

June 21, 2011, 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 7:00 p.m., and led the Pledge of Allegiance.

The invocation was given by Reverend Willie Rolland, People of Christ Missionary 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 June 2011, to Alan Bell, Senior Planner, Development and Engineering Services.

Mayor Ives presented Certificates of Commendation to the Gang and Narcotics Enforcement Team, the Directed Patrol Unit, Records Personnel and Support Staff recognizing their dedication to duty and commitment to improving public safety during "Operation Gateway."

Jeremy Ward, Firefighter-Paramedic, offered a presentation on the re-establishment of the Fire Explorer program.

1. **CONSENT CALENDAR** - 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 – Regular meeting minutes of May 3, 2011, special meeting minutes of May 10, 2011, and closed session minutes of June 7, 2011, were approved.
 - B. Authorization to Award Chemical Bids for Water and Wastewater Treatment for Fiscal Year 2011-12 – Resolution 2011-115 authorized award of the bid.
 - C. Approval of Resolutions: (1) Initiating Proceedings for the Annual Levy for Tracy Consolidated Landscape Maintenance District, (2) Preliminarily Approving the Engineer's Report for the Tracy Consolidated Landscape Maintenance District and (3) Declaring the Intention to Levy Annual Assessments and Setting the Date for the Public Hearing – Resolution 2011-116 initiated proceedings for the annual levy and collection of assessments for the Tracy Consolidated Landscape Maintenance District for FY 2011/2012. Resolution 2011-117 preliminarily approved the engineer's report. Resolution 2011-118 declared the City's intent to levy annual assessments. Council Member Abercrombie abstained from voting on Zone 9; Mayor Ives abstained from voting on Zone 24.
 - D. Implementing GASB 54 by Adopting a Fund Balance Policy, Committing the Ending Fund Balances of all Special Revenue Funds for Specific Purposes, and Delegating Authority to the Finance and Administrative Services Director for "Assigning" Ending Fund Balances – Resolution 2011-119 implemented GASB 54.

- E. Adopt a Resolution Approving the Youth Advisory Commission Bylaw Revisions – Resolution 2011-120 approved the bylaws.
 - F. Acceptance of the Storm Drain Improvements at Various Locations 2010 Project - CIP 76057, Completed by M.C.I. Engineering of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-121 accepted the improvements.
 - G. Acceptance of the Offsite Improvements Completed by Winco Foods LLC, the Developer of the Winco Foods Facility, for Construction of Offsite Frontage Public Improvements on Pavilion Parkway and Power Road, and at the Intersections of Pavilion Parkway and Naglee Road, and Grant Line Road and Corral Hollow Road – Resolution 2011-122 accepted the improvements.
 - H. Authorization for the City to Enter into Lease Agreement with Arnaudo Bros. for the Lease of the Holly Sugar Northerly Paved Drying Bed and Authorization for the Mayor to Execute the Agreement – Resolution 2011-123 authorized the City to enter into the lease agreement.
 - I. Authorization to Submit the Annual Claim to the State of California, Through the San Joaquin County Council of Governments, for Transportation Development Act Funds in the Amount of \$2,827,547 for Fiscal Year 2010-2011, and for the Finance and Administrative Services Director to Execute the Claim – Resolution 2011-124 authorized submittal of the claim.
 - J. Adopt Resolution to Authorize the City Manager to be the Authorized Agent of the City of Tracy and to Execute any Actions Necessary for the Purpose of Obtaining Proposition 1B Funds in the Amount of \$25,000 for the Design of a Fiber Optic Line from City Hall to the Tracy Transit Station and Appropriate the Funds to CIP 77545 – Resolution 2011-125 authorized the City Manager to be the authorized agent.
 - K. Approve Resolution Authorizing the City Manager to Sign the Non-Competitive Bicycle Project Claim Forms for all Projects Funded by the Measure K Non-Competitive Bicycle, Pedestrian and Safe Routes to School Program – Resolution 2011-126 authorized the City Manager to sign the project claim forms.
 - L. Accept Travel Report from City Attorney Regarding Attendance at League of California Cities' City Attorneys' Department Conference – Report accepted.
2. ITEMS FROM THE AUDIENCE - John Favors, 2119 Laura Lane, addressed Council regarding repairs needed on Linne Road.
3. INTRODUCTION OF AN ORDINANCE TO AMEND SECTION 11.12.060 (DELINQUENT ACCOUNTS) AND SECTION 11.12.080 (ADVANCE DEPOSITS) OF THE TRACY MUNICIPAL CODE AND FURTHER DISCUSS CITY UTILITY BILLING ADMINISTRATION ISSUES - Zane Johnston, Administrative Services Director, presented the staff report. At the March 15, 2011 City Council meeting, information was presented related to the administration, billing and collection of City supplied utilities (water, wastewater, and solid waste). These enterprise funds have not fared well in recent years due to a number of factors including the expense of bad debt write-off which has been exacerbated during the recession and housing crisis.

Much of the bad debt is associated with tenants who leave with a balance owing on their utility bills. Currently tenants pay an \$80 deposit to open a utility account. However, the minimum City utility bill (before water consumption charges) is about \$75. City utilities are billed in arrears, and many tenants may have several months due when they move. An increase to the deposit would cover these charges and result in less bad debt.

While increasing the amount of the deposit, this opportunity should also be used to increase certain fees associated with delinquent accounts. A fee of \$35 is charged to restore water service which has been shut off for non-payment. Fifty dollars is the fee for locking water meters (because the customer turned the water back on after the City turned it off) and then damaging that meter (the customer cuts it off). If the City must remove the water meter (because of continued tampering), the fee is \$100. The City charges \$25 on checks returned by the bank (non-sufficient funds). All of the above fees do not exceed the City's cost to take these actions. A \$25 non-sufficient funds fee is very common. The fees for meter and lock tampering are to reimburse the City for damage.

Recently the Council adopted a Master Fee Schedule; however, utility related fees were not included in this Master Fee schedule and remain in the Municipal Code.

At the March 15, 2011 City Council meeting, information was presented to the Council regarding the administrative burden of permitting tenants to open City utility accounts instead of such services being restricted to be in the name of the landlord. Although the Council at that time did not direct staff to develop such a change, the issue was presented again for Council discussion due to a number of factors. The March 15, 2011, staff report on this matter described the many administrative burdens associated with tenant utility accounts; however, the staff report did not quantify in terms of reduced full time equivalents (FTE) the reduction in City staff possible through such a change. A verbal estimate of 3 to 4 FTEs noted at the March 15th meeting included reductions from both the change to a landowner only utility account, and the elimination of cash as a form of payment for City utilities. The impact of these changes is important in light of the City's financial goals to reduce costs over the next three years and to mitigate the magnitude of future utility rate increases.

Staff estimates that 2 FTEs could be eliminated if tenants were not allowed to sign up for utilities. Additional FTE reduction could be achieved by eliminating cash receipt functions; however, this issue will continue to be examined in terms of alternatives and may be the subject of a subsequent report to the Council.

Since March 15, 2011, the City has received survey information from employees concerning possible retirements. The data indicates that over the next 12-18 months, the Finance Department will likely experience a significant departure of staff. When proposing a policy change such as the elimination of tenant sign up for City utilities and the resulting reduction in FTE, it is also necessary to determine the outcome of the displaced staff. In some organizations such staff simply might be absorbed into duties and functions which never result in any real cash savings. Others may choose to lay-off staff. Due to upcoming Finance staff departures, this change could occur and the impacted staff would be moved into vacated positions, thereby eliminating the need for layoffs. This action would achieve a reduction in FTEs allocated to the Finance Department and provide real cash savings.

Currently, there are about 4,860 existing City utility accounts held in the names of renters. If this change were implemented it would be done prospectively, meaning

existing tenant accounts would remain in place until that tenant terminated the account. Thereafter, the property owner would be required to open the account in their name from that point forward. As such, it would take a considerable amount of time before the majority of tenant accounts would be converted to landlord accounts. This lengthy transition prevents an undue burden on landlords since they would know well in advance that the next time they have a change in tenant at their property, the City utility bill would be transferred to the landlord's name. As such, the landlord could advertise the amount of rent which would include City utilities.

As noted in the March 15, 2011 staff report, landowners of a multi-tenant building serviced by one water meter, must have the account in the name of the landowner. In these situations, inclusion of City utilities in the amount of rent is the common practice.

There is no direct impact to the General Fund as City utility billing and administration matters are funded by the City enterprise funds of water, sewer, garbage and storm drain.

Staff recommended that the Council introduce an ordinance raising the deposit for City utilities to \$175 and revising associated fees for disconnection of services due to non-payment. Staff also suggested Council discuss again the elimination of tenant utility accounts and provide direction to staff.

Council Member Abercrombie asked if Mr. Johnston was aware of any other cities that do not accept cash payments. Mr. Johnston stated he was not aware of any city that did not accept cash; however, other cities do provide other opportunities for payments.

Mayor Pro Tem Maciel asked how many residents pay their bill in person. Mr. Johnston indicated approximately 1% of residents pay in cash. Mayor Pro Tem Maciel stated the fee increase was reasonable.

Mayor Pro Tem Maciel indicated Council needed to look out for the interests of the City and stated he would like to see a workshop where property owners/managers could provide input or suggestions on this subject.

Council Member Elliott asked if the increases in fees were needed to recover the costs now. Mr. Johnston stated yes, that the City cannot charge more than the cost of service.

Council Member Elliott asked if the City was looking at other possibilities for residents to pay their bill other than at the 7-11. Mr. Johnston stated possibly, and outlined some of the cumbersome processes involved.

Council Member Elliott asked if there were any other collateral benefits to this option such as a reduction in utility bills, or is it just a savings to the City. Mr. Johnston provided estimates for the various options.

Council Member Rickman asked how much would it be for the property owner to include it in the rent monthly. Mr. Johnston stated there would be less bad debt and less staff time needed.

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

Tom Benigno, 2473 Angora Court, indicated he did not believe it was worth the City's time to change utility billing and lose 2-4 city jobs. Mr. Benigno stated it was the property owner's responsibility to take care of their property. Mr. Benigno suggested giving the responsibility of utilities back to the property owners/property managers.

The Clerk read the title of proposed Ordinance 1161.

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 Council Member Elliott to introduce Ordinance 1161. Voice vote found all in favor; passed and so ordered.

4. ACCEPTANCE OF A STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL GRANT ASSISTANCE PROGRAM #11G-LA43 FOR \$35,000 AND APPROPRIATION OF FUNDS TO THE POLICE DEPARTMENT BUDGET FOR THE PURPOSE OF ENFORCING ALCOHOLIC BEVERAGE RELATED LAWS - Cody Dellabitta, Neighborhood Resource Officer, presented the staff report. Periodically, the City has had difficulties with alcohol sales to under-aged persons and parties where underage drinking and other nuisance related issues occur. The risks to underage persons from the consumption of alcoholic beverages are obvious and the parties create a nuisance from increased noise levels and debris left in neighborhoods. Occasionally, the Police Department receives complaints about on-sale establishments failing to adhere to the terms of their Alcoholic Beverage Control (ABC) licenses.

The Police Department believes that educating local retail establishments that sell alcoholic beverages on the laws relating to sales and the conditions of their ABC licenses is the most effective deterrent to violations. Additionally, periodic inspections of licensee establishments to evaluate compliance will help to reduce the number of violations. The City submitted a grant application to the State of California Alcoholic Beverage Control for \$65,273 to conduct a variety of operations. However, by the nature of the competitive grant application, the City was awarded \$35,000.

Implementation of the grant will begin on July 1, 2011. All expenses incurred to establish and fulfill the terms of the grant for the grant period are covered by the grant amount. Under the conditions of the grant, the Department must submit monthly reports, listing the expenditures of monies for that period. After receipt of each monthly report, the State Controller's Office will reimburse the City's General Fund for expenses.

Funding for overtime and training costs to support this program were not included in the FY 2011-12 Budget. The proposed \$35,000 grant limit needs to be appropriated from the General Fund and added to the Police Department's Operating Budget. The State Controller's Office would reimburse the General Fund for all expenses up to the \$35,000 grant award limit. This request would be a net neutral expense to the City's budget.

Staff recommended that the Council authorize the acceptance of the grant and the appropriation of \$35,000 from the General Fund to the Police Department's Operating Budget to pay for training and overtime costs in support of this grant aimed at reducing the use of alcoholic beverages by underage persons within the City of Tracy with the General Fund receiving reimbursement from the grant, based upon monthly reports.

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 2011-127 accepting a grant through the State of California Department of Alcoholic Beverage Control Grant Assistance Program #11G-LA43 for \$35,000, and appropriating funds to the Police Department budget to enforce alcoholic beverage related laws. Voice vote found all in favor; passed and so ordered.

DEVIATION IN AGENDA

Mayor Ives asked Mr. Johnston to return to discuss agenda item #3 regarding alternatives not covered in the Ordinance.

Council Member Elliott indicated residents should be able to pay their bills in cash and if other locations were made available, that would be acceptable. Council Member Elliott stated accounts held in the name of the landlord would be acceptable as long as the change was phased in.

Mayor Pro Tem Maciel indicated he agreed with Council Member Elliott's comments regarding another viable alternative. Mayor Pro Tem Maciel stated he would like some middle ground regarding the responsibility of utility deposits, including conducting a workshop to collectively come up with a solution.

Council Member Abercrombie asked for clarification on the ordinance and whether the ordinance would have to change if Council pursued other options regarding tenant or landlord payments. Mr. Johnston indicated the ordinance only requires a higher deposit for utilities.

Council Member Abercrombie indicated he would like input from property owners/managers.

Council Member Rickman indicated he agreed with Council Member Abercrombie and Mayor Pro Tem Maciel.

Mayor Ives asked if a pre-council meeting workshop would be appropriate. Mr. Churchill stated it would be possible.

5. **APPROVE ANNUAL GROUND LEASE RATE INCREASE BY 1.4 PERCENT FOR PRIVATELY-OWNED HANGARS AT TRACY MUNICIPAL AIRPORT EFFECTIVE JULY 1, 2011** - Ed Lovell, Management Analyst, presented the staff report. The City has 24 ground lease agreements with Lessees who have privately owned hangars at the Tracy Municipal Airport. The lease agreements have provisions allowing for annual rate increases based upon the U.S. Consumer Price Index (CPI), but not to exceed 10% for any single increase. All rate increases require a 30 day notice and the approval of the Council. Ground Lease Tenants were individually notified of this pending increase in correspondence postmarked May 31, 2011.

The last rate increase for privately owned hangars was in July of 2010. The CPI of the previous calendar year is used to adjust the rate in July of the following year. The increase is taken from the Consumer Price Index for all Urban Consumers, Other Goods and Services, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 =

100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor. The CPI increase for 2010 was 1.4%.

Tracy Airport currently averages 4.5 cents per square foot on ground leases for constructed hangars that are privately owned. Other airports in the area are reporting between 10 cents and 38 cents per square foot for similar ground leases with the exception of Stockton Airport whose pricing is similar to Tracy's. All ground leases at other airports include an annual escalator that is tied to the CPI. In addition, all ground leases contain a reversionary clause in which at the end of the lease the constructed hangar becomes the property of the airport. It is important to note that the Tracy's privately owned hangar ground lease rate includes electricity.

The Transportation Advisory Commission did not endorse this ground lease rate increase at their June 9, 2011 regular meeting.

As a result of this action, the increase in revenue to the Airport Enterprise Fund for Ground Leases will be \$262.68 for Fiscal Year 2011-2012. The rate increase ranges from \$.69 to \$1.08 per hangar per month.

Staff recommended that the Council approve increasing the ground lease rate by 1.4% for privately-owned hangars at Tracy Municipal Airport effective July 1, 2011.

Council Member Elliott asked why Tracy did not have a reversionary clause. Mr. Buchanan stated when the leases are renegotiated they include reversionary clauses.

Council Member Elliott asked why Tracy includes electricity. Mr. Buchanan stated when the original leases expire, they could be renegotiated.

Council Member Elliott asked if the increase covers the cost of services the City provides. Mr. Buchanan stated they are less, but privately owned hangars provide income from fuel, etc.

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

Dave Anderson 1940 Earl Way, Vice President of the Tracy Airport Association, addressed Council regarding the information presented. Mr. Anderson indicated Stockton and other cities do provide electricity in their rates. Mr. Anderson added the Transportation Commission did not endorse this rate increase and thought the rates should not increase until the sub-standards conditions at the airport are corrected. Mr. Anderson asked that Council not approve the rate increase.

John Favors, 2119 Lara Lane, indicated the rental rates at the Tracy Airport are substantially higher than other airports in San Joaquin County. Mr. Favors stated a rate increase would not be appropriate until the needed repairs were made to the airport and suggested that Tracy Airport not be compared to airports in the Bay area. Mr. Favors further stated that if an individual invests in a hangar at the airport, it seems reasonable that at the end of the rental period that individual should be able to deconstruct the hangar and move it elsewhere.

Trina Anderson, 1940 Earl Way, addressed Council and suggested the City should use the rural CPI for San Joaquin County.

Mayor Ives asked for clarification regarding a rural CPI. Mr. Lovell stated he was not aware of a rural CPI. Mr. Lovell stated other cities use a general California CPI or one for the entire western United States. In response to a question from Mayor Ives regarding which CPI the City used, Mr. Lovell stated the San Francisco/San Jose metro CPI.

Mayor Ives asked if the lease agreement had clear language regarding the CPI and how rates are tied to it. Mr. Buchanan stated the lease agreement indicates any rate increase will be based on the US CPI, but not to exceed 10%.

Mayor Pro Tem Maciel asked how long a typical ground lease was for. Mr. Lovell indicated 20-30 years. Mr. Buchanan stated the life cycle is approximately 50 years.

Council Member Abercrombie proposed that staff return with a reprioritization of the airport and how it fits into the City's economic development.

Council Member Rickman asked what would be the direct effect of not increasing rates. Mr. Buchanan stated the fiscal impact would not be realized. Mr. Buchanan stated the airport currently runs at a deficit.

Mayor Ives suggested Tracy's rates were too low.

Mayor Pro Tem Maciel asked if the City was limited by the language of the lease. Mr. Buchanan stated 18 leases were currently out of contract and staff had been waiting for the opportunity to re-negotiate. Mr. Buchanan further stated that according to analysis, 2013 would be the best time to re-negotiate the contracts.

Council Member Elliott asked how much of a deficit the airport runs and how the City was looking to bridge the gap. Mr. Buchanan stated the airport has a \$100,000 yearly deficit. Mr. Buchanan stated staff was pursuing hangar projects and loans so the Enterprise Fund could pay off its debt.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to adopt Resolution 2011-128 approving the annual ground lease rate increase of 1.4 percent for privately-owned hangars at Tracy Municipal Airport effective July 1, 2011. Roll call vote found Mayor Pro Tem Maciel, Council Member Rickman, Council Member Elliott, and Mayor Ives in favor; Council Member Abercrombie opposed. Motion carried 4:1.

6. FOLLOW-UP REPORT ON PREVIOUS COUNCIL DIRECTION FOR ADDITIONAL NOISE MEASUREMENTS FROM THE LEPRINO FOODS PLANT LOCATED AT 2401 N. MACARTHUR DRIVE - Ana Contreras, Community Preservation Manager, presented the staff report. Ms. Contreras stated this report was a follow up to the Council's direction relative to noise complaints received from Brian Van Lehn and Leanne Van Lehn regarding the Leprino Foods processing plant at 2401 N. MacArthur Drive.

On January 18, 2011, the Council accepted a proposal by Brown Buntin Associates (BBA) for additional noise measurements west of the Leprino Foods plant and adjacent to the residential area. This proposal included noise readings at two outdoor locations and two indoor locations. The two outdoor locations indicated on Attachment A to the staff report are adjacent to Site 13 and next to the Van Lehn's residence (Site 10A). The two indoor locations were the master bedroom and the second bedroom of the home

located at 540 Winston Court, immediately west of the railroad siding at Leprino Foods where refrigeration railroad cars are stationed.

The noise readings were conducted on May 4, 2011, beginning at approximately 8:00 p.m. City staff worked with Union Pacific Railroad to have railcars brought onto the Leprino site with the refrigeration units all facing south at the request of the Van Lehn's, thereby creating a scenario with respect to the impact of the noise on the adjoining and affected residential properties. Leprino Foods was in full operation with all three railcar refrigeration units running continuously during the reading period.

The following information summarizes the readings obtained by BBA:

- Site 10A was calculated at 63.0 dBa
- Sound levels at Site 13 were calculated at 65.9 dBa
- Master bedroom sound level was calculated at 37.4 dBa
- Second bedroom sound level was calculated at 38.0 dBa

The report submitted by BBA established that noise levels from Leprino Foods are consistent with the measurements taken by City staff and other previous noise consultants. The noise readings conducted on May 4, 2011, approach but do not exceed the maximum allowable noise decibel level of 67dBa.

While not required, the BBA report further identifies potential mitigation measures that could be implemented to further reduce noise levels at or within homes adjacent to the railroad property immediately west of Leprino Foods. These potential noise reduction measurements include:

- Noise barriers and/or extending the sound walls at the residential property lines.

Engineer's estimate of the cost and materials for constructing a new sound wall (approximately 851 lineal feet along the western residential property line of the Leprino Facility) is within the range of \$110,630 and \$144,670, depending on the type of material used (i.e., precast concrete wall or masonry block wall).

- Adding additional panels to fill the gaps between the existing absorption treatments recently installed by Leprino Foods

Engineer's estimate for filling these gaps between the existing sound barriers is approximately \$238,388.75 (111.5 feet aggregate at a cost of \$1,504.03 per lineal foot).

- Residential Sound Attenuation. Reduction of noise within residential structures would require modifications to individual homes, such as replacing windows and doors with acoustically rated products.

The estimated cost of window and door replacements is \$19,000 (20 windows @ \$500 = \$10,000; 19 sliding glass doors @ \$1,000 = \$19,000, excluding labor costs). The cost for installing the windows and doors is estimated at \$11,600 (20 windows @ \$200 = \$4,000; 19 sliding glass doors @ \$400 = \$7,600). This estimate depends on whether the residence is a stucco or sided structure. Ten parcels were taken into consideration for this calculation from Grant Line Road continuing north along the railroad tracks, two houses past the last rail car.

The BBA report was prepared at a cost of \$10,000 following Council's request on January 18, 2011, (Resolution No 2011-018).

Noise measurements taken by BBA found noise levels from Leprino Food's processing plant at 2401 N. MacArthur Drive consistent with staff's previous noise readings that indicated the plant does not exceed the 67 dBA level approved by the City's exemption granted to Leprino Foods in 1994.

The City is under no obligation to implement a solution nor to adopt any of the noise reduction options outlined by BBA; conversely, information in the report satisfies adjacent homeowners' requests for a reading by a professional acoustical engineer, along with a comprehensive description of the noise levels and actions necessary to reduce the level of sound from the Leprino Foods plant.

Staff recommended the Council accept BBA's report as complete and that no further action be taken with regard to noise reduction options contained in the report.

Ms. Contreras clarified that the engineer's estimate in the staff report incorrectly stated \$19,000 vs. \$29,000.

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

Brian Van Lehn, 540 Winston Court, addressed Council disputing several points: Rodham July 1, 2009 reading of 70 decibels and staff readings of May 18, 2010, also over 70 decibels. Mr. Van Lehn indicated he would like an end to this problem adding the costs to abate the nuisance as outlined in the ordinance should be recouped by Leprino Foods. Mr. Van Lehn stated the night Mr. Brown took the readings was not a worst case scenario, even though the rail cars were situated in the correct position. Mr. Van Lehn stated he does not believe that Leprino is honoring their sound mitigation.

Council Member Abercrombie asked Mr. Brown to address Council in response to some of the comments presented by Mr. Van Lehn.

Bob Brown, President of Brown Buntin Associates, stated the measurements were taken with certified equipment and by staff trained to take the measurements. Mr. Brown further stated he stands behind the measurements observed and reported.

Council Member Abercrombie asked if Mr. Brown had any information about the noise difference regarding diesel vs. electric powered rail cars. Mr. Brown stated no.

Mr. Brown referred to the aerial photo of the sites and the gaps in the barriers and the differences in the barriers. Mr. Brown indicated the staff report included an option to eliminate the gaps which may decrease noise.

Council Member Elliott asked for review of what constitutes a code violation in this case. Mr. Malik provided a background of the Leprino Foods noise exemption of 67 decibels. Alan Bell, Senior Planner, stated the sound level limit for Leprino is 67 decibels. For a violation to occur there would need to be noise volume in excess of 67 decibels for an hour long period, and three hour long periods in a 30 day period. Mr. Bell stated the City has not been able to document a noise violation for 30 minutes much less an hour any time a reading has been taken.

Mayor Pro Tem Maciel asked for a definition of “detrimental.” Mr. Sodergren stated it was broad, but if a specific decibel level was built in the permit then that could be a factor for health and safety.

Mr. Bell stated that the health, safety, and welfare finding was one that the Planning Commission had to make which is subjective and qualitative. Mr. Bell further stated that Leprino Foods made noise reduction efforts in 1994 when the Planning Commission considered this exemption. Mr. Bell stated that the Planning Commission had determined that the noise exemption provided would not be detrimental to the health, safety, and welfare of the neighboring residents.

Mayor Pro Tem Maciel stated although no one discredits the discomfort the Van Lehn’s are experiencing he did not believe there was anything further staff or the City could do.

Mr. Van Lehn indicated the noise mitigation was tied into their Conditional Use Permit.

Mr. Bell stated part of the noise ordinance required a noise mitigation measure plan for anyone seeking an exemption. Mr. Bell further stated Leprino undertook, designed and implemented their noise mitigation measures.

Mr. Van Lehn indicated that in Leprino’s mitigation plan, it states that by using diesel powered cars, they were realizing a savings.

Council Member Abercrombie asked if it would be feasible for the City Manager or staff to share the report with Leprino Foods and ask them to address some of the recommendations. Mr. Churchill indicated he would provide Leprino with the information if that was Council’s direction.

Mayor Pro Tem Maciel stated sharing the information with Leprino was fine, but that he was not an advocate of pursuing this issue any further.

Council Member Elliott asked for clarification of what constitutes a detriment to the neighbors, and what would be a reasonable definition of making sure that the City did not create conditions detrimental to public health. Mr. Sodergren stated once the use permit is granted it becomes vested; that is not to say that the City can’t amend or revoke the permit, but before the City could do that, they would need to establish that there is some detriment to the public health and safety.

Council Member Elliott asked if it would be reasonable to say that if our measurements taken are less than the commonly accepted standards which are reported to be 45 decibels inside the living quarters and those are used by FAA HUD and the State of California, is it reasonable to say if the noise levels are less than those, then those are reasonably considered to be not detrimental to the health of nearby residents.

Council Member Elliott stated there was some dispute regarding whether what was observed was the worst case. Mr. Brown stated it was the worst case that was measured that night. Mr. Brown added there were three rail cars, all operating in full operational mode, along with other equipment at Leprino operating at normal levels, along with noise coming from other industrial sources in the area.

Council Member Elliott indicated it appears that the City had gone above and beyond normal responsibilities.

Council Member Elliott stated he agreed with Mayor Pro Tem Maciel that it is appropriate to notify Leprino of the readings, but the City should leave it to Leprino as to whether they believe it is appropriate to pursue further mitigation since they are not in violation. Council Member Rickman stated he did not see a problem sharing the information with Leprino.

Council accepted the report from Brown-Buntin Associates, Inc., and suggested staff provide Leprino Foods with a copy of the report.

7. SECOND READING AND ADOPTION OF ORDINANCE 1160 AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING TITLE 3, CHAPTER 3.16, ENTITLED "TAXI CABS AND AUTOMOBILES FOR HIRE"

The Clerk read the title of proposed Ordinance 1160.

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 Council Member Elliott to adopt Ordinance 1160. Roll call vote found all in favor; passed and so ordered.

8. ITEMS FROM THE AUDIENCE – None.

9. STAFF ITEMS

- A. Accept Travel Report on City Manager's Lobbying Trip to Washington D.C. –
Leon Churchill, Jr., City Manager, indicated there were significant implications on how the City makes application for priority projects; the City is going to have to be more modest, going to have to leverage private investments and be more competitive in those processes.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to accept the report. Voice vote found all in favor; passed and so ordered.

10. COUNCIL ITEMS - Council Member Abercrombie indicated he would like to have a workshop with the Transportation Advisory Commission regarding the airport.

11. CLOSED SESSION

ITEMS FROM THE AUDIENCE – None

LABOR NEGOTIATIONS - (Gov. Code, § 54957.6)

Employee Organization: Tracy Firefighters' Association

City's designated representatives: R. Leon Churchill Jr., City Manager; and Jack Hughes, Esq.

MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie moved to recess to Closed Session. Council Member Elliott seconded the motion. Voice vote found all in favor; passed and so ordered. Time 9:20 p.m.

RECONVENE TO OPEN SESSION – The meeting was reconvened into open session at 10:05 p.m.

REPORT OF FINAL ACTION - None

12. ADJOURNMENT - It was moved by Council Member Elliott and seconded by Council Member Rickman to adjourn. Voice vote found Council Member Elliott, Council Member Rickman and Mayor Pro Tem Maciel in favor; Council Member Abercrombie and Mayor Ives absent. Mayor Ives left the meeting at 9:50 p.m. Motion carried 3:0:2. Time 10:05 p.m.

The above agenda was posted at the Tracy City Hall on June 16, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk