

## TRACY CITY COUNCIL

## REGULAR MEETING MINUTES

**March 1, 2011, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

Mayor Ives called the meeting to order at 7:00 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.

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for March 2011, to Bob Gravelle, Public Works Superintendent.

Mayor Ives and Council Member Abercrombie presented Certificates of Recognition to D.A.R.E. graduates.

Mayor Ives presented Certificates of Appointment to Arch Bakerink, George Riddle, Robert Tanner, and Larry Hite appointees to the Measure E Residents' Oversight Committee.

1. CONSENT CALENDAR - Following the removal of items 1-G by a member of the audience, and item 1-I by Council Member Abercrombie, it was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
  - A. Minutes Approval – Closed session minutes of February 15, 2011, were approved.
  - B. Award a Construction Contract to M.C.I. Engineering of Stockton, California, for Construction of Storm Drain Improvements at Various Locations, 2010 Project – CIP 76057, and Authorize the Mayor to Execute the Construction Contract – Resolution 2011-036 awarded the contract in the amount of \$17,280.
  - C. Award a Construction Contract to Rodgers Construction & Engineering, of Stockton, for the Chrisman Road Widening (Eleventh Street to Brichetto Road) Project - CIP 73110, and Authorize the Mayor to Execute the Contract – Resolution 2011-037 awarded the contract in the amount of \$ 215,994.
  - D. Authorize Removal of Existing “U” Turn Restrictions at Intersections on Valpico Road at Tracy Boulevard and MacArthur Drive – Resolution 2011-038 authorized removal of the “U” turn restrictions.
  - E. Approval of an Offsite Improvement Agreement (OIA) with AMB Property, L. P., for Construction of Public Improvements at the Intersection of Grant Line Road and Chabot Court and at the Entrance to the Best Buy Distribution Facility on

Grant Line Road, and Authorization for the Mayor to Execute the OIA – Resolution 2011-039 approved the agreement.

- F. Approve Resolution Authorizing a Leave of Absence for Tracy Transportation Advisory Commissioner Christina Frankel - Resolution 2011-040 authorized the leave of absence.
- H. Authorization to Amend the City's Conflict of Interest Code – Resolution 2011-041 authorized amending the code.
- J. Approving Consent of an Assignment and Assumption Agreement for the Existing Reimbursement Agreement of the Tracy Lammers Road Project with the New Developer, and Authorizing the Mayor to Execute the Consent – Resolution 2011-042 approved the agreement.
- G. Oppose the Governor's Proposal to Eliminate Redevelopment Agencies in California - Steven Qualls, Regional Public Affairs Manager, on behalf of the League of California Cities, addressed Council in support of the "Stop the State's Redevelopment Proposal." Mr. Qualls provided Council with information regarding the proposal.

Mayor Ives invited members of the public to address Council on the item. There was no one wishing to address Council on the item.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-042 opposing the Governor's proposal to eliminate redevelopment agencies in California. Voice vote found all in favor; passed and so ordered.

- I. Appropriation of Funds for a Variety of FY 10-11 Budget Items - Council Member Abercrombie asked for clarification regarding the \$10,000 for the San Joaquin Partnership. Leon Churchill, Jr., City Manager, stated the value of the partnership to the City of Tracy has increased to include business visits and trade missions.

Mayor Ives indicated the Partnership is conducting a search to replace Mr. Locke and have received applications from a number of good candidates. Mayor Ives further indicated the City is participating with the Partnership at an enhanced level.

Council Member Elliott asked if, with the departure of Mr. Locke, the Partnership has become more Stockton centric or are Tracy's interests being represented. Mayor Ives indicated the City is now positioning itself to get a seat on the executive board. That will allow the City to get a first look at things coming down the pike.

Council Member Abercrombie asked for clarification of the \$75,000 being allocated to the Police Department. Mr. Churchill stated this is an appropriation to address gang activity for the remainder of the fiscal year and represents overtime costs. Captain Espinoza stated the plan is to have the funds available to provide flexibility if activity spikes.

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

Robert Tanner, 1371 Rusher Street, addressed Council regarding the audit fees and asked what the estimated value of the find was and which distribution center provided the additional sales tax. Mr. Johnston, Finance and Administrative Services Director, stated the actual sales tax data and the particular company involved is confidential information that could not be disclosed. Mr. Johnston added that this particular item represented a sizeable six figure sum for one year.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-044 approving the appropriation of funds for a variety of FY 10-11 budget items. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Chris Long, 1024 Central Ave., on behalf of Surland Companies, addressed Council regarding the recent court action against the Ellis project and swim center project. Mr. Long stated Surland is committed to the project.

Paul Miles, 1397 Mansfield Street, addressed Council regarding a Police misconduct complaint he had previously filed. Mr. Miles requested a formal investigation of Mr. Churchill. Mr. Miles also requested that his documents be made a part of the minutes of the meeting.

Sandy Taylor, 8721 Julie Lind Circle, addressed Council regarding the Ellis Swim Center. Ms. Taylor thanked staff and the Council for all their hard work on the project. Ms. Taylor encouraged Council to continue to work to bring the swim center to fruition.

Al Nero, Fire Chief, addressed Council regarding Daylight Savings Time, which begins on March 13, 2011. Fire Chief Nero reminded residents to change the batteries in their smoke and carbon monoxide alarms and to test their alarms. Fire Chief Nero further stated the Fire Department is available to install and test smoke alarms in residents' homes. Residents can schedule an appointment by contacting Fire Administration.

Michel Bazinet, 1005 Mabel Josephine, addressed Council regarding the suit filed by TRAQC against the City. Mr. Bazinet indicated the judge's decision was tentative and not final. Mr. Bazinet stated it was important to proceed with the project until a final ruling is provided.

Marsha McCray, 560 W. Schulte Road, addressed Council voicing her disappointment in the tentative decision of the judge against the Ellis project. Ms. McCray stated she did not understand how TRAQC could oppose a quality project for the City.

Dave Helm, 1001 Central Avenue, addressed Council regarding gangs and gang activity. Mr. Helm suggested the six beats should include six officers if needed. Mr. Helm stated Council needed to make the necessary funds available.

3. APPROVAL OF MEMORANDUM OF UNDERSTANDINGS WITH TRACY LITTLE LEAGUE; TRACY BABE RUTH; TRACY YOUTH SOCCER LEAGUE; AND TRACY FUTBOL CLUB FOR CONSTRUCTION AND MAINTENANCE OF SPORTS FIELDS AND RELATED AMENITIES WITHIN THE HOLLY SUGAR SPORTS COMPLEX AND; APPROVAL OF AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT

WITH NOLTE ASSOCIATES, INC. FOR ADDITIONAL DESIGN AND CONSTRUCTION RELATED SERVICES FOR THE HOLLY SUGAR YOUTH SPORTS COMPLEX, CIP 78115, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AMENDMENT Rod Buchanan, Parks & Community Services Director, presented the staff report. On November 18, 2009, Council approved a conceptual design for the Holly Sugar Youth Sports Complex (Complex) and directed staff to prepare a Request for Proposals to obtain the services of a qualified consultant to design the first phase of the Complex, which encompasses approximately 60 acres. On July 20, 2010, the Council approved a Professional Services Agreement with Nolte Associates to complete design and construction documents for the Complex for a not to exceed amount of \$1,716,741. The scope of work involved master conceptual plan design of the whole 150+/- acre site to size the infrastructure, complete the improvement plans and specifications for Phase 1 infrastructure and sports fields.

Since the award of this agreement, Nolte Associates conducted meetings with staff, the Parks and Community Services Commission and local youth sports organizations to receive input on the Design Development Package for the Complex. The two factors that were primarily considered in the final Design Development Package were available funding and the 2006 Playing Field Needs Assessment. Consideration of these factors resulted in the availability of eight soccer fields and 12 baseball fields. The design adjustment was endorsed by the Parks and Community Services Commission at its February 3, 2011 meeting.

Over the last two years, staff conducted meetings with representatives of the local youth sports leagues to finalize MOUs for access to specific areas within the project site for development and ongoing maintenance of playing fields as designated in the conceptual design. A total of 12 leagues participated in developing the draft MOU deal points, and eight leagues submitted Statements of Interest and Ability to be considered in Phase 1 development. Because not all leagues can be accommodated in Phase 1, staff met with all eight leagues who have agreed with the Phase 1 plan. The four leagues that will be included in Phase 1 include Tracy Little League, Tracy Babe Ruth, Tracy Youth Soccer League and Tracy Futbol Club.

The remaining four leagues will have first right of refusal on their identified fields in the conceptual design in future phases and include Tracy Express Softball, Asociacion de Clubs Unidos Soccer League, Soccer Xtar Liga and Afghan Soccer Club. Separate MOUs will be presented for Council approval in April/May 2011 for these leagues.

Four additional leagues involved in the MOU development process have indicated they will wait for future phasing. They are Tracy Raiders, Tracy Cougars, Tracy Buccaneers and Alternativo Futbol.

Minor adjustments were made to the final conceptual design and the first phase of the Complex. Adjustments to the conceptual design were necessary to accommodate user group needs, space limitations and budget considerations. These factors included:

- Reduced space due to the inclusion of wind buffers as requested by user groups.
- Reduced space due to necessary storm water detention area.
- Additional parking area needed to accommodate facility users.
- Insuring adequate restroom/concession facilities and storage space for each league to operate.

The proposed first phase would encompass approximately 70.2 acres of the project site and would include a total of 12 baseball fields, eight soccer fields and four parking lots to accommodate facility users. The proposed phase adds approximately 10 acres which expands the scope of Nolte Associates' services requiring an amendment to their agreement. Nolte Associates has submitted a proposal to provide additional services for a not to exceed amount of \$83,000 which will be paid from the project budget.

A current available budget of \$10,778,324 exists for this CIP. In previous years, funds have been expended for environmental review and other related costs. The additional cost for the agreement amendment with Nolte Associates will be paid from the project budget. There is a construction shortfall of \$482,801 which staff believes can be made up in this favorable bid environment and in project contingencies. Adequate funding is available to pay the construction cost including Amendment 1 to the agreement with Nolte Associates. Due to the favorable construction bidding environment, the City may realize substantial savings in construction costs and the final project costs may be within the budgeted amount. Additionally, some shortfall may be absorbed in project contingencies or in slight changes in project scope and the City's rights to exercise the option of alternate bid items.

Staff recommended that City Council:

1. Approve a memorandum of understanding with Tracy Little League relating to the lease of property within the complex and construction of sports fields and related amenities; and
2. Approve a memorandum of understanding with Tracy Babe Ruth relating to the lease of property within the complex and construction of sports fields and related amenities; and
3. Approve a memorandum of understanding with Tracy Youth Soccer League relating to the lease of property within the complex and construction of sports fields and related amenities; and
4. Approve a memorandum of understanding with Tracy Futbol Club relating to the lease of property within the complex and construction of sports fields and related amenities; and
5. Accept the status of Holly Sugar Sports complex and approve Amendment 1 to the Professional Services Agreement with Nolte Associates, Inc. for additional design and construction related services for the Holly Sugar Sports Complex, CIP 78115, in the amount of \$83,000.

Derek McKee of Verde Design provided a presentation outlining the project.

Kuldeep Sharma, City Engineer, provided an infrastructure update.

Norm Soares, addressed Council indicating the amount of parking should be reviewed to ensure it was adequate.

Mayor Pro Tem Maciel thanked the sports leagues for their past and future efforts.

Council Member Rickman stated the design looked excellent and added he was excited that the kids will have a great place to play sports.

Mayor Ives indicated this has been a long time coming. Mayor Ives thanked staff for all their efforts.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-045 approving an MOU between the City of Tracy and Tracy Little League, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-046 approving an MOU between the City of Tracy and Tracy Babe Ruth, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-047 approving an MOU between the City of Tracy and Tracy Youth Soccer League, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-048 approving an MOU between the City of Tracy and Tracy Futbol Club, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-049 approving Amendment No. 1 to the Professional Services Agreement with Nolte Associates for additional design and construction related services for the Holly Sugar Sports Complex in the amount of \$83,000 and authorizing the Mayor to execute the amendment. Voice vote found all in favor; passed and so ordered.

4. SEEK CITY COUNCIL DIRECTION OF THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM PROFESSIONAL SERVICES AGREEMENT WITH THE TRACY UNIFIED SCHOOL DISTRICT (TUSD) AND WHETHER AND HOW TO PHASE OUT OF CITY FUNDING THE DARE PROGRAM - Council Member Abercrombie recused himself from consideration of the item because of his involvement with the DARE program.

Captain John Espinoza presented the staff report. Captain Espinoza stated that at the July 2010 Council meeting there was much discussion about the DARE Program and the Council clearly said there was a value to the community in supporting the DARE Program. Captain Espinoza added that due to the worsening economic conditions, the City had to deal with some of the realities as well, and had to reduce the economic contribution from \$60,000 a year to \$45,000.

At the July 20, 2010 meeting the Council asked that six items be brought back to Council for discussion before a new Professional Services Agreement was signed with TUSD. The items to be evaluated include:

- 1) Because the City provides funding, Council wanted a voice on the DARE board
- 2) The desire to have accounting reported on calendar versus fiscal year
- 3) The desire to have greater accountability for expenditures
- 4) The feasibility of reducing storage fees through use of school facilities
- 5) How Tracy police officers can become more involved in the DARE program
- 6) Evaluate a phase out schedule to eliminate the reliance on City funding

In preparing this report, staff spoke with members of the DARE board of directors, the Kiwanis Club board of directors, the TUSD DARE liaison, Mr. Paul Hall, and Police Department command staff to explore the feasibility of implementing each item.

**1) Because the City provides funding, Council wanted a voice on the DARE board**

The DARE Board is comprised of volunteers representing a cross section of the community with backgrounds in education, law enforcement, business, and community service. According to the DARE board, members are not appointed to any fixed terms and can serve on the board as long as they have the energy and are willing to commit the time to promote DARE. The board states they work collaboratively and vote on who will serve as their board officers and what policy direction the program will take. New members are selected when there is a vacancy and all candidates must show a commitment to furthering the objectives of the DARE program and educating Tracy's youth before they are selected. Board members are required to put in the time needed to actively solicit fundraising to support the program, to prepare for and attend DARE graduations, and to attend regular and ad hoc meetings based on the needs of the DARE program.

The DARE board stated it had no objection to a City representative serving on the board of directors, but the designated City representative would be subject to the same screening standards and fulfill the same commitments as any other candidate seeking to serve on the board. That is, the candidate will be interviewed and voted on by the existing board members for membership and be required to fully participate in promoting the DARE program through active fundraising, regular and ad hoc meeting participation, and preparation and attendance at DARE events. Because DARE board membership is a voluntary service, the DARE board would not pay for any City employee labor costs and the City would be responsible for the time or the City employee must be willing to donate their personal time and energy in furtherance of the DARE objectives. The board stated that because they put in so much time and energy to support the program, it would be unfair to other board members if the City wanted to assign a member to the board of directors, have a voice, and vote on program direction without being involved.

Recommendation: Staff recommended the City's role in the DARE program oversight remain as is with the Command Officer overseeing the Police Department budget serving as the staff liaison to the DARE board of directors and to TUSD. Adding a Council Member designee to the DARE Board of Directors may have Brown Act implications and subject the non-profit board to the same noticing and agenda requirements as the City has for its Boards and Commissions, and would not be recommended. The City Manager retains the right to assign a staff liaison to

represent the City to any contracting agency if such involvement is in the best interests of the City.

**2) The desire to have accounting reported on calendar versus fiscal year**

The DARE board currently reports financials on a fiscal year basis and no adjustment can be made in its financial statement reporting schedules. The DARE board falls under the dual umbrella of Kiwanis International for its insurance and 501(c)4 status, and of Good Samaritan for its 501(c)3 status, and is obliged to report their financial statements from July 1 through June 30. The DARE board is compelled to comply with Kiwanis International and Good Samaritan's rules and by-laws otherwise it will lose its insurance and non-profit status. However, the DARE board stated if the City was willing to indemnify the Board and help it obtain its own tax-exempt status, then the DARE board could change to calendar year reporting.

Recommendation: Staff recommended leaving accounting reporting as is.

**3) The desire to have greater accountability for expenditures**

The parameters for which invoices are paid are clearly delineated in the Professional Services Agreement (PSA) between the City and TUSD. The review and approval process currently in use to audit the expenditure of City funds to ensure compliance with the intended purpose from Council has a triple review and confirmation process on all submitted expenses, backed with itemized receipts, before any payment is made by the City. The triple check on expenses is as follows:

- 1) All DARE receipts are reviewed by the DARE board treasurer for compliance with the guidelines set forth under the City of Tracy and Tracy Unified School District. These receipts are then shared with the Kiwanis Club Board of Directors as part of its financial report and it approves the submission to the TUSD. Tracy Kiwanis is the subcontractor to the TUSD and it is the fiscal agent for the DARE board.
- 2) All DARE receipts are reviewed by TUSD's DARE Liaison, Paul Hall, Director of Student Services, for compliance with the PSA. Mr. Hall then forwards the receipts to TUSD Finance Department staff for another review and preparation of the invoicing which is forwarded to the Police Department.
- 3) All DARE receipts are reviewed by the Tracy Police Department's staff member responsible for billing and invoices to ensure compliance for appropriateness. After all these reviews, all invoices and receipts are forwarded to the Command Officer who oversees the Police Department budget for final approval and sign off for payment. The invoices are forward to the City's Finance Department for payment to TUSD.

Recommendation: Triple review of the expenditures is already in place to ensure the public's funds are appropriately used. Over the years, the scrutiny on expenditures has created a better contract and items that were once allowed were removed. Staff believes the auditing system currently in place is sufficient and recommended leaving as is. It is recommended, however, that Council receive a semi-annual update on performance and budget in January/February and July/August.



#### **4) The feasibility of reducing storage fees through use of school facilities**

The DARE board stated it was open to any storage alternatives, provided the space was securable to protect all items from theft/loss and the elements, and the space was accessible by their volunteer group, usually after hours or on weekends. The concept of finding alternative storage at TUSD and saving the monthly expenditure for storage fees was explored and determined to be impractical. TUSD staff stated they had a two prong problem in accommodating this request;

- a) No isolated and securable location that could house the purchased DARE items is available such that TUSD can guarantee security from potential loss or damage.
- b) Due to liability issues, even if TUSD could locate a secure area on TUSD property, it could not give a key and/or access to any non-TUSD person to enter TUSD property without an escort and retrieve DARE items whenever they wanted. Because access is required at nights or on weekends, the DARE program would have to be charged overtime for a TUSD employee to escort them around the facility.

Recommendation: Staff has determined that neither TUSD option is practical and paying money to access DARE supplies would result in a different type of program expense, much less the inconvenience associated with the practice.

#### **5) How Tracy police officers can become more involved in the DARE program**

The Tracy Police Department used to solely teach the DARE program with its own sworn officers. However, when it became too costly to continue using TPD's sworn officers the decision was made to outsource its teaching. Today, TUSD subcontracts with the Kiwanis Club to find a qualified DARE instructor to teach the program and the DARE board serves under the Kiwanis Club umbrella. From a cost-benefit analysis, outsourcing the program has been a good fiscal decision. The decision has allowed a service delivery model to be implemented at a lesser per student cost than using police officers and it has allowed the Police Department to allocate the former DARE officer position to other law enforcement needs for the community.

More recently the Police Department has visibly supported the DARE program by having sworn police officer staff, including Command Officers, participate in DARE graduations. Another idea is to have "on duty" uniformed patrol staff participate in the DARE program by visiting DARE classrooms during certain sessions, particularly the ones dealing with topics like "consequences," "role models," and "gangs." The operational concern would be that these same uniformed patrol officers would be subject to patrol duty responses. The Police Department's emphasis is to keep uniformed patrol officers available and focused on addressing street and gang related events. Thus, the certainty with which the officers could be in the classroom was questionable. Given the negative impact on the students and teachers if the officer did not show up as expected, how it would undermine TPD's credibility, and the emphasis is on high visibility uniformed patrol as a deterrent to gang activity on the street, the use of uniformed patrol officers for this outreach effort would not be the best option.

However, in order to have Tracy Police Department personnel involvement in the program, staff recommends "uniformed" police presence include command staff,

and officers, sergeants or lieutenants in order to provide more flexibility based on availability of staff so the burden is lifted from a sole reliance on uniformed patrol. For example, gang officers could attend certain sessions to speak about the dangers of gang membership. Gang officers already make community presentations and their work schedules can be more readily adjusted to fulfill commitments as they are not the primary responders to immediate calls for service. Likewise, personnel not assigned to primary patrol functions, like detectives and sergeants could occasionally be put into uniforms for school presentations. Even command officers can adjust their schedules and participate in the community presentations. Patrol personnel can be used when possible and as calls for service permit. The combined organizational effort should allow for sufficient Tracy Police Department presence in support of the DARE program without additional expense.

Recommendation: Staff recommended Council accept the Police Department's new strategy for incorporating more Tracy Police Department personnel into the DARE classrooms as a supplement to the lessons already taught.. While the logistics of who will attend and when have yet to be worked out, those outcomes will be included in a planned semi-annual performance report to Council. Police staff will also continue to attend DARE graduations.

#### **6) Evaluate a "phase out" schedule to eliminate the reliance on City funding**

Through the PSA with the TUSD, the City's current funding allocation ensures the DARE program is taught to all public school fifth grade classes within the City limits and two Jefferson School District schools. The estimate is over 2000 students per year. At the July 20, 2010 Council meeting, members of the Council discussed a desire to phase out City funding of program and encourage the DARE board to increase its donation gathering efforts to continue the program. Council agreed that the DARE program in Tracy was valued by the community.

The DARE Board of Directors was asked to offer its input on the rate at which they could sustain a phase out strategy to eliminate the need for continued City financial support. Given the poor economy, like all other non-profits, the DARE board is spending significant amounts of time and resources soliciting donations and the capacity of donors to give money has diminished. The DARE board could not offer any definitive time frame and stated that whatever time they are given by the City, they will simply have to adjust to keep some semblance of the DARE program going.

The DARE board asked the following three points be suggested to the Council in determining any phase out timeline.

- a) Consider increasing the City contribution for the DARE program to the original amount of \$60,000 and to allow for the use of City funds for salary or compensation to instructors.
- b) Retain the \$45,000 per year contribution going forward without a phase out. DARE board members stated that, like many non-profits, board members are having to put more hours into fundraising because fewer people have disposable income. Any loss of funds would make their fundraising efforts that much more difficult.

c) If the City wanted a phased out approach, the DARE board stated it would do all it could to raise funds to continue and support the DARE program in the City. The DARE board also recognized that if it fell short of its objectives, it would then have to make the difficult choice of which schools would have DARE programs eliminated because of financial shortfalls.

Recommendation: Staff recommended sustaining the current funding level of \$45,000. Staff also recommended a semi-annual performance report be sent to Council on the DARE program's accomplishments.

The Council has already approved the reduced City contribution of \$45,000 for FY 2010-11 and these funds will be used to pay for supplies and expenses, less any salaries. Staff recommends that Council maintain the current financial contribution level of \$45,000 per year for the upcoming FY 2011-12 as little time is left to sufficiently ramp up any donation efforts to overcome funding reductions.

If Council would like to implement a phase out schedule, staff recommends the topic be discussed as part of the City's FY 2012-13 budget preparation discussions. This would allow the DARE board to be better positioned to evaluate the likelihood of obtaining more donation dollars to become wholly self-sufficient or to evaluate what reductions in service delivery to the number of classrooms reductions would create.

There is no immediate impact to the City's FY 2010-11 Budget as \$45,000 has already been approved for the continued City contribution toward the DARE program. The funds would be added to the Police Department's Operating Budget for reimbursement to the Tracy Unified School District.

Staff recommended that the Council discuss the six recommendations and provide direction to staff. All direction will be incorporated into a new, revised, Professional Services Agreement (PSA) with the Tracy Unified School District to provide DARE program services. The revised PSA will be presented at a future meeting for Council approval.

Mayor Pro Tem Maciel thanked Captain Espinoza and the DARE program for their efforts. Mayor Pro Tem Maciel indicated he was satisfied with the mechanisms that have been put in to place to provide an accounting of all funds.

Council Member Elliott stated he was glad to see a plan to increase participation by the City's Police Department. Council Member Elliott stated it was important that City Council see that this program continues. Council Member Elliott asked if the program was working well with the current funding level. Captain Espinoza stated the DARE program does a good job with what they have, but added more money would benefit the kids.

Council Member Rickman asked if they were pursuing any grants. Captain Espinoza stated yes, and stated that the DARE Program has have received cop grant funds in the past. Council Member Rickman stated it was an important program for the children, as well as the support received in the community by the children who provide community service. Council Member Rickman indicated knowledge was power and the DARE program provided students with the necessary knowledge to stay away from drugs.

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

Larry Hite, 1373 Evergreen Way, addressed Council regarding grants that the DARE board has applied for. Mr. Hite stated he believed there was a crime problem in our City which was a sign of tough economic times. Mr. Hite encouraged Council to attend a DARE graduation and speak with the children and parents to find out how the program has affected their lives.

Nicholas, a fifth grader, addressed Council regarding the benefits of the DARE program and provided three examples of why the program is so important. Nicholas encouraged Council to keep the program in the schools.

Erica Sanchez touted Officer "Abs" encouragement of "stand up straight, stick your chest out and your chin up". Ms. Sanchez asked Council to keep the DARE program in schools.

Raymond Moses addressed Council regarding the important aspects of the DARE program.

Randy Luiz, 11407 W. Valpico Road, addressed Council regarding his experience in the DARE program. Mr. Luiz stated the DARE program helped him and stated he was currently enrolled in criminal justice and hopes to be the next DARE officer in Tracy.

Mayor Pro Tem Maciel reiterated that Council had never considered eliminating the DARE program; that the goal was to look for other funding sources. Mayor Pro Tem Maciel stated he supported the DARE program and added the City needed to continue to be a part of the program.

Mayor Ives stated attends as many DARE graduations as possible and stated the program is too effective to let go.

Council responded to the recommendations as follows:

1. No
2. A semi-annual report was acceptable
3. Regarding expenditures, all questions were answered
4. Storage fees were not within Council's purview
5. Additional police officer involvement at all levels
6. Remain at the \$45,000 funding level (option B)

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to support option B with a \$45,000 funding level and no phase out. Voice vote found all in favor; passed and so ordered.

Mayor Ives called for a recess at 8:59 p.m. The meeting was reconvened at 9:06 p.m.

5. PUBLIC MEETING TO CONSIDER A RESPONSE TO THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT REGARDING COMMENTS ON THE DRAFT HOUSING ELEMENT - Alan Bell, Senior Planner, presented the staff report.

Mr. Bell stated that at the December 21, 2010 City Council meeting, public input was solicited regarding the State Department of Housing and Community Development's (HCD's) comments on the City's Draft Housing Element. The focus of the discussion was on HCD's comments regarding the City's Growth Management Ordinance (GMO) and the 2000 voter initiative, Measure A. State HCD believes the limit on the number of new residential building permits does not allow the City to meet its RHNA (Regional Housing Needs Allocation), and asserts the Housing Element "must include programs to address and mitigate and/or remove constraints of the GMO." The City's RHNA is 4,888 units from 2007 through 2014 – 1,341 more than could be accommodated by the limits of the GMO.

Representatives from Tracy Region Alliance for a Quality Community (TRAQC) and the Building Industry Association of the Delta (BIA) spoke at the meeting.

TRAQC, essentially, is asking the City to accommodate the RHNA by obtaining credit for building permits issued during the past two RHNA cycles, dating back to 1993, during a time when the City issued more building permits than the RHNA.

State housing law does not authorize this approach. The RHNA planning cycle is adopted by legislation and the RHNA allocation is specific to that planning cycle. Furthermore, the RHNA is a planning goal, not a production goal. HCD has maintained that the RHNA is a minimum that each jurisdiction must meet through land use planning and zoning, but it is not a maximum.

In HCD's interpretation of the law, there is no "over production" in housing units. If housing production exceeds the RHNA, production is responding to market demands at the time (during that specific Housing Element planning period). Therefore, if a jurisdiction produces building permits (in excess of the RHNA) in one planning period, it does not earn a credit for the next planning period. By the same token, because the RHNA is not a production goal, if the jurisdiction under produces building permits (compared to the RHNA), it does not get penalized by being required to produce more in a later cycle.

The City is obligated under State law to "address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities."

Specifically, the City must demonstrate, to the satisfaction of the State, that it has mitigated its constraints to housing development. According to HCD comment letters for the 2003 Housing Element and 2009 Housing Element, limiting supply is a constraint to housing development. It is precisely due to this reasoning that the City's 2003 Housing Element did not receive certification from HCD.

Once a jurisdiction fulfills its planning obligations for the RHNA - providing adequate sites with appropriate densities and development standards, and mitigating identified constraints to housing development – then regardless of actual production, the RHNA is wiped clean at the end of the planning period, with a new RHNA starting for the next period. The majority of jurisdictions in California do not meet their RHNA in terms of production. However, according to HCD, no jurisdiction can receive certification if it does not adequately accommodate the RHNA through planning.

The BIA, by contrast, is endorsing an approach described as “Option B” in the December 21, 2010 City Council staff report. Basically, Option B would rely on an interpretation and implementation of Measure A that would allow issuance of building permits up to the City’s RHNA. This option is described in more detail below.

As discussed during the December 21, 2010 City Council meeting, HCD certification would decrease the frequency required to update the Housing Element in the future (from once every four years to once every eight years) and increase competitiveness or access to certain State grants or loans. Consultant costs to update the Housing Element are estimated at \$75,000 or more plus staff time for each update.

Two examples of programs affected by Housing Element certification from HCD are a residential project in Long Beach and a State infrastructure loan program. In 2009, the City of Long Beach and a residential developer received \$26 million to help develop a mixed use project in downtown Long Beach consisting of approximately 500 units, including 150 affordable senior housing units. The grant is a Transit Oriented Development grant authorized under California’s Proposition 1C. The project would not have qualified for funding if Long Beach’s Housing Element had not been certified by HCD.

Another example of infrastructure financing affected by Housing Element certification is a loan program offered through the California Infrastructure and Economic Development Bank (I-Bank). An I-Bank loan is a low-interest loan program and one potential source of funding the City could pursue for the upcoming Wastewater Treatment Plant Outfall Project.

### Options

During the December 21, 2010 City Council meeting, City staff identified three options as possible responses to HCD’s concerns with Measure A, summarized as follows:

A. Submit an Initiative Measure to the Voters

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.)

It should be kept in mind that the State Housing Element law provides in relevant part that the City is only required to “[a]ddress 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. Nevertheless, 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 the RHNA.

B. Amend the GMO

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 City Council to adopt an amendment to the GMO which would allow issuance of building permits up to the City's RHNA in each income category based on HCD criteria.

Should the demand for building permits exceed Measure A limits in a calendar year, the City would issue building permits until the City's RHNA obligation in each income category has been met.

Any building permits issued in excess of Measure A's 600 units-per-year average or 750 in a calendar year would be exempt from the GMO, up to the RHNA. The building permit exemptions to accommodate the RHNA would be available to any project that otherwise qualifies to obtain building permits (complies with all City standards, has approved tentative and final maps, has paid all fees for public services, etc.).

The City of Tracy's RHNA for the 2007 through June 2014 cycle is 4,888, for the four income categories combined: Very Low, Low, Moderate, and Above Moderate. To date, the City has issued 372 building permits during this RHNA cycle, leaving a balance of 4,516. The number of additional units needed to meet the RHNA, by income category, is as follows: Very Low, 907; Low, 582; Moderate, 669; and Above Moderate, 2,357.

C. Suggest No Changes to the GMO at This Time

The City 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.

Whichever option is chosen by the Council, staff will communicate with and submit implementation details for review by HCD. Any changes requested by HCD would be brought to Council for consideration and final review.

HCD Review

In accordance with State housing law, all cities are required to submit a draft Housing Element to HCD for review and comment. State HCD is required to determine whether the Draft Housing Element substantially complies with State housing law. State housing law requires each city's Housing Element, generally, 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 nongovernmental constraints upon the maintenance and development of housing.

If HCD determines that Tracy's Draft Housing Element substantially complies with State housing law, the Council may adopt the Housing Element. If HCD determines the Draft Housing Element does not substantially comply with State housing law, the Council may

modify the Draft Housing Element and resubmit to HCD for review, or the Council may adopt the Housing Element without changes. If the Council adopts the Housing Element without changes requested by HCD, the Council shall include findings which explain the reasons the City believes the Housing Element complies with State housing law. Each time HCD reviews a draft Housing Element, housing law provides 60 days for their review. State HCD has 90 days to review and provide comments on the Housing Element eventually adopted by the Council.

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 \$39,076.60 of the \$75,000 Professional Services Agreement maximum. The source of funding for this CIP was the General Fund.

Staff recommended that the City Council direct staff to amend the Draft Housing Element to respond to HCD comments and include Option B as a program in the Housing Element as described above.

Council Member Elliott asked for clarification regarding a memorandum received regarding grants. Mr. Malik indicated the City has not applied for those grants; they were provided as examples of grant funding.

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

John Beckman, on behalf of the Building Industry Association, applauded staff in pointing out the merits of the arguments included in the BIA letter and the fallacies of TRAQC in their letter. Mr. Beckman stated he agreed with staff's recommendation of Option B.

Mark Connolly, 121 E. Eleventh Street, on behalf of TRAQC, addressed Council regarding the alternatives provided. Mr. Connolly stated Alternative B as proposed is not legal for Council to consider, indicating Council could not set aside any portion of a voter approved initiative. Mr. Connolly added if Council attempted Alternative B, it would be challenged. Mr. Connolly stated Council's only legal option was Option C.

Mayor Ives asked Dan Sodergren, City Attorney, to advise Council's on its authority. Mr. Sodergren indicated Measure A does have a provision that states it cannot preclude the City from complying with any requirements under State Housing Law. Therefore, we do not believe such an amendment would violate Measure A.

Mayor Ives asked if there was any case law provided. Mr. Sodergren referred to a confidential memo that was provided to City Council. Mr. Sodergren indicated the City of Pleasanton was different from the City of Tracy.

Mayor Ives asked if this was the only way to certify the Housing Element. Mr. Sodergren stated as staff outlined in the report, it is a requirement of Housing Law that the City remove any constraints that would not permit the City to reach its RHNA numbers.

Council Member Elliott stated the City was facing economic difficulties and that in order for the City to take advantage of every economic opportunity, it appears the City does need to have a certified housing element. Council Member Elliott added the question is



whether it is in the best interests of the City to have a certified housing element. Council Member Elliott stated he believed the City should have a certified housing element and stated Council should adopt staff's recommendation.

Mayor Pro Tem Maciel stated he was in favor of Option 2, and further stated it was clear there was a benefit to the City of having a certified housing element.

Council Member Rickman asked how the City would comply with State law. Mr. Sodergren stated the amendment the City would suggest is that if the demand for building permits exceeded what was allowed under Measure A, the City would issue building permits up to its RHNA obligations for each income category as required by State law. Mr. Sodergren stated it created an exception if there is demand above Measure A for RHNA numbers for each income level.

Council Member Rickman asked if this amendment passes, would the City do the minimum to meet the RHNA numbers. Mr. Sodergren stated yes.

Council Member Rickman indicated the will of the voters needs to be heard on one hand, and on the other the City has State law. Council Member Rickman indicated there has to be compromise to keep the intent of Measure A alive. Council Member Rickman indicated Option B seemed to be the best alternative.

Mr. Connolly stated the provision staff is referring to might allow the court to interpret Measure A to make it comply with State law. Mr. Connolly stated this was not a matter of interpretation. Mr. Connolly further stated the State is now going to dictate how the City is going to grow if this is the path we are going to follow. Mr. Connolly stated Council's first line of defense was to go back to the voters and indicated TRAQC doesn't agree with the analysis that the City does not comply with State law.

John Beckman responded to a comment made by Mr. Connolly regarding the City relegating to the State the authority to determine what the housing limits are in the City of Tracy. Mr. Beckman indicated the State has already dictated what the City must plan for and allow to be built through its RHNA numbers. Mr. Beckman further indicated it was clear through HCD that Cities will be held accountable.

Council Member Abercrombie asked for clarification regarding the State relegating authority to other agencies. Mr. Sodergren stated a challenge of the Housing Element or Measure A can be brought by any one and challenges have been brought throughout the State for various reasons.

Mayor Ives indicated Council has determined that the best path for the City is to have the Housing Element certified. Mayor Ives referred to the Ordinance that addressed Measure A. Mayor Ives stated he was in favor of Option B.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to direct staff to amend the Draft Housing Element to respond to HCD comments and include Option B as a program in the Housing Element. Voice vote found all in favor; passed and so ordered.

6. APPROVE THE INCREASE IN BAIL SCHEDULE FOR TRACY MUNICIPAL CODE PARKING AND EQUIPMENT VIOLATIONS TO REFLECT CHANGES IN STATE OF CALIFORNIA FEES AND INTRODUCTION OF AN ORDINANCE TO REMOVE THE TRAFFIC FINE SCHEDULE FROM THE TRACY MUNICIPAL CODE AND ALLOW IT TO BE SET BY COUNCIL RESOLUTION - Captain Espinoza presented the staff report. Captain Espinoza stated that the State Legislature has increased "surcharges" on a variety of programs. To that end, the State Legislature has passed AB 1617 which imposed an additional State surcharge of \$3.00 on parking violations for the State Trial Court Trust Fund. The State of California is collecting the \$3.00 surcharge on every parking citation paid so local jurisdictions are left with the decision to either pass along the surcharge increase to the persons receiving the parking citation or for the local jurisdiction to absorb the surcharges. To remain revenue neutral, this additional \$3.00 surcharge should be added to the bail schedule.

As fee increases due to state legislative action may continue, it would be more efficient to reflect any bail schedule changes through a resolution rather than amending the Tracy Municipal Code (TMC). There are no costs to implementing the increases to the bail schedule. The increase would be revenue neutral.

Staff recommended the Council approve, by resolution, the \$3.00 increase in the bail schedule for Tracy Municipal Code parking violations. Staff further recommended that the Council introduce an ordinance to remove the bail schedule from the TMC and maintain and update the bail schedule through resolution as needed.

Council Member Rickman asked if the State had added the fee. Captain Espinoza stated yes.

Mayor Ives indicated he believed more items like this will be pushed down to the city level.

The Clerk read the title of proposed Ordinance 1156.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to introduce Ordinance 1156. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-050 approving an increase in the bail schedule for the Tracy Municipal Code parking and equipment violations to reflect changes in State of California fees. Voice vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.
8. COUNCIL ITEMS - Council Member Abercrombie asked if an update was available on the AMR contract.

Al Nero, Fire Chief, stated the Board of Supervisors approved the contract extension. Chief Nero stated American Medical Response (AMR) would no longer restock the City

with various supplies. The agreement between the City and the County included that when the City started the Advanced Life Support (ALS), the City would bear all costs relative to provision of ALS services. Another issue is the Interfacility Transport, which is when the City is called to render aid while that person is in route to another medical facility. The City is part of the Joint Radio Users Group, which oversees dispatch services. That group agreed with the interpretation that the City would no longer provide that service through its Fire Department. Fire Chief Nero stated there is a community expectation that the Tracy Fire Department respond and provide ALS services. Fire Chief Nero added he intends to meet with Mr. Dan Birch, EMS Director, to discuss that issue. Another issue is Mountain House response times. Mountain House was considered rural because of the population density and the amount of responses. That response time was 17 minutes and 29 seconds. The contract and designation were changed from rural to suburban moderate and the response time reduced to 15 minutes and 29 seconds. Another change to the contract was the addition of a \$931 Basic Life Support (BLS) fee. The BLS fee is in lieu of the transport fee of over \$1,700 for all transport whether ALS or BLS. The new contract includes that when a person is transported and ALS care is not needed, they will not be charged the \$1700 ALS fee, but will only be charged the \$931 BLS fee.

Council Member Abercrombie asked if the Basic Life Support fee would have the same incremental increase similar to the ALS fee, or would it remain at \$931 throughout the contract. Fire Chief Nero responded he was unsure, but suspected it will be raised incrementally similar to other fees.

Council Member Rickman asked if the Fire Department would continue to not be radioed to the medial facilities for either a Code 2 or 3. Fire Chief Nero responded this will be discussed with Mr. Birch, EMS Director in the future.

Mayor Ives suggested a written update be provided to Council.

9. 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 9:54 p.m.

The above agenda was posted at the Tracy City Hall on February 24, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk