Finance and Administrative Services Director, explained the importance of services to audit State Board of Equalization records. Mr. Tanner asked how much was recovered in Fiscal Year (FY) 09/10 and how much is expected in FY10/11. Mr. Johnston explained that the fee was 25% of the first six quarters of any fee that is recovered from their audit. For FY 09/10 the fee was \$13,000 which means MuniServices collected approximately \$52,000 in additional revenues for the City. Mr. Johnston stated there was no estimate for FY 10/11.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt Resolution 2010-207 designating MuniServices as an authorized City representative to examine sales and use tax records. Voice vote found all in favor; passed and so ordered.

- J APPROVE AMENDMENT OF THE CITY'S ADOPTED BUDGET FOR FY2010-11 TO CREATE A NEW CAPITAL IMPROVEMENT PROJECT – CIP 74091, FOR RECYCLED WATER DISTRIBUTION SYSTEM AND AUTHORIZE AN APPROPRIATION OF \$25,000 FROM THE WASTEWATER FUND 521 TO THIS PROJECT - Andrew Malik, Development and Engineering Services Director, asked that the item be pulled to clarify a discrepancy in the resolution attached to the staff report. The correct amount of the appropriation request is \$25,000.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt the revised Resolution 2010-208 approving an amendment of the City's adopted budget for FY2010-11 to create a new Capital Improvement Project – CIP 74091, for recycled water distribution system and authorize an appropriation of \$25,000 from the Wastewater Fund 521 to this project. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – None.

3. PUBLIC HEARING TO APPROVE THE FINAL COSTS OF WEED ABATEMENT AND DESCRIPTION OF THE STRATEGY FOR FUTURE ABATEMENTS - Dave Bramell, Division Fire Chief, presented the staff report. Chief Bramell stated that pursuant to Tracy Municipal Code, Title 4, Article 6, Section 4.12.260, the Fire Department had identified property that required weed abatement. The property owners were given notice to abate and public hearings were conducted on July 17, 2010, and October 19, 2010. The Tracy Municipal Code provides that if the owner, or authorized agent, fails to abate the property within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property. At the public hearings the Council authorized the abatement of several Tracy area properties.

The Fire Department budgeted \$12,100 for weed abatement in the FY2010-2011 budget. The department designated 21 parcels (Exhibit A to the staff report) that required abatement by the City's weed abatement contractor, Baylor Services. After the July 17, 2010 public hearing the City's contractor abated 16 parcels at a cost of \$10,319.80. After the October 19, 2010 public hearing, the contractor abated six additional parcels at a cost of \$1,744.50. The abatement was completed within budget at a cost to the City of \$12,064.30 for the contractor, and \$3,015.30 for the City's recoverable administrative costs. All other previously identified problem parcels were abated by the property owners.

Fire Department staff notified the property owners of this public hearing where Council will consider the report of costs for abatement and any objections of the property owners liable for the cost of abatement. The cost of abatement assessed to the property owners is the actual cost of the City contractor plus a 25% administrative charge.

Hazards due to weeds are significantly reduced during the fall and winter months. However, with FY 2010-2011 funding for further weed abatement exhausted, staff has identified strategies to address any hazards for the remainder of the fiscal year.

Strategy One: Develop a neighborhood outreach program:

In calendar year 2010, the department received 256 weed abatement complaints although only 21 non-compliant properties required abatement by the City's contractor. These statistics indicate a 92% citizen compliance rate. The City continues to work toward the initiation of an outreach program to educate and inform neighborhoods of how the weed abatement program works. The outreach will include meeting with home owners associations and neighborhood watch groups. Incorporating an outreach program will bring awareness to the community and assist the department in striving toward greater compliance with the ordinance.

Strategy two: Actively Assess Property Ownership:

A number of unabated properties are either unoccupied or bank owned properties in foreclosure. Fire Department staff makes every attempt to identify the current owner of the property prior to sending the abatement notice. Returned abatement notices result in a delay in abatement. The City will continue the practice of determining property ownership to ensure mail is delivered to the responsible party in a timely manner. In addition, staff will research technology that may assist in accurate property ownership identification.

Strategy three: Increase the Administrative Fee - The administrative charge for weed abatement was last increased in March 2003, by Resolution 2003-059. Staff will research the possibility of increasing the administrative charge from 25% to a percentage that would reflect the City's actual cost recovery. This increase should encourage property owners to comply with the ordinance.

Strategy four: Issue Administrative Citations - Staff has experienced a compliance rate of 92% for calendar year 2010 indicating very few properties require abatement through the administrative citation process. Staff intends to include the issuance of administrative citations as necessary to reduce the number of properties requiring abatement from the City's contractor. The Fire Department budgeted \$12,100 for weed abatement services

in FY 2010-2011. The department has expended \$12,064.30 for the work performed by Baylor Services. Expended funds were within the identified budget for FY 2010-2011.

Staff recommended that the Council authorize approval of the final abatement costs.

Mayor Pro Tem Maciel asked what the criterion was for establishing a fire hazard on residential property. Division Chief Bramell indicated the height and density of the weeds were taken into consideration.

Council Member Elliott asked to what degree the four strategies have been implemented. Division Chief Bramell indicated they have not been implemented in their entirety, but elaborated on the steps that have been taken.

Mayor Ives opened the public hearing. Since there was no one wishing to address Council on the item the public hearing was closed.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt Resolution 2010-209 approving the final costs of weed abatement. Voice vote found all in favor; passed and so ordered.

4. DECLARE 100 ACRES OF CITY PROPERTY LOCATED AT NORTH OF LARCH ROAD AND EAST OF TRACY BLVD AT HOLLY SUGAR AS SURPLUS PROPERTY, AUTHORIZATION OF A PURCHASE AGREEMENT WITH SAN JOAQUIN COUNTY FOR THE SALE OF SAID PROPERTY AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE SALE AGREEMENT AND RELATED DOCUMENTS - Rod Buchanan, Parks & Community Services Director, presented the staff report. Mr. Buchanan stated that 100 acres of the North East portion of the City owned property at Holly Sugar is no longer needed for City purposes. San Joaquin County desires to purchase the property for public purposes and has negotiated terms for acquisition with the City as shown in the Sale Agreement.

County staff has indicated the land will eventually be used as a County park. The amount of land to be sold to San Joaquin County is 100 acres. An appraisal set the fair market value of the subject land at approximately \$662,470.

San Joaquin County approved the purchase at its regular Board of Supervisors meeting on December 14, 2010. Prior to the sale, the Council needs to declare the property as surplus and authorize the sale agreement with San Joaquin County. The property is currently being leased, as part of a larger area, to the Arnaudo Brothers, a General Partnership. The sale agreement provides that the City will assign that portion of the lease of which the property is a part upon transfer of title to the property. The Arnaudo Brothers have agreed to the assignment.

Because the City's Waste Water Fund originally purchased the Holly Sugar property for possible waste water treatment facilities, the proceeds of \$662,470 from the sale of the surplus land will be credited to the Waste Water Fund.

Staff recommended that the Council declare 100 acres of City owned property located north of Larch Road and east of Tracy Boulevard at Holly Sugar as surplus property, authorize the purchase agreement with San Joaquin County in the amount of \$662,470, and authorize the Mayor to execute the sale agreement and related documents.

Mayor Ives invited members of the public to address Council on the item.

Supervisor Leroy Ornellas addressed Council stating it had taken approximately seven years to get to this date. Supervisor Ornellas stated the property will be land-banked until the County has funding available to develop the property. Supervisor Ornellas added his vision for the property was to develop it as a passive park for residents of Tracy and the surrounding cities to enjoy. Supervisor Ornellas asked Council to approve the request.

Council Member Elliott indicated it sounded like a win-win for the City, the County, and Tracy residents.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2010-210 declaring 100 acres of City owned property located at Holly Sugar surplus property, authorizing a Purchase Agreement with San Joaquin County for the sale of said 100 acres of property and authorizing the Mayor to execute the Purchase Agreement and related documents. Voice vote found all in favor; passed and so ordered.

5. PUBLIC MEETING TO CONSIDER COMMENTS FROM THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND REVISIONS TO THE DRAFT HOUSING ELEMENT - Alan Bell, Senior Planner, presented the staff report. Mr. Bell stated that the purpose of the public meeting was to review comments from the State Department of Housing and Community Development (HCD) on the City's Draft Housing Element.

The Housing Element is one of ten elements of the City's General Plan and is required to be submitted to HCD for review for compliance with State law. The goal of HCD review is to receive HCD's certification that the Housing Element is in substantial compliance with State housing law.

Generally, the Housing Element is required to: (1) identify and analyze housing needs for all income levels; (2) contain goals and programs to preserve and develop housing; (3) identify adequate sites for housing; and (4) analyze governmental and non-governmental constraints upon the maintenance and development of housing.

The City's previous Housing Element was not certified by HCD. At the time of the previous Housing Element review, HCD concluded that Measure A's (the 2000 voter initiative) limits on new housing construction caused a significant governmental constraint that was not adequately mitigated. For various other reasons, Tracy's two Housing Elements prior to 2000 (dating back to the beginning of HCD's program in 1988) were also not certified by HCD.

Historically, the consequences of non-certification from HCD were limited. In more recent years, however, receiving HCD certification has become increasingly important. One benefit is that HCD certification is often needed to qualify for and/or be competitive in certain State grants related to capital improvement financing.

A second benefit of HCD certification is that beginning with the next Housing Element cycle (after 2009-2014), Housing Element updates will be extended to every eight years if the previous Element is certified by HCD. If HCD does not certify the previous

Element, the City must update the Element every four years. That is, if the 2009-2014 Tracy Housing Element is certified by HCD, the City will update the Element again in 2014, for the planning period 2014-2022. However, if HCD does not certify the 2009-2014 Element, the City will be subject to two updates during the 2014-2022 period.

A third benefit of HCD certification is that, if legally challenged, a statutory “rebuttable presumption” exists that the Housing Element is valid.

The City has hired Veronica Tam and Associates (VTA), an experienced consulting firm specializing in Housing Element updates, to help with the Housing Element update process.

In June 2010, the Draft Housing Element was submitted to HCD, following review by the Planning Commission and City Council in April 2010. On August 19, 2010, HCD provided comments on the Draft Housing Element. Typically, HCD will certify compliance with State housing law after the City has satisfactorily addressed each of HCD’s comments. Several of HCD’s comments relate to the City’s Growth Management Ordinance (GMO) and Measure A.

The City Council adopted the GMO in 1987 to regulate the rate of residential growth in accordance with the availability of required public facilities and services. The GMO was adopted as Ordinance No. 993 and is codified in Tracy Municipal Code chapter 10.12. The GMO has been amended various times, including in 1994 (Ordinance No. 914); 1999 (Ordinance Nos. 993 and 1000); 2005 (Ordinance No. 1071); and 2009 (Ordinance No. 1136).

In 2000, the voters adopted Measure A which amended the GMO to reduce the number of housing units that could be constructed each year from a maximum of 1,500 and an average of 1,200 to a maximum of 750 and an average of 600.

The City Council has also established guidelines to aid in the implementation of the GMO Guidelines (GMO). The guidelines were originally adopted in 1987, amended various times, including in 2001 (Resolution No. 2001-067), and amended in 2005 (Resolution No. 2005-092) and 2009 (Resolution No. 2009-084).

Most of HCD’s comments relate to factual clarifications or elaborations regarding City housing statistics, projects, or programs.

The most significant HCD comment is that it believes the limit on the number of new residential building permits does not allow the City to meet its “share of the regional housing need. As a result, the [housing] element must include programs to address and mitigate and/or remove constraints of the GMO.” Staff is seeking public input on how to respond to this comment.

By “regional housing need”, HCD is referring to the Regional Housing Needs Allocation (RHNA). The RHNA is a prescribed number of new, residential building permits that each city must show can be constructed (“accommodated”) within its jurisdiction during the Housing Element cycle. The RHNA is separated into four income categories (very low, low, moderate, and above moderate) and each city must show it can accommodate the number of units in each income category. Each city and county is assigned a RHNA, based on criteria from HCD.

The GMO, as amended by Measure A, limits the number of new units that can be constructed each year. With a number of exceptions (such as small projects of four or fewer units) Measure A will allow approximately 400 new residential units in 2012 and an average of 600 new units per year beginning in 2013. Given the limits of Measure A, it would be difficult for the City to accommodate the RHNA for any income category in the current 2007 – 2014 RHNA cycle. The City would be 238 units short in the Moderate Income category and 1,103 units short for Above Moderate, for a total of 1,341 units. However, this does not take into account units that could be constructed under the various exemptions to the GMO.

Below are three preliminary options staff has identified as possible responses to HCD's concerns with Measure A. Of course, other options may be suggested by the public at the hearing on this item.

Under the California Elections Code, no ordinance that is adopted by the voters, such as Measure A, may be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance. (Elections Code, section 9217.)

The state Housing Element Law provides in relevant part that the City is only required to "[a]dress and, where appropriate and *legally possible*, remove governmental constraints to the maintenance, improvement, and development of housing for all income levels and housing for persons of disabilities." (Italics added.) (Government Code, section 65583(c) (3).) Therefore, because the City Council cannot legally amend or repeal Measure A on its own, it is not an option that should be included in the Housing Element. The City Council could adopt a program in the Housing Element directing the City Council to propose an initiative measure to the voters to repeal or amend Measure A to ensure that the City can meet its RHNA.

Measure A provides in relevant part that:

Nothing in this Initiative Ordinance shall be construed to preclude, prohibit or limit the City from complying with any requirements under state housing law. To the extent that any provision of this Initiative Ordinance can be read to conflict with state housing law, it shall be read to allow for compliance with state housing law, while honoring the intent and purpose of the Initiative Ordinance.

Interpreting and implementing this provision of Measure A, the City Council could adopt a program in the Housing Element directing the Council to adopt an amendment to the GMO Guidelines which would allow issuance of building permits up to the City's RHNA. The Council could direct staff to respond to HCD that, at this time, the City chooses not to suggest any changes to the GMO (including Measure A) or the GMO Guidelines in the Housing Element.

Staff recommended that the Council receive public comment on this issue and, taking into account the comments presented, direct staff to return with a recommendation for the Council to consider at a subsequent meeting.

After receiving direction from City Council at a subsequent meeting, staff and VTA will incorporate such direction, and any additional supplementary information requested by HCD, into the Draft Housing Element and/or in a supplementary memo to HCD. HCD

will have 60 days after receiving the second Draft Housing Element to provide comments.

After HCD review and comment, the City may revise the Draft Housing Element and ask for one or more additional 60-day review periods. Ultimately, a California Environmental Quality Act (CEQA) document will be prepared for the Housing Element (likely a Negative Declaration), the Planning Commission will review the final draft, and the Council will adopt the Housing Element. The adopted Housing Element will be sent to HCD one final time, and HCD will have 90 days to determine whether the Housing Element substantially complies with State Housing law and, if so, to certify the Housing Element.

The Draft Housing Element preparation is within the scope of work approved by the Council for VTA on April 21, 2009 (Resolution 2009-068). No additional expenditure of funds is required. To date, VTA has been paid \$37,001 of the \$75,000 Professional Services Agreement maximum. Funding for this CIP was from the General Fund.

Council Member Abercrombie asked how long the period is for receiving public comment. Mr. Bell indicated the public comment period would last until the item is brought back to Council for further consideration, hopefully by February. Council Member Abercrombie asked what type of outreach is planned to solicit comment. Mr. Bell indicated approximately 60 individuals and/or interested organizations are notified of each meeting, along with advertising.

Mayor Ives invited members of the public to address Council on the item.

Mark Connelly, 121 E. Eleventh Street, on behalf of TRAQC, provided a handout titled "TRAQC Analysis of Affordable Housing and Requested Allocation by Category for Housing Element". Mr. Connelly discussed the handout in detail. Mr. Connelly requested staff respond to HCD to modify the Housing Element to allocate the available RGA's under Measure A to those categories that provide affordable housing and to not take any type of effort that will open up marketing rate housing.

John Beckman, CEO, Building Industry Association, addressed Council regarding the RHNA numbers. Mr. Beckman indicated Measure A has been identified by HCD as a constraint to meeting the RHNA numbers. Mr. Beckman requested Council consider a temporary amendment to the GMO to bring the City into compliance with State law. Mr. Beckman indicated BIA would be willing to meet with City staff and HCD to help meet the State's housing law requirements.

Dave Helm, 1000 W. Central Avenue, addressed Council stating there seemed to be a surplus of affordable housing on the market. Mr. Bell indicated the discussion surrounds new housing construction. Mr. Helm asked what impacts are realized from not having the Housing Element certified. Mr. Malik stated the revolving loan fund from the State provides points for having a certified Housing Element when applying for loans and grants.

Celeste Garamendi, 139 W. Twelfth Street, addressed Council stating everyone has identified that HCD is out of touch with reality. The City has never had a certified Housing Element and the only reason we are here is because of the BIA and the developer's desire to build market rate housing. Ms. Garamendi stated the City's

development plans support the development of the type of housing needed in the community. Ms. Garamendi indicated the City should not pursue amending Measure A and requested that the Council accept that it may not see certification of the Housing Element unless a legitimate program comes along where grant funding is in jeopardy.

Jim Freeman, 705 Mt. Rushmore Avenue, addressed Council regarding adding additional allocations to a City that already has an excess of vacant housing. Mr. Freeman indicated the voters have spoken and if there are plans to build affordable housing, then that was a good thing.

Council Member Elliott asked what type of grants might be affected by not having a certified Housing Element. Mr. Malik referred to an attachment to the staff report which outlined the types of grants that could be affected.

Council Member Abercrombie asked what the difference was between the Pleasanton issue and the City of Tracy. Dan Sodergren, City Attorney, stated that the City of Pleasanton established a growth cap that was challenged by the Attorney General who brought suit because the growth cap made it numerically impossible for the City to meet its RHNA numbers.

Mayor Pro Tem Maciel indicated the City is stuck in the middle and added he was looking forward to hearing more from staff. Mayor Pro Tem Maciel indicated the State has been actively involved in imposing its will upon local jurisdictions. Mayor Pro Tem Maciel stated he saw the benefit of having a certified Housing Element and that Council need not limit its outlook on the here and now.

Mayor Ives indicated that the Council would like more information. Mayor Ives added Council needs to be convinced of the benefits of going through this process and suggested continuing the discussion. Mayor Ives stated he did see valuable reasons for having a certified Housing Element.

Andrew Malik suggested staff return to Council on January 18, to request direction on the response to HCD.

6. **DISCUSS GUIDELINES FOR THE MEASURE E RESIDENTS' OVERSIGHT COMMITTEE, APPOINT COUNCIL SUBCOMMITTEE TO INTERVIEW OVERSIGHT COMMITTEE APPLICANTS AND DIRECT STAFF TO RETURN TO COUNCIL WITH A RESOLUTION ESTABLISHING THE RESIDENTS OVERSIGHT COMMITTEE GUIDELINES AND BY-LAWS** - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that on August 3, 2010, Council adopted Resolution 2010-130 placing a one-half-cent transactions and use (sales) tax measure (Measure E) to maintain City services on the November 2, 2010, ballot. On August 17, 2010, Council adopted Ordinance 1151 imposing a transactions and use tax to be administered by the State board of equalization, enacting the transactions and use (sales) tax, if a majority of the electors approved the imposition of the tax. On November 2, 2010, Tracy residents approved Measure E with 57.98% of the vote.

Section 6.28.180 of Ordinance 1151 states that the City Council will establish a five member Residents' Oversight Committee no later than March 1, 2011. These guidelines include a proposed application/recruitment process, powers and duties, qualifications for appointment, selection of members, term of service, meetings, and staff liaison

appointments to the Oversight Committee. After Council finalizes the guidelines, staff will return to Council with the Measure E Resident Oversight Committee By-laws that reflect and incorporate Council discussion and input.

The proposed timeline to establish the Measure E Residents' Oversight Committee is as follows:

Action	Timeline
Council discusses and provides direction to staff regarding Resident Oversight Committee Guidelines & Bylaws	12/21/10
Appointment of Council Subcommittee to review Applications And Conduct Interviews	12/21/10
Action Timeline	
Adoption of a Resolution establishing the Measure E Residents' Oversight Committee Guidelines and By-Laws	01/18/11
Notice to Residents of Committee vacancies and Begin recruitment process	01/19/11
Applicant Interviews by Council Subcommittee	2/8/11 – 2/14/11
Appointment of Measure E Residents' Oversight Committee Members by Council	02/15/11

Application/Recruitment Process:

Staff recommended that Council utilize the recruitment process for boards and commissions as outlined in Resolution 2004-152 to conduct the application and recruitment process for the Measure E Residents' Oversight Committee. Special noticing of vacancies would be posted in the office of the City Clerk, Tracy Public Library, the City's website, and in other places eliciting interest from Tracy residents for a minimum of 20 days. The Mayor (or designee) and a selected Council member will review applications, interview applicants and recommend candidates to the Council for appointment to the Committee.

Powers and Duties:

The Measure E residents' Oversight Committee will ensure transparency and oversight of the revenues generated by and expenses related to Measure E. Enterprise and other funds generated independent of Measure E are outside the jurisdiction of the Measure E Residents' Oversight Committee. The Committee's duties include review of the annual independent financial audit of the City performed by an independent auditor, which includes the revenue raised and expended by this tax and other City financial reports necessary to advise the Council of its findings regarding use of the sales tax during their term. The Measure E Residents' Oversight Committee's findings will be presented annually in a written report to the City Council. The Council will seriously consider the

Committee's recommendations; however, the Council retains final authority in all decisions and has the fiduciary responsibility over all aspects of the sales tax revenue.

The Committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions, or financing plans. The Committee serves as an advisory-only role to the City Council, who retains final decision authority.

Qualifications for Appointment:

Staff recommends that residents appointed to the Measure E Residents' Oversight Committee will be residents at large who meet the residency requirement. The residency requirement is defined as residents who live within the city limits of the City of Tracy. Residency can be verified annually by the City Clerk through (1) voter registration, (2) California Driver's License or Identification, (3) utility bill (phone, water, cable, etc.), or (4) federal or state tax returns.

Selection of Members:

Per Ordinance 1151, five (5) members will be appointed to the Measure E Residents' Oversight Committee by the Council. Members will not be current City of Tracy employees, officials, contractors or vendors of the City. Past employees officials or vendors may be eligible to serve on the Committee, provided that no conflicts of interest exist.

Term of Service:

The five (5) member Measure E Residents' Oversight Committee will commence on March 1, 2011. Of the five (5) members of the Committee first appointed, three (3) could be appointed for a two (2) year term and two (2) could be appointed for a three (3) year term. Due to the Measure E's sunset date, no member of the committee could serve more than two consecutive terms.

Meetings:

The Measure E Residents' Oversight Committee could meet semi-annually on the 3rd Monday in January and 3rd Monday in July at 5:30 p.m. at City Hall Room 109. The Committee will be subject to the Brown Act, so its meetings must be noticed and open to the public. The Committee's minutes and reports are a matter of public record, and will be posted on a web site provided by the City. Additional meetings may be scheduled by the Committee as necessary. All Committee members should attend training and orientation sessions, including separate Brown Act and AB 1234 Ethics training.

Committee members are expected to attend all regular meetings. Because this committee only meets twice a year, failure to attend two consecutive meetings should result in removal from the Committee at the discretion of the City Council. Committee decisions, positions, findings, and procedures may require a simple majority vote of those members in attendance. The quorum requirement for any meeting shall be a minimum of three members.

Staff Liaison Appointment:

A city staff person will be appointed by the City Manager or his designee to serve as staff liaison. The staff liaison will be responsible for providing relevant information and will receive and record all exhibits, petitions, documents, or other material presented to the Committee in support of, or in opposition to, any question before the Committee, including the annual financial audit. The staff liaison will prepare, post and distribute agendas, and take minutes at each meeting. The city staff liaison will ensure approved minutes are made available to the public.

After Council discusses the guidelines and provides staff with direction, staff will return on January 18, 2011, with final guidelines and by-laws that reflect Council's direction and input for Council adoption.

There is no fiscal impact associated with Council's consideration of his item.

Staff recommended that: 1) Council discuss and finalize the Residents' Oversight Committee guidelines and direct staff to return for Council adoption of a resolution establishing the Measure E Residents' Oversight Committee guidelines and by-laws, and that 2) Council appoint a Council subcommittee to review applications, interview applicants and recommend candidates to the Council for appointment to the Oversight Committee.

In response to a question from Council Member Rickman regarding conflict of interest, Ms. Hurtado stated prior vendors who have done business with the City may pose a conflict of interest. City Attorney Sodergren indicated it would be determined on a case-by-case basis.

Mayor Pro Tem Maciel suggested a press release might be appropriate and suggested those opposed to Measure E have a seat at the table. Mayor Pro Tem Maciel emphasized meeting twice a year was the minimum.

Council Member Rickman asked if it was possible to advertise it on the web site as well. Ms. Hurtado stated yes.

Council Member Abercrombie inquired whether the committee could meet on a quarterly basis since the City receives quarterly reports on sales tax. Ms. Hurtado stated the committee could certainly meet on a quarterly basis. Ms. Hurtado stated the committee will bring a written report to Council at least once per year.

Council Member Abercrombie asked if there would be any training for the committee. Ms. Hurtado stated outside of Brown Act and Ethics training, staff is proposing that committee members attend an orientation and receive training on financial reports.

Council Member Elliott indicated the committee should expect that staff will answer their questions and agreed that the positions would need to be advertised. Ms. Hurtado indicated the City has already received interest from seven individuals.

Mayor Ives stated a set of authorities and responsibilities need to be laid out and applicants need to be aware that this is a voluntary committee without pay.

Mayor Ives invited members of the public to address Council on the item.

Robert Tanner, 1371 Rusher Drive, addressed Council regarding the annual report. Mr. Tanner suggested Council may need to have the recommendations after each committee meeting.

Mayor Pro Tem Maciel stated a five-year term affords the committee members with the needed knowledge to serve.

Council Member Abercrombie indicated he would like to receive input from the committee more than once per year.

Mayor Pro Tem Maciel indicated the Council may be faced with having to cut additional expenses and/or staff and this is something the committee may be involved with.

It was Council's suggestion to have quarterly meetings and an annual report at a minimum.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to direct staff to return for Council adoption of a resolution establishing the Measure E Residents' Oversight Committee guidelines and by-laws. Voice vote found all in favor; passed and so ordered.

Council Member Rickman and Mayor Pro Tem Maciel volunteered to review applications, interview applicants and recommend candidates to Council for appointment to the Oversight Committee.

7. APPOINT ONE APPLICANT TO THE TRACY ARTS COMMISSION - There is a vacancy on the Tracy Arts Commission due to the mid-term resignation of Commissioner Rothschild. To fill the vacancy, the City Clerk's office conducted a recruitment which opened on November 9, 2010, and closed on November 30, 2010. Three applications were received. On December 14, 2010, a Council subcommittee consisting of Mayor Pro Tem Maciel and Council Member Abercrombie interviewed the applicants. In accordance with Resolution 2004-152, the Council subcommittee recommended to appoint Ffjorren Zolfaghar to the Tracy Arts Commission. The appointee will serve the remainder of the vacated term which expires on December 31, 2011. The subcommittee also recommended placing Kalani Schreiner and Debbie Elliott on an eligibility list which could be used to fill vacancies that might occur in the following 12 months.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to appoint Ffjorren Zolfaghar to the Tracy Arts Commission, and to place Kalani Schreiner and Debbie Elliott on the eligibility list. Voice vote found all in favor; passed and so ordered.

8. ITEMS FROM THE AUDIENCE - Jim Freeman, 705 Mt. Rushmore Avenue, suggested Council watch a television special regarding unfunded pensions.

Dave Helm, 1000 W. Central Avenue, addressed Council complimenting police work that resulted in the arrest of an individual downtown.

9. COUNCIL ITEMS

- A. Consideration of a Request by Council Member Abercrombie to Reconsider Previous Council Direction Regarding the Use of Additional City Resources on the Van Lehn's Noise Complaint with Leprino Foods Processing Facility Located at 2401 N. Macarthur Drive - Council Member Abercrombie outlined the situation.

Mayor Pro Tem Maciel indicated he believed everyone was empathetic to the Van Lehn's issue, but it appeared that Leprino Foods had not violated the noise ordinance. Mayor Pro Tem Maciel added the City was no longer a part of the solution, and he did not advocate looking further into the issue. The situation was between Leprino and the Van Lehn's and should be pursued through civil action.

Council Member Rickman asked if there was any additional fact or information available to Council Member Abercrombie when he visited the site. Council Member Abercrombie indicated the Van Lehn's have requested to be present during subsequent readings. Mr. Malik indicated the Brown Buntin report did take readings at multiple locations.

Council Member Elliott asked for clarification regarding where the readings are to be taken. Andrew Malik, Director of Development and Engineering Services, indicated the readings are taken at the complaining party's property line.

Mayor Ives indicated he was concerned that if noise readings are taken and Leprino is out of compliance, what will Council do; and if the readings are in compliance, the Van Lehn's still won't be happy. Mayor Ives suggested looking at the City's noise policy.

Mayor Pro Tem Maciel asked how much it would cost to pursue the matter. Mr. Malik stated between \$5,000 and \$10,000 to hire an acoustical engineer.

Mayor Pro Tem Maciel asked if the railroad was pre-empted from the noise ordinance. Mr. Sodergren indicated it is the railroad's position that they are not subject to the noise ordinance.

Mr. Churchill indicated if there was a violation, the ordinance would be enforced and inquired if it's something other than noise, should the City of Tracy address those issues as a nuisance issue? Mr. Churchill stated the policy question should be, "Should the City of Tracy address the issue?"

Mayor Ives invited members of the audience to address Council on the item.

Brian Van Lehn, 540 Winston Court, thanked the Council for taking another look at the situation. Mr. Van Lehn indicated the City allowed Leprino to expand into residential property lines and added he would appreciate the Council's assistance.

Mayor Ives asked who designed the sound walls. Mr. Malik responded the sound walls were designed by Rodkins and Illingsworth, and Leprino Foods hired Rodkins and Illingsworth to build the walls.

Council Member Elliott inquired what was the acceptable level of noise and how did the City arrive at 67 decibels. Mr. Malik stated the Tracy Municipal Code calls for 65 decibels. When the Leprino facility was built, Leprino applied for and was granted a noise exemption. Dan Sodergren, City Attorney, added that in 1994 the Council adopted an ordinance establishing an exemption application and consideration process. In 1994, Leprino did go through a formal application and hearing process.

Mr. Van Lehn indicated the exemption was granted prior to the expansion when the railroad had a different orientation.

Mayor Pro Tem Maciel stated that if the City spends \$5,000-\$10,000 on this complaint and the results are the same, then it is not a city issue. Mayor Pro Tem Maciel added there has to be an end to the issue.

Council Member Elliott stated the Council cannot solve everyone's individual problem. If a City ordinance is in place and a violation exists, then the City is obligated to resolve it. If there is no violation, the City is not obligated to create a violation that needs to be fixed.

Council Member Abercrombie indicated the difference is that the problem didn't occur until the business expanded.

Council Member Rickman asked if the City is able to determine what the low frequency is, can the City legally require Leprino to change things. Mr. Sodergren indicated the City would have to go with what is currently in place.

Mr. Van Lehn stated Council has taken measures to help residents by installing speed bumps and stop signs, and asked what was the difference with his request.

Mayor Ives indicated he preferred that Council understands and works with residents to resolve their issues. Mayor Ives suggested constructing an analysis and carefully directing the project to a qualified acoustical engineer to find out if there is an issue or not. Mayor Ives stated he would then be able to make a definitive answer. Mayor Ives further stated it has to be a very carefully commissioned study.

It was moved by Council Member Abercrombie and seconded by Mayor Ives to bring the item back to Council with a proposal that included detailed costs for an acoustical engineer for further recommendations and solutions. Mayor Pro Tem Maciel indicated he could support this motion if there is an end. Voice vote found all in favor; passed and so ordered.

Council Member Abercrombie thanked everyone who volunteered for Brighter Christmas and added 900 families would be supplied with food and gifts. Council Member Abercrombie wished everyone a Merry Christmas.

10. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time 9:51 p.m.

The above agenda was posted at the Tracy City Hall on December 16, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk