

March 19, 2013, 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 Jessica Richmond, Seventh Day Adventist Church.

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

Mayor Ives and Police Chief Hampton swore in Police Officer Philip Guisto, and Police Corporals Tim Bauer, Mark Bergman, Trevin Freitas, Ed Gilmore, Greg Gilstrap, Rich Graham, Ricardo Hernandez, Octavio Lopez, Scott Muir, Dan Pasquale, Mike Richards and Mike Rickman.

Mayor Ives presented a proclamation to Liza Cruz, Regional Manager, San Joaquin American Red Cross, on behalf of American Red Cross Month.

Mayor Ives presented a Certificate of Recognition to outgoing Committee Member, Larry Hite, for his service on the Measure E Resident's Oversight Committee.

1. CONSENT CALENDAR - It was moved by Council Member Manne and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of February 5, 2013, and closed session minutes of March 5, 2013, were approved.
 - B. Approve Revised Boundaries of the Targeted Employment Area (TEA) for the San Joaquin County Enterprise Zone – Resolution 2013-039 approved the revised boundaries.
 - C. Acceptance of the Police Firearms Practice Range (FPR) – Septic System – CIP 71072B, Completed by Taylor Backhoe Services Inc., of Merced, California, and Authorization for the City Clerk to file the Notice of Completion – Resolution 2013-040 accepted the project.
 - D. Approve Professional Services Agreements (PSA) with Schack and Company, Inc. and Kjeldsen, Sinnock & Neudeck, Inc. (KSN) to Provide Technical Support Services for Multiple Capital Improvement Projects, Authorize the Mayor to Execute the Agreements, and Authorize the Director of Development Services to Extend the Agreement/s for Another Year if Needed – Resolution 2013-041 approved PSA with Schack and Company, Inc. Resolution 2013-042 approved PSA with Kjeldsen, Sinnock & Neudeck, Inc.

- E. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Class Specification and Pay Range for a Part-time, Limited Service Drug Abuse Resistance Education (D.A.R.E.) Officer – Resolution 2013-043 authorized the amendment.
2. ITEMS FROM THE AUDIENCE – Jo Hensel, North School, indicated Mayor Pro Tem Maciel spoke at North School and invited students to attend Council meetings. Four of the students addressed Council and respectfully requested the City build a basketball court at El Pescadero Park.
- Paul Miles, 1397 Mansfield Street, asked Council to consider forming an independent commission to review the disposition of Police complaints and adopt an open government ordinance.
- Dave Helm addressed Council voicing his support and respect of Police Chief Hampton.
- Steve Abercrombie echoed sentiments of Mr. Helm and stated he appreciated the implementation of the reading of the Code of Conduct when recognizing new and promoted Police Officers at Council meetings.
- John Favors, 2119 Laura Lane, Tracy Airport Association, stated the Association was holding an Open House and festival at the airport on June 29, 2013, celebrating aviation. Mr. Favors asked that the City sponsor their event.
3. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTIONS 10.12.060 AND 10.12.080 AND ADDING A NEW SECTION 10.12.065 RELATING TO COMPLIANCE WITH REGIONAL HOUSING NEEDS ALLOCATIONS AND STATE AND FEDERAL LAW RELATING TO DEED RESTRICTIONS – THE APPLICATION IS INITIATED BY THE CITY OF TRACY – APPLICATION NUMBER ZA12-0008 – Victoria Lombardo, Senior Planner, provided the staff report. Ms. Lombardo stated that the State Department of Housing and Community Development (HCD) requires that cities adopt Housing Elements for five-year cycles. Adoption of the document should address housing needs of all economic segments of the community, identifying how housing needs of existing and future residents of Tracy can be met. Tracy's Housing Element for the 2009-2014 cycle was adopted by City Council on May 15, 2012, and certified by HCD on July 26, 2012.
- Part of the approval of the City's Housing Element is a Housing Plan that includes implementing tools for the 2009-2014 Housing Element. Program 13 of this plan, under the category of "Remove Governmental Constraints" is a proposal to amend the City's Growth Management Ordinance (GMO) to remove the governmental constraint of annual limitations on Residential Growth Allotments (RGAs) and building permits. The amendment would allow the City to issue building permits up to the Regional Housing Needs Allocation (RHNA) number to achieve its obligation in each income category. The program also requires that due to the inconsistency with state and federal housing programs, the deed restriction of 55 years on affordable units must be revised to a deed restriction of ten years.
- Tracy's GMO allows for a maximum of 750 RGAs and building permits to be issued annually, with an average of 600 to be maintained. These limits were established in

2000, by an initiative measure ("Measure A"). There are several exemptions to these annual caps, including home remodels, house replacements, secondary residential units (also referred to as mother-in-law units), and small projects such as single custom homes that meet certain requirements.

The City's RHNA obligation for this Housing Element Cycle (2009-2014) is 4,888 units total (divided among all four income categories: Very Low, Low, Moderate and Above Moderate). The numerical limits of the GMO (600 annual average) would not allow a rate of residential construction during this Housing Element cycle that would achieve the RHNA. With less than two years left in the cycle, that would allow only 1,800 new housing units – 2,695 short of the RHNA.

Measure A contains the following language:

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

In order to comply with State law while honoring the intent of Measure A, on March 1, 2011, Council directed staff to propose to HCD an amendment to the City's GMO that would allow for building permits for housing units to be issued in order to meet the City's RHNA obligation. Staff proposed the amendment to HCD in the form of a revised draft Housing Element with such provisions, and HCD responded by certifying the Housing Element upon the condition that the City amend the GMO accordingly. The amendment must be completed by July, 2013, one year from the certification of the Housing Element. Additionally, the program requires the City to reduce the deed restriction on affordable units from 55 years to ten years.

The proposed amendment to the GMO contains limited changes to the existing regulations in order to keep the scope of changes as narrow as possible, while still meeting requirements of State law. The proposal would add a section discussing RHNA compliance that would allow for building permits for residential housing units to be issued in excess of the 600 average and 750 maximum in order to meet the RHNA for Tracy for the Housing Element cycle.

Although the Housing Element characterizes the proposed amendment to the GMO as an "exemption," what the proposed amendment actually does is clarify that the GMO does not apply to the extent that there is a conflict with State law RHNA requirements. The proposed amendment provides in relevant part that ". . . in any calendar year, once building permits have been issued for the number of residential units permitted by this chapter, the City shall issue additional building permits for residential dwelling units if they are necessary to achieve the RHNA goals in a particular income category (during each planning period)."

The proposed amendment also provides that, for the sole purpose of calculating the RGA and building permit averages contained in the GMO, any building permits issued under the authority of the proposed amendment shall be treated as if an RGA and a building permit were issued under the GMO. The provision was clarified based on comments received at the Planning Commission hearing on the proposed amendment.

Discussion at the Planning Commission meeting involved why building permits, but not RGAs were proposed to be issued to meet the RHNA. RGAs and building permits are tracked in the same manner, and the same number of each are available every calendar year. At one time, the RGA process was used to ensure that infrastructure requirements (water, sewer, schools, parks, etc.) had been met prior to the issuance of a building permit. There are numerous other regulations and systems in place that cause these requirements to be met before any project application can even be considered complete and potentially approved. These include the Subdivision and Development Review processes in accordance with Tracy Municipal Code Chapter 12 and Sections 10.08.3290 through 10.08.4110. Acquiring RGAs prior to building permits no longer serves any practical purpose. The sole reason RGAs remain within the Tracy Municipal Code is that Measure A is in place and requires them.

The amendment also makes the timeframe for maintenance of housing affordability consistent with State and Federal law requirements. Minor clarifications to Tracy Municipal Code Section 10.12.060 regarding exemptions are also proposed, and do not add, change, or delete any exemptions, but create sub-titles to ease understanding and readability of the section.

Proposed amendments to the GMO are consistent with the Initial Study and Negative Declaration for the Housing Element adopted by Council on May 15, 2012. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15183, no further environmental review is required.

Implementing a regulation to allow for the issuance of permits up to the RHNA does not have any environmental effects that were not already analyzed in the General Plan and in the Initial Study and Negative Declaration for the Housing Element.

There are no environmental effects that are peculiar to the project or that have not been previously analyzed because it does not affect a specific site, but rather implements a policy within the General Plan. Any future development that may result from the amendment will be subject to further site-specific environmental analysis. There are also no significant off-site or cumulative impacts that have not been previously discussed or any new information that was not known at the time of the Initial Study and Negative Declaration for the Housing Element.

The Planning Commission held a public hearing to discuss the proposed ordinance on November 14, 2012, and voted 3-2 recommending that Council not approve the proposed ordinance because it did not clearly state that RGAs would be counted as a part of building permit issuance. This provision has been added to the ordinance.

Staff recommended that Council introduce an Ordinance adding Tracy Municipal Code Section 10.12.065, and amending Tracy Municipal Code Sections 10.12.060, and 10.12.080, regarding building permit issuance for housing units to meet the RHNA for the Housing Element cycle and revising the timeline of affordable housing deed restrictions.

Dan Sodergren, City Attorney, indicated that Council Member Manne had considered the item as a Planning Commissioner and that it was appropriate for him to consider it in his new position of Council Member.

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

The Clerk read the title of proposed Ordinance 1184.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to waive reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to introduce Ordinance 1184. Voice vote found all in favor; passed and so ordered.

4. FOLLOW UP DISCUSSION AND DIRECTION TO STAFF RELATED TO EXPANDING PROVISIONS OF THE EXISTING BOARDING UP OF BUILDINGS WITH UNSECURED OPENINGS ORDINANCE – Ana Contreras, Community Preservation Manager, provided the staff report. Ms. Contreras stated that since February 21, 2012, discussions have been held with Council regarding Council Member Rickman’s request for information regarding vacant buildings in the City of Tracy. Code Enforcement staff presented Council with a discussion item regarding the effects of long-term vacant, boarded properties in the City of Tracy and the concepts of:

- Amending the Tracy Municipal Code’s (TMC) by expanding the provisions of the existing Boarded Buildings Ordinance to control the length of time vacant buildings are boarded, with the goal of eliminating the problems of boarded buildings, and associated blight.
- Establish a vacant building registry requiring property owners to register vacant buildings with the City.

Problems Associated with Vacant Boarded Buildings - Longstanding, boarded buildings and neglected maintenance boarded buildings tend to become neglected buildings which develop into both the cause and source of blight in both residential and non-residential neighborhoods. The situation holds true especially when the owner of the building fails to actively maintain and manage the building to ensure it does not become a liability to the neighborhood.

Neglected buildings and/or substandard or unkempt buildings discourage economic development and hinder appreciation of property values. It is the responsibility of property owners to prevent buildings from becoming a nuisance to the neighborhood and community as well as a threat to the public health, safety, and welfare.

As such, these buildings constitute a nuisance. To adequately protect public health, safety and welfare, Section 9.60 of the Tracy Municipal Code was adopted, which provides for the manner in which open, unsecure buildings are addressed. The ordinance has been an effective tool by providing staff with the enforcement means to abate nuisance conditions.

Since enacting the Ordinance in 2006, approximately 17 buildings have gone through the boarding up process. These properties largely remain boarded today.

There are two continuums of boarded buildings: (a) vacant, boarded buildings and (b) vacant, boarded buildings which are dilapidated and in dangerous, substandard condition. Since the latter part of 2012, staff has repositioned its priorities and has proactively inspected all boarded buildings in Tracy. Following these inspections, staff discovered that of the 13 boarded buildings; five are in a dilapidated state and structurally unsound; therefore qualify for abatement under the Abatement of Dangerous Buildings Code. In addition to these proactive inspections, staff has substantially accelerated its enforcement efforts to (1) address the life safety problems associated with their condition, and (2) to prevent further neighborhood decline and begin the process of rebuilding surrounding neighborhoods.

Open and unsecured buildings, and other violations that may exist on these properties, may be addressed by use of the following tools: Administrative Citations, Criminal Penalties, a combination of both administrative and civil penalties, City-initiated abatement proceedings (when voluntary compliance measures are not achieved), City-initiated Receivership.

In extreme cases, the City may consider using the option of a Receivership process to address boarded, derelict properties when property owners fail to comply with other enforcement measures. California Health and Safety Code sections 17980.6 and 17980.7 set forth criteria as to whether a property qualifies for this receivership option. Properties eligible for Receivership include properties that show evidence of the following: The building is residential; and, the building is deemed unsafe or dangerous; or the building is an attractive nuisance (e.g. drug or gang house, homeless people squatting in the building and engaging in unsafe practices, minors using the building and engaging in unsafe practices, etc.).

Receivership cases are uncommon, because this process is only available under certain conditions. Also, the cases can be costly and the up-front costs to pay for a Receiver's services would come from the City's General Fund. Recovering these costs could ultimately be a lengthy process. In addition to these remedies, vacant property owners may post "No Trespassing" signs on the property and file a "No Trespassing" letter with the Tracy Police Department, pursuant to California Criminal "Trespass & Trespassing" Laws.

Property owners have been responsive to code enforcement actions relative to nuisance issues that are found to exist in these properties using the above remedies. Enforcement of violations on these boarded buildings and the land they reside on have been abated on a voluntary basis by the property owner(s) without the use of forced compliance measures.

While these properties have complied with Tracy existing vacant and abandoned building codes, they remain in a boarded up condition which may impact the aesthetics and value of the neighborhood.

The existing 13 properties identified as vacant and boarded meet existing City codes and are properly secured and boarded. These properties could remain vacant and boarded indefinitely provided they continue to meet code standards. Since the last Council discussion on this matter, Code Enforcement has been made aware of a new product that secures vacant property without exposing its vacancy to onlookers and provides an aesthetically pleasing alternative to traditional plywood boarding. The

product material consists of recyclable/recycled polycarbonate materials, which protect vacant buildings from intrusion, as well as providing the appearance of common glass windows.

Traditional plywood boarding discloses a property as being vacant. The surrounding homes and commercial real estate may drop in value, and invite vandalism, additional crime, squatting, graffiti, etc. In consideration of the expenses incurred by property owners when securing property with glass windows and/or plywood boarding, the City has identified an alternative material for permanently securing a property that is both less expensive than glass windows, and has greater resistance to inclement weather than traditional plywood boarding. This alternative material is a polycarbonate product. It is a viable, long-term alternative to plywood boarding. The material is made of 100% recycled polycarbonate material and is virtually unbreakable. Additionally, when securing the property, it gives the building a visually appealing appearance to surrounding neighbors as well as preserving the quality of those neighborhoods.

In addition to securing the structure, the see-through material is a safer alternative to traditional plywood boarding for first responders, because they can have a clear vision into the building prior to entry. Unlike plywood, the polycarbonate material does not warp or mold during inclement weather and only needs to be installed once, as opposed to plywood boarding which can require multiple replacements due to deterioration.

TMC Section 9.60.040 (b), standards for securing open and unsecured buildings, states alternative methods of securing doors, windows or other openings of any building or structure must be approved by the Building Official. In the Building Official's determination, consideration is given to aesthetics and other impacts on the immediate neighborhood and the extent to which the method provides adequate and long-term security against the unauthorized entry to the property.

Community meetings have been held with the Tracy Association of Realtors and with owners of property living near or adjacent to the boarded buildings. The goal of these meetings was to obtain comments, opinions and concerns regarding neighborhood impacts associated with these vacant buildings, in addition to obtaining feedback regarding possible amendments to the Boarded Buildings Ordinance. During a June 5, 2012, meeting with the Tracy Association of Realtors, the Association was not supportive of any changes to the existing Boarding of Buildings Ordinance. The topic of residential resale inspections was discussed, which had been mentioned by a member of the real estate community at the February 21, 2012, Council meeting. The program would require owners of single family residences and duplexes to pay a fee and submit to a city inspection in order to receive certification that the home contains no unpermitted construction, particularly extra rooms or secondary units prior to selling properties. This program was also rejected by the Association.

Based on staff's knowledge of resale inspection programs and in researching other cities' practices regarding these programs, there were substantial variances among the approaches taken by each jurisdiction relative to resale inspections. While the program would have an imposed fee as a partial funding mechanism, the staff hours necessary to perform these inspections would far exceed the intake fees. Staffing levels and budgetary constraints would make such a program infeasible to implement at this time.

On November 20, 2012, a community meeting was conducted at the Tracy Transit Station to hear concerns and comments from owners of vacant and abandoned properties as well as residents of property within 400 feet of boarded buildings. Over 200 letters were sent notifying owners and residents of the meeting. Seven people attended the meeting with five being owners of boarded buildings. The property owners were opposed to any amendments to the Boarding of Unsecured Buildings Ordinance, especially as they pertain to establishing a timeline for these buildings to be boarded.

The now abolished Community Development Agency adopted a Downtown Agency Plan in July 1990, with the specific goal of eliminating or reducing instances of blight and blighting conditions within the Community Development Project Area. The goals of the Agency were developed to illustrate a broad range of concerns that the Agency intended to address over the life of the Plan. The vast majority of the boarded buildings in the City of Tracy are located within the downtown area. The blighted conditions of this area were identified in the Plan as being in need of attention. Property values and building maintenance appeared to have improved at that time; however, there was still substantial evidence of deferred maintenance, lack of general upkeep, litter, graffiti, inappropriate signage and other blighted conditions; including vacant, undeveloped railroad property that was used by transients for sleeping and loitering.

The Community Development Agency and the Council placed a major emphasis on the revitalization of the downtown area. Projects in excess of \$50 million have been completed or are in various stages of development. They include the Downtown Streetscape Project, the Grand Theater, the Downtown Plaza, the Transit Station and the restructured Fire Administration Building.

To ameliorate improvement efforts in the Downtown area, the Community Development Agency approved a series of programs which staff implemented that are designed to assist with revitalization efforts within the boundaries of the Downtown Redevelopment Program area. These programs consist of three small grant programs to assist owner/occupied homeowners with needed property improvements, two low interest loan programs for substantial health and safety property rehabilitation, and a down payment assistance program to assist first time homebuyers in buying owner/occupied residences. In addition, a graffiti abatement program was established to help property owners purchase paint and materials to remove graffiti on private property. These programs were created as an incentive for property owners and to enhance property values downtown.

Since the abolishment of redevelopment agencies in 2011, all but one program has been eliminated. The one remaining program currently in place is the City's Free Tow program for inoperable vehicles on private property. This is a voluntary program with funding from the City's General Fund. Unfortunately, the loss of redevelopment funds has removed an essential tool for combating blight.

Ms. Contreras outlined the options for Council consideration relative to expanding existing codes regarding vacant and abandoned buildings.

Option 1 - Continue enforcing Tracy's existing codes to ensure open, unsecured buildings comply with the Boarded of Unsecured Buildings Ordinance. Staff will maintain monthly, proactive inspections of these buildings to ensure they meet all code provisions

and properties are maintained nuisance-free. This would likely result in maintaining the existing status of the vacant and boarded properties.

Option 2 - Amend the Tracy Municipal Code regarding vacant and abandoned buildings (residential and commercial). Establish timeframes for how long a vacant building can remain in a boarded state (must replace boards with windows or suitable substitute within 90 days of notice (suitable substitute could be this polycarbonate product) and allow existing boarded buildings no longer than 120 days to remove plywood and replace with a more permanent material, such as glass or polycarbonate product.

This option would ensure open, unsecured buildings comply with the Boarded of Unsecured Buildings Ordinance while providing a viable, long-term alternative to plywood boarding. This option would also provide visual appeal to surrounding neighbors and to neighborhoods in general.

Option 3 - Same as Option 2, but limited to commercial establishments regarding vacant and abandoned buildings. Establish timeframes that include only commercial properties (must replace boards with windows or suitable substitute within 90 days of notice (suitable substitute could be polycarbonate product)) both because they are generally more susceptible to unwanted intrusions and to aid with economic development in the community. This option takes into account the visibility of commercial properties which are more evident to residents and guests entering the City, as they are typically located on major streets.

The Resale Inspection Program would require additional staff hours to carry out the labor intensive functions of the program. Current staffing levels and budgetary constraints render the program unfeasible to implement at this time. The local Real Estate Associations have voiced opposition to the program. Should Council direct staff to pursue Option 2, there may be impacts to the General Fund if the City takes action to pay for window replacement from non-responsive property owners. These funds could be recovered when the affected property is sold or through other legal means such as through small claims court proceedings. However, this would require a reprioritization of staff time to focus on these vacant and abandoned properties. Alternatively, staff could continue to fine these property owners through its administrative penalties until compliance is achieved.

Staff recommended Council consider Option 2 as a means to proactively address the problem of long-standing vacant and abandoned buildings, and provide staff direction accordingly.

Mayor Pro Tem Maciel asked how the resale inspection issue emerged from the boarding building discussion. Ms. Contreras indicated a speaker at one of the meetings requested that the City look into it. Mayor Pro Tem Maciel asked if staff inspected the vacant buildings monthly. Ms. Contreras stated yes, and that she and the Supervising Building Inspector inspected the vacant properties, which was when it was determined that some of the properties fell into the dangerous building category.

Council Member Young stated the abandoned building windows would look better with the polycarbonate material, but the buildings would still look dilapidated. Council Member Young asked if the boarding costs were the responsibility of the property owner. Ms. Contreras indicated the City could step in and board the building and once all due

process has failed, could place a lien on the property. Council Member Young asked what the difference in cost was between plywood and polycarbonate. Ms. Contreras stated a 48 x 96 inch polycarbonate sheet cost approximately \$115 per sheet which includes the necessary brackets while the same size plywood costs approximately \$30 per sheet.

Council Member Rickman asked about the availability of the material. Ms. Contreras stated the material could be ordered and available within one week. Council Member Rickman referred to the house that burned and asked how long ago that happened. Ms. Contreras stated approximately ten years ago.

Council Member Manne asked when an inspection took place, what were some of the health and safety issues noted. Ms. Contreras stated truss failures, chunks of building falling off, water damage, and deferred maintenance.

Council Member Manne asked if updating the Municipal Code would reduce the squatter issue. Ms. Contreras stated it would reduce the blight and appearance of it being unkempt and unmaintained. Ms. Contreras added polycarbonate gives the illusion of someone living there lessening the chances of squatting and dumping.

Mayor Pro Tem Maciel stated he was concerned that the material would not make a difference on the buildings that have been vacant for decades.

Mayor Ives invited members of the public to address Council.

Dave Helm stated property rights were important and that they should be considered on a case-by-case basis.

George Riddle, 1850 Harvest Landing Lane, asked if the Tracy Association of Realtors had any comments. Ms. Contreras stated they asked that the ordinance remain as is. Mr. Riddle stated 20 years was plenty of time for property owners to remedy the problem.

Ricki Hippa asked about the graffiti resistance of the polycarbonate product. Mayor Ives stated any surface could become a subject for graffiti.

Guy Burns, P.O. Box 930, owner of a boarded building, stated the polycarbonate would not resist graffiti and asked about odd-sized windows, fumes when the product burned, and security issues because of transparency. Mr. Burns also asked for the life of the product and if it had been tested. Mr. Burns stated he was not convinced that the 12 properties will be enhanced with the addition of the polycarbonate product and urged Council to pursue Option 1.

Mayor Pro Tem Maciel asked Mr. Burns how long his property been boarded. Mr. Burns stated he applied for the boarded building permit two years ago for some of the windows.

Mayor Pro Tem Maciel indicated he believed that most property owners were waiting for the market to change and that the key is cooperation, asking how long is too long for a property to remain stagnant. Mr. Burns indicated not every property was the same and that he should be able to do with his property what he wants.

Mayor Ives asked how many of the boarded buildings meet the code for boarding. Ms. Contreras stated nine currently meet boarding standards. Mayor Ives indicated the plywood was used to make the structure secure and asked how many of the boarded properties were commercial. Ms. Contreras stated just the Long John Silvers site.

Mayor Ives thanked staff for their efforts.

Council Member Young stated the situation was definitely a problem and asked what the real issue is and what the viable solution is. Council Member Young indicated some people are apathetic and even though they did not show up does not mean they aren't concerned. Council Member Young stated something needed to be done, but she did not know what the answer was.

Council Member Manne stated he held private property rights highly and that while it is true we have the right to do what we want, there comes a point when it affects those surrounding you. Council Member Manne stated it was up to the property owners to do something with those buildings and that he was not sure putting plastic on them would resolve the issues. Council Member Manne stated he was in favor of Option 1 and asked staff to continue to look into the health and safety issues of those properties.

Mayor Pro Tem Maciel stated he reluctantly believed Option 1 was appropriate, but was not sure maintaining status quo was the answer.

Council Member Rickman stated the main issue was blight and that staff has the tools necessary to fight blight. Ms. Contreras stated staff does not have an ordinance that restricts ugly or unattractive properties.

Council Member Rickman asked how staff determines if a building falls under a health and safety issue and asked Ms. Contreras what she recommended. Ms. Contreras indicated if staff questioned the structural integrity of a building, they considered having the property owner submit a structural engineer report regarding the building.

Andrew Malik, Development Services Director, stated staff has been looking at these eight properties for some time and that most of these properties were in family trusts which hold a sentimental and emotional attachment. Ms. Contreras further indicated she has met with all the property owners and they are fully aware that something needs to be done and are aware of the City's next steps.

Mayor Ives indicated he was happy to stay with Option 1, stating the problem was not huge, was well known, and wanted to move along in dealing with the properties.

Council Member Rickman stated the main issue was health and safety and the incompatible use of commercial properties which can be done through zoning. Council Member Rickman asked staff if they have the tools they need. Mr. Malik stated yes.

It was moved by Council Member Young and seconded by Council Member Rickman to direct staff to pursue Option 1. Voice vote found all in favor; passed and so ordered.

Mayor Ives called for a recess at 8:57 p.m., reconvening at 9:08 p.m.

5. DIRECT STAFF TO CEASE NEGOTIATIONS WITH SPIRIT OF CALIFORNIA ENTERTAINMENT GROUP, INC., FOR A NEW EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT; ADOPT A RESOLUTION TERMINATING THE EXISTING EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC AND FIRST AMENDMENT WITH TRACY BLAST DEVELOPMENT, LLC; AND DIRECT STAFF TO RETURN AT A LATER DATE WITH OPTIONS FOR POSSIBLE USES OF THE CITY-OWNED PROPERTIES OUTSIDE OF THE CITY LIMITS ON THE WEST SIDE OF TRACY BOULEVARD ADJACENT TO LEGACY FIELDS AND ON THE EAST SIDE OF TRACY BOULEVARD NORTH OF ARBOR ROAD AND NORTH OF THE CITY'S WASTEWATER TREATMENT PLANT ("HOLLY SUGAR PROPERTY") – Andrew Malik, Development Services Director, provided the staff report. Mr. Malik stated on April 29, 2011, the City entered into an Exclusive Negotiating Rights Agreement ("ENRA") with Tracy's California Blast, LLC regarding City-owned properties outside of the City limits on the west side of Tracy Boulevard adjacent to Legacy Fields and on the east side of Tracy Boulevard north of Arbor Road and north of the City's Wastewater Treatment Plant ("Holly Sugar Property"). On September 18, 2012, the City entered into the First Amendment to the ENRA with Tracy Blast Development, LLC (Tracy's California Blast, LLC and Tracy Blast Development, LLC are collectively referred to as "Tracy Blast").

On November 7, 2012, Council directed staff to enter into negotiations with the Spirit of California Entertainment Group, Inc. ("Spirit of California") for a new ENRA regarding the Holly Sugar Property. At that time, Council also directed that the ENRA with Tracy Blast should remain in place until a new ENRA with Spirit of California was approved.

Since November 7, 2012, it has come to staff's attention that James B. Rogers may be or may have been associated with a number of other companies, lawsuits, bankruptcy proceedings, and judgment liens. Mr. Rogers is listed as the Chief Executive Officer, Secretary, and Chief Financial Officer of the Spirit of California in forms Mr. Rogers has filed with the Secretary of State. He is listed as the sole Director as well. Mr. Rogers also identified himself as the Chief Executive Officer of Tracy Blast. Therefore, on February 7, 2013, staff sent Mr. Rogers a letter requesting additional information on these matters, specifically requesting that all responses be of sufficient detail to allow staff to independently verify the information.

On February 20, 2013, Mr. Rogers sent a letter to staff in response to staff's request. Attached to his letter were three reference letters from: James P. Nichols, Attorney at Law; Sheryl Madison Lancaster; and Phillip L. McKitterick, with the Artisan Company. Many of the responses in Mr. Roger's letter were general in nature and were not supported by any documentation that staff could rely on to independently verify the information. Also, some of the responses seem to conflict with court documents. For example, in his letter, Mr. Rogers describes one lawsuit he is involved in (*Bennett v. Superior Court*) as relating to ". . . a private lender who is suing another private lender in a transaction I was involved in 4 years ago. Because I was a party to the transaction I was sued as well." The following is a description of the facts from the Court of Appeal's opinion in the case: Bennett filed this action on May 6, 2010, naming only James B. Rogers, the primary source of the alleged fraud. According to the original complaint as well as his subsequent pleadings, in August 2007, Bennett loaned Rogers \$2 million. Rogers represented that he planned to construct a home and "Guest House" on a parcel of land in Los Gatos and then sell the property to recoup Bennett's investment. In exchange for the loan, Rogers gave Bennett a promissory note, secured by a deed of

trust on the property. The deed of trust allowed Bennett to “call the loan due in full” if Rogers transferred any or all of the property.

On April 1, 2008, Rogers persuaded Bennett to “go off title” to the Guest House, ostensibly so he could refinance that part of the loan. The papers Bennett signed, however, transferred to Rogers all of Bennett's title to and interest in the *main property* as well as the Guest House. In his first amended complaint Bennett alleged that he had mistakenly signed these documents in reliance on Rogers's representation that only title to the Guest House was being transferred.

On August 7, 2008, Rogers conveyed the property to Lexington Consulting, Rogers's solely owned entity. Less than two weeks later, Lexington Consulting filed for bankruptcy protection. According to Bennett, Rogers had made no payments on the note since September 2007. When Bennett discovered that he had been removed from title to the main property, he contacted Rogers, who first blamed the title company for incorrectly drafting the documents, but then explained that he needed Bennett's name and deed of trust removed from the main property to facilitate the transfer to Lexington Consulting and the bankruptcy filing. Rogers allegedly told Bennett that Bennett had to be removed from the title to the main property because Rogers needed another \$250,000 to complete construction on the main property in order to sell it. In addition, Rogers explained, the second lienholders reportedly would not provide the additional funding unless Bennett was removed from title, because he had not signed a subordination agreement. These second lienholders were real parties in interest Magnate Fund # 2, LLC; Lodgepole Investments, LLC; and LHJS Investments, LLC (collectively, real parties). (*Id.* at p. 2.)

In the Bennett case, the question before the court was a procedural one -- whether the plaintiff's lis pendens he filed on the property should be expunged. A lis pendens is a recorded document giving constructive notice that an action has been filed affecting title or right to possession of the property. The Court of Appeal concluded that the lis pendens should not be expunged because the plaintiff adequately pleaded a claim for fraudulent conveyance. In his letter, Mr. Rogers also describes two other federal lawsuits he was involved in (*Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc.* and *James B. Rogers, et al. v. Federal Bureau of Investigation*) as follows: “In most cases when a lawsuit with a federal institution is initiated, the FBI has to be involved due to its federal insurance. I prevailed in both of these joint cases. I was awarded 350k dollars in damages. This case was closed 15 years ago.” According to a federal District Court's opinion in the case involving the FBI (*James B. Rogers v. Federal Bureau of Investigation*), Mr. Rogers and the other plaintiffs were alleging, among other things, that the FBI and IRS violated their civil rights during the course of the criminal investigation into a company they operated, Preferred Financial Group, Inc. The company purported to provide securities brokerage services to cater to European clients. It appears as if this case was dismissed by the Federal District Court.

Mr. Rogers has failed to provide staff with sufficient information on the matters outlined in its February 13, 2013, letter to allow staff to negotiate and recommend entering into a new ENRA with Spirit of California. Tracy Blast is currently in default under the ENRA, in part because Tracy Blast failed to provide required financial information. At the November 7, 2013, Council meeting, Mr. Rogers did not dispute the fact that Tracy Blast was in default under the existing ENRA.

Staff recommended that Council: (1) direct staff to cease negotiations with Spirit of California for a new ENRA; (2) adopt a resolution terminating the existing ENRA with Tracy Blast; and (3) direct staff to return at a later date with options for possible uses of the Holly Sugar Property.

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

James Rogers addressed Council outlining the process involved in the Exclusive Negotiating Rights Agreement and provided responses to staffs' concerns. Mr. Rogers requested that the meeting be extended to provide him time to work with staff to clear any concerns. Mr. Rogers stated he was in the process of completing the required financial information.

James Nichols, an attorney in San Mateo representing Mr. Rogers, addressed Council indicating he had not seen the letter asking for clarification of any lawsuits. Mr. Nichols commented on what he believed were misconceptions in the staff report.

Council Member Manne asked Mr. Rogers to speak to the bankruptcy. Mr. Nichols answered stating his understanding was that Lancaster had virtually no assets and no liabilities, and it was filed to clarify an issue regarding a bankruptcy transfer.

Cheryl Madison Lancaster indicated she has invested thousands of dollars with Mr. Rogers, has been treated with respect and honesty, and supported Mr. Rogers. Ms. Lancaster stated Mr. Rogers did not file bankruptcy to hurt her.

Susan Alcala, a resident on Hollywood Avenue, spoke in support of the project referring to its potential for job generation. Ms. Alcala asked that Council support the project.

Cindy Banister asked that Council give Mr. Rogers the time he needs to answer questions.

Steve Brenkwitz, a resident for 50 years, stated he trusted Mr. Rogers and was in favor of the project.

Angel Moreles, a resident since 2005, spoke in favor of the project.

Robert Dell Aringa, 18581 Bachetti Road, asked Council to direct staff to work with Mr. Rogers.

Arnold Fish, 17571 W. Bethany Road, spoke in favor of the project and the value it would add to the City's youth.

Dennis Lancaster stated he heard more about boarding windows than about this project.

Chelsey Adamson, a senior at Kimball High School, stated this project could change Tracy forever and that it was time for a change.

Mayor Ives asked staff to outline what has happened since November 2007, and negotiating the ENRA. Mr. Malik stated staff held a couple of meetings with Mr. Rogers on the ENRA in regard to the Cost Recovery Agreement. Mr. Malik stated meetings held

in December 2012, and January 2013, covered the Cost Recovery Agreement and that in early January some issues came to light.

Mayor Ives asked if back and forth communication took place regarding the Cost Recovery Agreement and at what point did it get hung up. Mr. Malik stated he did not believe it was hung up, but that staff was looking at deposit amounts and what would be necessary to move forward.

Mayor Ives asked how Mr. Rogers was notified. Mr. Malik stated he and Rod Buchanan, Interim Director Public Works, called Mr. Rogers on March 14, 2013, and left a message stating this item would be on the agenda March 19, 2013. Mr. Malik added that staff followed up with an e-mail which contained the staff report. Dan Sodergren, City Attorney, stated he was contacted in October 2012, by an attorney who indicated he was representing the Spirit of California, and therefore notified that attorney that the item would be on the March 19, 2013, agenda which the attorney acknowledged receiving.

Mr. Rogers indicated he has not met or had a conversation with staff since November 7, 2012.

Mayor Ives informed Mr. Rogers that Council was in a tough position and that he has spoken with Mr. Rogers regarding the project and indicated that he had to show the Council that the project is viable. Mayor Ives stated it was incumbent on Mr. Rogers to convince Council, without a shadow of a doubt that the project can happen. Mayor Ives indicated Mr. Rogers should have brought his best consultants to the meeting to support the project and show Council what has been done. Mayor Ives stated Council represents approximately 85,000 individuals and needs to assure the residents that this project is a good deal for the City.

Mr. Rogers indicated that is why he has been forwarding Council his newsletter. Mr. Rogers stated he has been waiting on direction from Mr. Malik and came to this meeting because of an attack on his reputation. Mr. Rogers further indicated he was spending \$100,000 per month on the project. Mr. Rogers referred to the bankruptcy mentioned indicating he did it to help a local investor safeguard their funds. Mr. Rogers stated he will work with staff but that he cannot get a Cost Recovery Agreement from staff. Mr. Rogers further stated he has been working for a year on the financial models for the project and has \$300 million lined up for the project.

Mayor Pro Tem Maciel stated when the project came to Council in its first iteration as a racetrack it sounded interesting and asked then how it was going to be paid for. Since then, the project has become grandiose and the same questions remain. Mayor Pro Tem Maciel further stated the City has requested financial information on Mr. Rogers and asked if that information had been provided. Mr. Malik stated staff has no financial information on Mr. Rogers or any expressions of interest from investors.

Mayor Pro Tem Maciel stated it appeared that those questions have not been answered and was concerned about the Merced project indicating he did not want to put the residents of Tracy at a similar risk. Mayor Pro Tem Maciel stated if Council agrees to give Mr. Rogers an additional 30 days it will be the last chance and that every question will need to be answered. Mayor Pro Tem Maciel suggested that the project be scaled down.

Council Member Manne indicated the project would put Tracy on the map. Council Member Manne, addressed Mr. Rogers, stating the responses to the letter requesting information were poor and incomplete. Council Member Manne stated Mr. Rogers partners with his investors well, but not with the Council. Council Member Manne indicated if Council extends the time period, 30 days should be sufficient to clear up the concerns.

Council Member Young indicated it was her first time addressing the project as a Council Member and that Council needed to be notified of meeting dates and copied on all correspondence. Council Member Young stated she was willing to give additional time for due diligence.

Council Member Rickman stated it was staff's job to bring concerns to Council and that there appeared to be a lack of communication on both sides. Council Member Rickman stated he would like Mr. Sodergren, Leon Churchill, Jr., City Manager and Maria Hurtado, Assistant City Manager, involved in a meeting that addressed any unanswered questions or concerns of litigation. Council Member Rickman suggested that if Mr. Rogers has investors in town, the Mayor or Council should be contacted to meet with them. Council Member Rickman indicated Council was not trying to kill the project, but concerns needed to be addressed.

Mayor Ives stated it looked like Council was willing to provide Mr. Rogers more time but specifics were needed regarding what Mr. Rogers should provide. Mayor Ives indicated they have talked about an ENRA and a reimbursement agreement.

Mr. Sodergren indicated staff did send a letter requesting documents and information to independently verify some of the issues. Mr. Sodergren added that the reason the lawsuits were listed in the staff report was because that was all staff was able to verify. Mr. Sodergren suggested that the requested information should come from Mr. Rogers in an official document form.

Ms. Hurtado suggested a two phase approach; the initial piece of information related to the financials that staff has not been able to verify, and the listed litigations and lack of documentation that can be independently verified.

Ms. Hurtado stated if Council were to give Mr. Rogers an additional 30-60 days to respond, the financial verification needed would be based on what the City's consultant says is true verification, as well as the litigation that Mr. Sodergren outlined in his letter, and the status of the corporation, its officers, purpose of the corporation and his involvement, and any legal settlement obligations that can be verified. Ms. Hurtado stated at that point staff could bring the information to Council and if it is satisfactory, then staff can begin ENRA discussions and a Cost Recovery Agreement. Ms. Hurtado indicated she understood that Council would like to be copied on all correspondence between staff and Mr. Rogers.

Mayor Ives asked if staff were to get the financial information and proper responses, would that provide what is needed for negotiation on the ENRA and Cost Recovery Agreement. Ms. Hurtado stated the City still needs the financial verification. Mayor Ives asked if it was plausible that the Reimbursement Agreement could be negotiated if all information is provided.

Mr. Sodergren indicated it was his understanding that Council would like to see the items outlined in Mr. Malik's letter of November 7, 2012. Mr. Sodergren reminded Council that the existing ENRA with Tracy Blast was in default, mainly due to the lack of financial information and that Council directed staff to keep it in place until a new ENRA is negotiated. Mr. Sodergren indicated direction was needed on that item.

Mayor Ives asked Mr. Rogers if he could fulfill the requests within 30 days. Mr. Rogers stated he would be able to provide the information contained in the letter within 30 days, after that point they would need to enter into an ENRA that had financial requirements tied into it. Mr. Rogers stated he could show the larger sums of money within 90 days.

Mayor Ives stated he was not asking for \$300 million dollars, just proof that it existed. Mr. Rogers stated the money is available to do projects but needed to go through the process.

It was Council consensus to provide Mr. Rogers with 30 days to answer questions posed to him in the February 7, 2013, letter. Mr. Sodergren indicated staff would need an additional 30 days to review the information Mr. Rogers provides.

Council Member Rickman indicated a meeting was necessary to mend fences.

James Nichols stated some records are not readily accessible from various cities, counties, or courts, but indicated they would respond within 30 days with the information that is available, so staff could begin work to verify the information.

Ms. Hurtado responded that bi-monthly meetings could be held with Mr. Rogers with the City Manager and City Attorney present. Ms. Hurtado stated staff would calendar an item to update Council within 60 days.

Mayor Ives indicated that process would begin building the confidence Council needs.

Mr. Rogers indicated it would be helpful if he could meet with Mr. Sodergren. Mr. Sodergren indicated he was contacted by an attorney who stated he represented the applicant and it was not professional courtesy to meet with an applicant without his attorney.

Mayor Ives stated the reason he wanted it clear to everyone what was required, was because there will be a bottom line, and a better working relationship will be established along with more confidence in one another.

Ms. Hurtado added that staff would need Mr. Rogers' financial information also.

Mayor Ives indicated to Mr. Rogers that at some point he would need to show that the corporation is able to perform in this manner. Mr. Rogers stated he would like to have a Council member present at the meeting.

Council Member Manne stated Mr. Rogers' personal financial information was absolutely needed; that it provides credibility.

Mr. Sodergren asked Council for direction regarding the existing ENRA. Mayor Ives asked Mr. Rodgers if he would honor the conditions of the original ENRA. Mr. Rogers stated yes.

Mr. Sodergren stated the ENRA was in default which is why staff recommended cancelling the ENRA. Mr. Buchanan added that payments for January, February, and March 2013, were due.

6. SECOND READING AND ADOPTION OF ORDINANCE 1182 AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002 - The Clerk read the title of Proposed Ordinance 1182.

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

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to waive reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Ordinance 1182. Roll call vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.

8. COUNCIL ITEMS

- A. Appointment of City Council Subcommittee to Interview Applicants for Vacancies on the Transportation Advisory Commission - Council Member Rickman and Council Member Manne were appointed to interview applicants for vacancies on the Transportation Advisory Commission.

Mayor Pro Tem Maciel requested an agenda item to discuss the possible naming of the Tracy Fire Range Facility after the late Police Captain John Serpa. Ms. Hurtado indicated staff would return to Council with the naming policy.

Council Member Young announced that the World Series Trophies would be present at City Hall Wednesday, March 20, between 4:00 p.m. and 6:00 p.m.

Council Member Rickman wished everyone a happy Easter.

Council Member Manne thanked Police Chief Hampton and Officer Brian Azevedo for allowing him to participate in a recent ride-along.

9. ADJOURNMENT - It was moved by Council Member Young and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered. Time: 11:06 p.m.

The above agenda was posted at the Tracy City Hall on March 14, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk