

**February 18, 2014, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

Mayor Ives called the meeting to order at 7:00 p.m., and led the Pledge of Allegiance.

Pastor Tim Heinrich, Crossroads Baptist Church, provided the invocation.

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 Lieutenants Kami Ysit, Luis Mejia and Alex Neicu, and Police Sergeants Tim Bauer and Trevin Freitas.

Mayor Ives congratulated students from George Kelly, Wanda Hirsh, and Art Freiler Elementary Schools in recognition of their D.A.R.E. graduation.

Bridgette Hall, Chairperson, and Althea Elmore, Commissioner, presented the Youth Advisory Commission annual report.

Mayor Ives thanked the representatives for what they provide to the younger community and for their input. Mayor Ives also thanked the adult members of the Commission for their commitment.

1. CONSENT CALENDAR - Following the removal of items 1-A by a member of the audience and 1-B by Mayor Pro Tem Maciel, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
  - C. Acceptance of the Installation of Fiber Optics from City Hall to the Transit Station - CIP 77543, Completed by Kertel Communication Incorporated (dba Sebastian) of Fresno, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2014-021 accepted the project.
  - D. Acceptance of Muirfield 7 – Phase Four, Tract 3779, for Standard Pacific Corporation - Resolution 2014-022 accepted the project.
  - E. Acceptance of the Police Firearms Practice Range Restroom Building - CIP 71072C, Completed by Southland Construction of Pleasanton, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2014-023 accepted the project.
  - F. Approve Various Amendments to the Professional Services Agreements with Kimley-Horn and Associates for Completion of Roadway Analysis for Cordes Ranch and Tracy Hills Developments, and Authorize the Mayor to Execute the Agreements - Resolution 2014-024 approved the amendments.

- G. Approve Various Professional Services Agreements with West Yost and Associates Related to Water Analysis for Cordes Ranch and Tracy Hills Developments and Authorize the Mayor to Execute the Agreements - Resolution 2014-025 approved the agreements.
- H. Approve Amendment Number Three to the Professional Services Agreement with Kimley-Horn and Associates, for the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report and Authorize the Mayor to Execute the Amendment - Resolution 2014-026 approved amendment three.
- I. Approval of Four Master Professional Services Agreements with Kimley-Horn, First Carbon Solutions, Ascent Environmental, and De Novo Planning Group for Environmental Analysis (CEQA) Services and Planning Assistance for Various Projects and Authorize the Mayor to Execute the Agreements - Resolution 2014-027 approved the four agreements.
- A. Approval of Minutes – Paul Miles stated the minutes of December 17, 2013, fairly reflected the discussion. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to approve the regular meeting minutes of December 17, 2013. Voice vote found all in favor; passed and so ordered.
- B. Acceptance of the Downtown Plaza Project CIP - 78117, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Mayor Pro Tem Maciel indicated he pulled the item from consent because it was a significant accomplishment and one of the many positive things that have happened in Tracy. Mayor Pro Tem Maciel stated staff was able to utilize monies that would have otherwise been lost to the State when the Redevelopment Agency was dissolved. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2014-028 accepting the project. Voice vote found all in favor; passed and so ordered.
2. ITEMS FROM THE AUDIENCE – Steve Nicolaou addressed Council regarding the upcoming election asking that Council discuss and enact a local ordinance mandating that campaign contributions totaling \$50 or more be disclosed on a candidate's campaign disclosure form. Mr. Nicolaou asked that each Council member running for re-election as well as other candidates running for office voluntarily pledge themselves to disclosing all donors when the \$50 threshold is met.
- Paul Miles addressed Council regarding misuse of the City issued credit card by Leon Churchill, Jr., City Manager, previous complaints of police misconduct, criminal violations of law, and dishonesty. Mr. Miles stated the Council has failed to act and has left the City without a functioning government. Mr. Miles further stated he disagrees with the position of some that it is time to leave Mr. Churchill alone.
- Dave Helm addressed Council stating he was disturbed that he has heard from Mayor Ives and Mayor Pro Tem Maciel regarding Mr. Churchill's behavior, but not from other Council members. Mr. Helm discussed various expense reports submitted by Mayor Ives seeking mileage reimbursement. Mr. Helm stated there was no back up or explanation provided for Mayor Ives to seek mileage

reimbursement from Livermore to Stockton. Mr. Helm stated this subject needed to be discussed publically.

Mayor Ives stated Mr. Helm never called and asked for an explanation of the expense. Mayor Ives explained that mileage is a reimbursable expense and that Livermore is where his place of employment is located. Mayor Ives further explained that at least three times per month he is required to attend various City meetings in Stockton including the San Joaquin Council of Governments, the Rail Commission and the Partnership for Economic Development.

Mayor Pro Tem Maciel stated the Brown Act prohibits Council from taking action on an item from the audience, but does allow Council Members to make clarifying statements. Mayor Pro Tem Maciel stated while some members of the public may disagree with the action that was taken, Mr. Churchill had been held accountable.

Wesley Huffman thanked Council for their unstinting support of the Youth Advisory Commission and added he enjoys wearing the YAC hat.

2. ACCEPT CONSULTANT FINAL REPORT ON CITY COST ALLOCATION PLAN AND CONSIDER NEW SINGLE HOURLY BILLING RATE METHODOLOGY AND MODIFICATION OF COST RECOVERY AGREEMENT (CRA) OVERHEAD RECOVERY LEVELS – Jenny Haruyama, Administrative Services Director, provided the staff report. In August 2013, Management Partners presented a status update to Council regarding its evaluation of the City's cost allocation methodology and practices. Management Partners indicated that the City's cost allocation methodology was reasonable and within industry standards. Management Partners also met with members of the development community to review the City's current cost allocation practices. The consultants reported that developers were less concerned about the overhead methodology and more focused on the City's policy to recover full overhead costs. It was also determined that the City's presentation of its overhead charges would benefit from further clarification on customer invoices. Management Partners has recommended that the City's invoices be reformatted to ensure clarity and transparency for its customers.

Ms. Haruyama introduced Andy Belknap of Management Partners who provided the report. Mr. Belknap stated the City currently uses a multiplier methodology that is applied to engineering and planning hourly rates to recover indirect costs associated with planning and engineering services. This is what has been historically known as the "150%." Following Council direction, staff developed a single hourly billing rate methodology with guidance from Management Partners. Like the City's current practice, the proposed methodology is designed to recover planning and engineering's share of indirect costs through Cost Recovery Agreements (CRAs) and capital projects.

The single hourly billing rate model reflects four indirect costs categories: Divisional Indirect; Development Services (DS) Administration; Internal Services; and City-Wide Services.

1. **Divisional Indirect.** This category reflects the divisions' operating budget, less direct salary and benefits, and billed contracts, DS administration, and internal service fund charges.
2. **DS Administration.** This category represents support from executive administrative staff and department senior leadership support (Department Head, City Engineer).
3. **Internal Services.** This category represents support from internal service funds which include workers' compensation, building maintenance, vehicle operation, maintenance, and replacement, vehicle fuel, information technology, general equipment, and general insurance.
4. **City-Wide Services.** This category represents support from central services departments, including the City Manager, City Clerk and City Attorney, and Administrative Services Department (Finance and HR).

**Cost Recovery Agreements (CRAs)** - Staff met several times with the development community to discuss the proposed new methodology and received positive feedback. In response to Council direction, staff also discussed the different indirect cost categories and corresponding rates in the context of CRAs. Overhead recovered through CRAs is difficult to predict because it is based on activity level. After reviewing FY 12/13 General Fund year-end actuals, the City recovered approximately \$200,000 in indirect costs through CRAs. However, it is anticipated that there will be fewer CRAs over time as they are typically associated with larger development projects.

Staff compared the proposed rates to private sector charges for engineering and planning services and determined that the *Internal Services* rates were the most competitive. Under this scenario, it is estimated that the City would recover between 70-75% of its total indirect costs. Using FY 12/13 CRA overhead as an example, the City would recover \$140,000-\$150,000 of the \$200,000 using the Internal Services rates.

While the development community acknowledged that the *Internal Services* rates may be comparable to the private sector, they emphasized that the rates do not take into account additional cost associated with the time for the City to review, process, and approve various planning/engineering activities. Given this, the majority of developers expressed interest in having the *DS Administration* rates apply to CRAs. Under this scenario, the City would recover an estimated 65% of its total indirect costs, or \$130,000 based on FY 12/13 CRA overhead actuals.

### **Capital Projects**

Indirect costs are also recovered through capital projects and significantly exceed what is collected via CRAs. In prior years, annual overhead recovered through CIPs has been \$2-\$2.2 million. However, after calculating year-end actuals for FY 12/13, the amount recovered was approximately \$2.3 million. It is expected that the City would continue to recover this amount using the new allocation model and City Wide Service rate.

### **Policy Considerations**

Determining the level of cost recovery is a policy decision.

1. **Implement a Single Hourly Billing Rate.** Staff proposed that Council consider transitioning from a multiplier methodology to a single hourly billing rate to recover indirect costs. A single hourly billing rate provides the transparency requested by Council and the development community and is a more precise way of calculating and capturing applicable expenses.
2. **Consider modifying the City's Current Cost Recovery Practice.** The City's current practice is to fully recover all of its indirect costs. Council requested that staff explore recovery alternatives with respect to CRAs, which would impact general fund expenditures. Should Council choose not to fully recover overhead costs with respect to CRAs, staff recommended that the *Internal Services* rates apply.

Should Council adopt the new methodology and/or adjust overhead cost recovery levels for CRAs, staff recommended that the change be effective the date of the Council action. Adopting a single hourly billing rate cost allocation methodology based on a full cost recovery model will maximize the recovery of overhead, reducing the fiscal impact to the General Fund, assuming the application of City Wide Services rates. Using a rate other than the City Wide Services rate will reduce overhead recovery levels, and potentially increase expenses to the General Fund.

Staff recommended that Council take the following actions:

1. Accept Management Partners final cost allocation report.
2. Consider Single Hourly Billing Rate Cost Allocation Methodology to recover City Indirect costs.
3. Provide direction to staff regarding cost recovery levels for CRAs.
4. Maintain full cost recovery for indirect costs related to capital projects.

Kuldeep Sharma, City Engineer, provided information regarding Capital Improvement Project (CIP) soft costs.

Andrew Malik, Development Services Director, provided an example of CIPs that receive 100% funding (cost recovery).

Mayor Pro Tem Maciel stated he needed further clarification regarding Central Services which he believed was a fixed cost.

Ms. Haruyama stated there were a number allocation factors that were included in the City Wide overhead rate. Mr. Haruyama asked Ray Durant of Management Partners to further explain.

Mr. Durant explained the process for calculating the Central Services rate.

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

Council Member Manne asked if a comparative analysis was done against the current cost recovery plan. Ms. Haruyama stated the two methodologies were very different, but that they did attempt that comparison. Mr. Durant added a comparison was completed between the proposed rates and the old methodology and explained the differences.

Council Member Manne asked when comparing the two, which methodology was fairer. Mr. Durant stated in his opinion the hourly billing rate that was being proposed was fair and explained his reasoning. Mr. Durant stated it was a Council decision.

Council Member Manne asked if it was fair to say that in the past the City has not overcharged. Ms. Haruyama stated it was fair to say that the City was not fully recovering its costs.

Council Member Manne stated there were two goals; recover costs and to be fair with the development community. Council Member Manne stated a comparative analysis would have been helpful.

Council Member Young discussed overhead costs and the difficulty of determining when a project triggers the assignment of those costs. Council Member Young stated she would like to achieve a level where the City is being fair to the development community and the City is recovering its costs. Ms. Haruyama indicated Council chooses what they believe is appropriate.

Council Member Rickman referred to CIPs asking if the City was charging itself a fee by taking it from the CIP and placing it in the General Fund. Ms. Haruyama stated the City is recovering overhead where it is appropriate and recovering the overhead needed to move the project forward. Mr. Sharma explained the difference between CIPs and development programs.

Council Member Rickman asked if the City was charging itself. Mr. Malik stated overhead was a component of the costs. Ms. Haruyama stated the City is reimbursing itself for direct and indirect charges, and that Council Member Rickman's understanding was correct.

Council Member Rickman discussed items such as lights, desks and computers that are not project activated, asking if those costs were included in the fees. Ms. Haruyama stated yes.

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

Steve Nicolaou asked if the City ever considered privatizing Development Services and having a skeletal crew to oversee it.

Mayor Ives stated in his experience, the City has not looked at those specific functions.

Michel Bazinet stated overhead allocation is an arbitrary process and that many assumptions go into the calculations. Mr. Bazinet stated full cost recovery should not be an objective of the City and the City should charge development for a fair share of their consumption.

Veronica Vargas addressed Council stating entitlement projects have entitlement fees which developers are charged to cover the project. Ms. Vargas stated it sounds like the City was looking for a raise.

Council Member Rickman stated the single hour billing rate seemed easier to understand and more transparent. Council Member Rickman added he still struggles with Indirect Costs. Leon Churchill, Jr., City Manager, clarified that if you see City Wide overhead as a fixed cost, then there is logic to not recover that cost. However, allocating overhead is appropriate where a beneficiary can be identified.

Mayor Ives referred to Attachment 1 to the staff report and asked Council to focus on the column titled "City Wide Services" which appears to be the item Council is taking exception to.

Council Member Young stated she struggles with Internal Service Charges.

Council Member Rickman stated he agreed with Council Member Young regarding Internal Service Charges.

Ms. Haruyama recapped what she believed Council had concerns with charging including City Wide Overhead and Internal Service charges, which leaves Development Services charges.

Mayor Pro Tem Maciel stated an argument could be made for attempting to recover Internal Service Charges.

Council Member Rickman asked if small businesses use Cost Recovery Agreements. Mr. Malik stated not typically.

Council Member Young discussed the idea Mr. Churchill raised regarding identifying a beneficiary. Ms. Haruyama stated whatever choice is made, it should be consistent.

A discussion ensued regarding eliminating some of the items (Indirect Costs/City Wide Services) from the equation and establishing a percentage rate.

Mr. Durant discussed the pros and cons of eliminating Indirect Costs and City Wide Services from the equation.

Mayor Ives stated it was hard to say that there are no reasonable costs in each category, and that he had a problem eliminating all of them. Mayor Ives stated he prefers to have this as a policy. Mayor Ives stated he would like to see City Wide Services fees reduced.

Mayor Pro Tem Maciel stated it seemed the two areas in question are City Wide Services and Internal Services, suggesting staff come back with proposed reductions in each area.

Mr. Churchill stated he heard that City Wide Service Charges are not desired and the debate is focused on Internal Services.

Ms. Haruyama summarized that annual revenue from Cost Recovery Agreements totaled approximately \$200,000. If the City did not charge for City Wide Services, it would reduce that revenue by \$50,000; if the City did not collect Internal Services

Charges, it would be further reduced by \$70,000. In summary, the City would be collecting \$130,000 versus \$200,000.

Mayor Ives stated in some circumstances those fees could be negotiated. Ms. Haruyama stated the suggestion was inefficient and advised against the approach.

Council Member Rickman asked if the revenue was inconsistent. Ms. Haruyama stated yes, and was based on development.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to accept the Management Partners report.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to accept the Single Hourly Billing Rate Cost Allocation Methodology without specific numbers attached at this time. Voice vote found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne opposed.

It was moved by Mayor Ives and seconded by Council Member Manne, to direct staff to return with an item regarding the cost recovery level for Cost Recovery Agreements with options. Voice vote found all in favor; passed and so ordered.

Council agreed more options were needed regarding CIPs.

Mayor Ives called for a recess at 9:29 p.m., reconvening at 9:35 p.m.

4. **FISCAL YEAR 13/14 GENERAL FUND MID-YEAR BUDGET PERFORMANCE REPORT** - Jenny Haruyama, Administrative Services Director, provided the staff report. Mid-year trends indicate that General Fund operating revenue will exceed adopted budget levels. Expected increases in FY 13/14 revenue are based on continued economic growth and recovery. Current operating expense projections anticipate year-end savings due to vacancies, reprioritization of projects, and current and prior year expense trends. It is projected that the City will realize \$2.9 million at year-end.

Property tax trends continue to show signs of recovery. In the City of Tracy, property tax revenue is transitioning from a negative decline to steady growth. This is due to a reduction in foreclosures and turnover in homes and/or property reassessments. Given that property tax revenue projections for year-end are anticipated to be higher than adopted levels, a budget adjustment of \$1,228,820 was recommended.

The FY 13/14 adopted budget for sales tax was \$14.5 million; however, based on 2013 third quarter projections from the City's sales tax consultant, Muni-Services, FY 13/14 year-end sales tax revenue is expected to be higher. A budget adjustment of \$636,000 was recommended.

The increase in sales tax is due to changes in the City's top three key economic categories. According to Muni-Services' 2013 Third Quarter Sales Tax Report, the strongest categories are transportation, general retail, and food products. New auto sales are expected to continue through FY 14/15 and level out in subsequent years.



In November 2010, Tracy voters approved Measure E, a new half-cent temporary sales tax applicable to physical purchases made in the City of Tracy and online sales to Tracy customers. The tax began in April 2011, and will expire in March 2016. The FY 13/14 General Fund Adopted Budget assumes \$5.9 million in Measure E taxes; however, current projections indicate that the amount may be closer to \$6.6 million.

Franchise fees are currently received from gas and electric, cable television, and solid waste collection service providers. Franchise fee revenue currently represents approximately 5% of the General Fund budget. The FY 13/14 General Fund Adopted Budget assumed \$2.5 million in franchise fee revenue based on the prior year's estimated year-end figures. Conservative projections anticipate no change to the adopted amount.

The Other Taxes revenue category includes several tax sources, the most significant of which are Transient Occupancy Tax (TOT) and Business License Tax. The City levies TOT on all hotel and motel rooms within Tracy city limits. The City also requires all businesses located within the City of Tracy, or those that operate within Tracy to obtain a business license. Revenue received from the Other Taxes category is on target and is expected to be in alignment with adopted levels of \$1.6 million at the end of FY 13/14.

Revenue received from the Use of Money & Property category includes investment earnings and rental income from City property. The City earns interest income by investing monies not immediately required for daily operations in a number of money market instruments. While the General Fund reserve is not declining, capital fund balances fluctuate from year- to-year depending on the number of projects; therefore, FY 13/14 year-end projections are estimated to be approximately \$426,000 (\$344,000 lower than adopted levels).

Department expenditures are trending at or below the expected 50% budget level. Operating expense projections anticipate that the City may experience budget savings due to vacancies, reprioritization of projects, and current and prior year expense trends. The City could realize up to \$1.1 million in savings at year-end.

The FY 13/14 mid-year report reflects several proposed revenue and expenditure adjustments. Proposed adjustments would impact the General Fund and other non-general fund sources.

An expense adjustment in the amount of \$39,771 to the General Fund is requested to cover the cost of unanticipated street tree emergency removal services due to a storm in October 2013. This expense would be funded through anticipated excess revenue and year-end savings.

An expense adjustment in the amount of \$100,000 is requested to address airport fuel system repairs required by the San Joaquin County Environmental Health Department. This expense would be funded through anticipated excess revenue and year-end savings.

An expense adjustment in the amount of \$176,000 to the Non-General Fund is requested to cover increased operating costs as a result of purchasing a portion of the City of Lathrop's South San Joaquin Irrigation District (SSJID) capacity. This purchase

was authorized by Council in August 2013 and increased costs were expected at the time of the purchase. Supplemental funding is available via the Water Fund.

An expense adjustment in the amount of \$4,300 is requested to fund temporary work hours to assist with water conservation including, but not limited to, responding to requests for information, field inspections, and implementation of water conservation measures. Supplemental funding is available via the Water Fund.

An expense adjustment in the amount of \$102,000 is requested to fund an Accounting Coordinator position from development-related fees to coordinate all existing and new development reporting, including but not limited to: AB 1600 development impact fee reporting and fee revenue data for Finance and Implementation Plan (FIPs).

The Governor's FY 14/15 budget does not propose any fiscal or legislative changes that would impact local government or local control.

As of June 30, 2013, the General Fund has a reserve balance of \$28.9 million; approximately \$27.5 million is designated as unrestricted. The total unrestricted fund balance represented over 56% of total general fund expenditures for FY 13/14. Of the \$27.5 million in reserves, approximately \$12 million is allocated to the Reserve for Economic Uncertainty.

In January 2014, staff began strategic budget development discussions anticipating the need to maintain service levels and prioritize any recommended budget augmentations given the timing of future revenue and anticipated expiration of Measure E in FY 15/16. To date, the City has implemented nearly \$5 million in budget reductions due to targeted early retirements, vacancy eliminations, and consolidation of departments and executive management positions. Another \$3 million in savings will occur incrementally over the next three fiscal years (starting in FY 12/13) as employees begin to pay their share of PERS costs. Employees will pay their full share of employee PERS by FY 15/16. Also included in the FY 14/15 budget development process is the Capital Improvement Program (CIP) budget.

The mid-year budget analysis indicates that overall, assumptions for revenues and expenditures have not changed significantly, with exception of property tax and sales tax revenue. Several general fund and non-general fund expense adjustments have also been proposed.

The FY 13/14 General Fund Adopted Budget reflects \$14,410,000 in property tax and 14,502,900 in sales tax revenue. Based on current economic trends and projections provided by Muni-Services, both property and sales tax revenue are expected to be higher than the FY 13/14 adopted amounts. Authorization of revenue adjustments would increase the FY 13/14 adopted property and sales tax revenue to \$1,228,820 and \$636,000 respectively. Proposed general fund expenditure adjustments would increase the expenditure budget by \$137,371. This amount would be covered by anticipated FY 13/14 year-end savings and excess revenue. The proposed non-general fund expenses, which total \$282,300, would be funded through applicable sources, including the Water Fund and development-related fees.

Staff recommended that City Council accept the FY 13/14 General Fund Mid-Year Performance Report, and adopt a resolution authorizing a FY 13/14 Budget Adjustment.

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

Paul Miles urged caution in looking at the budget and consider that the City is still running approximately a \$3 million deficient if Measure E were not in place.

Michel Bazinet, Measure E Committee Member, stated the budget numbers are very good and that the City should be proud of its performance. Mr. Bazinet stated the Measure E Committee would like to see what the City's position is without Measure E.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2014-029 authorizing Fiscal Year 2013/2014 Operating Budget Adjustments. Voice vote found all in favor; passed and so ordered.

5. DISCUSS AND PROVIDE DIRECTION ON A COUNCIL COMMUNICATION POLICY – Mayor Ives stated he would like Council to consider the City of Menlo Park's policy and excused himself for the duration of the meeting at 9:54 p.m.

Leon Churchill, Jr., City Manager, provided the staff report. On July 17, 2012, Council discussed the establishment of a City Council procedure and protocol manual, a City Council communications Policy, and a City Council code of conduct guidelines. Council determined that additional information on a communication policy should be brought back for Council consideration.

On February 21, and 22, 2013, during the Council retreat, Council briefly discussed the development of a communication policy, a code of conduct policy, and the future compilation of a manual that contains all Council related procedures and policies for current and future Council members.

Mr. Churchill presented a sample Communication Policy for Council for Council consideration. Once the Communication Policy is adopted by Council, staff proposes to return to Council with a code of conduct agenda item for Council discussion, followed by a discussion on the development of a manual containing all Council related policies for easier future reference.

Council expressed interest in clarifying how communications to, from, and between City Council Members take place. Mr. Churchill referred to a draft communication policy which was attached to the staff report which addresses how written Council-related communication is handled and is largely based on current practices and City Council policies as well as state law requirements.

The Communications Policy is divided into three sections: The first section describes how communications to the City Council are distributed.

The second section describes how communication from the City Council is recommended. Particular attention is focused on the difference between Council members' representation of the City Council's official positions or actions versus individual Council member's views as residents and how these differences should be

differentiated when speaking to groups or individuals related to various issues. This section also clarifies the use of City Letterhead and other resources, as well as how confidential information is handled.

The last section of the draft Communications policy focuses on communications between City Council members and the importance of understanding City Council parameters bounded by the Brown Act.

Staff recommended that Council review and discuss the policy and provide direction.

Mayor Pro Tem Maciel asked if Council should consider restricting the use of texting during Council meetings.

Mayor Pro Tem Maciel invited members of the public to address Council on the item.

Paul Miles discussed the ability to receive communication during a meeting, attorney client privileged communication, a time limit for items on the agenda, currently policy regarding closed action minute reporting, and the possibility of a Council Member having a proxy when they cannot attend a meeting.

Dan Sodergren, City Attorney, stated attorney-client privilege is governed by State Evidence Code and the privilege does lie with the Council. Mr. Sodergren stated the composition of the Council is governed by State law and the City of Tracy, being a general law city, does not have that flexibility.

Mayor Pro Tem Maciel asked for clarification regarding time limits for items on the agenda. Mr. Sodergren stated Council does have the discretion to set time limits.

Robert Tanner stated the audience is expected to turn off their cell phones and if Council Members have their cell phones on, it is disrespectful to the citizens.

Council Member Young stated cell phones were part of technology and a resource for the Council. Council Member Young further stated as adults, Council should have sense of what is respectful while still giving attention to speakers.

Mr. Sodergren provided legal background information on cell phone usage during Council meetings.

Council Member Manne, referring to cell phone usage, stated it is appropriate to silence cells phones, but he would not turn his cell phone off during Council meetings for emergency reasons.

Mayor Pro Tem Maciel stated his concern was if Council was going to receive communication during open session, it should be open. Mayor Pro Tem Maciel stated there have been instances in the past when something was brought to one Council Member's attention and no one else was privy to that information. Mayor Pro Tem Maciel added that you cannot believe everything you read on the internet and that Council needs to rely on the accuracy of information provided by staff.

Mr. Churchill asked Council if there was any consensus on what should be added or deleted from a policy. Mr. Sodergren stated if Council chooses to adopt a policy, staff would make the changes and bring the item back on a future Consent Calendar for adoption.

Mayor Pro Tem Maciel asked for clarification regarding documents being presented during a meeting. Mr. Sodergren stated it would be better to qualify it within the existing policy.

Council Member Manne stated he was not in favor of adding any policy or rules and was in favor of the status quo.

Council Member Young stated the policy regarding presentations being received 24 hours in advance was pointless.

Mayor Pro Tem Maciel stated there was no Council consensus on this point.

Mayor Pro Tem Maciel asked if there was consensus on whether or not Council should be going on-line for information.

Council Member Rickman asked if it was against any State law to review or look up items on-line. Mr. Sodergren stated when Council is acting in a quasi-judicial role, they should only rely on evidence available to the public.

Council Member Rickman stated he has no concerns with the internet. Council Member Manne stated he agreed, adding technology should to be used appropriately.

Mayor Pro Tem Maciel stated there was no Council consensus on this point.

Mayor Pro Tem Maciel asked if there was consensus on sending or receiving texts excluding being notified of personal emergencies.

Council Member Rickman asked if there were any legal implications other than quasi-judicial reasons. Mr. Sodergren stated there could be an appearance of a Brown Act violation.

Mr. Sodergren stated he understood there was Council consensus to bring back a policy regarding communication.

Council Member Rickman stated he wanted to make sure the communication policy does not restrict Council contacting people on the outside or meeting with citizens.

Mayor Pro Tem Maciel stated if someone brings an item or information to his attention, he forwards it to the appropriate Department Head and copies the City Manager, provides contact information and a brief description of situation. Mr. Churchill stated he appreciated the practice.

It was moved by Council Member Young and seconded by Mayor Pro Tem Maciel to direct staff to bring back a communication policy for adoption based on information

presented to Council. Voice vote found Council Members Manne, Rickman, Young and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

6. SECOND READING AND ADOPTION OF ORDINANCE 1193 AN ORDINANCE OF THE CITY OF TRACY REZONING ASSESSOR'S PARCEL NUMBERS 235-070-64 & 66 FROM LIGHT INDUSTRIAL (M-1) TO MEDIUM DENSITY RESIDENTIAL (MDR). THE APPLICANT IS ANDRE STAMBUK AND THE PROPERTY OWNERS ARE JAVIER AND JUANA DIAZ. APPLICATION NUMBER R13-0001 - The Clerk read the title of proposed Ordinance 1193.

It was moved by Council Member Manne and seconded by Council Member Rickman to waive the reading of the text. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

It was moved by Council Member Manne and seconded by Council Member Rickman to adopt Ordinance 1193. Roll call vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

7. ITEMS FROM THE AUDIENCE – Paul Miles responded to Mayor Pro Tem Maciel's previous comments regarding the community's belief that Council did not address the misconduct of Mr. Churchill.

George Riddle commended Council for acting quickly to approve funds to address airport fuel concerns.

Mayor Pro Tem Maciel asked if it was known how long those repairs would take. Mr. Churchill stated between six and eight weeks.

8. STAFF ITEMS

- A. Receive and Accept the City Manager Informational Update – Leon Churchill, Jr., City Manager, provided the staff report.

Mayor Pro Tem Maciel asked what would happen to the former fire facility at Pescadero Park when the new fire stations were occupied. Mr. Churchill stated plans are underway and information will return for Council.

Council accepted the City Manager's informational update.

9. COUNCIL ITEMS – Council Member Young stated she would like to sponsor an agenda regarding options to address infrastructure issues in the Mount Oso, C Street, Mount Diablo area.

Council Member Young reminded everyone of upcoming events being held in honor of National Black History Month including an event at the Tracy Museum on February 19, 2014, at 7:00 p.m. titled Being Black in Tracy; Thursday February 20, 2014, at 6:00 p.m., Freedom Riders being held at the Grand Theatre, and February 28, 2014, at 6:00 p.m. at Merrill F. West High School, titled Shades of Black.

Mayor Pro Tem Maciel requested a Council discussion or workshop regarding ways the City can restore confidence from the community including how the City presents its financial information, enhancing transparency, enhancing accessibility and a review of credit card and purchasing policies with the intent to rehabilitate the image of civic government.

Maria Hurtado, Assistant City Manager, stated the senior leadership team contemplated an agenda item on March 4, 2014, with a plan to assess policies and procedures on internal controls.

Dan Sodergren, City Attorney, stated Mayor Pro Tem Maciel's item will be placed on the agenda as a sponsored item.

Council Member Rickman voiced concern regarding a discussion in a public forum on the topic. Mayor Pro Tem Maciel clarified that he was talking in general terms.

Council Member Rickman stated the people's trust and confidence is strained and that Council needs to hear from the people.

Mayor Pro Tem Maciel stated Council has taken action regarding Mr. Churchill.

Council Member Rickman stated the purpose of a closed session was to discuss public trust and confidence.

Council Member Manne stated he would like to have a closed session to ensure that Council Members are prepared to offer statements that are legal while also protecting the employee.

Mr. Sodergren stated a closed session would be appropriate if Council was discussing employee performance, and not appropriate if discussing policy.

Council Member Young stated there were two different issues. Council Member Young added that residents need to be able to air their concerns.

Council Member Manne stated individuals have valid concerns that need to be addressed and that Council should be prepared to have that conversation.

Mayor Pro Tem Maciel stated there was Council consensus to have an item on a future agenda regarding restoring confidence in city government.

Mr. Sodergren stated he heard Council consensus to have a staff item dealing with some of the issues Ms. Hurtado added as well as an item sponsored by Mayor Pro Tem Maciel. Mr. Sodergren stated the Mayor or three Council Members can call for an acceptable Brown Act closed session regarding employee performance. Mr. Sodergren stated he could send an attorney-client privileged memo offering legal advice.

Mayor Pro Tem Maciel stated he liked the offer by the City Attorney to offer an opinion under the attorney-client relationship.

It was moved by Council Member Rickman to have a closed session regarding Mr. Churchill's employee performance. Council Member Manne seconded the motion. Voice vote found Council Members Manne, Rickman and Young in favor; Mayor Pro Tem Maciel opposed; Mayor Ives absent.

Mr. Sodergren summarized the items to return on the next agenda: 1) A closed session; 2) A staff item; 3) An item sponsored by Mayor Pro Tem Maciel.

10. ADJOURNMENT - It was moved by Council Member Manne and seconded by Council Member Rickman to adjourn. Voice vote found Council Members Manne, Rickman, Young and Mayor Pro Tem Maciel in favor; Mayor Ives absent. Time: 11:37 p.m.

The above agenda was posted at the Tracy City Hall on February 13, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor

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City Clerk