

**March 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 7:09 p.m., and led the Pledge of Allegiance.

The invocation was provided by Pastor Scott McFarland, Journey Christian Church.

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

Mayor Ives presented a proclamation to Multiple Myeloma patient, Diane Colon-Montalbo, in recognition of Multiple Myeloma Awareness Month.

Mayor Ives presented Certificates of Appointment to new Measure E Residents' Oversight Committee members John Ferguson, Teresa Kandes, and Kevin Tobeck; and Certificates of Recognition to outgoing committee members Arch Bakerink, George Riddle, and Robert Tanner.

1. CONSENT CALENDAR - It was moved by Mayor Pro Tem Maciel 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 the Final Subdivision Map, Subdivision Improvement Agreement (SIA), and Deferred Improvement Agreement (DIA) for Tiburon Village, Tract 3290 (A.K.A. Ventana Subdivision), Authorization for the Mayor to Execute the Agreements, and Authorization for the City Clerk to File the Deferred Improvement Agreement with San Joaquin County Recorder - Resolution 2014-034 approved the map.
  - B. Approval of Permits for the Consumption of Alcoholic Beverages on City Streets for the Following Events: City of Tracy Downtown Block Parties on May 2, June 13, June 20, July 11, July 18, August 1, and August 15, 2014; City of Tracy "Girls Night Out" Event on May 9, 2014; Chamber of Commerce "Fourth of July Celebration" on July 4, 2014; Tracy City Center Association "Fall Wine Stroll" on September 27, 2014; and City of Tracy "Girls Night Out – Witches and Broomsticks" Event on October 24, 2014 - Resolution 2014-035 approved the permits.
  - C. Approve Amendment 1 to the Memorandum of Understanding Between the City of Tracy and the West Side Pioneers Association and Authorize the Mayor to Execute the Amendment - Resolution 2014-036 approved the amendment.
  - D. Authorization to Amend the City's Conflict of Interest Code - Resolution 2014-037 amended the code.

- E. Approve Extending the Term, By Eighteen Months, of the Exclusive Negotiating Rights Agreement with Combined Solar Technologies, Inc., for Green Energy and Thermal Desalination Project and Authorize the Mayor to Execute the Amendment - Resolution 2014-038 approved the extension.
- F. Approve an Exclusive Negotiating Rights Agreement (ENRA) by and Between the City of Tracy and Becker Commercial Properties for City-Owned Properties Located Near the Northeast Corner of Naglee Road and Grant Line Road and the Southwest Corner of Naglee Road and Pavilion Parkway, and Authorize the Mayor to Sign the Agreements - Resolution 2014-039 approved the agreement.

Deviation in agenda.

#### 11. STAFF ITEMS

- A. Receive and Accept the Interim City Manager Update – Maria Hurtado, Interim City Manager, provided information regarding a transition plan.

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

Council accepted the Interim City Manager's update.

- 2. ITEMS FROM THE AUDIENCE – Dave Helm addressed Council regarding the absence of a footnote on the Comprehensive Annual Financial Report, transparency and accountability, concerns with the City retaining the same auditor for ten years, and a severance package for terminated employees.

Larry Gamino addressed Council thanking them for approving an emergency Memorandum of Understanding establishing an alternate site for the Westside Pioneers Association to continue teaching students the importance of Tracy History since the fire at the Lammersville Historic School site.

Paul Miles asked that Council consider moving agenda item 12.A to be heard earlier on the agenda.

Mayor Ives asked Council Member Young if she felt the item was not placed appropriately on the agenda. Dan Sodergren, City Attorney, stated placement on the agenda does not make a difference for the purposes of the Brown Act. Mr. Sodergren stated the agenda item will allow Council to review the staff report and determine what Council wants to do next. Council Member Young recommended discussing the item as it currently appeared on the agenda.

- 3. PUBLIC HEARING TO CONSIDER A PRELIMINARY AND FINAL DEVELOPMENT PLAN APPLICATION FOR A CAR WASH AND VACUUM SERVICE ON THE WESTERN PORTION OF ASSESSOR'S PARCEL NUMBER 238-600-04 LOCATED IN THE TRACY MARKETPLACE. APPLICANT IS FRANK MADRUGA AND PROPERTY OWNER IS LAMORINDA DEVELOPMENT AND INVESTMENT CORPORATION. APPLICATION NUMBER D13-0014 – Kimberly Matlock, Assistant Planner, provided the staff report. Ms. Matlock stated the proposed project was a car wash tunnel, covered

vacuum areas, and associated parking area improvements proposed to be constructed on the western third of a vacant three-acre parcel within the Tracy Marketplace, north of Les Schwab Tire Centers.

The proposed vehicle service use is conditionally permitted in the General Commercial designation. On February 12, 2014, the project was granted a Conditional Use Permit to operate, contingent upon the City Council's approval of the Preliminary Development Plan/Final Development Plan (PDP/FDP). The property owner is concurrently processing a tentative parcel map to subdivide the parcel and transfer ownership of the one-acre project site to the project applicant (MS13-0006). The proposed project meets the City's Design Goals and Standards for commercial development.

The proposed parking area will provide adequate vehicular and pedestrian circulation in accordance with the requirements established in the Tracy Municipal Code, City Standards, and the I-205 Corridor Specific Plan, including substantial vehicle stacking area to the car wash for efficient circulation. The primary access to the site will be from the existing private access roads that run through Tracy Marketplace. The north-south access road along the western perimeter of the site will be acquired by the City for the future extension of Lammers Road from Byron Road to Grant Line Road. The future right-of-way is anticipated to be located at the face of the curb along the western planter. Until the Lammers Road extension is constructed, the access road will remain open for use.

The Planning Commission held a public hearing on February 12, 2014, to review and consider the applicant's proposed PDP/FDP and Conditional Use Permit. No concerns were raised. Planning Commission unanimously voted in favor of recommending City Council approval of the PDP/FDP and approved the Conditional Use Permit contingent upon the City Council's approval of the PDP/FDP.

The proposed project is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15332, which pertains to certain in-fill development projects. Furthermore, the project is consistent with the I-205 Corridor Specific Plan Environmental Impact Report certified on August 21, 1990.

Staff and the Planning Commission recommended Council approve the PDP/FDP for the car wash and vacuums, Application Number D13-0014, subject to the conditions and based on the findings contained in the City Council Resolution dated March 18, 2014.

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

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2014-040 approving a Preliminary and Final Development Plan application for the car wash and vacuum service on the western portion of Assessor's Parcel Number 238-600-04 located in the Tracy Marketplace - Application Number D13-0014. Voice vote found all in favor; passed and so ordered.

4. PUBLIC HEARING TO CONSIDER A VESTING TENTATIVE SUBDIVISION MAP AND A PRELIMINARY AND FINAL DEVELOPMENT PLAN AMENDMENT TO CONSTRUCT 60 DUPLEX UNITS ON APPROXIMATELY 4.32 ACRES AT THE NORTHEAST

CORNER OF LAMMERS ROAD AND FETEIRA WAY. THE APPLICANT IS VALLEY OAK PARTNERS AND THE OWNER IS TRACY WESTGATE APARTMENTS, LLC – APPLICATION NUMBERS TSM13-0004 AND PUD13-0004 – Victoria Lombardo, Senior Planner, provided the staff report. Ms. Lombardo stated in 2007, Council approved the Vesting Tentative Subdivision Map and Preliminary and Final Development Plans for Tiburon Village, for 103 residential lots. An amendment to the Vesting Tentative Subdivision Map of Tiburon Village was approved on August 20, 2013, to allow a density up to 5.6 dwelling units per acre and create 105 lots single family dwelling units. This subdivision is designated in the General Plan as Low Density Residential (LDR) for residential low development.

In addition to the in-tract subdivision improvements, the Subdivider will construct street and utility improvements on MacArthur Drive which include a masonry wall and frontage landscaping, a temporary pedestrian walkway along the west side of MacArthur Drive from the subdivision entry to Valpico Road, and the undergrounding of overhead utilities on MacArthur Drive.

The Final Subdivision Map has been reviewed as to its substantial compliance with design of the approved Vesting Tentative Subdivision Map.

There will be no impact to the General Fund. The Subdivider has paid the applicable engineering review fees which include the cost of processing the Final Subdivision Map and Subdivision Improvement Agreement.

Staff recommended that Council approve the Final Subdivision Map for Tiburon Village, Tract 3290 (a.k.a. Ventana), and authorize the Mayor to execute the Subdivision Improvement Agreement and Deferred Improvement Agreement, and authorize the City Clerk to file the Deferred Improvement Agreement with the Office of the San Joaquin County Recorder.

Mayor Ives asked if there were a total of 148 parking spaces. Ms. Lombardo stated, yes, for 60 units.

Mayor Ives opened the public hearing.

Douglas Rich, the applicant, thanked staff for working with them and the neighborhood for their input.

Jennifer Mastro, architect for the project, provided a presentation outlining the architectural features of the project.

Molly Lowe and a resident of Milton Jensen Court addressed concerns regarding the number of parking spots and increased traffic.

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

Council Member Rickman asked if staff had looked at other cities for industry standards regarding parking. Ms. Lombardo stated the City of Tracy standards are the same as other cities.

Council Member Rickman asked if there would be a homeowners association. Ms. Lombardo stated yes.

Mayor Pro Tem Maciel noted that the concerns expressed relate to current parking violations and asked if anyone has reported the problem to the Police Department for enforcement. Ms. Lombardo stated when she was made aware of the situation, she notified the Police Department who indicated they would increase patrols.

Council Member Young stated this type of housing product was needed in Tracy and draws in new people looking for places to live. Council Member Young stated she was in favor of project.

Mayor Pro Tem Maciel stated the project meets the goal of providing a variety of housing, was considered infill, and was close to freeway access.

Council Member Manne stated he had an opportunity to meet with the applicant and believes they are providing a quality project. Council Member Manne stated he also had concerns regarding parking, but believes the homeowners association can police any problems.

Mayor Ives asked why the City does not paint curbs red when there are no parking signs in place. Ms. Lombardo stated it was an option and suggested additional signage may help the problem.

It was moved by Council Member Manne and seconded by Council Member Rickman to adopt Resolution 2014-041, approving the Feteira Tentative Subdivision Map and Amendment to the Preliminary and Final Development Plan for a 4.32-Acre site located at the northeast corner of Lammers Road and Feteira Way – Application Numbers TSM13-0004 and PUD13-0004. Voice vote found all in favor; passed and so ordered.

5. COUNCIL UPDATE AND DISCUSSION REGARDING AQUATICS CENTER NEGOTIATIONS AND PROVIDE DIRECTION TO STAFF TO NEGOTIATE WITH WILD RIVERS, LLC FOR DEVELOPMENT OF AN AQUATICS CENTER AT THE ELLIS LOCATION – Andrew Malik, Development Services Director, provided the staff report. Mr. Malik stated on September 17, and October 1, 2013, Council directed staff to begin negotiations with Wild Rivers, LLC and Surland Communities for the potential development and operation of an aquatic center in the City of Tracy. Since the initial proposals submitted to the City by Wild Rivers LLC and Surland Communities were very different projects in scope and scale, staff developed a formal process to review individual project proposals based on a consistent set of criteria.

Immediately following the September 17, 2013, Council meeting, a staff aquatic center team was assembled to develop and implement a negotiation process to obtain more detailed information from each of the proposers. In order for staff to ultimately make a recommendation to Council selecting the best proposal, a Proposer Questionnaire was developed and sent to each developer on November 20, 2013.

The Proposers project and operational information outlined in Section 1 of the questionnaire was due to the City on December 16, 2013, while the financial information under Section 2 was due December 20, 2013.

The only proposal received by the City was submitted by Wild Rivers, LLC. Mr. Malik outlined the highlights of the proposal.

- Wild Rivers proposed the Ellis site as the best location requiring approximately twelve acres for amenities and seven acres for parking.
- A 25 meter activity pool rather than an Olympic size pool, which could then be operated year round, should demand warrant.
- A peak season operational schedule of 10:00 – 8:00 (Mid-June through Labor Day); suggesting a shorter schedule during off season (weekends)
- Youth swimming programs, junior life guarding and use by swim teams and the general public.
- Does not anticipate needing any financial assistance once the park is built and recommends being able to structure a deal that would return some or all of the assistance provided by the City.
- An initial step will be for them to obtain financing; adding that planning the project would take about three months and construction an additional nine to twelve months.

In analyzing the key elements of the Wild Rivers proposal, certain project assumptions were identified that require further policy discussion and direction.

Project Location and Physical Size - The Ellis site is the preferred location for Wild Rivers to build a privately constructed and operated aquatic center in the community. Other sites reviewed by Wild Rivers included the I-205 Mall area, Outlet Center lands, and the Holly Sugar property to name a few. According to Wild Rivers, the Ellis site is preferred because it is close to the residential part of the community while also being close to convenient freeway access.

Wild Rivers has indicated that they need a minimum of 20 acres to develop their proposed aquatic park concept in the community. The additional acreage, in part, is intended to handle the larger number of customers than originally anticipated under the original City aquatic center concept.

Policy Discussion/Direction - Council has already given direction to staff relative to negotiating a development agreement amendment with Surland Communities. In order to accommodate the aquatic center proposal from Wild Rivers, an additional four acres would need to be negotiated with Surland. Staff has had preliminary discussions with both Surland and Wild Rivers, which were positive and warranted further negotiations.

Project Amenities and Design - The new 20 acre aquatic center size recommended by Wild Rivers is necessary to accommodate a greater number of customers than the City's original concept. According to Wild Rivers, the proposed amenities would be consistent with development of their other facilities which are more water park in nature.

While there may be an industry formula for water park developers to accommodate more customers, Wild Rivers has indicated that they are open to including amenities and design concepts that meet the needs of both the community and the future neighboring Ellis residents. For example, Wild Rivers has proposed to include a recreational pool that can accommodate swim lessons as well as swim team practices inclusive of the lazy river which would allow for swimming against a current as additional conditioning.

Equally important is to design an aquatic center that will fit in with the neighboring Ellis community. Wild Rivers has indicated they are willing to work with the community and Surland to find a balance between desired amenities and design elements that will be compatible with the Ellis development. In fact, if the private Wild Rivers operation is successfully sited at Ellis, there may be an opportunity to address citywide aquatic needs.

Citywide Aquatic Solution - There are three primary aquatic needs within the community: recreation, competition, and instruction. Using the three available sites within Tracy (Ellis site, Joe Wilson Pool, West High Pool) all three of the needs can be met in a variety of ways at each location.

While the Ellis site would be built to suit the needs of the community, the West High Pool and Joe Wilson Pool would require some renovation and upgrades to better accommodate the needs of the community. These renovations would be done through the CIP process.

Staff recommended Council direct staff to enter into negotiations with Wild Rivers, LLC for development of a Public/Private Aquatic Center at Ellis. This option would allow staff, the community and Surland Communities to continue to refine the Ellis site amenities and design. Negotiations with Wild Rivers would also potentially leverage private funding to possibly solve community wide aquatic needs and provide for construction of aquatic facilities in the shortest time frame possible as any location other than Ellis would likely require further environmental review and property acquisition.

Mayor Ives stated he was pleased to be moving forward with Wild Rivers but voiced concerns regarding timing and processes. Mr. Malik stated it would require heavy coordination and communication with Council, but much could be done concurrently.

Mayor Ives asked for a time line. Mr. Malik stated negotiations with Wild Rivers would take approximately six months, concurrent with efforts on the other amenities.

Mayor Ives invited members of the public to address Council.

Molly Lowe voiced her anger and frustration in trying to bring a swim center to the community. Ms. Lowe stated the Joe Wilson pool will never meet their needs and the West High Pool, because of the handicap cutouts, will not make it eligible for swim meets.

Mayor Ives asked if the plan was to spend money at West High and change the pool or change the relationship with the school district. Mr. Malik stated conceptually they were looking at making improvements at the West High pool.

Ms. Lowe stated they have been working with City staff to make changes to the agreement at West High which has too many restrictions.

Dave Helm addressed Council regarding any additional CEQA analysis, CIP funding and a private partnership.

Steve Nicolaou discussed new water regulations in California and suggested Council retains the advice of water law counsel.

Marsha McCray provided background on the Dr. Powers site including parking limitations, loss of parking space, and required funds to upgrade the site. Ms. McCray suggested Council direct staff to explore options with Wild Rivers and Surland to see if a 50 meter pool can be included in the proposals.

Michel Bazinet stated he was encouraged by Wild Rivers who claims they are will to work with the community to define amenities and concepts.

Mayor Ives asked if there was anything to preclude discussions with Wild Rivers on a broader concept. Mr. Malik stated no.

Mayor Ives stated he believed that Wild Rivers becoming a partner with the City was a good thing. Mayor Ives further stated he would like to see a 50 meter pool in the Wild Rivers proposal and the Dr. Powers Pool open for recreational swimming.

Mayor Pro Tem Maciel stated he was an advocate of a 50 meter pool as part of an aquatic center. Mayor Pro Tem Maciel stated the City needs to move forward in negotiations with Wild Rivers. Mayor Pro Tem Maciel stated if the City has to rely on the West High Pool, the terms need to change regarding upgrading the site, and gaining additional control.

Council Member Young stated the delays have been frustrating and that she was encouraged at the options provided. Council Member Young further stated the competition pool is important and preferred it be placed on the Ellis site if possible. Council Member Young added that the character of the facility needs to go with the community and not an amusement area stuck in a housing area.

Council Member Rickman asked if anything was set in stone and if all options were on the table. Mr. Malik confirmed that nothing has been finalized and all options would be considered.

Council Member Manne stated the community would be involved in the discussions before any decision was made. Council Member Manne stated all options needed to be explored on parallel paths and fast.

It was moved by Council Member Manne and seconded by Council Member Rickman to direct staff to enter into negotiations with Wild Rivers LLC for development of a Public/Private Aquatic Center at Ellis. Voice vote found all in favor; passed and so ordered.



Mayor Ives stated he would like the community meeting for input held soon, and suggested a timeline be included in the April 1, 2014, staff report.

Mayor Ives called for a recess at 8:52 p.m., reconvening at 9:00 p.m.

6. RECEIVE UPDATE AND PROVIDE FURTHER DIRECTION RELATED TO AN AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, LLC FOR THE ELLIS DEVELOPMENT LOCATED ON APPROXIMATELY 321-ACRES OF LAND ON THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD – Bill Dean, Assistant Development Services Director, provided the staff report. Mr. Dean stated on April 18, 2013, the City and Surland Communities, LLC (“Surland”) entered into an Amended and Restated Development Agreement (“Development Agreement”). The Development Agreement provides in relevant part that, not later than the annexation effective date (September 15, 2013), Surland shall deposit into a swim center funds account \$2,000,000 for use by the City in the development, construction, operation and maintenance of a swim center. Surland subsequently submitted an application for an amendment to the Development Agreement to extend the time to make this deposit. On September 17, 2013, the Council authorized staff to negotiate such an amendment as long as the City received adequate consideration.

As part of the consideration for Surland’s requested amendment, staff will be recommending an extension of the time the City has to accept the Ellis swim center site. The Development Agreement requires Surland to offer and dedicate to the City approximately 16 acres of land for the location of a potential swim center. Surland has submitted to the City a proposed draft dedication offer. Under the Development Agreement, the City has until July 17, 2014, to accept the dedication offer. If the City does accept the dedication offer, Surland will have been deemed to have satisfied its community park obligation for the Ellis Specific Plan.

Staff has been considering the Ellis swim center site as the possible location of a swim center, and has been discussing this possibility with Wild Rivers, LLC (“Wild Rivers”). Wild Rivers is proposing a preliminary site plan reflecting a 20 acre site within the Ellis Specific Plan. Therefore, to accommodate Wild Rivers’ proposal, an additional four acres would be needed at the Ellis site. This may also require minor amendments to the Ellis Specific Plan.

Negotiating an amendment to the Development Agreement to add four additional acres of property, and processing any necessary Specific Plan amendments, will likely go beyond July 17, 2014.

Staff suggested that the City not accept the dedication offer until it has a commitment from Wild Rivers that it will develop a swim center on the site.

In order to have such an amendment take effect before the July 17, 2014, deadline, the City has to accept Surland’s dedication offer, which would have to be presented to the Planning Commission for consideration no later than May 14, 2014. The alternative to negotiating such an amendment to push out the timing for payment/land dedication acceptance would be recommending denial of Surland’s original request for an extension, thereby triggering the \$2 million payment.

Staff recommended that Council receive the update and direct staff to finalize negotiations with Surland for a one year extension of Surland's obligation to deposit funds in the swim center fund account; and a one year extension for the City to accept the dedication offer, and negotiate with Surland for an additional four acres of land for a swim center.

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

Dave Helm asked if there was a progress payment due last June of \$2 million. Mr. Dean stated there was a payment to be made no later than the annexation date of September 2013. Mr. Helm asked what the schedule was for the remaining funds due. Mr. Dean stated the request only asks to postpone the initial \$2 million payment for one year.

Mr. Helm asked why the City did not take the land now. Mr. Dean stated it comes down to whether there will be a center at that site or not. Dan Sodergren, City Attorney, stated it also involves a park site. Mr. Helm stated it was time to move forward.

George Riddle asked that Council ensure that any plans are done in accordance with ALUC plans for the Tracy Airport.

Michel Bazinet stated it does not matter if the \$2 million is given to the City now or later.

Robert Tanner stated Surland should pay now so the City can collect interest.

Chris Long, Surland Companies, stated they were not proposing a change to the ultimate \$8 million due in 2016.

Mayor Pro Tem Maciel asked if there was a downside to not accepting the 16 acres at this point. Mr. Sodergren stated accepting the 16 acres could lock that site into park land indefinitely which would be hard to convert to another use. In addition, if the City did convert to another use the City would have to recoup fees back in to the park fund.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to direct staff to finalize negotiations with Surland for a one year extension of Surland's obligation to deposit funds in the swim center funds account; and a one year extension for the City to accept the dedication offer, and negotiate with Surland for an additional four acres of land for a swim center. Voice vote found all in favor; passed and so ordered.

7. **SELECT AN EXECUTIVE SEARCH AND CONSULTING FIRM FOR THE RECRUITMENT OF THE CITY MANAGER POSITION AND AUTHORIZE THE MAYOR TO EXECUTE AN AGREEMENT** – Gary Hampton, Acting Assistant City Manager, provided the staff report. Mr. Hampton stated as of March 5, 2014, the City Manager position for the City of Tracy was vacated. The City requires the services of an executive search and consulting firm to recruit for the City Manager position.

The City solicited proposals from a number of reputable executive search firms. While two of the solicited firms had to decline submitting proposals due to their current case loads, four firms submitted proposals. Staff recommended that Council consider

choosing from one of the following three firms: Avery & Associates, Bob Murray & Associates, and Beckham & McKinney.

These firms are recommended based on the proposal packets they provided which detailed their experience in recruiting for City Managers throughout California, demonstrated their abilities to successfully find and place numerous City Managers as well as presenting strong references for previous placements at other municipalities.

Summary of Recruitment and Selection Process - The selected consultant firm will provide specific details about their process and necessary decision points directly to the Council as they may arise. Based upon the various steps associated with the recruitment and selection process, it is estimated that it could take approximately 17 weeks from the time the consultant is hired until a candidate is selected.

Based upon the selection of the Executive Recruitment Firm and the actual expenses related to the recruitment and selection process, the fiscal impact is estimated at \$26,000 and can be absorbed in the current Human Resources budget for FY 13/14.

Staff recommended that Council select a recruitment firm to conduct a City Manager search and authorize the Mayor to execute a Professional Services Agreement with the selected firm.

Council Member Young asked why four attachments were provided and only three recommendations. Mr. Hampton stated because staff was only recommending three firms.

Mayor Ives asked for the name of the principals from the various firms. Mr. Hampton stated Bill Avery of Avery & Associates, Bob Murray of Bob Murray & Associates, and Bobby Beckham of Beckham & McKinney.

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

Mayor Ives stated he had experience with Bill Murray & Associates and Beckham & McKinney. Mayor Ives added he liked the Beckham group because they spend time in the community and are expedient.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to adopt Resolution 2014-042 authorizing the Mayor to execute a Professional Services Agreement with Beckham & McKinney to conduct the City Manager recruitment. Voice vote found all in favor; passed and so ordered.

8. ACCEPT REPORT REGARDING THE CITY'S INTERNAL CONTROL WORK PLAN – Jenny Haruyama, Administrative Services Director, provided the staff report. Ms. Haruyama stated at the Tuesday, March 4, 2014, Council meeting, staff presented an overview of the City's fiscal and administrative policies and procedures, including the financial auditing process, which involves a comprehensive review of the City's financial statements and internal control processes. Staff also discussed next steps as it relates

to the development of an internal control work plan to protect City assets, control expenditures, and prevent misuse of City resources.

Phase 1: Credit Card Audit and Best Practice Review - On March 4, 2014, staff indicated to Council that it would develop a work plan involving a comprehensive review of the City's internal controls. The first phase of this work plan is attached for Council reference and includes following objectives:

1. *Reduce Risk and Exposure.* A key principle in risk management is to implement efforts that reduce exposure. Currently, Department Directors approve and assign credit cards to their respective employees. In light of recent events, Department Directors are actively reviewing the number of city credit cards and store cards issued in their individual departments with the goal of reducing that amount significantly. After a more thorough review of credit cards, it has been determined that there are 160 credit cards city-wide. Approximately 54 credit cards are employee issued cal-cards and 106 are store cards. To date, 6 cal-cards and 38 store cards have been identified for destruction, reducing the total number of city-wide credit cards to 116.
2. *Identify Best Practice Policy Models.* A best practices review of the City's administrative and financial policies is already underway. This policy research will include identifying best practice policies and procedures related to authorization and card issuance, cardholder responsibilities, lost/stolen cards and receipts, parameters for usage, purchase reporting requirements, and administrative/financial processing to name a few.
3. *Evaluate and Test Current Policy/Procedures.* Concurrent to the best practice policy research, staff will engage an independent auditor to conduct an audit of the City's credit card transactions/statements for FY12/13 and July – December of FY 13/14. This process will include an evaluation of the City's current credit card policy and procedures and extensive sampling of credit card transactions to determine compliance with City policy. The auditor will also provide recommended reporting requirements for cardholders and desk specific procedures for administrative and finance staff.
4. *Revise Credit Card Policy/Procedures.* The results of the best practice research, credit card audit, and policy/procedural recommendations from the auditor will be used to update the City's current credit card policy. Additionally, city-wide feedback will be solicited from administrative staff and existing cardholders regarding the proposed policy changes.
5. *Enhance Internal Control Training and Communication.* For internal controls to be effective, frequent communication and training must occur. Staff will develop a communications plan to ensure that all cardholders receive policy and procedural training regarding city issued and store credit cards. The proposed training may also include anti-fraud and use of public funds education. Additionally, cardholders will be required to sign an updated cardholder agreement form, acknowledging City credit card use parameters and responsibilities, and potential disciplinary action for non-compliance.

Phase 2: Transparency Initiative - Phase two of the Internal Control Work Plan involves the development of a Transparency Initiative. This initiative is reflective of the Council's Governance Strategy which promotes communication and civic engagement, financial transparency, and fiscal stewardship. The Transparency Initiative includes efforts to improve public access and understanding of City finances through the use of technology, including but not limited to open government software and upgrades to the City's financial system. Additionally, staff will begin to identify improvements to the City's website and explore the creation of a transparency webpage to consolidate information pertaining to council and administrative policies, statement of economic interests, fiscal, investment, and internal control policies, Public Record Request (PRAs) submission processes, PRA frequently asked questions, and information related to financial audits and reporting requirements.

Phase 3: Financial Review and Policy Update - Phase three of the Internal Control Work Plan will involve a review of the City's financial policies. Several of the City's policies are outdated and require modification. Examples of these policies include but are not limited to: travel expense and reimbursement, cell phone use, issuance and stipends, petty cash handling, and purchasing practices.

The Internal Control Work Plan is designed to be fluid in nature and is expected to change as phases are implemented. Monthly status reports will be scheduled to advise Council about staff progress, significant findings, and/or changes to the work plan.

Staff recommended that Council accept the report regarding the City's proposed Internal Control Work Plan.

Council Member Rickman asked if Interim Assistant City Manager Gary Hampton would be involved in the review. Mr. Hampton stated yes. Council Member Rickman asked if three months was a realistic time period in which to complete the review. Mr. Hampton stated the Interim City Manager would utilize him as long as necessary.

Maria Hurtado, Interim City Manager, assured Council that the goal was to make the project a priority.

Mayor Pro Tem Maciel expressed support for the plan. Mayor Pro Tem Maciel stated the City should be in a position where it was not vulnerable and a bright light shown on the credit card area.

Mayor Ives referred to part 3, phase 1, asking if an auditor has already been secured. Ms. Haruyama stated staff was in the process of finalizing the contract.

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

Dave Helm provided a brief history of credit card use problems and policy, discussed staff development, and shared his confidence in Gary Hampton.

Mayor Ives stated continuity needs to be maintained during the transition of the Interim Assistant City Manager.

Paul Miles discussed transparency, public records requests and the use of exemptions.

Mayor Ives asked staff to provide examples of why the City would need to purchase alcohol. Mr. Hampton provided examples of downtown block parties and events at the Grand Theatre. Mr. Hampton stated the practice of the City purchasing alcohol would be changed, and City employees would no longer buy or serve alcohol.

Council Member Rickman thanked Ms. Haruyama for her efforts.

Council Member Young stated it was important that processes are reviewed periodically.

Council Member Manne voiced confidence in the team that has been put together to complete the audit.

Council accepted the report regarding the City's Internal Control Work Plan.

9. REVIEW AND DISCUSS PRIORITY PROJECTS WHICH INCLUDE THE JUNE 18, 2013 COUNCIL ADOPTED STRATEGIES AND APPROVE RECOMMENDATION FOR DEADLINE ADJUSTMENTS ON SPECIFIED ACTION ITEMS – Maria Hurtado, Interim City Manager, provided the staff report. Ms. Hurtado stated on June 18, 2013, Council adopted Resolution 2013-088 outlining the City Council strategic priorities which contain a total of 131 action items under the four Council strategic priorities which contain a total of 131 action items under the four strategy areas.

*Governance Strategic Plan* - Three goals are outlined in the Governance Strategic Plan with 33 associated action items. Action items related to two of the three goals are in the process of being implemented or have already been completed. For Goal 3, related to identifying technological resources to promote communication, enhance city services, and promote organizational productivity, staff recommends extending the timeframes for two action items related to the implementation of the Enterprise Resource Planning Software. Due to the complexity of the system and scheduling conflicts, staff recommends extending the due date for action item 3.c.3 to April 1, 2014.

*Economic Development Strategic Plan* - The Economic Development Strategy contains four goals, one of which is progressing on schedule. Staff recommends due date extensions for three action items under Goal 1, two action items under Goal 3, and one action item under Goal 4.

Goal 1 relates to creating head-of-household jobs reflective of the City's target industries. Staff recommends that the due date for the action item related to the development of marketing and outreach plan to include quarterly newsletters, broker tours, and co-op advertising be extended from December 2013, to June 2014. The City is currently finalizing consultant contracts with the Pennino Group and the Placemaking Group. Staff recommends that the due date for the action item related to developing a business system to formally recolonize companies in Tracy be extended from December 2013, to August 2014.

Goal 3 relates to supporting a higher education presence in Tracy. Staff recommends that the due date of the action item related to the coordination of educational meetings to review and discuss the consultant's capacity analysis be extended from February 2014,

to July 2014, due to staff transition. The other objectives under this goal are in the process of being implemented or have been completed.

Goal 4 relates to positioning Tracy as the preferred location for start-up companies and entrepreneurial investment. Staff recommended eliminating the concept of securing a single office location for entrepreneurs, and negotiate a lease with property owners due to the recommendation from various high tech companies and other entrepreneurs. Staff will replace that objective with the coordination of two events per year, in partnership with the Chamber of Commerce, TiE (Talent, Ideas, Enterprise) Silicon Valley, or other entrepreneurial organizations with a focus support and access to specific entrepreneurial networking needs.

In addition to the priorities listed in the strategic plans, staff will continue to work with General Services Administration (GSA) relative to the Schulte Road Property.

Staff recommended that Council review the priority projects which includes the June 18, 2013, Council adopted strategies and approve recommendations for deadline adjustments on specified action items.

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

Paul Miles stated Mr. Denham must be riding the GSA hard because they will negotiate with the City.

Mayor Ives referred to the Economic Development Strategy indicating the strategy did not particularly say "jobs" although it was inferred. Ms. Hurtado stated the actual strategy has an entire goal dedicated to creating head of household jobs that targets various industries. Andrew Malik, Development Services Director, stated staff was currently working with eight major clients with positive job numbers.

No further direction was provided by Council.

10. ITEMS FROM THE AUDIENCE – None.

12. COUNCIL ITEMS

A. Receive Report on Citizen Police Review Boards and Determine Whether the City Council Desires to Explore Establishing a Similar Board – Police Chief Gary Hampton provided the staff report. Chief Hampton stated the United States Department of Justice has opined that the vast majority of law enforcement officers in this country perform their very difficult jobs with respect for their communities and in compliance with the law. Even so, there are incidents in which this is not the case. Federal and State laws have been adopted addressing police misconduct.

The laws protect all persons, citizens and non-citizens. Complaints regarding criminal police misconduct may be filed federally through the Federal Bureau of Investigations, or the State through the State Department of Justice. In California, criminal police misconduct may be reported through the California Attorney

General's Office, the County District Attorney's Office or the local law enforcement agency where the alleged criminal misconduct occurred.

Non-criminal police officer misconduct complaints may be reported directly to the local law enforcement agency. The Tracy Police Department is fully compliant with the state law. Tracy Police Department Policy #1020 *Personnel Complaint Procedure*; establishes procedures for the reporting, investigation and disposition of complaints regarding the conduct of members, employees and volunteers of the Department. The policy, in addition to an abbreviated pamphlet detailing how to bring a complaint against members of the Tracy Police Department, are published on the City web page and made available in the lobby of the police department.

Chief Hampton outlined the number of Citizen Complaints, Administrative Investigations and Interactions for the period 2009-2012. Personnel complaints originating from the public are generally classified as "Citizen Complaints" and are processed in strict adherence to State law.

The Chief of Police also has the authority to direct a personnel investigation into conduct and/or policy violations when information arises within the department through the normal course of leading and managing the daily operations of the department. These investigations are classified as 'Administrative Investigations' and reflect internal efforts to maintain accountability for strict adherence to department policies and procedures.

Over the past five years (2009-2013), the Tracy Police Department has received and investigated an average of 4.8 formal Citizen Complaints per year and also initiated 4.8 Administrative Investigations each year. In comparison, the police department experiences an average of 58,787 interactions with persons each year. The police department receives on average one formal Citizen Complaint out of every 12,247 interactions.

The relatively low number of Citizen Complaints each year is indicative of the opinion that the Tracy community is not distrusting of its police department or personnel working on their behalf. Likewise, the infrequent necessity to convene an Administrative Investigation supports the assertion that the Tracy Police Department holds its personnel to the highest professional standards. Complaints and their dispositions are reported annually to the California Citizen Department of Justice. The City Council and Tracy community also receive this information annually through the Tracy Police Department Annual Report.

Chief Hampton provided outcome from the Citizen Complaints and Administrative Investigations for the period 2009-2013. Of the combined total 48 Citizen Complaint and Administrative Investigations convened during the past five years, 21 (45%) concluded with sustained findings. Administrative Investigations convened by the department totaled 24, with 15 (60%) concluding in sustained findings; while the 24 Citizen Complaints concluded with 6 (21%) sustained findings.



In comparison, over the five year period 2001 through 2005, the state wide average of citizen complaints received by law enforcement agencies across the state concluded with sustained findings just over 10%. Thus, the Tracy Police Department personnel investigations into citizen complaints conclude with sustained findings twice as often as the state wide average. This does not suggest a lack of transparency, objectivity, or improprieties in the police department receiving, investigating and dispositioning personnel complaints brought by members of the public.

A citizen review board is typically a panel of appointed citizens serving to review citizen complaints against police officers. Often referred to as police review boards, or citizen oversight boards, such boards were first established in large cities across the country in the late 1950's and early 1960's. By mid-2005 there were, reportedly, more than 100 oversight/review boards in cities across the nation. It is estimated that three-quarters of the largest cities in the United States have some form of citizen oversight. Such oversight boards are not prevalent in smaller cities the size of Tracy. Seemingly, many oversight boards have been established when citizens of a community mistrust the police department and/or when there is a major incident involving the questionable use of force, or de-escalation thereof, which results in serious injury or death. The greater community of Tracy has not expressed mistrust in the Tracy Police Department, or its members, which can be attributed to the high ethical and professional standards established within the department.

The terms 'citizen oversight,' 'citizen review,' and 'civilian review' are commonly used and interchangeable. Chief Hampton discussed four types of oversight systems. Generally, what distinguishes the different types of review is the degree of independence from the police department. It should be noted, however, that almost all types of oversight or review processes are limited in scope to only formulating recommendations.

California law enforcement agencies are the subject of much ongoing and ever expanding review and monitoring by local, state and federal bodies. That review may be achieved through general annual reporting mandates, topic specific annual reporting and/or inquiries, or incident specific inquiry.

Because Tracy is a general law city, any review or advisory panel/board created to oversee Police Department citizen complaints, or Department operations, must be created in an advisory capacity only. Under California law, only charter cities have the flexibility to establish citizen review boards that have the power to investigate citizen complaints, conduct internal affairs investigations, conduct officer use-of-force investigations and review of police officers' personnel files.

General law cities, such as Tracy, have only those powers expressly conferred on them by the California Constitution or the Legislature. California Government Code Section 38630 gives control of the police department specifically to the chief of police who has the sole responsibility for investigating citizen complaints against members of the police department. California state law also specifically regulates the process for receiving, investigating, reporting and maintaining records of citizen complaints filed against peace officers. This process is well

established within the collective bargaining agreement of the Tracy Police Officer Association. Duties cannot be transferred from the purview of the Police Chief to a police advisory or review board in general law cities like Tracy include investigating citizen complaints, conducting internal affairs investigations, conducting officer use-of force investigations and the review of police officers' personnel files. However, citizen boards can provide *input and advice* relating to the process of conducting these investigations, police department policies, practices, equipment, resources and strategic direction. The Chief of Police is responsible for the confidentiality of peace officer personnel investigations. The Tracy Police Department fully complies with the laws establishing and regulating Citizen Complaints against peace officers and has established policies and procedures insuring full compliance with laws and the highest ethical standards.

Occasionally the question is asked why investigations into police officer conduct, initiated through a citizen complaint or internal inquiry, are not subject to public disclosure. California law provides that "*Peace officer personnel records and records maintained by any state or local agency... or information obtained from those records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery.*" Investigations into alleged police misconduct are in fact personnel records as defined by statute. This level of confidentiality was afforded to peace officers in recognition that they do not enjoy the rights that many other workers enjoy. Peace officers are routinely compelled through the potential of adverse employment action, to fully cooperate with personnel investigations, which may include answering self-incriminating questions.

Should City Council choose to establish the work group, staff would recommend that it is comprised of a broad representation of the community, City staff, Tracy Police Officer's Association and other members as directed by Council.

Staff recommended that Council receive the report and provide further direction relative to this matter.

Dan Sodergren, City Attorney, provided background on several types of citizen oversight boards as well as a comparison between general law and charter cities.

Police Chief Hampton added that the Police Chief has sole responsibility for overseeing the day to day operations of the Police Department. Police Chief Hampton added that he has taken steps to assign the responsibility to a professional standards officer who is a non-sworn member of the Police Department.

Council Member Rickman asked how many complaints have been filed by Mr. Miles. Police Chief Hampton stated Mr. Miles has filed complaints against four police officers, and one against him, and multiple complaints against some of those officers.

Council Member Rickman asked how much money the City has spent on processing those complaints. Police Chief Hampton stated the City has gone to great lengths to satisfy Mr. Miles, including hiring a law firm to conduct an independent review of his complaints. Police Chief Hampton estimated that over

\$125,000 in City resources and public funds have been expended to appease Mr. Miles.

Council Member Young asked for clarification regarding cities that have tried to create such boards. Mr. Sodergren stated he did not believe there has been a challenge for a general law city.

Council Member Young asked if the board served as an advisory group. Mr. Sodergren stated they would not deal with peace officer personnel files or complaints, but could give direction on policy in a general law city.

Council Member Young stated there should be some type of outlet where citizens can voice their frustration or another channel for recourse worth exploring.

Police Chief Hampton stated improvement can be made relative to providing more information to the community regarding options they have. Police Chief Hampton added in the case of Mr. Miles, he has been referred to the District Attorney who rejected his complaint, as well as to the State Attorney General. Police Chief Hampton stated he spends a lot of time in community outreach and hears complaints regarding service. Police Chief Hampton stated there are multiple ways for the community to reach out to the Chief.

Mayor Ives invited members of the public to address Council.

Paul Miles provided a presentation regarding civilian oversight of the Tracy Police Department.

Mayor Pro Tem Maciel stated Mr. Miles has questioned the integrity of Council and staff on numerous occasions and is concerned that there is no pleasing him. Mayor Pro Tem Maciel further stated there was no reason for him to believe that complaints and/or investigations have not been handled appropriately.

Council Member Young stated the purpose for her bringing this item to Council was because she believed it was a good idea for an individual to be able to bring a complaint before an unbiased board.

Paul Miles stated he has accused people of very bad things, and just asked that individuals look at the facts. Mr. Miles stated he has striven to be accurate.

Police Chief Hampton provided a recap of the misrepresentations made by Mr. Miles. Police Chief Hampton stated the staff report provided was an objective presentation of oversight boards in general and not directed to a specific individual.

Council Member Manne stated a review board is necessary if you believe the system is broken. Council Member Manne further stated he did not believe the system was broken and that he did not mistrust the current system or police force. Council Member Manne stated he did not feel there was a need for any type of review board.

Mayor Pro Tem Maciel stated he did not believe a citizen review board was necessary.

Council Member Rickman stated he has the utmost trust and respect for the Tracy Police Department and its leadership. Council Member Rickman stated every agency has oversight and a policy to address complaints. Council Member Rickman stated he did not believe a review board would make a difference.

Police Chief Hampton stated he wanted it on the record that the City Manager and City Attorney should expect to receive a complaint from Mr. Miles. Police Chief Hampton further stated that during his 32 years of service, the only complaints he has received have been from Mr. Miles.

Mayor Ives stated there was no systemic need for a review board, and that he hesitated adding any formality or bureaucracy. Mayor Ives asked staff to ensure that the processes are available and accessible, and to keep looking for best practices.

Council accepted the report.

Police Chief Hampton provided comments for the record: Regarding Police Chief Hampton's statements that Mr. Miles was being disingenuous or dishonest to the City Council relate to a California Highway Patrol (CHP) letter dated August 26, 2009, addressed to Mr. Miles and mailed to his home. Police Chief Hampton stated the letter clarifies that CHP staff provided Mr. Miles information regarding the traffic collision report involving his son. Police Chief Hampton further stated that initial information indicated that the Tracy CHP office did not review his son's accident report; subsequently it was found that the Tracy CHP station did review the report with Sergeant Sheneman, but that the CHP considered it an informal review. Police Chief Hampton stated Mr. Miles has been provided with all of the information. Police Chief Hampton further stated that Mr. Miles received a letter from Leon Churchill, Jr., City Manager, dated March 25, 2010, advising him on the disposition of his 2008/2009 complaint. In addition, on September 15, 2001, Mr. Miles received a disposition letter relative to his 2008 and 2009 complaints which were conducted by an outside entity hired by the City. On December 27, 2011, Police Chief Hampton responded to Mr. Miles' request for additional information.

Dan Sodergren, City Attorney, reminded Council it was after 11:00 p.m., and per policy they would need to determine whether or not to proceed with the remaining agenda items.

It was Council consensus to continue the meeting.

- B. Consider Whether an Item to Discuss a Public Records Act Request Log Should be Placed on a Future City Council Agenda – Maria Hurtado, Interim City Manager, provided the staff report. Ms. Hurtado stated at the City Council meeting held on March 4, 2014, Council Member Young requested that Council consider a discussion item related to a Public Records Act (PRA) request log.

Approval of Council Member Young's request would enable an agenda item to be brought back for discussion on a future Council agenda.

Mayor Ives asked if staff had checked with other cities for precedence. Dan Sodergren, City Attorney, stated staff has begun to compile information with plans to modify the City's website to include a comprehensive public records act section which provides background information and how to make a public records request. Mr. Sodergren stated staff was also looking at listing those public records that were most frequently requested by the public.

Council Member Young stated she would be pleased to hear about the best practices that staff found.

Mayor Pro Tem Maciel stated the public records act law was a great law and that he was in support of government transparency. Mayor Pro Tem Maciel stated he would like to see who is requesting records and what they are requesting.

Council Member Manne stated he was in favor of putting an item on a future agenda regarding a public records act log.

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

Michael Langley suggested the City have a log which requires the requestor to sign in, record what they are requesting, along with the date of the request.

George Riddle asked at what point do you determine that someone is abusing the system when they are looking for clarity.

Robert Tanner asked if there was a cost to the requestor. Mr. Sodergren clarified that the City could only charge the actual cost of duplicating the records.

Council Member Young stated a log would show how staff is spending their time and the impact on the City because of public records requests.

It was moved by Council Member Manne that staff prepare a future City Council agenda item with options relative to a Public Records Act request log. It was seconded by Mayor Pro Tem Maciel. Council Member Young stated she would like information included on the amount of staff time spent on public records requests. Voice vote found all in favor; passed and so ordered.

- C. Appointment of City Council Subcommittee to Interview Applicants for Vacancies on the Transportation Advisory Commission – Council Member Young and Council Member Rickman were appointed to interview applicants to fill two upcoming term expirations on the Transportation Advisory Commission

13. ADJOURNMENT - It was moved by Council Member Manne and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered.  
Time: 11:50 p.m.

The above agenda was posted at the Tracy City Hall on March 14, 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