

Please compare the consolidated "Open Government" information available on the City of Benicia's website with that available in Tracy:

City of Benicia Open Government Information

It is the goal of the Open Government Commission to make it easier for people to access city government so that they may be more informed about what their city is doing. The information provided is to help increase the public awareness and knowledge about their government.

1. **Good Government**
 - 1.1 Conflict of Interest Statements
 - 1.1.1 Mayor Patterson
 - 1.1.2 Vice Mayor Campbell
 - 1.1.3 Councilmember Hughes
 - 1.1.4 Councilmember Schwartzman
 - 1.1.5 Councilmember Strawbridge
 - 1.1.6 City Manager
 - 1.1.7 City Attorney
 - 1.2 Approved document retention policy
 - 1.3 Investment policy
 - 1.4 Employee gift acceptance policy
 - 1.5 City Manager's Message on Transparency & City Employee Compensation


2. **Finance**
 - 2.1 2013-2015 Budget
 - 2.2 Council resolution adopting current budget
 - 2.3 General Fund overview
 - 2.4 All Funds Summary
 - 2.5 Five Year - Long Range Budget Model June 2009
 - 2.6 Most recent audited financial statements and auditor's letter
 - 2.7 Investment Policy

3. **Executive Management and Compensation**
 - 3.1 City manager employment agreement
 - 3.2 City attorney employment agreement and 2011 Amendment
 - 3.3 Council resolution approving a reduction in the compensation package for city manager, city attorney and city council

4. **Human Resources**
 - 4.1 Labor agreements and side letters
 - 4.2 Personnel rules
 - 4.3 Benefits summary sheets
 - 4.4 Whistleblower policy
 - 4.5 Salary ranges per position
 - 4.6 Gross wages for all city employees

5. **Open Government Documents**

- 5.1 Title 4 of the Benicia Municipal Code
(Open Government Ordinance)
- 5.2 2012 Brown Act
- 5.3 Participating in City Council Meetings
- 5.4 City Council Rules of Procedure
- 5.5 Open Government Tips
- 5.6 Code of Conduct
- 5.7 Whistleblower policy
- 5.8 Can I Vote?
- 5.9 Resolution 12-97, Amending the City's Conflict of Interest Code


 Approved Document Retention Policy.pdf

 Investment Policy.pdf


 General Fund Overview.pdf

 All Funds Summary.pdf

 Reduction in compensation package.pdf

 Whistleblower Policy.pdf

 City Attorney Contract 2007

 City Attorney Contract Amdt 2011

Next compare the Benicia City Attorney's efforts to instill an ethical atmosphere into City operation with the efforts of Mr. Sodergren:



City Attorney's Office MEMORANDUM

Date: January 10, 2012

To: City Council

Arts and Culture Commission

Civil Service Commission

Community Sustainability Commission

Economic Development Board

Finance Committee

Historic Preservation Review Commission

Human Services Board

Library Board of Trustees

Open Government Commission

Parks, Recreation & Cemetery Commission

Planning Commission

Sky Valley Open Space Committee

Traffic, Pedestrian and Bicycle Safety Committee

From: Heather C. Mc Laughlin, City Attorney

Re: Update Brown Act- 2012

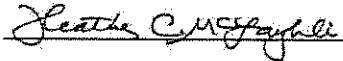
Attached is a copy of the 2012 Brown Act update. There were three substantive changes and one minor change to the Brown Act this year. First, compensation and stipends are limited for simultaneous or nearly simultaneous meetings. See new Government Code Section 54952.3. This is to protect against some of the abuses from other cities where council members would get meeting stipends for attending meetings of other agencies that are made up of the city council. Some cities had a practice of agendizing meetings even when there was not real business so the members could receive compensation. Second, meeting notices are required to be posted on the City's website for the City Council and boards and commissions if both the members receive compensation and the members include at least one member of the City Council. See amended Government Code Section 54954.2. We already post the Council agendas and your board and commission agendas on our website. We typically use the meeting agenda as the notice. Third, some technical amendments were made to Government Code Section 54954.6. Fourth, compensation changes for the City Manager, City Attorney and Department Heads may only happen at a regular meeting.

Here are a few reminders for you.

1. For the purposes of the Brown Act, know what is the quorum for your group. Quorum is the number of members needed to conduct business. Typically, it is a majority of the body. If there is an even number of members, quorum is 50% of the membership plus one. For the Council, three members constitute the quorum. Please note that a vacancy or absence does not change a body's quorum.
2. Use caution using email or other technology or people to "talk" about a matter. The Brown Act prohibits a majority of a body from using "a series of communications" either directly or through intermediaries to hear, discuss or deliberate on a matter. Questions to and from staff and members of a body are still allowed outside of a meeting so long as no one communicates the position or comments of a member to other members.

3. Use caution if you have a blog or an email newsletter. Not only can your comments show up in the newspaper or in litigation, they can also be used to claim a violation of the Brown Act if you are transmitting your positions and comments to other members of your body or to a third person who communicates the comments to members of your body. Remember, your decision-making should happen at a meeting in compliance with the Brown Act.
4. Finally, remember the perception on a Brown Act violation can do as much harm to public confidence in the process as an actual violation. While it may be permissible for you to do certain things under the Brown Act, please consider how the public will view your action.

Please let me know if you have any questions. Again, in the interest of saving paper, we have copied the update in a booklet format. If you would like a larger print (i.e. one page per sheet), please let my assistant Kathi Molinar know and she will prepare one for you. She can be reached at 746-4216.



cc: City Manager
Department Heads

Here are excerpts from Title 4 of the Benicia Municipal Code that deal with the public's rights, access to public records, and enforcement. It does not impose excessive (if indeed any) additional restrictions on the actions of City staff and should only be onerous to those who would conceal misconduct:

Chapter 4.04 IN GENERAL

4.04.010 Goal.

It is the goal of this title to make it easier for people to access city government so that they may be more informed about what their city is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings, easier access to public records, ethical guidelines and a watchdog commission will help increase the public trust and confidence in the city government and will increase the public awareness and knowledge about their government. A well-educated public and ethical officials are essential to good government. (Ord. 05-06 § 1).

4.04.020 Findings and purpose.

The city council finds as follows:

A. The Ralph M. Brown Act states: "The people of this State do not yield their sovereignty to the agencies which serve them."

B. It is the city's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.

C. Elected city officials, commissions, boards, advisory bodies and other agencies of the city exist to conduct the people's business. This title is intended to assure that the deliberations of these bodies and the city's operations are open to the public.

D. This title is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Benicia can be fully informed and thereby retain control over the instruments of local government in their city.

E. This title is intended to list and implement fundamental rights of each member of the public. (Ord. 05-06 § 1).

4.04.030 Fundamental rights.

Fundamental rights of each member of the public include, but are not limited to:

A. The right to receive meaningful, advance notice of agendas and packets of all meeting materials.

B. The right to attend, listen to and participate in all meetings without cost, signup, giving name or address or any personal information.

C. The right to speak with a meaningful amount of time on every agenda item separately, including each consent item, closed session or any report items without being required to sign up, give his/her name, or address, or any other information.

D. The right to interrupt the body for a point of order or clarification except to the extent that it becomes unduly disruptive.

E. The right to speak on any subject not on the agenda so long as the subject relates to the business of the body.

F. The right to criticize the body or members for their official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

G. The right to pull consent agenda items for public review and discussion.

H. The right to comment on every agenda item either during the public comment period on that item, under the general public comment period or in writing.

I. The right to use presentation tools when commenting.

A plaque listing these rights will be placed at the entrance of the council chambers. These rights shall be read aloud by the presiding official to the public at the start of each meeting unless the rights are posted in the meeting room. If the rights are posted, the presiding officer may state the rights are posted instead of reading them. (Ord. 05-06 § 1).

4.12.010 Release of documentary public information.

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Ord. 05-06 § 1).

4.12.020 Release of oral public information.

Release of oral public information shall be accomplished as follows:

A. Every department director shall be responsible for being knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The department will make every effort to facilitate the information requested and will make it a top priority.

B. It shall be the duty of the department director (or designee) or, in the case of requests not directed to a specific department, the city clerk to provide information on a timely and responsive basis to the public. It shall also be their duty to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

C. Public employees and city board, commission or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the city, department, board, commission or committee and does not materially misrepresent the city, department, board, commission or committee's position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. (Ord. 05-06 § 1).

4.12.030 Public review file – Policy body communications.

Every body specified in BMC 4.04.050 shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the body's duties which the clerk or secretary of such body has distributed to, or sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous 30 days or is scheduled or requested to be placed on the agenda within the next 30 days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this title. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file; provided, that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review. (Ord. 05-06 § 1).

4.12.040 Non-exempt public information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:

a. Sex, age and ethnic group;

b. Years of graduate and undergraduate study, degree(s) and major or discipline;

c. Years of employment in the private and/or public sector;

d. Whether currently employed in the same position for another public agency;

e. Other non-identifying particulars as to experience credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the positioning in question.

2. The job description of every employment classification.

3. The resumes of employees, although personal information such as home address shall be deleted.

4. Any adopted memorandum of understanding between the city and a recognized employee organization.

D. Law Enforcement Information.

1. The Benicia police department shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law such as the TNG Order, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the district attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. The final decision for disclosure shall be made by the city council and the vote and reasoning of each city council member shall be made public on all nondisclosures. Such redacted information may include:

- a. The names of juvenile witnesses or suspects;
- b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- c. The identity of a confidential source;
- d. Secret investigative techniques or procedures;
- e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
- f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.


2. The Benicia police department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.

F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the city council, or their standing committees.
2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social, legal or other services whose records are confidential by law. The nonconfidential portion, if any, of such records shall be disclosed.

G. Email correspondence retained in the ordinary course of business and not exempt from disclosure shall be made available within three working days upon written or oral request. All such email shall be maintained for two years before being destroyed. (Ord. 05-06 § 1).

4.12.050 Disclosure requests. 

A. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than five business days unless the requestor is advised in writing within one business day that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
2. The requested records are in the possession of the department processing the request;
3. The requested records are stored in a location outside of the department;
4. The requested records likely comprise a voluminous amount of separate and distinct writings;
5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.

B. All determinations made pursuant to subsections (A)(1) through (A)(5) of this section shall be communicated in writing to the requestor within five business days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than 10 business days after the written determination pursuant to subsections (A)(1) through (A)(5) of this section is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state a number by which the requestor may be contacted.

C. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but shall be advised that providing such information may help the city assist the person finding all documents responsive to their request.

D. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection (A) of this section shall be sent to the requestor if an address has been provided. (Ord. 05-06 § 1).

4.12.060 Immediate disclosure request.

A. An immediate disclosure request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, within the past calendar year, or (2) public records such as statements of economic interests that have, by other law, a requirement to be disclosed within a specific shortened time frame. All immediate disclosure requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.

B. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records pursuant to an immediate disclosure request that is submitted to any department or to any body shall be satisfied at the earlier of the time required by other law or no later than two business days unless the requestor is advised in writing within two business days that additional time is needed because of the volume of records sought or because the records do not qualify as subject to the immediate disclosure request procedure.

C. All determinations made pursuant to subsection (B) of this section shall be communicated in writing to the requestor within two business days of the date of the request. If additional time is needed or if the records do not qualify for an immediate disclosure request, the request shall be processed in accordance with BMC 4.12.050. (Ord. 05-06 § 1).

4.12.070 Withholding restrictions.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law.

B. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review. (Ord. 05-06 § 1).

4.12.080 Justification for withholding.

Any withholding of information shall be justified, in writing, as follows:

A. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

D. The final decision for withholding information shall be made by the city council. The matter shall be scheduled for action at the next regularly scheduled city council meeting unless such meeting is more than 30 days from the date of the request for action by the council. In the event that the next regular meeting is more than 30 days away, a special meeting shall be called. If the council decides records should be disclosed, the records shall be disclosed not later than 5:00 p.m. of the next business day following the council meeting unless the council specifies some other time. Each council member's vote and general reason shall be given and recorded in public. Detailed reasons need not be provided when such disclosure would compromise privacy or confidential matters or would subject the city to litigation. (Ord. 07-05 § 1; Ord. 05-06 § 1).

4.12.110 Requests made by email.

To ensure that email requests are received, records requests made by email shall not be effective until acknowledged by a return email of the city. Immediately upon receipt of an email request for records, the employee shall promptly acknowledge the request by a return email. Departments may establish a designated staff member or designated email address to receive email records requests. (Ord. 05-06 § 1).

Chapter 4.20 OPEN GOVERNMENT COMMISSION

4.20.010 Open government commission.

A. Duties. In the implementation of this title, the commission shall:

1. Advise the city council and provide information to other city departments and bodies on appropriate ways in which to implement this title with a priority on simple, standard procedures.
2. Assist in citywide training for implementing the title.
3. Develop and maintain an administrative process for review and enforcement of this title.
4. Propose amendments to the city council of this title as needed.
5. Report to the city council on any practical or policy problems encountered in the administration of this title.

B. The commission shall consist of five members of the public. All commission members shall have a demonstrated interest in open and ethical government through such activities as, but not limited to, attendance at meetings of government bodies, requests for documents from government agencies, disseminating information about government to others, and familiarity with the Brown Act and/or Public Records Act. All members shall be without known conflicts of interest and shall be residents of the city to the extent possible.

C. The commission will meet as needed, but at least quarterly, unless otherwise directed by the city council.

D. The commission shall provide an annual report on implementation and compliance with this title. (Ord. 08-05 § 2; Ord. 05-06 § 1).

4.20.020 Administrative review and appeal process.

A. An administrative review and appeal process is hereby established to review whether a meeting was held in violation of this title or records were withheld in violation of this title. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act. Further, such administrative review process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor.

B. Such review process shall include an:

1. Appeal to the city manager who shall make a decision within seven days of the appeal. (This step shall not apply in cases involving the city manager or members of the city council.)

2. Appeal of the city manager's decision to either the commission or a three-member panel of city attorneys, at the option of the person appealing the decision. The commission or three-member panel of city attorneys, as the case may be, shall first review the matter to determine if they have jurisdiction over the matter. If the complaint involves allegations that meetings were held in violation of this title or records were withheld in violation of this title, then they have jurisdiction to hear the matter and may hear the matter in accordance with the procedures established by resolution of the open government commission. The decision on jurisdiction is final unless judicial review is initiated.

3. If the commission or a three-member panel of city attorneys reviews whether a meeting was in violation of this title or records were withheld in violation of this title, their decision may be appealed to the city council. The decision of the city council is final.

C. Enforcement.

1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (B) of this section, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this title.

2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a body has violated this title. The costs and fees shall be paid by the body and shall not become a personal liability of any public official or employee of the body.

3. If the litigation is judged to be frivolous by the court, the defendant body may assert its right to be paid reasonable court costs and attorneys' fees.

D. Mediation. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any body, agency or department may demand immediate mediation of his or her request with the Solano County courts mediation service or some mutually agreed-upon person who agrees to volunteer his or her time serving as mediator.

E. Cure and Correction.

1. Nothing in this title shall prevent a body from curing or correcting an action challenged on grounds that a body violated any material provision of Chapter 4.08 BMC. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the commission, upon the conclusion of a formal hearing conducted pursuant to its administrative review process, determines that a body violated any material provision of this title, the body shall agendize for the challenged action to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) – (4), inclusive.

F. Reports or Recommendations from Meetings Alleged to Have Been Held in Violation of This Title. If the sole purpose or nature of an action that is challenged for violation of this title is to make or convey an advisory report or recommendation to another body, such body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said body to hear or take action on the item in the absence of such report or recommendation.

G. Penalties. The penalty for violation of this title by an elected or appointed official shall be commensurate with the violation and may include penalties, such as censure, including findings of fact and a determination, which shall be given to media selected by the commission.

H. Limitation of Actions. No person may file a complaint with the commission alleging violation of the notice provisions of BMC 4.08.050 if he or she attended the meeting or had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken. (Ord. 07-08 § 1; Ord. 05-06 § 1).

4.20.030 Responsibility for administration.

A. The city manager shall administer and coordinate the implementation of the provisions of this title for all bodies, agencies and departments under his or her authority, responsibility or control.

B. The city attorney shall staff, or provide staff for, the commission to permit the commission to fulfill the functions and duties set forth herein. The city attorney shall provide the commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The city clerk in the case of the city council and the assigned department in the case of other bodies shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

D. The city clerk or designee shall act as information request facilitator to assist members of the public with acquiring the information they seek. If it will take longer than 48 hours (excluding Saturdays, Sundays, and holidays) to obtain the information requested by a member of the public then the city clerk will provide a written concise explanation of how and when the information will be made available. (Ord. 05-06 § 1).

January 7, 2014

City of Tracy City Council
333 Civic Center Plaza
Tracy, CA 95376

By Hand-delivery and electronic mail

Mayor Ives and Council Members Maciel, Rickman, Young, and Manne:

Through this letter I object to City Manager Leon Churchill's involvement in the investigation of my December 17, 2013 complaint against Police Chief Gary Hampton for dishonesty, violation of oath, and obstruction of justice.

Mr. Churchill and City Attorney Daniel Sodergren both have a documented history of concealing police misconduct by failing to comply with mandatory procedures required by California Penal Code (PC) § 832.5 and by producing false writings denying that misconduct occurred. Because evidence of criminal misconduct by Mr. Churchill and Mr. Sodergren is a central aspect of the complaint against Mr. Hampton, they are also subjects of this complaint. The involvement of Mr. Churchill and/or Mr. Sodergren in any way in the management, performance, or the reporting of the results of the investigation of this complaint is unacceptable.

Note further that the complaint alleges misconduct constituting potential criminal violations of PC §§ 31, 32, and 182 on the part of Mr. Hampton. Tracy Police Department (TPD) Policy 1020.5 *requires* a separate criminal investigation:

Where an employee of this department is accused of potential criminal conduct, separate supervisor or assigned detective shall be assigned to investigate the criminal allegations apart from any administrative investigation.

Failure to follow this procedure is a criminal violation of PC §832.5.

At this time I am also requesting that my previous complaint against Mr. Hampton filed on January 17, 2012 be re-opened, as the procedures required by TPD Policy 1020.5 were not followed. This complaint alleged potential criminal violation of PC §§ 182 and 832.5 for failing to investigate a formal peace officer complaint and § 832.7 for failing to provide a proper notification of the disposition of this complaint. City records indicate that no external criminal investigation took place and I was not contacted by any investigator. Criminal conduct by Mr. Churchill and Mr. Sodergren was also central to this previous complaint. *Failure to conduct a criminal investigation as required by policy constituted a criminal violation of law by City staff.*

I await the response of an appropriate, uncompromised City official acknowledging the receipt of my December 17, 2013 complaint as well as the attached companion complaint against Mr. Hampton for knowingly misleading the public and the City Council through the remarks he made during the

December 17, 2013 City Council meeting. I also expect to receive a written description of the procedure that will be used to investigate these complaints. The standard provisions of TPD Policy 1020.5 cannot be applied to investigations of the Chief of Police.



Paul Miles
1397 Mansfield St.
Tracy, CA 95376

e-cc: San Joaquin County District Attorney
California Attorney General's Office
Central San Joaquin Valley Risk Management Authority
South San Joaquin Co. Risk Management Authority
Assembly member Susan Eggman
California State Senator Cathleen Galgiani
US Representative Jeff Denman
San Joaquin Co. Board of Supervisors
San Joaquin County Council of Governments
League of California Cities

January 7, 2014

City of Tracy City Council
333 Civic Center Plaza
Tracy, CA 95376

Sirs,

This letter constitutes a formal citizen complaint against City of Tracy Police Chief Gary Hampton for knowingly misleading the citizens of Tracy and the City Council.

In his testimony to the Council on December 17, 2013, Mr. Hampton stated that the judge in a complaint brought before the San Joaquin County Superior Court "who accepted and rendered an opinion did not find that I was criminally culpable for any of the allegations that Mr. Miles has alleged against me."

In fact, the judge did not render any opinion related to the allegations against Mr. Hampton. Rather, the judge opined that a civil court was not in a position to institute criminal proceedings. *None of the criminal allegations against Mr. Hampton have been adjudicated.*

Mr. Hampton sought to influence public policy and public opinion through provision of false and/or misleading testimony, implying that the allegations against him were not sustained and/or that he had been exonerated.

Mr. Hampton must set the standard for integrity in the Tracy Police Department through his own actions. This behavior is unacceptable.

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.



Paul Miles, 1397 Mansfield St., Tracy, CA 95376