

December 18, 2012, 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 offered by Pastor Tim Heinrich, Crossroads Baptist Church.

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

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for December 2012, to Vicki Lombardo, Development Services Department.

Mayor Ives and Police Chief Hampton administered the Oath of Office to newly promoted Sergeant Steve Bailey and Sergeant Craig Koostra.

Fire Chief Al Nero and Fire Engineer Brian Bagley introduced new CERT Members. Fire Engineer Bagley announced that the CERT Academy is offered three times a year. The next academy begins on January 26, 2013, and runs for three consecutive Saturdays. Anyone interested in attending the academy should call the Fire Administration Department – 209/831-6700.

Alex Calvillo, PG&E Senior Account Executive, presented a check to the City in the amount of \$152,870 for an energy efficient project which was initiated by the City in 2008. The project greatly reduces the use of natural gas by harvesting and burning methane gas produced by the Wastewater Treatment Plant. Annual savings are anticipated to be approximately \$120,000 – \$150,000. Mr. Calvillo commended the City for its commitment to energy efficiency.

Interim City Clerk, Carole Fleischmann read a letter of resignation from former Council Member Bob Elliott into the record, at the request of Mayor Ives. Mr. Elliott resigned from the City Council effective December 17, 2012, due to his successful election to the San Joaquin County Board of Supervisors, 5th District. Mr. Elliott will be sworn in on January 7, 2013. Mayor Ives presented a plaque to Mr. Elliott in recognition of his service to the City of Tracy.

Gary Hampton, Police Chief, reported on the procedures and training programs the Police Department has undertaken to ensure Tracy's schools are safe. Chief Hampton added that school safety is a top priority for the Police Department. Dr. Franco, Superintendent, and Paul Hall, Director of Student Services, Tracy Unified School District, gave a brief overview of the policies the School District has in place to ensure school safety. Mr. Hall stated the School District would review their security measures following the tragedy at Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012.

1. CONSENT CALENDAR – Following the removal of items 1.D by Council Member Young, and 1.E by Marvin Rothschild, Resident, Council Member Rickman moved to adopt the Consent Calendar. Mayor Pro Tem Maciel seconded the motion. Roll call vote

found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor. Motion carried.

- A. Minutes Approval – Regular meeting minutes of August 21, 2012, were approved.
- B. Approval of Utility Agreements (73063.01 And 73063.02) Between the City of Tracy and Pacific Gas and Electric Company (PG&E), and Agreement No. 73063.03 Between the City of Tracy and West Side Irrigation District (WSID) for the Relocation and Modification of their Facilities Within the Limit of the Eleventh Street East Tracy Overhead Bridge Replacement Project - CIP 73063, and Federal Project No. BHLS - 5192(020) and Authorize the Mayor to Execute the Agreements – Resolution 2012-247 approved the agreements.
- C. Acceptance of the City of Tracy's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2012 – Resolution 2012-248 accepted the report.
- F. Acceptance of Yosemite Vista Unit 2, Phase 1, Tract 3495, for Bright Development – Resolution 2012-249 accepted the project.
- G. Adoption of a Resolution Authorizing Amendment #6 to the Joint Exercise of Powers Agreement for the South County Fire Authority – Resolution 2012- 250 authorized the amendment
- H. Approval of Professional Services Agreements and an Amendment With Various Consultants to Provide Infrastructure Studies Within Tracy Hills Specific Plan Development Area – Resolution 2012-251 approved the agreement and amendment.
- D. Accept a Grant from the California Office of Traffic Safety and Appropriate \$26,500 of Reimbursable Funds from the General Fund to the Fire Department's Fiscal Year 2012-2013 Budget for the Tracy Fire Child Automotive Restraint Education and Safety (C.A.R.E.S.) Car Seat Program – Al Nero, Fire Chief, presented the staff report. The Tracy Fire Department has provided Child Automotive Restraint Education and Safety (C.A.R.E.S.) to the Tracy community since 2001. In March of 2012, the Fire Department applied for a grant from the California Office of Traffic Safety (OTS) to allow the department to provide car seats to low income families, re-certify employees as technicians, conduct four public car seat inspection events, and overall program support. Currently, four fire personnel are certified as car seat technicians and provide inspections to the community free of charge on an appointment basis. The department has inspected an estimated 2,000 car seats since the inception of the program. The grant is 100% reimbursable and requires no matching of City funds. The grant will require an upfront appropriation of \$26,500 which will be reimbursed as it is expensed. Chief Nero added the majority of people needing car seats are referred through community groups including Sutter Tracy Hospital, Interfaith, Headstart programs and overflow from the California Highway Patrol (CHP). Chief Nero concluded by stating the ultimate goal is to provide a safe device for the child to be transported in safely.

Council Member Young asked how car seats are distributed, and what events are held for the community to be made aware that these seats are available. Chief Nero responded the Fire Department partners with the CHP and the Tracy Police Department whenever they hold traffic events in the City, in addition to community events such as the Pancake Breakfast.

Council Member Rickman stated this was an excellent program and suggested residents who do not have access to a safe car seat contact the Fire Administration Office, 835 Central Avenue, Tracy.

Mayor Pro Tem Maciel moved to adopt Resolution 2012-252, accepting a grant from the California Office of Traffic Safety and appropriating \$26,500 of Reimbursable Funds from the General Fund to the Fire Department's Fiscal Year 2012-2013 Budget for the Tracy Fire Child Automotive Restraint Education and Safety (C.A.R.E.S.) Car Seat Program. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

- E. Adopt a Resolution Amending the City of Tracy Master Fee Schedule to Include a State Mandated (SB 1186) One Dollar Business License Tax Certificate Application Fee for Disability Access and Education – Resolution 2012-253 amended the Fee Schedule – Marvin Rothschild, Resident, commented that he was surprised when he had to pay the extra dollar because previously non-profits were not required to pay. Mayor Ives stated it was a state mandated program and asked if the City would receive anything from the program. Robert Harmon, Senior Accountant, Finance Department, stated the City will receive approximately \$3,000 in revenue from the program. The administrative costs will probably be equivalent to the revenue the City receives, although it will provide some training for certified access specialists to help members of the public going through the permitting process.

A resident commented on the additional dollar charged by the DMV to smog a relative's car.

Mayor Pro Tem Maciel moved to adopt Resolution 2012-253, amending the City of Tracy Master Fee Schedule to include a State Mandated (SB 1186) one dollar Business License Tax Certificate Application Fee for Disability Access and Education. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Mr. Benevides, parent of a Montessori School student commented on impact fees of approximately \$160,000 and infrastructure fees of approximately \$352,000 levied on the Montessori School for development of a sister school on West Mount Diablo Boulevard. Mr. Benevides asked that the impact fees be directed toward the cost of infrastructure development. Ms. Meagher, (parent), Ms. Ocampo, (parent), and Ms. Dacruz, (teacher and parent), of children attending Montessori School also requested that the impact fees be directed towards the cost of infrastructure for the new school. Cathy McIntosh, Director of Montessori School, thanked Mayor Pro Tem Maciel and Council Member Rickman for visiting the new site, and invited Council Member Young and anyone else who would like to visit the site to contact her. Ms. McIntosh suggested the impact fees be part of the infrastructure costs.

Matthew Palomino, Resident, commented on poor wheelchair access in the City, particularly from East Street to Central Avenue. Mayor Ives requested Andrew Malik, Director of Development Services, contact Mr. Palomino to discuss his issues.

3. INTRODUCTION OF AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 1 AND TITLE 10 OF THE TRACY MUNICIPAL CODE, AND ADOPT RESOLUTIONS AMENDING THE I-205 CORRIDOR SPECIFIC PLAN, INDUSTRIAL AREAS SPECIFIC PLAN, AND RESIDENTIAL AREAS SPECIFIC PLAN RELATING TO EATING AND/OR DRINKING ESTABLISHMENTS WITH ENTERTAINMENT – CITY INITIATED – APPLICATION NUMBERS ZA12-0007, SPA12-0005, SPA12-0006, AND SPA12-0007
Scott Claar, Associate Planner, presented the staff report and used a power point in his presentation. Mr. Claar added that a revised Ordinance had been submitted to the Council. The City's Zoning Ordinance currently permits eating and drinking establishments in the Central Business District Zone, General Highway Commercial Zone, Community Shopping Center Zone, and Highway Service Zone; and conditionally permits them in the Neighborhood Shopping Zone. Eating and drinking establishments are also permitted in certain areas of the I-205 Corridor Specific Plan, Industrial Areas Specific Plan, and the Residential Areas Specific Plan.

On May 30, 2012, an application was submitted for a Conditional Use Permit (CUP) to expand the restaurant and bar operations of The Great Plate (714 Central Avenue) to include entertainment uses, such as live bands, disc jockeys, dancing, and comedy shows, similar to what is commonly referred to as a nightclub. This type of use (an eating and/or drinking establishment with entertainment) is currently not listed in the City's Zoning Ordinance. As a use not listed, it is prohibited until such time that the use is authorized for a particular zone, either as a permitted use or conditionally permitted use, pursuant to Tracy Municipal Code Section 10.08.1070.

On June 28, 2012, city staff informed The Great Plate that their application for a CUP could not be processed until the Zoning Ordinance was amended. Staff returned the application fees to The Great Plate and informed them that the City would initiate a Zoning Ordinance amendment to address this use.

Over the past several months, City staff has also received interest from a potential new business in Tracy, The Frog Eatery & Lounge, with plans for establishing a bar with entertainment at 2706 Pavilion Parkway. The proponent of The Frog Eatery & Lounge has been informed of the City initiated Zoning Ordinance Amendment and is also awaiting the outcome. In drafting this proposed amendment to the Zoning Ordinance, staff aimed to balance the desire for encouraging nightlife and entertainment with the goals of minimizing impacts to public safety resources and ensuring compatibility between neighboring land uses. Following a review of related ordinances in multiple other cities, including a recently approved ordinance in the City of Walnut Creek, and discussions with city staff from various departments, including Police and Economic Development, staff developed an approach that is intended to encourage evening entertainment in a dining/post-dining environment while allowing for discretionary review and conditions of approval for establishments serving alcohol and providing late-night entertainment, similar to a nightclub. The proposed draft ordinance would do the following:

- Eating and/or drinking establishments would be permitted to serve alcohol and provide entertainment up to 11:00 p.m. without requiring a CUP.

- The definition of “entertainment” would be such uses as live music, disc jockeys, dancing, karaoke, comedy shows, modeling, or live performances.
- A Conditional Use Permit (CUP) would be required for eating and/or drinking establishments that serve alcohol and provide entertainment after 11:00 p.m.
- Eating and/or drinking establishments not providing entertainment would be permitted to serve alcohol before and after 11:00 p.m. without requiring a CUP. This is the same as Tracy’s existing Code.
- Eating and/or drinking establishments not serving alcohol would be permitted to provide entertainment before and after 11:00 p.m. without requiring a CUP. The time of 11:00 p.m. is recommended by staff as a reasonable threshold for the CUP requirement based on attempting to encourage evening entertainment while still having the necessary controls in place to regulate nightclub-type activity.

The City of Walnut Creek’s recently approved ordinance requires a CUP for any eating and/or drinking establishment that serves alcohol after 11:00 p.m., with or without entertainment. Most other cities that staff investigated require a CUP for any bar/restaurant that provides entertainment, regardless of the time of day or night.

Potential types of conditions of approval that may be relevant to future CUP applications include, but are not limited to, the following:

- Establishment must abide by all licensing requirements of California’s Department of Alcoholic Beverage Control (ABC).
- Security guards required, based on number of occupants. A formula for the number of security guards per number of occupants will be developed by the Police Department.
- Security guards would be required to carry proof of valid registration through the California Department of Consumer Affairs, Bureau of Security and Investigative Services (BSIS) in the form of a Security Guard Card.
- No dual roles for security (i.e. bartender/security).
- No person under 21 years of age allowed in the establishment after 11:00 p.m.
- Trash/litter must be cleaned up from the property by 7:00 a.m. each morning.
- Potential limitations on the hours of operation.
- Requirements regarding Zoning Code regulations, Building Code regulations, Fire Code regulations, and any applicable regulations of the Tracy Municipal Code.

In addition to amending the City’s Zoning Ordinance, three Specific Plans would also need to be amended to address the topic on a City-wide basis. The proposed Specific Plan Amendments are described below.

The I-205 Corridor Specific Plan Area is primarily located in the general vicinity of the shopping areas surrounding Naglee Road, north of I-205, including the West Valley Mall area, Home Depot area, and the Tracy Marketplace area, which is adjacent to W. Grant Line Road, and includes Wal-Mart and Costco areas. The I-205 Corridor Specific Plan permits eating and drinking establishments in areas designated Commercial Center, General Commercial, Service Commercial, and Freeway Commercial, which generally consists of the areas described above. Staff recommended that the I-205 Corridor Specific Plan be amended to be consistent with the proposed amendments to the City’s Zoning Ordinance for all areas that permit eating and drinking establishments.

The Industrial Areas Specific Plan (ISP) generally consists of industrial areas within the City. However, the ISP also contains a couple of areas that permit eating and drinking establishments. The primary area is the Red Maple Village shopping center (Raley's site) at the northeast corner of Tracy Boulevard and Valpico Road. This site is designated Village Center and permits eating and drinking establishments. A second location within the ISP that permits eat and drinking establishments is a portion of the Flex Office Zone at the northeast corner of Tracy Boulevard and Whispering Wind Drive. Staff recommended that the ISP be amended to be consistent with the proposed amendments to the City's Zoning Ordinance for all areas that permit eating and drinking establishments.

The Residential Areas Specific Plan (RSP) generally consists of residential areas within the City, as is indicated by its name. However, the RSP also contains a few areas with commercial zone designations, which permit eating and drinking establishments. These areas primarily include the Save Mart Shopping Center at the southeast corner of W. Eleventh Street and Corral Hollow Road, the Save Mart Shopping Center at the southwest corner of Tracy Boulevard and Schulte Road, and the commercial area at the southwest corner of Corral Hollow Road and W. Grant Line Road, where Chili's restaurant is located. Staff recommended that the RSP be amended to be consistent with the proposed amendments to the City's Zoning Ordinance for all areas that permit eating and drinking establishments.

The Planning Commission discussed this item on November 14, 2012, and recommended that the Council introduce the ordinance and approve the proposed amendments to the Specific Plans. During public comment, representatives of the Frog Eatery and Lounge expressed frustration that the ordinance was not approved earlier.

The permitting/conditionally permitting of eating and/or drinking establishments with entertainment, similar to nightclubs, has the potential to increase demands for public safety resources, particularly police services. If appropriate conditions are imposed through the conditional use permit process, the Police Department believes it will be able to address any foreseeable demands using existing resources.

Gary Hampton, Police Chief, stated the Police Department has worked closely with other departments involved in this process and supports bringing live entertainment to the City. Well operated venues can improve the quality of life for residents, but unregulated entertainment venues can also drain public safety resources for the entire community. There are cities in the Valley that spend nearly \$1 million in law enforcement overtime managing incidents at live entertainment venues. Chief Hampton suggested each venue be evaluated on its own merits, through the CUP process to make sure they have safe operating plans.

In Tracy at least four entertainment venues with eating and drinking establishments are in violation of the City's current ordinance. Calls for service over the past four years have increased for these establishments. There are times when calls for service can expend all Police resources. Chief Hampton gave an overview of certain incidents which can tie up Police Officers for hours at a time, and added this is a commodity the City cannot currently offer to the residents under the current ordinance. This is a permissive ordinance which if regulated responsibly will enable the community to engage in live entertainment venues, which will not negatively impact the public safety available to the rest of the community

Mr. Claar stated staff had recently received a letter from the proponent of the Frog Eatery and Lounge requesting any potential CUP application fees be waived.

Mr. Claar concluded by stating staff and Planning Commission recommended that the Council introduce an ordinance amending various sections of Title 1 and Title 10 of the Tracy Municipal Code, and approve, by resolutions, the proposed amendments to the I-205 Corridor Specific Plan, Industrial Areas Specific Plan, and Residential Areas Specific Plan relating to eating and/or drinking establishments with entertainment.

Council Member Young asked if there was any way to check back once a CUP has been issued to see if the conditions have been violated in any way. Dan Sodergren, City Attorney stated once a CUP has been granted it becomes part of the zoning for the district. If a business is found to be violating the conditions of the CUP, staff, Planning Commission or Council can call the matter up for a hearing. Mr. Sodergren stated the City does not provide an annual review which would be burdensome for staff.

Andrew Malik, Director of Development Services, stated if complaints are received the City can investigate whether the complaints are minor or not.

Chief Hampton stated any establishment which sells alcohol is monitored by the Police Department. In cases of eating and drinking establishments if a pattern of calls for service is evident the Police Department will schedule visits and request the establishment be part of the solution by changing their business strategy to reduce their impact on public safety. If compliance is not possible, other options can be considered.

Gary Gardino, the proponent for the Frog Eatery and Lounge in Pavilion Parkway, stated he had a vast amount of experience in putting together establishments with entertainment. Mr. Gardino stated he had presented his plan more than seven months ago and was told it would take approximately 120 days to process. Mr. Gardino disagreed that entertainment results in problems and also disagreed with the 11:00 p.m. closing time. Mr Gardino indicated he had lost business during the busiest time of the year - October through January. The delays have cost Mr. Gardino's company more than \$78,000.

Mr. Gardino stated the public hearing was originally scheduled for December 4, which was then rescheduled to December 18, 2012. Mr. Gardino stated he had been told the City was a business friendly City, but stated he is disappointed and unsure what the City wants. Mr. Gardino stated his venue will cater to those 35 years of age and older.

Mr. Gardino stated his proposed location is in a commercial area, consisting of local hotels and motels. Petitions sent to surrounding businesses have produced favorable responses. Mr. Gardino stated after 45 years in the business he has never lost a license or been sanctioned. Mr Gardino requested if this process moves forward he be given consideration for the time and energy invested to date.

Mr. Claar indicated the CUP would allow this type of operation to be open beyond 11:00 p.m. Mr. Dean stated the proposed Ordinance requires a CUP process which is issued by the Planning Commission. Mr. Dean added a CUP was not a blanket approval and each use is looked at individually.

Mayor Ives explained if the ordinance is approved and an application for a CUP is submitted then a public hearing would be scheduled to consider the application.

Don Cose, 17 E. Sixth Street, suggested the Ordinance move forward so Mr. Gardino can move forward.

Robert Tanner, 1371 Rusher Street, asked what is the average cost for a CUP application. Mr. Claar stated the cost for a Class A Conditional Use Permit is \$5,459; Class B is \$3,476, which is a one-time fee that stays with the property.

Paul Miles, 1397 Mansfield Street, indicated "entertainment" was not defined in the slides. Mr. Claar indicated the City does have an adult business license which regulates those types of entertainment.

Mr. Gardino asked what the application fees were used for. Mr. Claar stated the fees are used for reviewing the application and holding public hearings.

Mayor Pro Tem Maciel asked for clarification regarding entertainment uses and if they are currently addressed in zoning. Mr. Claar stated over the years businesses not in compliance with the zoning issues have been addressed.

Council Member Rickman asked how long it takes to obtain a CUP. Mr. Claar indicated 6-8 weeks.

Mayor Ives informed the audience that Council needed to be careful with policy development which takes time.

Mayor Ives and Mayor Pro Tem voiced support of the Ordinance.

Mayor Ives closed the public hearing.

The City Clerk read the title of proposed Ordinance 1177 as revised. Council Member Rickman moved to waive reading of the text. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to introduce Ordinance 1177 as revised. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel moved to adopt Resolution 2012-254 amending the I-205 Corridor Specific Plan, Appendix A, Table A-2, Permitted and Conditionally Permitted Land Uses, relating to eating and/or drinking establishments with entertainment. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel moved to adopt Resolution 2012-255 amending the Industrial Areas Specific Plan relating to eating and/or drinking establishments with entertainment. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Pro Tem Maciel moved to adopt Resolution 2012-256 amending the Residential Areas Specific Plan, Land Use Section 4.1.2.1, Neighborhood shopping, and Land Use

4.1.2.2 General Highway Commercial, relating to eating and/or drinking establishments with entertainment. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.

4. PUBLIC HEARING TO CONSIDER A 184-UNIT RESIDENTIAL APARTMENT PROJECT (“VALPICO APARTMENTS”), INCLUDING PARKING AND RELATED ON-SITE IMPROVEMENTS ON APPROXIMATELY 8.75 ACRES LOCATED ON THE NORTH SIDE OF VALPICO ROAD, NORTHEAST OF THE INTERSECTION OF VALPICO ROAD AND GLENBRIAR DRIVE, 501 E. VALPICO ROAD (FORMERLY 2795 S. MACARTHUR DRIVE), ASSESSOR’S PARCEL NUMBERS 246-140-13 AND 14. THE PROJECT INCLUDES A GENERAL PLAN AMENDMENT FROM COMMERCIAL TO RESIDENTIAL HIGH (GPA12-0001), REZONING FROM COMMUNITY SHOPPING CENTER TO HIGH DENSITY RESIDENTIAL (R12-0001), ZONING REGULATIONS AMENDMENT REGARDING THE MINIMUM DISTANCE BETWEEN MAIN BUILDINGS ON A SITE (TRACY MUNICIPAL CODE SECTION 10.08.1610(d)) (ZA12-0004), AND DEVELOPMENT REVIEW APPROVAL FOR THE APARTMENT PROJECT (D12-0004). A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM, PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ARE PROPOSED FOR ADOPTION. THE APPLICANT IS ERIC TAYLOR, SOMIS INVESTMENTS – Alan Bell, Senior Planner presented the staff reports for agenda items 4 and 5. The subject property designated as the location for Valpico apartments was annexed to the City in 1994 and designated Commercial (and zoned Community Shopping Center – CS) at that time, along with adjacent parcels, in anticipation of providing retail and commercial services to the growing residential neighborhoods in this southeast quadrant of the City. A commercial project was approved for the site in 2005, with approximately 100,000 square feet of commercial space and a 36,000 square foot grocery store. This commercial project was never constructed. The entire CS site includes approximately 13 acres and incorporates the subject property and the four parcels between the subject property and MacArthur Drive. The Rite Aid store, at the northwest corner of Valpico Road and MacArthur Drive was constructed in 2008. The other three parcels of the CS Zone each contain a single-family home, constructed prior to annexation to the City.

The proposal is to construct a 184-unit, multi-family residential project on approximately 8.75 acres. The Project consists of seven, three-story apartment buildings with 24 units each, plus 16 townhouse-style units in six building of two stories each.

No subdivision is proposed at this time; all units will be rental apartments. The project will also include a leasing office in the triplex townhouse building near the mailbox kiosk at the southeast corner of the site. The townhouse units are located in buildings of two, three, and four units at the southeast corner of the site. The townhouse units will be constructed on the same grade as Valpico Road, with the building fronts oriented toward Valpico Road to establish a more residential, pedestrian-oriented presence along the Project’s Valpico Road frontage.

The remaining buildings will be located on lower grades than the townhouses, following the existing topography of the site. The site slopes from its southeast corner to its northwest corner, experiencing an approximately 15-foot grade difference from the highest spot (nearly level with Valpico Road) to its lowest point. The developer intends to retain much of the existing grade (unless engineered fill becomes available at an economically available price) resulting in a significant grade difference between Valpico

Road and the apartment buildings in the center and west portions of the site. The ground floor of buildings 1 and 7 will be approximately ten feet below the Valpico Road grade. The result will be that pedestrians and motorists along Valpico Road will effectively see the apartments as two-story buildings, as the ground floor will be below the grade of Valpico Road. The parking spaces and drive aisle between Valpico Road and the apartment buildings will also be lower than the Valpico Road grade, resulting in a view of the buildings' architecture and site landscaping less obstructed by parked vehicles and carports. The seven apartment buildings will consist of one and two bedrooms units, and the townhouse units will contain one-bedroom and three bedroom units. Altogether, there will be 89, one-bedroom units; 84, two-bedroom units; and 11, three-bedroom units. The apartments range in size from approximately 900 square feet to nearly 2,000 square feet for the largest townhouse units.

City zoning regulations require 1.5 off-street parking spaces for each one-bedroom unit and two parking spaces for each unit with two or more bedrooms, plus one guest space for every five units. The project meets the City's standard by providing 361 spaces. Carports will provide covers for 184 of the parking spaces. The applicant has submitted two different exterior elevations of the buildings. Both versions include tile roofs, decorative window trim and shutters, and vertical and horizontal relief to create a high-quality architectural design. Both versions meet City standards. City staff and the Planning Commission have recommended that both versions be approved to allow the developer to choose one version or the other at the time of construction.

Single-family homes constructed prior to annexation to the City exist adjacent to the north and east of the Project site. A tentative subdivision map ("Tiburon Village") for approximately 100 homes was approved several years ago on the approximately 20-acre property adjacent to the north. No grading or other improvements for that project have yet begun. Adjacent to the west is a 2.87-acre site containing one single-family home. On that site is a proposed 60-unit apartment project called MacDonald Apartments.

The project consists of four separate applications: (1) a General Plan Amendment from Commercial to Residential High, (2) rezoning from Community Shopping Center (CS) to High Density Residential (HDR), (3) Tracy Municipal Code Amendment regarding the required minimum distance between main buildings on a site, and (4) Development Review approval for the project. The site's current commercial General Plan and zoning were established by the City Council in 1994 when the site was annexed. As residential neighborhoods grew, the Raley's shopping center site obtained commercial zoning and was constructed at the northeast corner of Valpico Road and Tracy Boulevard, less than one mile west of the subject property. Real Estate professionals and commercial developers have reported to staff that the proximity of the Raley's center will prevent a similar commercial shopping center from locating at this site because of the limited number of houses that could ever be constructed in the vicinity. The site is viable for high density General Plan and zoning consideration due to a number of factors including the site's depressed grade (which reduces visual impacts of the Project), high density residential General Plan designation to the west (increasing opportunity for land use compatibility), frontage and direct access onto Valpico Road, proximity to the Altamont Commuter Express Station is less than two miles away, and adjacent and nearby shopping opportunities.

Each zone district establishes standards related to building bulk and intensity on a site, regulated by such measures as setbacks from property lines, building height, floor area ratio, maximum lot coverage, and other items. These regulations are designed to affect or protect the light, air, and open space considerations of development. The California Building and Fire Codes, by contrast, are designed to reduce the spread of fire and other safety considerations. Zoning codes, in contrast to Building and Fire codes, are typically not oriented toward safety items and therefore, are established by each City for each of its zone districts.

Tracy's HDR zone requires that the minimum distance between main buildings on a site must equal the average height of the two buildings. Therefore, taller buildings are required to be further apart from each other than shorter buildings. The three-story apartment buildings of this project are approximately 27 feet tall. Therefore, the HDR Zone District requires all of those buildings to be at least 27 feet apart. Most of the buildings in this project meet this standard. Building 3 and Building 6, however, are proposed to be approximately 15 feet apart. City staff recommended the regulation be changed to be more responsive to creative or successful site planning. For example, the close point between Buildings 3 and 6 is adjacent to an open parking area on one side and a very generous, open, recreation area with pool on the other side. Furthermore, this Project mitigates concerns related to building proximity by providing over four times the minimum amount of "usable open space" required by the HDR Zone - 5,725 square feet is required and the Project proposes over 22,000 square feet, including the pool area. The HDR Zone contains no height limit. All buildings and site development in the HDR Zone must receive discretionary approval through Development Review. Staff recommended that the City create the flexibility to evaluate the appropriate distance between main buildings in the HDR Zone on a project-by-project basis and replace the existing distance-between-buildings requirement from "the average height of the two main buildings" to "six feet". Tracy Municipal Code Section 10.08.1610(d) would be amended as follows: Distance between buildings: Six (6;) feet between accessory buildings and between an accessory and main building; and the minimum distance between main buildings shall be the average height of the two (2) main buildings six feet. Six feet (although not proposed for this project) is the recommended replacement for the minimum distance between main buildings. This distance is used in residential zones throughout the City to prevent inaccessible or unusable corridors between buildings.

Glenbriar Drive is proposed to be extended north from its current northern terminus at Valpico Road to the north side of the Project site. The Project will have one driveway access (existing) directly onto Valpico Road at the southeast corner of the site, and two access points to Glenbriar Drive on the west side of the site. The Valpico Road Driveway, currently used by the Rite Aid site, will be shared with the Rite Aid site. Easements for this joint use are already in place. Turning movements at the Valpico Road driveway allow right-turns in and out of the site and left-turn in, but no left turns out onto east-bound Valpico Road. The Glenbriar Drive driveways will provide direct access to Valpico Road and full turning movements at that signalized intersection. The Glenbriar Drive extension for this Project will be designed so that it could eventually be connected to future residential development to the north. The Project's current Valpico Road frontage includes 15 feet between the curb and the site's property line. Within this strip is public right-of-way with existing landscaping and a five-foot wide sidewalk. The developer is proposing to construct a ten-foot wide bike/pedestrian path on the Project site adjacent to the right-of-way and dedicate this additional ten-foot strip to the City for public use. This bike/pedestrian path will be an immediate amenity across the front of

the site and will eventually connect to the bike/pedestrian system that will extend east and west of this Project.

A retail commercial shopping center generates more traffic trips than an apartment complex of the density (approximately 21 dwelling units per acre) proposed for the Valpico Apartments and the adjacent, 60-unit, MacDonald Apartments. Valpico Road, MacArthur Drive, and other area roadways have been designed through the City's Transportation Master Plan to accommodate traffic at prescribed levels of service for land uses identified in the City's General Plan. In order to evaluate lengths of turning lanes, other intersection design details, and roadway levels of service, the City contracted with TJKM Transportation Consultants to analyze potential traffic impacts of the proposed Valpico Apartments and the MacDonald Apartments. TJKM's Traffic Impact Study concludes that traffic generated by the two apartment projects, combined, with existing and anticipated traffic in the future will result in nearby roadways and intersections operating within levels of service standards.

The Project site is located within the Tracy Unified School District related to K through 12th grade education. School age children who reside within the Valpico Apartments would be in the attendance boundary areas for Bohn Elementary School, Williams Middle School, and Tracy High School. The Project plans, notices, and other outreach have been extended to Tracy Unified School District staff. School District staff indicated enrollment at the three potentially affected schools has been on the decline in recent years and they do not anticipate any issues in being able to accommodate students from this Project.

The Project includes a swimming pool centrally located on the site. An additional improvement is a proposed bus shelter within the Valpico Road right-of-way. The City is completing a City-wide project to construct bus turnouts and shelters along the bus routes throughout town. Funding for that project was provided by a Federal grant. One of the City's existing bus routes currently travels in both directions along Valpico Road. With the construction of 184 new apartment units adjacent to the Rite Aid store, a bus shelter could be a meaningful amenity to encourage use of the public transit system. The bus shelter will be located at least 60 feet west of the driveway at the southeast corner of the site.

On September 12, 2012, the developer conducted a neighborhood meeting to introduce the project and answer questions. The developer sent approximately 170 notices to nearby property owners and the Hidden Lake property owners association. Normally, public hearing notices are sent to owners of property within 300 feet of a project site in compliance with State law. Other notices are sent to the public library, media contacts, and others who have expressed interest in the project. The number of property owners within 300 feet of this Project site is 34. Due to a potentially higher level of interest among nearby property owners regarding this Project and the adjacent Valpico Apartments project, City staff expanded the public notice mailing for the November 14, 2012 Planning Commission meeting to include approximately 220 of the nearest property owners, some parcels over 900 feet away. Based on public input during the Planning Commission public hearing, the notification for this City Council hearing was expanded even further to include over 700 property owners – mostly owners of residential property in the nearby Ashley Park (Larkspur Estates), Hidden Lake, and Glenbriar Subdivisions and in San Joaquin County southeast of the intersection of Valpico Road and MacArthur Drive. Most inquiries to City staff, as a result of Project

outreach, have been fact finding clarifications regarding project design, timing, and nearby planned roadway or other City improvements.

On November 14, 2012, the Planning Commission conducted a public hearing to review the Project. The Project applicant spoke in favor of the Project. Two Tracy residents addressed the Planning Commission in opposition to the project, identifying concerns related to traffic, parking, storm drainage, space in public schools, and public notification regarding the Project. Following a discussion, the Planning Commission recommended that the City Council approve the Project on a 5-0 vote.

In accordance with the California Environmental Quality Act (CEQA) Guidelines, an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared to evaluate potential environmental effects of the project. Part of the Project approval includes a recommendation for adoption of the CEQA documentation.

There is no specific expenditure from the General Fund. Staff and consultant costs to process the application are recovered through a Cost Recovery Agreement with the Developer, executed by the City Manager on June 11, 2012.

Staff recommended Council: 1. Adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program. 2. Approve the General Plan amendment from Commercial to Residential High. 3. Approve the rezoning of the site from Community Shopping Center to High-Density Residential. 4. Approve the Tracy Municipal Code Amendment regarding distance between buildings. 5. Approve the Development Review application for the 184-unit residential apartment project.

Mr. Bell indicated a 23-page letter was received late today from Horizon Planet objecting to the CEQA approach chosen by the City. Mr. Bell introduced Ben Ritchie, Principal with DeNovo Planning Group and the author of the Mitigated Negative Declaration, who introduced information into the record.

Mr. Ritchie outlined the public comment period that was provided, indicating no comments were received. The applications were presented to the Planning Commission and no comments were received at that hearing. Mr. Ritchie addressed each assertion from Horizon Planet and which actions were taken by the City and Consultant that were appropriate and adequate under CEQA regulations.

Dan Sodergren, City Attorney, commented the tactic Horizon Planet has attempted is referred to as "data dumping" when, at the very last minute they submit a large volume of data which forces the agency to dump data back into the record, when in fact they had ample time to submit comments.

Mayor Ives indicated it was difficult for him to understand the project's compatibility with the existing roadway network relative to the Roadway Master Plan and how in the analysis it was concluded that the intersection of Valpico Road and MacArthur Road was marked as severely impacted. Mayor Ives stated he needed to know how this project mitigates any impact on the existing two lane Valpico Road section.

Kuldeep Sharma, City Engineer, indicated the project is located in the Infill area which is planned for in the Roadway Master Plan. Mr. Sharma stated all Infill properties pay the impact fees and this particular project will fund the projects such as MacArthur Drive

widening from Valpico to Schulte Road, and then Schulte Road connecting to Eleventh Street when the bridge is completed. The project will also fund improvements on Valpico Road which is divided into two phases. Mr. Sharma stated the Finance and Implementation Plan for the Infill area, adopted in April 2012, include the two phases. Mr. Sharma added that design work has already begun for Valpico Road and MacArthur Drive. Mr. Sharma outlined the funding sources for both phases.

Council Member Young asked if the funding would be in place so that when the projects are built, the roadways be improved to accommodate the traffic. Mr. Sharma indicated there will not be enough funding to complete the widening of the streets when the apartments were built.

Mr. Bell added that the Traffic Study clearly demonstrates that even with the traffic added by these two apartment projects, the level of service on Valpico Road and the intersections will remain at level of service "C".

Mayor Pro Tem Maciel asked if there was an estimate as to when the funding may be in place. Mr. Sharma stated it depended on when the projects develop.

Mayor Ives opened the public hearing.

A resident of the Glenbriar subdivision voiced concerns with traffic and the possible impact to schools.

Members of the Phillips family and residents of Ashley Park indicated they were not notified of the meetings. They also voiced concerns with vehicle traffic, pedestrian traffic without sidewalks, and a possible contaminated property neighboring the projects. The Phillips family thanked Mr. Bell for his availability and for taking the time to answer all their questions.

Eric Taylor, owner of the Valpico property, provided Council with a history of the property and his attempts to develop the property. Mr. Taylor outlined the features of the project.

Mayor Pro Tem Maciel asked Mr. Taylor to expand on how the storm drainage gets returned to the water table. Mr. Taylor indicated the soils engineer conducted extensive tests and outlined the processes for those tests.

Council Member Rickman asked for clarification of the three-story units. Mr. Taylor indicated all three stories would not be visible from Valpico Road. Mr. Taylor stated he has worked with the property owner adjacent to the project to address his concerns.

Council Member Rickman asked about aesthetics of the three-story units. Mr. Taylor discussed how the 80-foot setback and landscaping would mitigate the height of the buildings. Mr. Taylor further stated that the units that abut RiteAid are single and two-story units.

Peter MacDonald, applicant of the adjacent project, addressed Council outlining how he has worked with Mr. Taylor to develop the two properties, the various studies that have been conducted, interaction with the neighbors, design of the units, and the economic vitality that these projects will offer the community.

Charles Rossell, a new resident to Tracy, addressed Council stating he would not have purchased a home in Glenbriar if he had known an apartment would be built near the community. Mr. Rossell asked why no studies were conducted regarding possible impacts on crime and property values. Mr. Rossell asked what the overall benefits were with building the apartments in this area. Leon Churchill, City Manager, stated in general the direct financial benefit was property tax and the addition of residents to help support the demand for retail. Mayor Ives outlined one of the reasons why high density housing was required in the City.

Mr. Rossell asked if any specific studies were done for the City of Tracy vs. nation-wide. Mr. Churchill indicated the studies conducted were broader and not specific to Tracy. Police Chief Gary Hampton stated a recent study was not available, but in the 1990's and 2000's, a comparison study was done on calls for service, which did not support the idea that high-density housing created more calls for service.

Mr. Rossell stated he would like to see current crime statistics for the City of Tracy. Chief Hampton stated he would be glad to work with Mr. Rossell to provide that information. Mr. Rossell also asked if there were any studies regarding housing values.

Mayor Pro Tem Maciel indicated when he was with the Police Department and received calls for service to apartment complexes it usually revolved around management, indicating on-site management was important.

Danny Dominguez, a resident of Glenbriar, stated when he purchased his home he was told a shopping center was planned for the site. Mr. Dominguez voiced concerns with traffic, the traffic study, and pedestrian safety. Mr. Dominguez urged Council to stick with the original plan for a strip mall at the site.

Edwin White, 2625 MacArthur Drive, addressed Council regarding access to MacArthur Drive through his property, drainage of dirt onto the road, trash generated from the RiteAid property, crime, and the impact on owls and foxes. Mr. White stated he wants a wall separating his property from the proposed apartment complexes and the easement removed for access onto MacArthur Drive.

Jim Dale, 702 Quail Run Circle, voiced his concern regarding property values and the lack of noticing.

Craig Saalwachter, 4083 Peyton Lane, thanked the applicants for coming up with a use for the property. Mr. Saalwachter asked if a left hand turn signal at Glenbriar Drive and Valpico Road was planned. Mr. Saalwachter addressed the difference in architecture between the two projects and the possibility of future development being able to develop at street level. Mr. Saalwachter also voiced concerns about pedestrian safety.

A resident of Tracy and former renter at Waterstone apartments encouraged Council Members to visit the site before approving the project. The resident suggested building townhouses, or condominiums similar to those in the Redbridge community. The resident suggested crime information from the Sheriff's Department would need to be included because of the close proximity of County property.

A resident addressed Council with concerns regarding pedestrian traffic and the impact on existing schools.

Mayor Ives called for a recess at 11:15 p.m., reconvening at 11:25 p.m.

Another resident also voiced concerns with crime that comes with residents, along with congestion on the roads. The resident hoped a final decision would be extended until a future date.

A resident stated he did not believe there was enough information to make a decision at this meeting. The resident also referred to a street stub that could be used in the future for vehicle traffic onto DeBord.

Alma Moorley, 4262 Middlefield Drive, indicated she lives near the Waterstone apartment complex and that there have been increased traffic issues. Ms. Moorley asked why more apartments were needed in Tracy. Mayor Ives clarified a City needs to provide a variety of housing options such as low income, middle income and high income units. Ms. Moorley suggested restaurants and retail rather than more housing is needed in Tracy.

As there was no one further wishing to address Council on the item, Mayor Ives closed the public hearing.

Council Member Rickman asked how long it would be before the roadway can be widened and sidewalks constructed. Andrew Malik, Development Services Director, indicated a couple of projects south of Valpico were in the planning stages, but he could not say exactly how long it would be.

Council Member Rickman indicated most of the residents' concerns centered on traffic and congestion, the lack of sidewalks and safety. Mr. Sharma stated no roads can be completed until sufficient funding is received from future development. Mr. Sharma stated staff would also work on State and Federal grants, but it was not a guarantee.

Mayor Ives asked if it could be part of a Capital Improvement Program. Mr. Sharma stated yes.

Council Member Rickman asked about the uniformity of the project's architecture. Mr. Taylor stated the two-story project is at grade on Valpico Road, and the lower part of the MacDonald property includes a sound wall which will only show one level of housing from the street.

Mr. Taylor added that the two projects would generate approximately \$7 million to the City and the School District.

Council Member Young stated she was concerned with the lack of sidewalks and bike paths.

Mayor Pro Tem Maciel stated staff needs to ensure there is timely notification to neighbors and property owners. Mayor Pro Tem Maciel indicated he did not have grave concerns with crime or the ability of the School District to accommodate more students. Mayor Pro Tem Maciel further stated plans to build the project are market driven; whether it is retail, industrial, or single-family homes. Mayor Pro Tem Maciel indicated his single concern was traffic flow on Valpico Road. Mayor Pro Tem Maciel stated the

projects do dovetail with the City's need for high density housing, sustainability and specific mandates by the State.

Mayor Ives stated Council goes through this process every time an apartment complex is proposed. Mayor Ives further stated he wanted to ensure that Mr. White's concerns were addressed. Mayor Ives encouraged staff to ensure that people are informed appropriately. Mayor Ives stated this project does place Valpico Road as a priority in the CIP process.

Council Member Rickman indicated he was concerned with aesthetics and the presence of 3-story buildings.

Council Member Rickman moved to adopt Resolution 2012-257 approving a Negative Declaration and Mitigation Monitoring Program for the Valpico Apartments General Plan Amendment (GPA 12-0001), Rezoning (R12-0001), Zoning Regulation Change (ZA12-0004), and Development Review (D12-0004). Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to adopt Resolution 2012-258 approving a General Plan Map Amendment from Commercial to Residential High for approximately 8.75 acres located at the Northeast corner of Valpico Road and Glenbriar Drive, 501 E. Valpico Road (Formerly 2795 S. MacArthur Drive), Assessor's Parcel Numbers 246-140-13 and 14, Application Number GPA 12-0001. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

The City Clerk read the title of proposed Ordinance 1178. Council Member Rickman moved to waive reading of the text. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to introduce Ordinance 1178. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

The City Clerk read the title of proposed Ordinance 1179. Council Member Rickman moved to waive reading of the text. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to introduce Ordinance 1179 as revised. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to adopt Resolution 2012-260 approving a Development Review Application (D12-0004) for the Valpico Apartments located on approximately 8.75 acres at the northeast corner of Valpico Road and Glenbriar Drive, 501 E. Valpico Road (formerly 2795 S. MacArthur Drive), Assessor's Parcel Numbers 214-140-13 and 14. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

5. PUBLIC HEARING TO CONSIDER A 60-UNIT RESIDENTIAL APARTMENT PROJECT (MACDONALD APARTMENTS), INCLUDING PARKING AND RELATED ON-SITE IMPROVEMENTS ON APPROXIMATELY 2.87 ACRES LOCATED ON THE NORTH SIDE OF VALPICO ROAD NORTHWEST OF THE INTERSECTION OF VALPICO ROAD AND GLENBRIAR DRIVE, 2605 S. MACARTHUR DRIVE, ASSESSOR'S

PARCEL NUMBER 246-140-12. THE PROJECT INCLUDES REZONING THE SITE FROM MEDIUM DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL (R12-0002), ZONING REGULATIONS AMENDMENT REGARDING THE MINIMUM NUMBER OF REQUIRED OFF-STREET PARKING SPACES (TRACY MUNICIPAL CODE SECTION 10.08.3470) (ZA12-0005), AND DEVELOPMENT REVIEW APPROVAL FOR THE APARTMENT PROJECT (D12-0006). THE APPLICANT IS PETER MACDONALD. See item 4 above for discussion.

The City Clerk read the title of proposed Ordinance 1180. Council Member Rickman moved to waive reading of the text. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to introduce Ordinance 1180. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

The City Clerk read the title of proposed Ordinance 1181. Council Member Rickman moved to waive reading of the text. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to introduce Ordinance 1181. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

Council Member Rickman moved to adopt Resolution 2012-260 approving a Development Review Application (D12-0006) and determination regarding off-street parking space reduction for the MacDonald Apartments located on approximately 2.87 acres at the northwest corner of Valpico Road and Glenbriar Drive, 2605 S. MacArthur Drive, Assessor's parcel Number 214-140-12. Mayor Pro Tem seconded the motion. Voice vote found all in favor; passed and so ordered.

Mayor Ives indicated he had spoken to staff and agenda items 6, 7, 8 and 9 would be rescheduled to January 15, 2012.

6. APPROVE NAME OF THE YOUTH SPORTS FIELDS LOCATED ON NORTH TRACY BOULEVARD – Item rescheduled to January 15, 2013.
7. APPROVAL OF AN AGREEMENT WITH THE CITY OF STOCKTON TO PARTICIPATE IN THE COMMUNITY CORRECTIONS TASK FORCE AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT; ACCEPT ASSEMBLY BILL 109 (AB 109) PRISON REALIGNMENT FUNDING TO HIRE ONE TEMPORARY FULL-TIME POLICE OFFICER; AND APPROPRIATE FUNDING FOR ONE FULL-TIME POLICE OFFICER AND RELATED EQUIPMENT FOR FISCAL YEAR 2012-13 - Item rescheduled to January 15, 2013.
8. ACCEPT A PRESENTATION ON THE SOUTH COUNTY FIRE AUTHORITY FISCAL YEAR 2011-2012 ANNUAL REPORT – Item rescheduled to January 15, 2013.
9. APPOINT ONE APPLICANT TO THE SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT BOARD FOR A TERM OF TWO OR FOUR YEARS – Item rescheduled to January 15, 2013.
10. ITEMS FROM THE AUDIENCE - None

11. COUNCIL ITEMS

- A. Discuss Appointment Process to Fill Anticipated Vacant Council Seat and Provide Direction to Staff and/or Take Action to Fill the Vacancy By Appointment – Mayor Ives stated Council would continue discussion from the December 4, 2012, City Council meeting related to the process to be followed to fill the vacant Council seat left by the resignation of former Council Member Elliott and/or take action to fill the vacancy by appointment.

Council Member Rickman stated all three of the other candidates who ran in the November 2012 election were well qualified and he would not have a problem working with any one of them.

Mayor Pro Tem Maciel stated at the last meeting he had been a strong proponent of opening up the appointment process to anyone who wanted to apply. Although he still believed that was the best way to move forward he was willing to compromise and consider only the three other candidates who ran in the November 2012 election, to avoid a Council deadlock. Mayor Pro Tem Maciel was adamant the three candidates should undergo a thorough and detailed interview process. Mayor Pro Tem Maciel added that the Council has the authority and the responsibility to fill this vacant position. If Council cannot come to a consensus at the end of the interview process Mayor Pro Tem Maciel stated he would be willing to direct staff to begin the process for a special election.

Council Member Young stated that she hadn't changed her decision from two weeks ago; however, she was willing to agree to open up the process only to the three candidates who ran in the November 2012 election.

Mayor Ives stated he believed everyone should have the opportunity to run for office, but in order to move the process forward he would be willing to consider only the three unsuccessful candidates from the November 2012 election.

Robert Tanner, 1371 Rusher Street, asked when the process would begin, since the sooner the vacant seat could be filled the better it would be for the City.

Linda Jimenez, P.O. Box 1065, Tracy, stated she had researched how neighboring cities had filled vacant Council seats. Most of them used the appointment process. However, following the November 2012 election the City of Lathrop had filled a vacant seat by appointing the candidate who received the third highest number of votes. Ms. Jimenez stated that she still believed the vacant seat on the Tracy City Council should be filled by the person who received the third highest number of votes.

Alma Morley stated she disagreed with the previous speaker, and believed that the third place candidate is not necessarily the best choice. The Council needs to look at who is best for the job.

Mr. Tanner asked for clarification on the 60 day rule. Mayor Ives stated the 60 days begins with the date of the resignation of the former Council Member.

Patricia Palmer, Resident, stated it cannot be assumed that the result would be different if a special election is held. Ms. Palmer stated the voters had spoken. Mr. Morelos came in third and should be appointed.

Mercedes Silveira, Resident, commended the Council for reaching a consensus on the process. However, since Mr. Morelos had received 4% of the vote, Ms. Silveira requested that Council take that number into consideration when making their decision.

Marvin Rothschild complimented Mayor Pro Tem Maciel on reaching a compromise.

Mayor Ives stated the Council had agreed the interview process should be limited to the three candidates who ran in the November 2012 election. Following a brief Council discussion it was agreed the three candidates would be invited to a special meeting to be held at 5:00 p.m., on January 15, 2013. If an appointment is made, the newly appointed Council Member could be seated at the same meeting. Leon Churchill, City Manager, stated since the Council had narrowed the pool of candidates, all candidates could be briefed before the meeting. Mayor Ives stated the process should go quickly since this is a Council decision and there will be no public input.

The interview process will include asking all three candidates the same questions. Dan Sodergren, City Attorney, stated a subcommittee could be formed to assist in forming the questions. The subcommittee should not solicit additional input outside of the Council meeting from other Council Members. Mayor Pro Tem Maciel shared with the Council some questions he had drafted. Mr. Sodergren stated the subcommittee could bring the questions back to the Council at the special meeting on the January 15th.

Mayor Ives proposed a subcommittee be formed to add to or remove questions from the two lists, and bring the list of questions back to Council at the special meeting to be held on January 15, 2013. Council Member Rickman confirmed that all candidates would be asked the same questions. Mayor Pro Tem Maciel and Council Member Rickman volunteered to serve on the subcommittee. Mayor Pro Tem Maciel suggested each applicant be given the opportunity to make a closing statement.

Mayor Ives stated his preferred questions include Nos. 4, 5, 6, 8 and 11 from the original list of questions attached to the staff report. Following the interview process each Council Member will rank the candidates 1, 2 or 3, although the ranking would be non-binding. Council Member Young stated her preferred questions include Nos. 1, 4, and 11 from the list attached to the staff report and questions 2, 4, and 5 from Mayor Pro Tem Maciel's list. Council Member Young also proposed a specific question be added related to community involvement and how it relates to the role of a Council Member, and agreed the candidates should be allowed to offer a closing statement.

Alma Morley asked if a candidate did not show up at the January 15, 2013 meeting, would they be out of the running. Ms. Morley also asked what would happen if the Council deadlocked, and why Mayor Pro Tem Maciel's questions

were not available. Mayor Ives responded the candidates needed to be present at the meeting, and copies of Mayor Pro Tem Maciel's questions would be made available to the community.

Linda Jimenez asked for clarification on who was appointed to the subcommittee and whether the questions would be opened up to the community. Mayor Ives responded the subcommittee will consist of Mayor Pro Tem Maciel and Council Member Rickman, and although the questions could have been opened up to include input from the community, the Council chose not to do that.

12. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel to adjourn. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered. Time 12:57 a.m. December 19, 2012.

The above agenda was posted at the Tracy City Hall on December 13, 2012. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk