

Tuesday, December 3, 2019, 7:00 P.M.

City Council Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

Americans With Disabilities Act - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6000) 24 hours prior to the meeting.

Addressing the Council on Items on the Agenda - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

Consent Calendar - All items listed on the Consent Calendar are considered routine and/or consistent with previous Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Addressing the Council on Items not on the Agenda - The Brown Act prohibits discussion or action on items not on the posted agenda. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed, including those distributed within 72 hours of a regular City Council meeting, to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

Notice - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL
PRESENTATIONS

1. CONSENT CALENDAR

- 1.A. APPROVE AMENDED OCTOBER 1, 2019 REGULAR MEETING MINUTES AND NOVEMBER 5, 2019 SPECIAL MEETING MINUTES
- 1.B. ADOPT RESOLUTION AUTHORIZING THE SUBMITTAL OF AN APPLICATION, ACCEPTANCE OF AN ALLOCATION OF FUNDS AND EXECUTION OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, BY THE MAYOR FOR AN AIRPORT IMPROVEMENT PROGRAM (AIP) MATCHING GRANT FOR CIP 77583
- 1.C. AWARD A CONSTRUCTION CONTRACT TO ST. FRANCIS ELECTRIC, LLC OF SAN LEANDRO, CALIFORNIA, IN THE AMOUNT OF \$265,400 FOR THE TRAFFIC SIGNAL MODIFICATION AT SCHULTE ROAD/LAURIANA LANE AND TRACY BOULEVARD/TENNIS LANE INTERSECTIONS PROJECT, CIP 72111 AND CIP 72115, WITH A NOT TO EXCEED BUDGET OF \$420,000, AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$27,000, IF NEEDED
- 1.D. ESTABLISH A NEW CIP (78183) FOR CITY WIDE BIKEWAYS MAINTENANCE AND AUTHORIZE AN APPROPRIATION OF \$75,000 FROM TRANSPORTATION DEVELOPMENT ACT (TDA) FUND (F241)
- 1.E. WAIVE SECOND READING AND ADOPT ORDINANCE 1277, AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 6.36 OF TITLE 6, "BUSINESSES, PROFESSIONS, AND TRADE" OF THE TRACY MUNICIPAL CODE TO ESTABLISH LOCAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY
- 1.F. WAIVE SECOND READING AND ADOPT ORDINANCE 1278, AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.3196 OF CHAPTER 10.08 "ZONING REGULATIONS" OF TITLE 10 "PLANNING AND ZONING" OF THE TRACY MUNICIPAL CODE TO ESTABLISH LAND USE RESTRICTIONS ON COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

2. ITEMS FROM THE AUDIENCE

3. REGULAR AGENDA

- 3.A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE PERMITTED USES IN THE GENERAL HIGHWAY COMMERCIAL ZONE OF THE RESIDENTIAL AREAS SPECIFIC PLAN (SPA19-0003) AND A DEVELOPMENT REVIEW PERMIT FOR AN ASSISTED LIVING AND MEMORY CARE FACILITY (D19-0019) ON APPROXIMATELY 2.73 ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND ALEGRE DRIVE (2050 W. GRANT LINE ROAD) – THE APPLICANT IS SUMMIT SENIOR LIFE, LLC.
- 3.B. INTRODUCE AN ORDINANCE AMENDING CHAPTER 11.12 “UNIFORM BILLING, COLLECTION AND DELINQUENCY PROCEDURES FOR CITY SERVICES” AND ADOPT RESOLUTION ESTABLISHING POLICY ON DISCONTINUATION OF RESIDENTIAL WATER SERVICE FOR NONPAYMENT TO IMPLEMENT SENATE BILL 998
- 3.C. CONDUCT A HEARING TO APPROVE A SALES TAX AGREEMENT WITH HOME DEPOT U.S.A., INC. AS PART OF THE CITY’S OFFICE/INDUSTRIAL INCENTIVE PROGRAM
- 3.D. RECEIVE PRESENTATION BY VERIZON WIRELESS ABOUT SMALL WIRELESS FACILITIES AND 5G WIRELESS TECHNOLOGY
- 3.E. ADOPT COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE
- 3.F. DISCUSS COUNCIL VACANCY POLICY AND PROVIDE DIRECTION TO STAFF
- 3.G. RECEIVE INFORMATIONAL REPORT ON THE TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT
- 3.H. DISCUSS POTENTIAL ORDINANCE REGULATING THE SALE OF E-CIGARETTES/VAPING AND/OR THE SALE OF FLAVORED TOBACCO AND PROVIDE DIRECTION TO STAFF
- 3.I. PROVIDE DIRECTION ON FY 2019/20 STRATEGIC PRIORITIES AND APPROVE COUNCIL WORKSHOP REPORT AS OCTOBER 2, 2019 SPECIAL MEETING MINUTES
- 3.J. CONSIDER AN ORDINANCE AMENDING THE COMPENSATION FOR THE COUNCIL AND MAYOR IN ACCORDANCE WITH STATE LAW
- 3.K. CONSIDER URGENCY ORDINANCE TO PROVIDE TENANTS WITH JUST CAUSE EVICTION PROTECTION AND INTERIM RENT STABILIZATION UNTIL ASSEMBLY BILL 1482 TAKES EFFECT ON JANUARY 1, 2020

4. ITEMS FROM THE AUDIENCE

5. STAFF ITEMS

6. COUNCIL ITEMS

7. ADJOURNMENT

AGENDA ITEM 1.A

REQUEST

APPROVE AMENDED OCTOBER 1, 2019 REGULAR MEETING MINUTES AND NOVEMBER 5, 2019 SPECIAL MEETING MINUTES

EXECUTIVE SUMMARY

Staff was directed to review the recording of the October 1, 2019, regular meeting, item 3.A (“Katterra Appeal”), and the meeting minutes for item 4 (“Aquatic Center Final Conceptual Plan”) on the November 5, 2019. The recordings for both items have been reviewed and the minutes are before Council for adoption.

DISCUSSION

The City Council minutes record the actions approved by City Council consensus. However, on October 15, 2019 Council approved proposed language provided by Council Member Arriola to be included in item 3.A (Katterra Appeal) of the October 1, 2019 regular meeting minutes. On November 5, 2019, Mayor Rickman requested review of the recording to clarify advice provided by the City Attorney related to that language.

After review of the recording, the City Clerk proposes amending the October 1, 2019 regular meeting minutes to replace the language provided by Council Member Arriola with the following:

Council Member Arriola requested clarification regarding state law requirements regarding the approval of housing from the Interim City Attorney Leticia Ramirez. Ms. Ramirez provided background regarding the Housing Accountability Act’s requirements and advised that Council would have to make two written findings that the project would have an adverse impact upon the public health or safety, and there is no feasible method to mitigate or avoid that adverse impact other than to disapprove of the project. The amendment to the Housing Accountability Act in 2017 made clear that if a court order is issued finding that a project was rejected in violation of this act, the City could be subject to a fine of \$10,000 per unit. Staff answered various questions from Council Member Arriola regarding the impact of the project on the public health or safety.

Additionally, on November 19, 2019, the Council requested that the City Clerk verify that Agenda Item #4, Council’s consensus was correctly summarized.

The City Clerk transcribed and reviewed the minutes and found that they accurately summarized Council consensus. For purposes of clarity, two minor changes were made as shown below:

- Place things in a way that allows for potential expansion.
- Not master planning (building out) to the developer’s proposed final conceptual plans

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's four strategic priorities.

FISCAL IMPACT

There is no fiscal impact associated with this item.

RECOMMENDATION

It is recommended that Council approve the attached amended October 1, 2019 regular meeting minutes, and the November 5, 2019, special meeting minutes.

Prepared by: Adrienne Richardson, City Clerk

Reviewed by: Leticia Ramirez, City Attorney

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A - Amended October 1, 2019, Regular Meeting Minutes

Attachment B - November 5, 2019, Special Meeting Minutes

AMENDED MINUTES

TRACY CITY COUNCIL

REGULAR MEETING MINUTES

October 1, 2019, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Rickman called the meeting to order at 7:00 p.m.

Mayor Rickman led the Pledge of Allegiance.

Pastor Doug Diestler, Tracy Mission City Church offered the invocation.

Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young and Mayor Rickman present.

Jenny Haruyama, City Manager presented the Employee of the Month award for October 2019 to Matt Kopinski – Utilities Department.

Mayor Rickman presented a proclamation for Arbor Day to John Newman, Urban Forestry Supervisor, Public Works Department.

Mayor Rickman presented a proclamation for Domestic Violence Awareness Month to Stephanie Player, Director of Programs for Prevention & Intervention Services, Women's Center-Youth & Family Services.

1. CONSENT CALENDAR – Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - 1.A APPROVAL OF SEPTEMBER 17, 2019, SPECIAL MEETING, CLOSED SESSION AND REGULAR MEETING MINUTES – **Minutes were adopted**
 - 1.B APPROVE AN AGREEMENT WITH SAN JOAQUIN REGIONAL TRANSIT DISTRICT FOR TRANSIT SERVICES AT TRACY TRANSIT STATION AND MOUNTAIN HOUSE FOR A TOTAL COST OF \$46,667 - **Resolution 2019-191** approved the agreement with San Joaquin Regional Transit.
 - 1.C AWARD A CONSTRUCTION CONTRACT TO TOM MAYO CONSTRUCTION, INC. OF STOCKTON, CALIFORNIA, IN THE AMOUNT OF \$128,200 FOR CONSTRUCTION OF SIDEWALK, CURB & GUTTER REPAIRS, CIP 73167; AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$19,000, IF NEEDED; AND AUTHORIZE AN APPROPRIATION OF \$20,000 FROM GAS TAX (F245) FOR THIS PROJECT – **Resolution 2019-192** awarded a Construction Contract to Tom Mayo Construction, Inc.
 - 1.D FIND THAT IT IS IN THE BEST INTEREST OF THE CITY TO FORGO THE FORMAL REQUEST FOR PROPOSAL PROCESS AND APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH CH2MHILL INC. FOR REGULATORY PERMITS COMPLIANCE NOT TO EXCEED \$1,368,000 FOR

THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT – CIP 74083 – Resolution 2019-193 approved the agreement with CH2M Hill Inc.

- 1.E AWARD A CONSTRUCTION CONTRACT TO ZIMM INDUSTRIES, INC., OF FRESNO, CALIFORNIA, IN THE AMOUNT OF \$358,680 FOR THE REHABILITATION OF LEWIS MANOR WELL, CIP 75153, WITH A NOT TO EXCEED BUDGET OF \$447,482, AND APPROVE AN AMENDMENT WITH GEI CONSULTANTS FOR DESIGN SUPPORT IN THE AMOUNT OF \$25,000, AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$53,802, IF NEEDED – Resolution 2019-194 awarded the Construction Contract to Zimm Industries, Inc., and Amendment with GEI Consultants.
- 1.F WAIVE SECOND READING AND ADOPT ORDINANCE 1272, AN ORDINANCE OF THE CITY OF TRACY ELECTING TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM BY AND THROUGH THE EAST BAY COMMUNITY ENERGY AUTHORITY - Ordinance 1272 was adopted
2. ITEMS FROM THE AUDIENCE – Evelyn Will shared her concerns about the Post Office and requested that Council do something about getting a real Post Office in Tracy.

Tim Silva spoke about the traffic dangers on Valpico Road and Glenbriar Drive for bicycle or pedestrian traffic.

Council Member Vargas provided a brief response to Mr. Silva's comments.

Alice English asked about funding that was allocated for Corral Hollow Road widening.
3. REGULAR AGENDA
- 3.A PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A DEVELOPMENT REVIEW APPLICATION (D19-0018) FOR A 264-UNIT RESIDENTIAL APARTMENT PROJECT ("VALPICO GLENBRIAR APARTMENTS"), ON APPROXIMATELY 11.62 ACRES LOCATED ON THE NORTH SIDE OF VALPICO ROAD AT GLENBRIAR DRIVE, 501 E. VALPICO ROAD (ALSO KNOWN AS 2605 AND 2795 S. MACARTHUR DRIVE), ASSESSOR'S PARCEL NUMBERS 246-140-13 AND 14. THE APPLICANT IS KATERRA, INC.

Alan Bell, Senior Planner and Andrew Malik, Assistant City Manager provided the staff report.

Frederik Venter, Kimberly-Horn and Associates Consultant provided an overview of the Transportation Master Plan.

Robert Armijo, Senior Engineer provided an update on proactive roadway construction.

Randall Bradley, Fire Chief and Alex Neicu, Interim Police Chief provided information regarding impacts on public safety.

Kristina Covall, Project Manager for Katterra introduced members of the Katterra team, and provided a presentation and information regarding construction of the project.

Greg Kaiser, Landscape Architect and Planner presented the landscaping design for the project.

Mayor Rickman opened the public hearing.

Yubo Kody, John Chen, Victor Chow, Tim Keel, Noel Varela, Robert Tanner, Monty Montgomery, Teresa English Soto (submitted a handout into the record), Bernel Scholl, Andre Ferris, Phillip Kite, Stephanie Payne, Byron Lance, Kathy Bower, Nancy Hernandez, Jass Sangha, Dan (Carpenters Union), Saval Kamal, Evelyn Will, Vivian Johnson, Analyn Sorge, Jamie McKeown, Tim Silva, Rebecca, Jennifer Miller, Allie, Raquel Fairfield, Kyra Ferris, Mr. Ceja, Jerry Sonderman shared a variety of concerns and opposition regarding the project.

Jackie Curtain, and Peter MacDonald spoke in support of the project.

Mayor Rickman called for a recess at 10:02 p.m. due to technical difficulties.

Mayor Rickman reconvened the meeting at 10:12 p.m.

Public comment continued.

Eric Taylor and Dan Schack spoke in support of the project.

Amrik Wander, Alice English, and Joe Cunningham shared a variety of concerns and opposition regarding the project.

Mayor Rickman closed the public hearing.

Ms. Covell and staff responded to comments and questions from the public and Council questions.

Ms. English approached the podium after public comment ended stating Council Member Vargas should not vote on the item due to her attendance at a Planning Commission meeting in August.

Council Member Vargas confirmed with Leticia Ramirez, Interim City Attorney that her attendance at the Planning Commission meeting in August did not create a conflict of interest and would not preclude her from participating in the matter.

City Council questions and comments followed.

Council Member Arriola requested clarification regarding state law requirements regarding the approval of housing from the Interim City Attorney Leticia Ramirez. Ms. Ramirez provided background regarding the Housing Accountability Act's requirements and advised that Council would have to make two written findings that the project would have an adverse impact upon the public health or safety, and there is no feasible method to mitigate or avoid that adverse impact other than to disapprove of the project. The amendment to the Housing Accountability Act in 2017 made clear that if a court order is issued finding that a project was rejected in violation of this act the City could be subject to a fine of \$10,000 per unit. Staff answered various questions from Council Member Arriola regarding the impact of the project on the public health or safety.

It was Council consensus to make the following changes to the Conditions of Approval for the Katterra project.

B-22: Change term of agreement from 10 years to 15 years from building occupancy.

Add Condition B-23: The apartment buildings shall include additional architectural enhancements, including but not limited to movement or variety in materials in the roof line, and may include awnings over windows or balconies, architectural breaks, or use of colors to the satisfaction of the Development Services Director.

Add Condition B-24: Landscaping, particularly along the north property line adjacent to the residential property, shall be designed and maintained to ensure a continuous tree canopy, and shall be maintained in accordance with the approved plans, pursuant to Tracy Municipal Code Section 10.08.3560(n).

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Ransom to adopt **Resolution 2019-195** reversing the Planning Commission's decision to deny Development Review Application Number D19-0018 and determination regarding off-street parking space reduction for the Glenbriar-Valpico Apartments located on approximately 11.62 acres on the north side of Valpico Road at Glenbriar Drive, Assessor's Parcel Numbers 246-12, 13, and 14, and include the above revisions to the Conditions of Approval. Roll call found Council Members Arriola, Ransom, Vargas, and Mayor Pro Tem Young in favor; passed and so ordered. Mayor Rickman opposed.

3.B PUBLIC HEARING TO CONSIDER ADOPTION OF THE 2019 PUBLIC SAFETY IMPACT FEE UPDATE FOR PUBLIC SAFETY FACILITIES AND UPDATED PUBLIC SAFETY IMPACT FEES FOR DEVELOPMENT PROJECTS WITHIN THE CITYWIDE MASTER PLAN AREA

Robert Armijo, Senior Engineer provided the staff report.

Alison Bouley, Harris and Associates, responded to Council questions.

Mayor Rickman opened the public hearing.

No one from the audience wished to speak.

Mayor Rickman closed the public hearing.

City Council questions and comments followed.

ACTION: Motion was made by Council Member Ransom and seconded by Council Member Arriola to adopt **Resolution 2019-196** approving the 2019 Public Safety Impact Fee Update and Updated Safety Development Impact Fees for the Citywide Master Plan Area. Roll call found Council all in favor; passed and so ordered.

3.C CONSIDER STAFF'S RECOMMENDATION FOR AWARD OF MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK (MCYSN) RECONNECTING OUR YOUTH (ROY) GRANT PROGRAM FUNDS FOR FISCAL YEAR 2019-2020, APPROVE THE FUNDING AGREEMENTS FOR THE PROGRAM, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE FUNDING AGREEMENTS – **Item continued to October 15, 2019**

3.D ADOPT PROPOSED CITY OF TRACY CITY COUNCIL CODE OF CONDUCT – **Item continued to October 15, 2019**

4. ITEMS FROM THE AUDIENCE – None

5. STAFF ITEMS – None

6. COUNCIL ITEMS

6.A DETERMINE THE CITY'S POSITION ON TWO RESOLUTIONS TO BE CONSIDERED AT THE 2019 ANNUAL BUSINESS MEETING OF THE LEAGUE OF CALIFORNIA CITIES

Adrienne Richardson, City Clerk provided the staff report.

No one from the public wished to speak.

City Council questions and comments followed.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to vote in support of the following League of California Cities Resolution. Roll call found Council all in favor; passed and so ordered.

Resolution of the League of California Cities calling on the California Public Utilities Commission to amend Rule 20A to add projects in very high fire hazard severity zones to the list of eligibility criteria and to increase funding allocations for Rule 20A projects

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to vote in support of the following League of California Cities Resolution. Roll call found Council Member Arriola, Vargas, Mayor Pro Tem Young and Mayor Rickman in favor; passed and so ordered. Council Member Ransom abstained.

A Resolution calling upon the Federal and State Governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean

6.B APPOINT TWO APPLICANTS TO SERVE ON THE PLANNING COMMISSION

Council Subcommittee members Mayor Rickman and Council Member Ransom provided the report.

No one from the public wished to speak.

ACTION: Motion was made by Council Member Ransom and seconded by Mayor Rickman to approve the subcommittee's recommendation and appoint Maurice Francis to the Planning Commission to serve the remainder of a term beginning October 2, 2019, and ending on March 31, 2022, and appoint Gurtej Atwal to serve the remainder of a vacated term and a new four year term beginning October 2, 2019, and ending March 31, 2024. James Caling was added to a one year eligibility list. Roll call found Council all in favor; passed and so ordered.

Council Member Vargas requested to bring back to Council an update on the Valley Link and discussion for land dedication for operations for the project. Council Member Ransom supported the request.

7. ADJOURNMENT – Time: 12:18 a.m. Wednesday, October 2, 2019.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to adjourn. Roll call vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on September 26, 2019. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

TRACY CITY COUNCIL

SPECIAL MEETING MINUTES

November 5, 2019, 6:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

1. Mayor Rickman called the meeting to order at 5:30 p.m.
2. Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman present.
3. ITEMS FROM THE AUDIENCE – None
4. APPROVE AQUATIC CENTER FINAL CONCEPTUAL PLAN AND AUTHORIZE STAFF AND SURLAND COMMUNITIES, LLC TO PREPARE FINAL DESIGN AND CONSTRUCTION DOCUMENTS FOR THE PROJECT WITH A NOT TO EXCEED AMOUNT OF \$54 MILLION, INCLUDING CONTINGENCY AND SOFT COSTS

Brian MacDonald, Parks and Recreation Director, Karin Schnaider, Finance Director, and Jenny Haruyama, City Manager provided the staff report and powerpoint presentation.

Chris Long, Surland Companies introduced their consultant team below and provided a powerpoint presentation and an overview of the history of the Aquatic Center.

Barry Long, Urban Design Associates provided information regarding funding alternatives

Doug Whittaker, Water Technologies Incorporated (WTI) provided information regarding the community preferred plan elements.

David Sangree, Hotel & Leisure Advisors (H&LA) provided information regarding operational strategy and cost recovery.

Stuart Lumsden, Gleeds USA, provided information regarding construction costs.

Steve Herum spoke about the action before Council and provided a resolution drafted by Surland, to the City Clerk for Council consideration.

Robert Tanner spoke about the balances that are uncommitted, and supported committing \$54 million for the Aquatic Park.

Jacob Hunter did not support a destination plan and requested Council commit to \$80 million for the Aquatic Park.

Janice Couturier asked about the charge to use the Aquatic Park and the operational costs, and is the City in a position to manage subsidies.

Todd Lieberg spoke about the project being long overdue, potential cost of the pool going from \$54 million to \$130 million, and stated there has to be a pool.

Eleassia Davis expressed concerns about there being no pool in the \$54 million concept, the need to be fiscally responsible, and stated there needs to be a pool.

Sanjeet Chitnis supported the competition pool and suggested not needing to buy all the amenities.

Molly Lowe urged Council to take action on the swim center and vote for the \$80 million plan.

Christine Sedanyo expressed her concerns regarding fiscal irresponsibility, size, noise, lights and impact on neighbors. Ms. Sedanyo is in support of a swim pool.

Roger Birdsall spoke about the cost of the use of the Aquatic Park, unknown operational costs, current deficit, and whether government should be involved in private business. Mr. Birdsall supported a 50-meter pool in Tracy.

Marsha McCray provided a brief history of the Aquatic Park and advocated for the \$80 million community preferred plan.

Pete Mitracos supported a 50-meter pool, recreational pool and staff's recommendation of \$54 million Aquatic Park budget. Mr. Mitracos suggested Surland's involvement has delayed the project, and Council needs to be fiscally responsible.

Brandon Kanner endorsed the community preferred plan.

Wahid Abdul supported the project and suggested getting creative on how to make money, and put the project on the ground.

Ann Langley stated it has been a 30 year conversation and the community has provided their input and it is time for this project.

Sandy Taylor supported Marsha McCray's comments, and the community preferred plan.

Richard English stated the City should not spend more than \$54 million, but should include competition pool in the design.

Denise Helitzer urged Council to build a competition pool and provide amenities that serve the community in recreation.

Michael Quann supported a competition pool, the community preferred plan and added the City needs attractions to keep tax dollars in town.

Alice English supported building the Aquatic Park for \$54 million and suggested Surland has delayed pool with extensions. Ms. English added residents voted for Measure V for amenities, but not to spend \$80 million on 50-meter pool.

Mary Mitracos disagreed with comments made regarding the community's preferred plan. Ms. Mitracos stated unanimously everyone wants a pool, but she did not support spending \$80 million to get a pool.

Mayor Rickman extended the special meeting to 7:15 p.m.

Council Member Arriola's questions and comments followed.

Mr. Sangree, Mr. Lumsden, and Mr. Whittaker responded to Mr. Arriola's question.

MEETING RECESSED - Mayor Rickman announced that the special meeting will be recessed until after the regular meeting, and items 3F, 3G and 3H on the regular agenda will be moved to November 19, 2019.

ACTION: Motion was made by Council Member Ransom and seconded by Mayor Pro Tem Young to recess the meeting until after the regular meeting. Roll call vote found all in favor; passed and so ordered. Time: 7:12 p.m.

MEETING RECONVENED - Mayor Rickman reconvened the special meeting at 9:00 p.m.

City Council questions and discussion continued.

City staff responded to Council questions.

Les Serpa, and Chris Long, Surland Companies along with Surland's consultant team, responded to City Council questions.

Jenny Haruyama, City Manager summarized City Council's consensus:

- Maximum budget of \$65 million which includes the following: City's contribution of \$35 million, contingency amount of \$9 million, \$10 million from the developer, \$10 million from Measure V.
- Place things in a way that allows for expansion.
- Not master planning/building out to the developer's proposed final conceptual plans.
- Order of Priority for desired Aquatic Center elements:
 1. 50-meter pool
 2. Recreation/warm-up pool
 3. Lazy River
 4. Water Slides
 5. Toddler Area
 6. Indoor Pool (optional)
 7. Fitness Center (optional)

Staff to work with developer over the next few weeks to figure out the final conceptual plan and return to Council before end of calendar year. Staff to bring back a presentation on what the final conceptual plan looks like on January 21, 2020

5. ADJOURNMENT – Time: 11:29 p.m.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Arriola to adjourn. Roll call found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on October 31, 2019. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

ADOPT RESOLUTION AUTHORIZING THE SUBMITTAL OF AN APPLICATION, ACCEPTANCE OF AN ALLOCATION OF FUNDS AND EXECUTION OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, BY THE MAYOR FOR AN AIRPORT IMPROVEMENT PROGRAM (AIP) MATCHING GRANT FOR CIP 77583

EXECUTIVE SUMMARY

The City was awarded a grant in September 2019 from the Federal Aviation Administration (FAA) in order to update the master plan at the Tracy Municipal Airport. A State Airport Improvement Program (AIP) matching grant is available that will offset the City's General Fund match. In order to finalize the State grant award process, a Council resolution is required, authorizing the Mayor to file the application, accept the allocation of state AIP Matching Grant funds and execute the grant agreement.

DISCUSSION

As the Federal Aviation Administration (FAA) requires Airports to maintain a current airport layout plan (ALP) in order to receive an airport design, construction, or equipment grant, these funds will be utilized to update the existing Airport Layout Plan/Airport Geospatial Information System with Obstruction Mitigation Plan. In order to remain current, the ALP must be updated every five years.

The State Division of Aeronautics provides matching grants of 5% of the FAA grant awards, not to exceed \$50,000. The application for the grant must be submitted and approved before any work can be completed on the new project. The project is ready to begin. However, City staff has identified this grant and is requesting to utilize this grant to offset the General Fund's grant match prior to starting the project.

The cost breakdown for this project is as follows:

Airport Layout Plan/ Airport Geospatial Information System with Obstruction Mitigation Plan	\$241,200
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Reimbursements Allocated:

FAA Participation	\$217,080
State Matching Grant	\$10,854
City Responsibility (Airport Funds)	<u>\$13,266</u>
	\$241,200

In order to apply for the state matching grant and receive the grant funds from the State Division of Aeronautics, the Mayor needs to sign the grant application and return it to the Division of Aeronautics immediately. Staff is requesting Council approve a resolution authorizing the Mayor to file the application, accept the allocation of state AIP Matching Grant funds and execute the grant agreement. This resolution will be provided to the State in order to finalize the grant match.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's Strategic Plans.

FISCAL IMPACT

CIP 77583 for the planning and design for the Airport Layout Plan/Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport is a council approved project with a not to exceed budget of \$241,200.

RECOMMENDATION

That the City Council adopt a resolution authorizing the Mayor to file the application, accept the allocation of state AIP Matching Grant funds and execute the grant agreement in the amount of \$10,854 to offset the costs of the AIP #3-06-0259-021-2019.

Prepared by: Paula Jessup, Airport Manager

Reviewed by: Brian MacDonald, Parks & Recreation Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

Attachment A: Executed Federal Aviation Administration Grant Agreement
Attachment B: ALP Matching Grant Application

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U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer	<u>August 8, 2019</u>
Airport/Planning Area	<u>Tracy Municipal</u>
AIP Grant Number	<u>3-06-0259-021-2019</u>
DUNS Number	<u>074640111</u>
TO:	<u>City of Tracy</u> (herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated February 7, 2019, for a grant of Federal funds for a project at or associated with the Tracy Municipal Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Tracy Municipal Airport (herein called the "Project") consisting of the following:

Update Airport Master Plan Study

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, as applied and interpreted consistent with the FAA Reauthorization Act of 2018 (see 2018 FAA Reauthorization grant condition.), (b) and the Sponsor's acceptance of this Offer; and, (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

- 1. Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$217,080. The following amounts represent a breakdown of the maximum obligation for the purpose of establishing

allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$217,080 for planning

\$0 airport development or noise program implementation; and,

\$0 for land acquisition.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR §200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR §200.343).

The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies, and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the assurances which are part of this agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 9, 2019, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the

Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

- 10. United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
- 11. System for Award Management (SAM) Registration And Universal Identifier.**
- A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - B. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5771) or on the web (currently at <http://fedgov.dnb.com/webform>).
- 12. Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
- 13. Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
- 14. Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this agreement.
- 15. Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
- 16. Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.
- 17. Maximum Obligation Increase For Nonprimary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

- A. May not be increased for a planning project;
- B. May be increased by not more than 15 percent for development projects;
- C. May be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.

18. Audits for Public Sponsors. The Sponsor must provide for a Single Audit or program specific audit in accordance with 2 CFR part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Provide one copy of the completed audit to the FAA if requested.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR §180.200, the Sponsor must:

- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 - 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- B. Require prime contractors to comply with 2 CFR §180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- C. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.

20. Ban on Texting While Driving.

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

21. AIP Funded Work Included in a PFC Application.

Within 90 days of acceptance of this award, Sponsor must submit to the Federal Aviation Administration an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this grant award. The airport sponsor may not make any expenditure under this

award until project work addressed under this award is removed from an approved PFC application by amendment.

22. Exhibit "A" Property Map. The Exhibit "A" Property Map dated May 23, 2014, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.

23. Employee Protection from Reprisal.

A. Prohibition of Reprisals –

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal office or employee responsible for oversight of a grant program;
 - v. A court or grand jury;
 - vi. A management office of the grantee or subgrantee; or
 - vii. A Federal or State regulatory enforcement agency.
3. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b)
6. Assumption of Rights to Civil Remedy - Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

24. 2018 FAA Reauthorization. This grant agreement is subject to the terms and conditions contained herein including the terms known as the Grant Assurances as they were published in the Federal Register on April 3, 2014. On October 5, 2018, the FAA Reauthorization Act of 2018 made certain amendments to 49 U.S.C. chapter 471. The Reauthorization Act will require FAA to make certain amendments to the assurances in order to best achieve consistency with the statute. Federal law requires that FAA publish any amendments to the assurances in the Federal Register along with an opportunity to comment. In order not to delay the offer of this grant, the existing assurances are attached herein; however, FAA shall interpret and apply these assurances consistent with the Reauthorization Act. To the extent there is a conflict between the assurances and Federal statutes, the statutes shall apply. The full text of the Act is at <https://www.congress.gov/bill/115th-congress/house-bill/302/text>.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



(Signature)

Laurie J. Suttmeier

(Typed Name)

Manager

(Title of FAA Official)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this 6TH day of SEPT, 2019.

City of Tracy

(Name of Sponsor)



(Signature of Sponsor's Authorized Official)

By:

ROBERT BECKMAN

(Typed Name of Sponsor's Authorized Official)

Title:

MAYOR

(Title of Sponsor's Authorized Official)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Bianca Rodriguez, Deputy City Attorney, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of California. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Tracy, California (location) this 4th day of September, 2019

By:



(Signature of Sponsor's Attorney)

¹Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

PLANNING AGENCY SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act - 5 U.S.C. 1501, et seq.²
- d. Rehabilitation Act of 1973 - 29 U.S.C. 794
- e. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin)
- f. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability
- g. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- h. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- i. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

EXECUTIVE ORDERS

- a. Executive Order 12372 - Intergovernmental Review of Federal Programs

FEDERAL REGULATIONS

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures
- e. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- g. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- h. 49 CFR Part 20 - New restrictions on lobbying.
- i. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- j. 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- k. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- l. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- m. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- n. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- q. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252).

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary

5. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.

6. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any

books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

7. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

8. Reports and Inspections.

It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

- 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
- 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 4) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 5) So long as the sponsor retains ownership or possession of the property.

a.) Required Solicitation Language.

b.) It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The City of Tracy, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

d. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by

the sponsor with other parties:

- a.) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b.) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- e. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

10. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

11. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

12. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.

13. Disadvantaged Business Enterprises.

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. § 3801).



FAA Airports

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

Updated: 4/18/2019

View the most current versions of these ACs and any associated changes at:
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars/

NUMBER	TITLE
70/7460-1L Change 2	Obstruction Marking and Lighting
150/5000-9A	Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations
150/5000-17	Critical Aircraft and Regular Use Determination
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Changes 1- 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Nonprimary Airports
150/5200-28F	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30D Change 1	Airport Field Condition Assessments and Winter Operations Safety
150/5200-31C Changes 1-2	Airport Emergency Plan
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications

NUMBER	TITLE
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVS)
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16E Changes 1	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26 Changes 1-2	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5300-13A Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C Change 1	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards

NUMBER	TITLE
150/5320-5D	Airport Drainage Design
150/5320-6F	Airport Pavement Design and Evaluation
150/5320-12C Changes 1-8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5235-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength - PCN
150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30J	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retro reflective Markers
150/5345-42H	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43H	Specification for Obstruction Lighting Equipment

NUMBER	TITLE
150/5345-44K	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46E	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49D	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13A	Airport Terminal Planning
150/5360-14A	Access to Airports By Individuals With Disabilities
150/5370-2G	Operational Safety on Airports During Construction
150/5370-10H	Standards for Specifying Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5390-2C	Heliport Design

NUMBER	TITLE
150/5395-1A	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

Updated: 3/22/2019

NUMBER	TITLE
150/5100-14E Change 1	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17 Changes 1 - 7	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5300-15A	Use of Value Engineering for Engineering Design of Airport Grant Projects
150/5320-17A	Airfield Pavement Surface Evaluation and Rating Manuals
150/5370-12B	Quality Management for Federally Funded Airport Construction Projects
150/5380-6C	Guidelines and Procedures for Maintenance of Airport Pavements
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness

**STATE MATCHING GRANT FOR FAA AIRPORT IMPROVEMENT PROGRAM
- APPLICATION**

DOA-0012 (REV 12/2018)

PLEASE PRINT OR TYPE AND COMPLETE ALL APPLICABLE ITEMS

AIRPORT INFORMATION

PUBLIC ENTITY City of Tracy	COUNTY San Joaquin	
AIRPORT NAME Tracy Municipal Airport	PERMIT NUMBER	
CONTACT NAME Brian MacDonald	TITLE Parks & Recreation Director	
BUSINESS ADDRESS 333 Civic Center Plaza	EMAIL brian.macdonald@cityoftracy.org	PHONE (209) 831-6203

PROJECT INFORMATION

Is project in the Department's most recent Capital Improvement Plan?
(If no, then project is not eligible for grant funds.) Yes No

DESCRIPTIVE TITLE OF APPLICANT'S PROJECT (as shown on page one of the executed grant and in the the adopted Capital Improvement Plan):

Update on airport master plan study

FEDERAL GRANT NUMBER

3-06-0259-021-2019

FEDERAL GRANT \$ 217,080

APPLICANT FUNDS \$ 13,266

STATE FUNDS* \$ 10,854

TOTAL COST OF PROJECT \$ 241,200

*Maximum is 5% of the federal grant amount.

REQUIRED SUPPORTING DOCUMENTS

Pursuant to Public Utilities Code Section 21681-21684 and Section 4067 of the CAAP Regulations, submit the following documents with this application:

- Local government approval (*resolution or minute order*) as described in Section 4067(a).
- FAA Grant Agreement with FAA and sponsor signatures.
- Verification of full compliance with the California Environmental Quality Act (CEQA) by submitting information to fulfill either 1. or 2. below:
 1. Copy of Notice of Exemption or provide the Categorical Exemption Class # 1.
(CEQA Guidelines Sections 15300-15333).
 2. Copy of Notice of Determination or provide the following information:
 - Environmental Impact Report (Title/Date) _____ State Clearinghouse (SCH) # _____ or
 - Negative Declaration (Title/Date) _____ State Clearinghouse (SCH) # _____ or
 - National Environmental Policy Act (NEPA) document (Title/Date) _____
(NEPA documents-Environmental Impact Statement or Finding of No Significant Impact must comply with CEQA provisions).
- 11 x 17-inch Drawing or Airport Layout Plan showing project location(s) and dimensions.
- Completed CAAP Certification (Form DOA-0007), if not submitted to the Division of Aeronautics earlier for this fiscal year.
- Additional documentation may be required if items in the FAA AIP grant are not eligible for CAAP funding.

AUTHORIZATION

AUTHORIZED OFFICIAL'S SIGNATURE	DATE	
PRINT NAME Robert Rickman	TITLE mayor	
BUSINESS ADDRESS 333 Civic Center Plaza	BUSINESS PHONE (209) 831-6115	EMAIL council@cityoftracy.org

SEND COMPLETED FORM AND ALL REQUIRED DOCUMENTS TO:

California Department of Transportation
Division of Aeronautics - MS #40
P.O. Box 942874
Sacramento, CA 94274-0001

RESOLUTION NO. 2019- _____

A RESOLUTION OF THE CITY OF TRACY AUTHORIZING THE SUBMITTAL OF AN APPLICATION, ACCEPTANCE OF AN ALLOCATION OF FUNDS AND EXECUTION OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, BY THE MAYOR FOR AN AIRPORT IMPROVEMENT PROGRAM (AIP) MATCHING GRANT FOR CIP 77583

WHEREAS, the City of Tracy and the Federal Aviation Administration are parties to federal Airport Improvement Program (AIP) grant 3-06-0259-021-2019 for the update on the airport master plan study at the Tracy Municipal Airport, and

WHEREAS, the California Department of Transportation, pursuant to the Public Utilities Code section 21683.1, provides grants of 5% of Federal Aviation Administration grants to airports not to exceed \$50,000, and

WHEREAS, the California Department of Transportation requires the City Council to adopt a resolution authorizing the submission of an application for an AIP Matching grant;

NOW, THEREFORE BE IT RESOLVED that the City Council of Tracy, California hereby authorizes the Mayor to file an application for a state AIP Matching grant for this project, to accept the allocation of state AIP Matching funds for the project, and to execute the AIP Matching Grant Agreement for this project.

* * * * *

The foregoing Resolution 2019-_____ was adopted by City Council of the City of Tracy, on the 3rd day of December 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

AWARD A CONSTRUCTION CONTRACT TO ST. FRANCIS ELECTRIC, LLC OF SAN LEANDRO, CALIFORNIA, IN THE AMOUNT OF \$265,400 FOR THE TRAFFIC SIGNAL MODIFICATION AT SCHULTE ROAD/LAURIANA LANE AND TRACY BOULEVARD/TENNIS LANE INTERSECTIONS PROJECT, CIP 72111 AND CIP 72115, WITH A NOT TO EXCEED BUDGET OF \$420,000, AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$27,000, IF NEEDED

EXECUTIVE SUMMARY

Award of a construction contract for the traffic signal modification at Schulte Road/Lauriana Lane and Tracy Blvd/Tennis Lane intersections Project, CIP 72111 and CIP 72115 (Project).

DISCUSSION

The Project consists of traffic signal modifications at the intersections of Schulte Road/Lauriana Lane and Tracy Boulevard/Tennis Lane. The work consists of removal of existing video detection, installation of detector loops, pavement rehabilitation, and signage and striping at the Schulte Road and Lauriana Lane intersection. The Project also includes the removal and replacement of detector loops on the eastbound lanes on Tennis Lane at Tracy Boulevard intersection. In addition, Accessible Pedestrian Signals (APS) will be installed at both intersections.

Project design, improvement plans and specifications were prepared by Kimley Horn & Associates. The Project was advertised for competitive bids on September 13, 2019 and September 20, 2019. The City received and opened three bids on Tuesday, October 15, 2019 as follows:

	Bidder	Location	Total Bid
1	St. Francis Electric, LLC	San Leandro, CA	\$265,400
2	Tennyson Electric	Livermore, CA	\$324,317
3	Sturgeon Electric California, LLC	Chino, CA	\$450,000

The lowest monetary bid is from St. Francis Electric, LLC of San Leandro, California, in the amount of \$265,400. The bids are responsive and bidder is responsible. The contractor has good references and has completed similar projects for other cities and public agencies.

The anticipated cost for construction of this Project, if awarded to St. Francis Electric, LLC, is estimated as follows:

Construction Bid Amount (Base Bid + Additive Bid)	\$265,400
Contingency (~10%)	\$27,000
Construction Management & Inspection (~5%)	\$13,500
Design Support during Construction (~3%)	\$8,000
Total Project Cost	\$313,900
Available Budget CIP 72111, CIP 72115	\$420,000

With regards to the construction contingency amount, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the amount approved by Council. The recommended contingency amount for this Project is \$27,000.

STRATEGIC PLAN

The agenda item is a routine operational item and is not related to the Council's Strategic Plans.

FISCAL IMPACT

The Traffic Signal Modification at Schulte Road/Lauriana Lane and Tracy Boulevard/Tennis Lane Intersections, CIP 72111 and CIP 72115 are approved Capital Improvement Projects. With a total available budget of \$420,000, funded from the Gas Tax Fund (F245).

RECOMMENDATION

Staff recommends that City Council, by resolution, award a construction contract to St. Francis Electric, LLC of San Leandro, California, in the amount of \$265,400 for the Traffic Signal Modification at Schulte Road/Lauriana Lane and Tracy Boulevard/Tennis Lane Intersections Project, CIP 72111 and CIP 72115, with a not to exceed budget of \$420,000, and authorize the City Manager to approve change orders up to the contingency amount of \$27,000, if needed.

Prepared by: Anju Pillai, PE, Associate Civil Engineer

Reviewed by: Zabih Zaca, PE, Senior Civil Engineer
Robert Armijo, PE, City Engineer / Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

RESOLUTION 2019-_____

AWARDING A CONSTRUCTION CONTRACT TO ST. FRANCIS ELECTRIC, LLC OF SAN LEANDRO, CALIFORNIA IN THE AMOUNT OF \$265,400 FOR THE TRAFFIC SIGNAL MODIFICATION AT THE SCHULTE ROAD/LAURIANA LANE AND TRACY BOULEVARD/TENNIS LANE INTERSECTIONS PROJECT, CIP 72111 AND CIP 72115, WITH A NOT TO EXCEED BUDGET OF \$420,000, AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$27,000, IF NEEDED

WHEREAS, The Project consists of traffic signal modifications at the intersections of Schulte Road/Lauriana Lane and Tracy Boulevard/Tennis Lane, and

WHEREAS, The Project consists of removal of existing video detection, installation of detector loops, pavement rehabilitation, and signage and striping at the Schulte Road and Lauriana Lane intersection, and

WHEREAS, The Project includes the removal and replacement of detector loops on the eastbound lanes on Tennis Lane at Tracy Boulevard intersection, and

WHEREAS, The Project also includes installation of Accessible Pedestrian Signals (APS) at both intersections, and

WHEREAS, The Project was advertised for competitive bids on September 13, 2019 and September 20, 2019, and

WHEREAS, The bids were received and opened on October 15, 2019, and

WHEREAS, The lowest monetary bid is from St. Francis Electric, LLC of San Leandro, California, in the amount of \$265,400, and

WHEREAS, The bids are responsive and bidder is responsible, and

WHEREAS, The anticipated cost for construction of this Project, if awarded to St. Francis Electric, LLC is estimated as follows:

Construction Bid Amount (Base Bid + Additive Bid)	\$265,400
Contingency (~10%)	\$27,000
Construction Management & Inspection (~5%)	\$13,500
Design Support during Construction (~3%)	\$8,000
Total Project Cost	\$313,900
Available Budget CIP 72111, CIP 72115	\$420,000

WHEREAS, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the amount approved by Council and the recommended contingency amount for this Project is \$27,000, and

WHEREAS, The Traffic Signal Modification at Schulte Road/Lauriana Lane and Tracy Boulevard/Tennis Lane Intersections, CIP 72111 and CIP 72115, are approved Capital

Improvement Projects, with a total available budget of \$420,000, funded from the Gas Tax Fund (F245);

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby awards a construction contract to St. Francis Electric, LLC of San Leandro, California, in the amount of \$265,400 for the Traffic signal modifications at the intersections of Schulte Road/Lauriana Lane and Tracy Boulevard/Tennis Lane Project, CIP 72111 and CIP 72115, with a not to exceed budget of \$420,000, and authorizes the City Manager to approve change orders up to the amount of \$27,000, if needed.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the City Council on the 3rd day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.D

REQUEST

ESTABLISH A NEW CIP (78183) FOR CITY WIDE BIKEWAYS MAINTENANCE AND AUTHORIZE AN APPROPRIATION OF \$75,000 FROM TRANSPORTATION DEVELOPMENT ACT (TDA) FUND (F241)

EXECUTIVE SUMMARY

The City of Tracy receives approximately \$75,000 annually through its Transportation Development Act (TDA) claims for pedestrian/bikeways purposes. In order to spend the funds on a project, the funds must be appropriated to a CIP.

DISCUSSION

Through the TDA claim process, the City of Tracy receives approximately \$75,000 annually to be used toward pedestrian/bikeways improvements. In order to spend the received funding on an eligible project, the funds must be first appropriated to a CIP. Staff is requesting that Council establish a new CIP for City wide Bikeways Maintenance, and appropriate \$75,000 from Fund 241 to the CIP. The appropriated funding will be used to improve various bikeways throughout the City of Tracy. In addition to the restriping of faded bike lanes, staff is also working to implement a plan for green bikeways striping in high traffic areas throughout the city. This is a priority and goal of the Transportation Advisory Commission. Future installations of green bikeways will be included as part of the Bikeways Master Plan which is currently in development.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's Strategic Plans.

FISCAL IMPACT

The City of Tracy has already received \$77,562 in pedestrian/bikeway apportionments from the San Joaquin Council of Governments through its FY18/19 claim. The funds are currently in the Transportation Development Act Fund (F241) and must be appropriated in order to be spent.

RECOMMENDATION

Staff recommends that City Council establish a new CIP (78183) for City wide bikeways maintenance and appropriate \$75,000 from Transportation Development Act Fund (F241) to the CIP.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Brian MacDonald, Parks & Recreation Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

RESOLUTION 2019-_____

ESTABLISHING A NEW CIP (78183) FOR CITY WIDE BIKEWAYS MAINTENANCE AND AUTHORIZING AN APPROPRIATION OF \$75,000 FROM TRANSPORTATION DEVELOPMENT ACT (TDA) FUND (F241)

WHEREAS, The City of Tracy receives funding for pedestrian/bikeways projects through its Transportation Development Act (TDA) annual claim, and

WHEREAS, The City has received \$77,562 for pedestrian/bikeways projects as part of its FY18/19 TDA Claim, and

WHEREAS, The said funds have been deposited into the TDA Fund (F241), and must be appropriated to a project before they can be spent;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby establishes a new CIP (78183) for City wide bikeways maintenance and appropriates \$75,000 from Transportation Development Act Fund (F241) to the CIP.

* * * * *

The foregoing Resolution 2019-_____ was adopted by the Tracy City Council on the 3^d day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

WAIVE SECOND READING AND ADOPT ORDINANCE 1277, AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 6.36 OF TITLE 6, “BUSINESSES, PROFESSIONS, AND TRADE” OF THE TRACY MUNICIPAL CODE TO ESTABLISH LOCAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

EXECUTIVE SUMMARY

Ordinance 1277 was introduced at the regular Council meeting held on November 19, 2019. Ordinance 1277 is before Council for adoption.

DISCUSSION

The proposed ordinance will amend Chapter 6.36 regarding commercial cannabis activity in the City of Tracy. The proposed ordinance will establish regulations on commercial cannabis activities, including the allowable cannabis business types, the number of cannabis business permits issued by type, cannabis business permitting procedures and requirements, the operating procedures for the permitted cannabis businesses, the operating procedures specific to certain cannabis business types, and enforcement.

Ordinance 1277 is before City Council for adoption.

STRATEGIC PLAN

This agenda item supports Goal 2 and Objective 2.C of the Governance strategic priority:

Goal 2.Ensure Continued Fiscal Sustainability through Financial and Budgetary Stewardship

FISCAL IMPACT

The City Council has previously directed staff to establish fees related to the recovery of costs of the application and permit process. These fees will return to the City Council for consideration at a future meeting. The City Council may consider placing cannabis general tax measure on the November 2020 ballot. This item will return to the City Council in Spring 2020.

RECOMMENDATION

That City Council adopt Ordinance 1277.

Prepared by: Adrienne Richardson, City Clerk
Reviewed by: Midori Lichtwardt, Assistant City Manager
Approved by: Jenny Haruyama, City Manager

ORDINANCE 1277

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 6.36 OF TITLE 6, "BUSINESSES, PROFESSIONS, AND TRADES" OF THE TRACY MUNICIPAL CODE TO ESTABLISH LOCAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

WHEREAS, In November 1996, California voters approved the Compassionate Use Act of 1996 ("CUA") which authorized a limited defense to criminal charges for the use, possession or cultivation of marijuana (cannabis) for medical purposes when a qualified patient has a doctor's recommendation for the use of cannabis, and

WHEREAS, In November 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which legalized the use of non-medicinal (recreational) cannabis by adults and the cultivation of up to six cannabis plants for personal use; and the AUMA also created a statewide regulatory framework for the cultivation, production, and sale of non-medical cannabis for adult use, and

WHEREAS, In June 2017, the State Legislature adopted Senate Bill 94 creating a new statewide comprehensive regulatory system for medical and adult use commercial cannabis activity titled Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), and

WHEREAS, CUA, AUMA and MAUCRSA do not prohibit cities from enacting regulations regarding commercial cannabis activities and uses, and

WHEREAS, The City Council seeks to establish regulations for commercial cannabis activity in the City of Tracy to ensure such activities are conducted in a manner that mitigates negative impacts, protects the public health, safety, and welfare of residents, and supports economic development, and

WHEREAS, The City of Tracy engaged in a comprehensive review and study of state and local cannabis regulations, conducted community outreach on this topic, and held various public meetings to discuss commercial cannabis activity, provide policy direction to staff, and receive public input on the topic of commercial cannabis activity.

WHEREAS, The City Council considered this ordinance at a duly noticed public hearing held on November 5, 2019.

The City Council of the City of Tracy does ordain as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as findings.

SECTION 2. The City Council hereby amends Chapter 6.36 as shown in Exhibit "A".

SECTION 3. If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective

of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 5. The City Council finds that this Ordinance is exempt from CEQA in accordance with Business and Professions Code section 26055(h) because it requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

SECTION 6. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov’t. Code §36933.)

* * * * *

The foregoing Ordinance 1277 was introduced at a regular meeting of the Tracy City Council on the 19th day of November 2019, and finally adopted on the 3rd day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

Chapter 6.36 COMMERCIAL CANNABIS ACTIVITY.

Article 1. – General Provisions.

- Section 6.36.010 Purpose and Intent.
- Section 6.36.011 Legal Authority.
- Section 6.36.012 Definitions.
- Section 6.36.013 Compliance with State and Local Laws.

Article 2. – Cannabis Business Permits.

- Section 6.36.020 Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.
- Section 6.36.030 Cannabis Business Permit Required to Engage in a Commercial Cannabis Activity.
- Section 6.36.040 Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.
- Section 6.36.050 Application Procedure for a Cannabis Business Permit.
- Section 6.36.060 Selection of Cannabis Business Permittee(s).
- Section 6.36.070 Grounds for Denial of a Cannabis Business Permit.
- Section 6.36.080 Expiration of Cannabis Business Permits.
- Section 6.36.090 Suspension, Modification or Revocation of Cannabis Business Permits.
- Section 6.36.100 Renewal Applications.
- Section 6.36.110 Effect of State License Suspension, Revocation, or Termination.
- Section 6.36.120 Change in Contact Information; Updated Registration Form.
- Section 6.36.130 Transfer of Cannabis Business Permit.
- Section 6.36.140 Limitations on City's Liability.
- Section 6.36.150 Cannabis Employee Permit Required.

Article 3. – General Operating Procedures for all Cannabis Business Permittees.

- Section 6.36.160 City Business License.
- Section 6.36.170 Records and Recordkeeping.
- Section 6.36.180 Security Measures.
- Section 6.36.190 Restriction on Alcohol & Tobacco Sales.
- Section 6.36.200 Fees and Charges.
- Section 6.36.210 Packaging and Labeling.
- Section 6.36.220 Diversion Prohibited.
- Section 6.36.230 Emergency Contact.
- Section 6.36.240 Community Relations Manager.
- Section 6.36.250 Payment of Taxes.
- Section 6.36.260 Employee Permit Requirement.
- Section 6.36.270 Cannabis Consumption Prohibited.
- Section 6.36.280 Persons Under 21 Years of Age Prohibited.
- Section 6.36.290 Site Management.
- Section 6.36.300 Reporting Criminal Activity.
- Section 6.36.310 Display of Permit and City Business License.
- Section 6.36.320 Miscellaneous Operating Requirements.

Article 4. – Operating Procedures for Specific Cannabis Business Types.

- Section 6.36.330. Commercial Cannabis Cultivation Permit Requirements

Section 6.36.340 Cannabis Distribution Permit Requirements
Section 6.36.350 Cannabis Manufacturing Permit Requirements
Section 6.36.360 Cannabis Microbusiness Permit Requirements
Section 6.36.370 Cannabis Non-Storefront (Delivery) Retailer Permit Requirements.
Section 6.36.380 Cannabis Storefront (Dispensary) Retailer Permit Requirements
Section 6.36.390 Cannabis Testing Laboratory Requirements

Article 5. – Enforcement.

Section 6.36.400 Promulgation of Regulations, Standards and Other Legal Duties.
Section 6.36.410 Fees Deemed Debt to City of Tracy.
Section 6.36.420 Permit Holder Responsible for Violations.
Section 6.36.430 Inspection and Enforcement.
Section 6.36.440 Compliance with State Regulation.
Section 6.36.450 Violations Declared a Public Nuisance.
Section 6.36.460 Each Violation a Separate Offense.
Section 6.36.470 Criminal Penalties.
Section 6.36.480 Remedies Cumulative and not Exclusive.
Section 6.36.490 Service of Notices.

Article 1. General Provisions.

Section 6.36.010. Purpose and Intent

It is the purpose and intent of this Chapter to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) to accommodate the needs of medically-ill persons in need of and provide access to cannabis for medicinal purposes and implement the desire of California voters who approved the Adult Use of Marijuana Act (“AUMA”) by Proposition 64 in November 2016, while imposing sensible regulations on the use of land to protect the City’s residents, neighborhoods, and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this Chapter to regulate the commercial cannabis activity in a responsible manner to protect the health, safety, and welfare of the residents of Tracy and to enforce rules and regulations consistent with state law. It is the further purpose and intent of this Chapter to require all commercial cannabis operators meeting the established requirements to obtain and renew annually a regulatory permit to operate a cannabis business in Tracy. Nothing in this Chapter is intended to authorize the possession, use, or provision of cannabis for purposes that violate state or local law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to operate a cannabis business in the City, such as a conditional use permit issued pursuant to Title 10 of this Code, and are in addition to any permits, licenses and approval required under state, county, or other law.

Section 6.36.011. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, the provisions of MAUCRSA, and any subsequent state legislation and/or regulations regarding same, the City of Tracy is authorized to adopt ordinances that establish standards, requirements and regulations for the licensing and permitting of commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the

State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Tracy to all commercial cannabis activity.

Section 6.36.012. Definitions.

When used in this Chapter, the following words shall have the meanings ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

“A-license” means a State License issued for cannabis or cannabis products that are intended for adults who are 21 years of age or older (adult-use) and who do not possess a physician’s recommendation.

“A-licensee” means any person holding a license under California Business and Professions Code Section 26000 et seq. for cannabis or cannabis products that are intended for adults who are 21 years of age or older (adult-use) and who do not possess a physician’s recommendation.

“Applicant” means an owner applying for a cannabis business permit or a person applying for a cannabis employee permit pursuant to this Chapter.

“Bureau” means the California Bureau of Cannabis Control within the California Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

“Cannabis” means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety Code.

“Cannabis accessories” has the same meaning as in Section 11018.2 of the California Health and Safety Code.

“Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this Chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the California Health and Safety Code, or drug, as defined by Section 109925 of the California Health and Safety Code.

“Cannabis employee permit” means a regulatory permit issued by the City pursuant to

this Chapter to persons working, volunteering, interning, or apprenticing at any cannabis business operating in the City.

“Cannabis product” means cannabis or a product containing cannabis, including, but not limited to, manufactured cannabis, and shall have the same meaning as in Section 11018.1 of the California Health and Safety Code. For purposes of this Chapter, “cannabis” does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

“Canopy” shall have the same meaning as that appearing in Title 3, Section 8000(f) of the California Code of Regulations.

“Caregiver” or “primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

“City” or “City of Tracy” means the City of Tracy, a California general law City.

“City Council” means the City Council of the City of Tracy.

“Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in this Chapter and in MAUCRSA. This definition shall have the same meaning as set forth in California Business and Professions Code Section 26001(k) as the same may be amended from time to time.

“Commercial cannabis business” or “Cannabis business” means any business or operation which engages in medicinal or adult-use commercial cannabis activity.

“Commercial cannabis business permit” or “City cannabis business permit” means a regulatory permit issued by the City pursuant to this Chapter to a person operating a cannabis business in the City. This permit is required before any commercial cannabis activity may be conducted in the City and does not constitute a land use entitlement nor a conditional use permit. The issuance of a cannabis business permit is made expressly contingent upon the business’ ongoing compliance with all of the requirements of this Chapter and any regulations adopted or imposed by the City governing the commercial cannabis activity at issue.

“Cultivation” or “cultivate” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Cultivation site” means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

“Cultivation area” means the area in which cannabis is cultivated.

“Customer” means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician’s recommendation, or a primary caregiver.

“Delivery” means the commercial transfer of cannabis or cannabis products by a retailer directly to a customer off the premises of a cannabis retail facility, in the customer’s home or other

locations authorized by this chapter. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer. This definition shall have the same meaning as Section 26001(p) of the California Business and Professions Code, as may be amended from time to time.

"Dispensary" or "Dispensary site" means a state-licensed, locally permitted business selling cannabis, cannabis products or cannabis accessories from a building or structure that is open to customers. For the purposes of this Chapter, the term "Dispensary" is synonymous with a storefront retailer.

"Dispensing" means any activity involving the licensed retail sale of cannabis or cannabis products from a retailer.

"Distribution" means the procurement, sale, and transport of cannabis and cannabis products between Licensees.

"Distributor" means a person holding a valid commercial cannabis state license for distribution, required by state law to engage in the business of purchasing cannabis from a licensed cultivator, or cannabis products from a license manufacturer, for sale to a licensed retailer.

"Labeling" means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.

"Licensee" means any person holding a State License under this Chapter, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.

"Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the Licensee.

"M-license" means a State License issued for commercial cannabis activity involving medicinal cannabis.

"M-licensee" means any person holding a State License for commercial cannabis activity involving medicinal cannabis.

"Manufacturing" or "manufacturing operation" means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or container.

"Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, extraction or other manufactured product intended for internal consumption through inhalation or oral ingestion or for topical application.

"Manufacturing site" means a location that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods,

independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a person issued a valid commercial cannabis business permit for manufacturing from the City of Tracy and, a valid State License as required for manufacturing of cannabis products.

“Medicinal cannabis” or “medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation. For the purposes of this Chapter, the term “medicinal cannabis” is synonymous with medical cannabis.

“Microbusiness” means a business that engages in at least three of the following commercial activities: cultivation (provided that the cultivation area is less than 10,000 square feet); distribution; manufacturing (Level 1), storefront retailer (dispensary), or non-storefront retailer (delivery-only). This definition shall have the same meaning as Section 26001.1 of the California Business and Professions Code, as may be amended from time to time.

“Natural person” is an individual human being as opposed to an artificial or legal person like a company which may be a private entity or non-governmental organization or public government organization.

“Non-Storefront retailer” or “Retailer Non-Storefront” means a cannabis business that conducts sales of cannabis or cannabis products to customers exclusively by delivery and whose premises are closed to the public. The term “Non-Storefront retailer” is synonymous with the terms “delivery only” or “delivery service.”

“Non-volatile solvent” means any solvent used in the extraction process that is not a volatile solvent. For purposes of this Chapter, a nonvolatile solvent includes ethanol and carbon dioxide used for extraction, or as it may be defined and amended by the state.

“Operation” means any act for which licensure is required under the provisions of this Chapter, or any commercial transfer of cannabis or cannabis products.

“Owner” means any of the following:

- (1) A person with an aggregate ownership interest of five (5) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.
- (2) The chief executive officer and the members of the board of directors of the entity engaging in the cannabis business.
- (3) An individual who will be participating in the direction, control, or management of the person applying for a City cannabis business permit.

“Package” means any container or receptacle used for holding cannabis or cannabis products.

“Patient” or “qualified patient” shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health and Safety Code Section 11362.5.

“Permit Holder” means person to whom a permit under this Chapter has been issued, including but not limited to a cannabis business permit and cannabis employee permit. For purposes of this Chapter, the term “Permit Holder” is synonymous with “Permittee.”

“Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Person with an identification card” shall have the meaning given that term by California Health and Safety Code Section 11362.7.

“Physician’s recommendation” means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code.

“Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee. This definition shall have the same meaning as California Business and Professions Code Section 26001(ap), and as may be amended from time to time.

“Retailer” means a cannabis business issued a state license for the retail sale and delivery of cannabis or cannabis products to customers. This definition shall have the same meaning as California Business & Professions Code Section 26070 and as may be amended from time to time.

“Sell,” “sale,” “to sell” and “retail sale” include any transaction whereby, for any consideration, title to cannabis or cannabis products are transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

“State” means the State of California.

“State License” means a permit or license issued by the State of California, or one of its departments or divisions, under MAUCRSA and any subsequent State of California legislation regarding the same, to engage in commercial cannabis activity.

“Testing laboratory” means a laboratory, facility, or site that offers or performs tests of cannabis or cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the State of California to engage in cannabis testing activities.

“Transport” means the transfer of cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes

of conducting commercial cannabis activity authorized by the MAUCRSA which may be amended or repealed by any subsequent State of California legislation regarding the same.

Section 6.36.13. Compliance with State and Local Laws.

It is the responsibility of the owners and operators of the cannabis business to ensure that it is always operating in a manner compliant with all applicable state and local laws, policies, rules, and regulations including, but not limited to, the California Health and Safety Code, the California Water Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, Energy Code, Green Building Standards Code, Existing Building Code, Historical Building Code, the Tracy Municipal Code, the Tracy Zoning Code, all requirements and conditions related to the land use entitlement process, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions that violate state law or local law with respect to the operation of a cannabis business. It shall be the responsibility of the owners and the operators of the cannabis business to ensure that the cannabis business is, at all times, operating in a manner compliant with all applicable state and local laws, including for as long as applicable, the Compassionate Use Act (“Prop. 215”) and the Medical Cannabis Program Act (“MMPA”) (collectively “the Medical Cannabis Collective Laws”), the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions that violate state law regarding the operation of a commercial cannabis business.

Article 2. – Cannabis Business Permits

Section 6.36.020. Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.

Except as specifically authorized in this Chapter, the commercial cultivation, manufacturing, processing, storing, laboratory testing, labeling, retail sale, delivery, distribution or transportation (other than as provided under California Business and Professions Code section 26090(e)), of cannabis or cannabis product is expressly prohibited in the City of Tracy.

Section 6.36.030. Cannabis Business Permit Required to Engage in a Commercial Cannabis Activity.

No person may engage in any commercial cannabis activity within the City of Tracy unless the person (1) has a valid Cannabis Business Permit from the City of Tracy; (2) has a valid State License; and (3) is currently in compliance with all applicable state and local laws and regulations pertaining to the cannabis business and the commercial cannabis activities and land use and zoning requirements, including obtaining a valid conditional use permit pursuant to Title 10 of this Code.

Section 6.36.040. Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.

(a) Maximum Number and Type of Authorized Cannabis Businesses Permitted. The number

of each type of cannabis business that shall be permitted to operate in the City at any one given time shall be as follows:

- i. Cultivation (Indoor Only) – no maximum number.
- ii. Distribution – no maximum number.
- iii. Manufacturing – no maximum number.
- iv. Microbusiness – no maximum number.
- v. Retailer - Non-Storefront (Delivery Only) – no maximum number.
- vi. Retailer - Storefront (Dispensary) – a maximum of four (4) storefront retailers.
- vii. Testing Laboratory – no maximum number.

This Section is only intended to create a maximum number of cannabis businesses that may be issued permits to operate in the City under each category. Nothing in this Chapter creates a mandate that the City Council must issue any or all of the cannabis business permits if it is determined that the applicants do not meet the standards which are established in the application requirements or further amendments to the application process.

(b) Each year following the Police Chief's initial award of cannabis business permits, if any, or at any time in the City Council's discretion, the City Council may reassess the number of cannabis business permits which are authorized for issuance. The City Council, in its discretion, may determine by ordinance whether the number of commercial cannabis permits should change.

Section 6.36.050. Application Procedure for a Cannabis Business Permit.

(a) The City Council shall adopt by resolution the procedures to govern the application process, and the manner in which the decision to issue a cannabis business permit(s) is made. Said resolution shall authorize City staff and/or consultants to provide detailed objective review criteria to be evaluated on a point system or equivalent quantitative evaluation scale tied to each set of review criteria ("Review Criteria") and to prepare the necessary forms, solicit applications, and review and evaluate the applicants. Applications for a cannabis business permit shall include, but not be limited to, the following information:

- i. Applicant Background Information.
 - A. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.
 - B. The phone number and address to which any notices and correspondence regarding the application is to be mailed.
 - C. Owners. The name, address, telephone number, title, respective percentage of ownership, and function of each of the owners.
 - D. Background checks. For each of the interested parties:
 1. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.
 2. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense

charged, the offense convicted, the sentence, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.

3. Consent to fingerprinting and a criminal background investigation.

- ii. Business operations.
 - A. Business plan. A plan describing how the cannabis business will operate in accordance with this code, state law, and other applicable regulations. The business plan must include proof of sufficient capital to start the business and sustain it through the first three months of operation, plans for handling cash and transporting cannabis and cannabis products to and from the site.
 - B. Community relations plan. A plan describing who is designated as being responsible for outreach and communication with the surrounding community, including the neighborhood and businesses, and how the designee can be contacted.
 - C. Document(s) demonstrating property owner acknowledgement. Document(s) demonstrating that the property owner is fully aware that the applicant intends to use the property for cannabis business purposes. Document(s) must include name, address, and contact information for the property owner.
 - D. State licenses. Copies of any state licenses relating to cannabis that the applicant holds.
 - E. Tax compliance. A current copy of the applicant's city business operations tax certificate, state sales tax seller's permit, and the applicant's most recent year's financial statement and tax returns.
 - F. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
 - G. Budget. A copy of the applicant's most recent annual budget for operations.
 - H. Price list. A list of the most recent prices for all products and services provided by the applicant.
- iii. City authorization. Authorization and consent for the City to seek verification of the information contained within the application.
- iv. Applicant's certification. A statement dated and signed by the applicant, under penalty of perjury, that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the applicant's supervision.
- v. Indemnification. An agreement, in a form approved by the City Attorney, whereby the applicant: (1) releases the City, and its agents, officers, elected officials, and employees from any and all claims, injuries, damages, or liabilities of any kind arising from: (a) any repeal or amendment of this Chapter or any provision of Title 10 of the Zoning Code relating to cannabis, and (b) any arrest or prosecution of the applicant or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies, and holds harmless the City and its agents, officers, elected officials, and employees from and against any and all claims or actions: (a) brought by adjacent or nearby property owners or any other parties for any damages, injuries, or other liabilities of any kind arising from operations at the commercial cannabis business, and (b) brought by any party for any problems, injuries, damages, or other liabilities of any kind arising out of the distribution of cannabis produced or processed at the site or by the business.

(b) Non-Refundable Application Fee. At the time of filing, each applicant shall pay a non-refundable application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.

(c) Review of Applications. The Development Services Director or designee, Finance Director or designee, and Fire Chief or designee (“Review Committee”) shall conduct an initial review of the applications and rank and score the applications utilizing the Review Criteria. The Review Committee shall then make a recommendation to the Police Chief or designee, who shall make a final selection in accordance with Section 6.36.060.

(d) THE CITY’S RESERVATION OF RIGHTS:

The City reserves the right to reject any or all applications. Prior to cannabis business permit issuance, the City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to cannabis business permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application.

Section 6.36.060. Selection of Cannabis Business Permittee(s).

(a) The Police Chief or designee shall determine which applicants will be granted a cannabis business permit in accordance with the procedures established referenced in Section 6.36.050, subsection (a). The Police Chief’s or designee’s decision as to the selection of permittees shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

(b) Upon issuance of a conditional use permit, a cannabis business permit is valid at only the location granted under the conditional use permit and State License.

(c) Issuance of a cannabis business permit does not constitute a land use entitlement nor does it constitute a land use permit. Following the Police Chief’s selection, the prevailing candidates(s) shall apply to the City’s Development Services Department to obtain a conditional use permit pursuant to Section 10.08.4250 and any other required land use approvals or entitlements for the permittee’s premises. Land use approvals shall include compliance with all applicable provisions of California Environmental Quality Act.

(d) Conditions placed on the conditional use permit issued under Title 10 of this Code are also conditions of the cannabis business permit. Any violation of the conditional use permit’s conditions is grounds for suspending or revoking the cannabis business permit.

(e) Furthermore, no permittee shall begin operations, notwithstanding the issuance of a cannabis business permit, unless all of the state and local laws and regulations have been complied with, including but not limited to the requirements of this Chapter and Section 10.08.3196 of this Code.

f) Notwithstanding anything in this Chapter to the contrary, the City reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a cannabis business permit until a permit is issued, and then only for the duration of the term specified in the permit. Each applicant assumes the risk that, at any time prior to the issuance of a cannabis business permit, the City Council may terminate or delay the program created under this Chapter.

(g) If an application is denied for a cannabis business permit, a new application may not be filed for one (1) year from the date of the denial.

(h) Permit Fee. Each person granted a Cannabis Business Permit shall pay the permit fee established by resolution of the City Council, to cover the costs of administering the cannabis business permit regulatory program created in this Chapter.

Section 6.36.070 Grounds for Denial of a Cannabis Business Permit.

(a) The City may deny a cannabis business permit if the Police Chief or designee(s) determines that one or more of the following circumstances exist:

- i. The application received is incomplete, filed late, or not responsive to the requirements of this article;
- ii. The application contains a false or misleading statement or omission of a material fact;
- iii. The operation of a cannabis business described in the application fails to comply with any of the requirements in this code, state law, or any other regulation;
- iv. The applicant or any of its owners has any unpaid and overdue administrative penalties imposed for violations of this chapter;
- v. The applicant has not paid the applicable business operations tax pursuant to Chapter 6.04 or subsequent Chapter(s) or taxes which may be amended from time to time by the voters.
- vi. Within 12 months of the date of application, either the applicant has had its cannabis business permit revoked; or any of its owners were associated with another business that had its cannabis business permit revoked; or
- vii. Operation of the cannabis business is a threat to the public health, safety, or welfare.

Section 6.36.080. Expiration of Cannabis Business Permits.

Each cannabis business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. Cannabis business permits may be renewed as provided in Section 6.36.100.

Section 6.36.090. Suspension, Modification, or Revocation of Cannabis Business Permits.

(a) The Police Chief or designee may suspend, modify, or revoke a cannabis business permit issued pursuant to the provisions of this Chapter for any of the following reasons:

- i. One or more of the circumstances upon which a cannabis business permit could be

- denied, as described in Section 6.36.070, exists or has occurred;
 - ii. One or more conditions of the cannabis business permit has been violated; or
 - iii. The Permittee, its owners, officers, directors, partners, agents, or other persons vested with the authority to manage or direct the affairs of the business have violated any provision of this Chapter.
- (b) The Police Chief's or designee's decision as to the suspension, modification, or revocation of a cannabis business permit shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

Section 6.36.100. Renewal Applications.

- (a) An application for renewal of a cannabis business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.
- (b) The renewal application shall contain all the information required for new applications.
- (c) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.
- (d) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
- i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred;
 - ii. The application is filed less than sixty (60) days before its expiration.
 - iii. The cannabis business permit is suspended or revoked at the time of the application.
 - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit for a vacant site and is subject to discretionary permit processing and construction.
 - v. The permittee fails to or is unable to renew its State License.
- (e) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.
- (f) If a renewal application is denied, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.
- (g) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

Section 6.36.110. Effect of State License Suspension, Revocation, or Termination.

- (a) Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a cannabis business, such revocation or termination shall constitute grounds for revoking a City cannabis business permit.
- (b) Permittee shall inform the Police Chief or designee of any suspension, revocation or termination of their State license within one business day of receiving notice from the State. Failure to do so shall constitute grounds for revoking a City cannabis business permit.

Section 6.36.120. Change in Contact Information; Updated Registration Form.

- (a) Any time the contact information listed on a cannabis business permit has changed, the business shall re-register with the Police Chief or designee(s). The process and the fees for re-registration shall be the same as the process and fees set forth in Section 6.36.100.
- (b) Within fifteen (15) calendar days of any other change in the information provided in the application or any change in status of compliance with the provisions of this Chapter, including any change in the cannabis business ownership or management members, the applicant shall file an updated registration form with the Police Chief or designee(s) for review along with a registration amendment fee, as set forth in Section 6.36.100.

Section 6.36.130. Transfer of Cannabis Business Permit.

- (a) The holder of a cannabis business permit shall not transfer ownership or control of the permit to another person or entity unless and until the transferee obtains an amendment to their State License, if required, and an amendment to the permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief or designee(s) in accordance with all provisions of this Chapter (as though the transferee were applying for an original cannabis business permit) accompanied by a transfer fee in an amount set by resolution of the City Council, and the Police Chief or designee(s) determines that the transferee passed the background check required for permittees and meets all other requirements of this Chapter.
- (b) Cannabis business permits issued through the grant of a transfer by the Police Chief shall be valid for a period of one year beginning on the day the Police Chief approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this Chapter.
- (c) Changes in ownership of a permittee's business structure or a substantial change in the ownership of a permittee business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the Police Chief or designee(s) through the transfer process contained in this subsection (a). Failure to comply with this provision is grounds for revocation.
- (d) A permittee may change the form of business entity without applying to the Police Chief or designee(s) for a transfer of permit, provided that either:

- i. The membership of the new business entity is substantially similar to original permit holder business entity (at least 51% of the membership is identical), or
- ii. If the original permittee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and to comply with Section 6.36.130, subsection (b), provided that the Board of Directors (or in the case of an unincorporated association, the individual(s) listed on the City permit application) of the original permittee entity are the same as the new business entity.

Although a transfer is not required in these two circumstances, the permit holder is required to notify the Police Chief or designee(s) in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for permit revocation.

(e) No cannabis business permit may be transferred when the Police Chief or designee has notified the permittee that the permit has been or may be suspended or revoked.

(f) Any attempt to transfer a cannabis business permit either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

Section 6.36.140. Limitations on City's Liability.

To the fullest extent permitted by law, the City of Tracy shall not assume any liability whatsoever with respect to having issued a cannabis business permit pursuant to this Chapter or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any cannabis business permit, the applicant shall be required to meet all of the following conditions before receipt of the permit:

(a) The applicant must execute an agreement, in a form approved by the City Attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Tracy, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the cannabis business permit, the City's decision to approve the operation of the commercial cannabis business or activity, the process used by the City in making its decision, or the alleged violation of any state or local laws by the cannabis business or any of its officers, employees or agents.

(b) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City Attorney and/or Risk Manager.

(c) Reimburse the City of Tracy for all costs and expenses, including but not limited to attorney fees and costs and court costs, which the City of Tracy may be required to pay as a result of any legal challenge related to the City's approval of the applicant's cannabis business permit, or related to the City's approval of a commercial cannabis activity. The City of Tracy may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

Section 6.36.150. Cannabis Employee Permit Required.

(a) Any person who is an employee or who otherwise works within a cannabis business must be legally authorized to do so under applicable state law.

(b) Any person who is an employee or who otherwise works within a cannabis business must obtain a cannabis employee permit from the City prior to performing any work at any cannabis business.

(c) Applications for a cannabis employee permit shall be developed, made available, and processed by the Police Chief or designee(s), and shall include, but not be limited to, the following information:

- i. Name, address, and phone number of the applicant;
- ii. Verification of the applicant's age and identity. A copy of a birth certificate, driver's license, government issued identification card, passport or other proof that the applicant is at twenty-one (21) years of age must be submitted with the application;
- iii. Name, address of the cannabis business where the person will be employed, and the name and phone number of the primary manager of that business;
- iv. A list of any crimes enumerated in California Business and Professions Code Section 26057(b)(4) of which the applicant has been convicted;
- v. Name, address, and contact person for any previous employers from which the applicant was fired, resigned, or asked to leave and the reasons for such dismissal or firing;
- vi. The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the Police Chief or designee(s).
- vii. A fee paid in an amount set by resolution of the City Council in an amount necessary to cover the costs of administering the cannabis employee permit program. The fee is non-refundable and shall not be returned in the event the employee permit is denied or revoked.

(d) The Police Chief or designee(s) shall review the application for completeness, shall conduct a background check to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant:

- i. Has ever been convicted of a violent felony as defined by California Penal Code Section 667.5, or equivalent offenses in other states;
- ii. Has ever been convicted of a crime involving dishonesty, fraud or deceit, including but not limited to fraud, forgery, theft, or embezzlement as those offenses are defined in California Penal Code Sections 186.11, 470, 484, and 504a, respectively; or; equivalent offenses in other states; or
- iii. Has ever been convicted of the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, except for cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.
- iv. Employers who wish to hire an individual notwithstanding this rule shall apply to the Police Chief, who at his/her sole discretion may issue a written waiver. The employer or employee shall submit a statement of rehabilitation for each conviction. The statement of rehabilitation may contain evidence that the employer or employee would like the Police Chief to consider that demonstrates the employee's fitness for a

cannabis employee permit. Supporting evidence may be attached to the statement of rehabilitation and may include, but is not limited to, dated letters of reference from employers, instructors, or professional counselors that contain valid contact information for the individual providing the reference. The Police Chief's or designee's decision as to the selection of an employee shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

Discovery of facts showing that the applicant has either failed to disclose or has been convicted of any of the above offenses are grounds for denial of the permit. Where the applicant's sentence (including any term of probation, incarceration, or supervised release) for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is completed, such underlying conviction shall not be the sole ground for denial of a commercial cannabis employee permit.

(e) The Police Chief or designee shall implement the cannabis employee permit process in accordance with the procedures and rules established by resolution adopted by the City Council.

(f) A cannabis employee permit shall be valid for a twelve (12) month period from date of issuance and must be renewed on an annual basis. Renewal applications shall contain all the information required in Section 6.36.150, subsection (c) above including the payment of a renewal application fee in an amount to be set by resolution of the City Council.

(g) The City may immediately revoke the cannabis employee permit should the permit holder be convicted of a crime listed in subsection (d)(ii) above. The following are additional grounds for revoking a cannabis employee permit based on the specific role and function of that employee:

- i. A cannabis employee permit shall be revoked if the employee permit holder:
 - A. Sells or provides cannabis or cannabis products to a minor;
 - B. Attempts to give away cannabis or cannabis products while working, unless as authorized pursuant to Section 5411 of Chapter 3, Division 42, Title 16 of the California Code of Regulations;
 - C. Acts to illegally divert cannabis or cannabis products to the black market, including stealing cash; stealing the licensee's product for personal consumption; or selling the licensee's product and keeping the proceeds of the sale; or
 - D. Is cited for driving under the influence of alcohol, cannabis or another illicit drug while on- or off-duty.

(h) The applicant may appeal the denial or revocation of a cannabis employee permit to the City Manager by filing a notice of appeal with the City Clerk within ten (10) working days of the date the applicant received the notice of denial or revocation, which appeal shall be conducted as set forth in Chapter 1.12 of this Code.

Article 3. – General Operating Procedures for Cannabis Business Permittees

Section 6.36.160. City Business License.

Prior to commencing operations, a cannabis business shall obtain a City of Tracy business license.

Section 6.36.170. Records and Recordkeeping.

(a) Each owner and operator of a cannabis business shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a commercial cannabis business permit issued pursuant to this Chapter), or at any time upon reasonable request of the City, each cannabis business shall file a sworn statement detailing the number of sales by the commercial cannabis business during the previous twelve-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid. On an annual basis, each owner and operator shall submit to the City a financial audit of the business's operations conducted by an independent certified public accountant. Each permittee shall be subject to a regulatory compliance review and financial audit as determined by the City Manager or designee(s).

(b) Each owner and operator of a commercial cannabis business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the commercial cannabis business. The register required by this paragraph shall be provided to the Police Chief or designee(s) upon a reasonable request.

(c) All cannabis businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing and distribution processes in accordance with the MAUCRSA.

(d) Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA) and other applicable regulations, each cannabis business shall allow City of Tracy officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted commercial cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated in writing by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware.

Section 6.36.180. Security Measures.

(a) A permitted cannabis business shall implement sufficient security measures to deter and prevent unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent theft of cannabis or cannabis products at the cannabis business. Except as may otherwise be determined by the Police Chief or designee and Fire Chief or designee, these security measures shall include, but shall not be limited to, all of the following:

- i. Preventing individuals from remaining on the premises of the cannabis business if they are not engaging in an activity directly related to the permitted operations of the cannabis business.
- ii. Establishing limited access areas accessible only to authorized commercial cannabis business personnel.
- iii. All cannabis and cannabis products shall be stored in a secured and locked room, safe, or vault, provided that such secured areas meet the emergency egress requirements in the Building Code. All cannabis and cannabis products that are being sold for retail purposes shall be kept in a manner as to prevent diversion, theft, and loss.
- iv. On-site security guard(s), licensed by the State of California Bureau of Security and Investigative Services, may be required as determined by the Police Chief or designee, and shall be subject to the prior review and approval of the Police Chief or his/her designee(s), with such approval not to be unreasonably withheld.
- v. Installing security surveillance cameras of sufficient resolution to allow the identification of persons and objects to monitor all entrances and exits to and from the premises, all interior spaces within the commercial cannabis business which are open and accessible to the public, all interior spaces where cannabis, cash or currency, is being stored for any period of time on a regular basis and all interior spaces where diversion of cannabis could reasonably occur. The commercial cannabis business shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief or designee(s), and that it is compatible with the City's software and hardware. In addition, remote access to the video footage from the cameras shall be provided to the Police Chief or designee(s). Video recordings shall be maintained for a minimum of ninety (90) days, or as required under state law, and shall be made available to the Police Chief or designee(s) upon request without unreasonable delay. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial cannabis business.
- vi. Alarm system. Professionally and centrally-monitored fire, robbery, and burglar alarm systems must be installed and maintained in good working condition. The alarm system must include a private security company that is required to respond to every alarm.
- vii. A commercial cannabis business shall notify the Police Chief or his/her designee(s) within twenty-four (24) hours after discovering any of the following:
 - (1) Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the City Manager or his/her designee(s).
 - (2) Diversion, theft, loss, or any criminal activity involving the commercial cannabis business or any agent or employee of the commercial cannabis business.
 - (3) The loss or unauthorized alteration of records related to cannabis, customers or employees or agents of the commercial cannabis business.
 - (4) Any other breach of security.

Section 6.36.190. Restriction on Alcohol and Tobacco Sales.

- (a) It shall be unlawful to cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the cannabis business.

(b) It shall be unlawful to cause or permit the sale of tobacco products on or about the premises of the cannabis business.

Section 6.36.200. Fees and Charges.

No person may commence or continue any cannabis activity in the City, without timely paying in full all fees and charges required for the operation of a cannabis business. Fees and charges associated with regulation of a cannabis business shall be established by resolution of the City Council which may be amended from time to time.

Section 6.36.210. Packaging and Labeling.

All cannabis, cannabis products, and cannabis accessories sold by a cannabis business shall be packaged, labeled and placed in tamper-evident packaging which at least meets the requirements of the MAUCRSA and all state implementing rules and regulations.

Section 6.36.220 Diversion Prohibited.

No person shall give, sell, distribute, or otherwise transfer any cannabis from a permitted cannabis business to any person in any manner that violates local or state law.

Section 6.36.230 Emergency Contact.

Each cannabis business shall provide the Police Chief or designee(s) with the name, telephone number (both landline and mobile, if available) of at least one 24-hour on-call designated employee to serve as a liaison to resolve complaints, to respond to operating problems or concerns associated with the cannabis business, and to notify the Police Chief of any security issues arising per the terms of Section 6.36.180 (a) vii.

Section 6.36.240 Community Relations Manager.

Each cannabis business shall provide the Police Chief or designee(s) with the name, telephone number (both landline and mobile, if available) of at least one employee to communicate with surrounding neighborhoods and businesses. The cannabis business shall make good faith efforts to encourage neighborhood residents to call this person to solve problems, if any, before any calls or complaints are made to the City.

Section 6.36.250 Payment of Taxes.

All cannabis businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under state and local law. Each cannabis business shall cooperate with the City or designee(s) with respect to any reasonable request to audit the cannabis business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

Section 6.36.260 Employee Permit Requirement

(a) It shall be unlawful for any cannabis business Permittee to employ any person or allow a person to volunteer who is not the holder of a valid City cannabis employee permit.

(b) All managers and staff of a cannabis business permittee must retain a copy of the City-issued cannabis employee permit and make it available to City officials upon request.

Section 6.36.270 Cannabis Consumption Prohibited.

No cannabis business permittee shall allow any person to smoke, ingest, or otherwise consume cannabis or cannabis products in any form on, or within 20 feet of, the premises.

Section 6.36.280 Persons Under 21 years of Age Prohibited.

Persons under the age of twenty-one (21) years shall not be allowed on the premises of any cannabis business, unless otherwise provided in this Chapter. It shall be unlawful and a violation of this Chapter for any person to employ any person at a commercial cannabis business who is not at least twenty-one (21) years of age.

Section 6.36.290 Site Management.

(a) The cannabis business permittee shall prevent and eliminate conditions on the site that constitute a nuisance.

(b) The cannabis business permittee shall maintain the exterior of the site, including any parking lots under the control of the permittee, free of litter, debris, and trash.

(c) The cannabis business permittee shall implement measures that discourage loitering near the business and shall collaborate with the City Police Department to enforce related laws.

(d) The permittee shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations.

(e) Notwithstanding any provisions of this Code to the contrary, the permittee shall remove all graffiti from the site and parking lots under the control of the permittee within 72 hours of its application.

Section 6.36.300 Reporting Criminal Activity.

A cannabis business permittee shall immediately report to the City Police Department all criminal activity occurring on the cannabis business site.

Section 6.36.310 Display of Permit and City Business License.

The original copy of the City cannabis business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the cannabis business in a location readily-visible to all persons entering the premises.

Section 6.36.320 Miscellaneous Operating Requirements.

- (a) Cannabis businesses may operate only during the hours specified in the conditional use permit issued by the City. The hours of operation provided in the conditional use permit shall not exceed the hours of operation allowed under state law.
- (b) No cannabis, cannabis products, graphics depicting cannabis, or cannabis products shall be visible from the exterior of any property issued a cannabis business permit, or on any of the vehicles owned or used as part of the cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
- (c) Reporting and Tracking of Product and of Gross Sales. Each cannabis business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the commercial cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. Said tracking system must be in compliance with state's designated track-and-trace system. The commercial cannabis business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Police Chief or designee(s) prior to being used by the permittee.
- (d) Odor Control. Odor control devices and techniques shall be incorporated in all cannabis businesses to ensure that odors from cannabis are not detectable off-site. Commercial cannabis businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the commercial cannabis business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. As such, cannabis businesses must install and take all measures, including installing equipment, to control odor as required by the Development Services Director or designee.

Article 4. – Operating Procedures for Specific Business Types

Section 6.36.330. Commercial Cannabis Cultivation Permit Requirements

- (a) No person shall operate a cannabis cultivation business in the City without a valid cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued. This section shall not apply to the cultivation of cannabis for personal use allowed under state law.
- (b) Permit Fee. A cannabis cultivation permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.
- (c) Cannabis Business Permit(s) will only be issued for the following types of cannabis cultivation businesses:
 - i. Specialty Cottage – Indoor cultivation up to 500 square feet of total canopy size on one cultivation site.

- ii. Specialty - Indoor cultivation of less than or equal to 5,000 square feet of total canopy size on one cultivation site.
 - iii. Small - Indoor cultivation between 5,001 and 10,000 square feet of total canopy size on one cultivation site.
 - iv. Medium – Indoor cultivation between 10,001 and 22,000 square feet of total canopy size on one cultivation site.
- (d) Indoor Only. A cannabis cultivation permittee shall only cultivate cannabis in a fully enclosed building. Outdoor cultivation of commercial cannabis is expressly prohibited.
- (e) A cannabis cultivation permittee shall not allow cannabis or cannabis products on the cultivation site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site’s main entrance and lobby.
- (f) A cannabis cultivation permittee may conduct all activities permitted by the State License.
- (g) Any cultivation activity that will be conducted by the permittee shall be included on the permit application. No additional cultivation activity can be conducted without applying for and receiving written permission from the City for that additional activity.
- (h) At all times, the cannabis cultivation site shall be compliant with all state regulations for cannabis cultivation including Title 3 of the California Code of Regulations as may be amended.
- (i) Inspections by the Fire Chief or designee may be conducted any time during the business's regular business hours.
- (j) Site Requirements. A cannabis cultivation site shall comply with the following requirements:
- i. Entrances. All entrances into the buildings on the cultivation site shall be locked at all times with entry controlled by the permittee’s managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - ii. Cultivation area. All cultivation areas in any building on the cultivation site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee from the lobby area. As such, managers and staff of the permittee shall not be required to exit the building in an emergency through the cultivation area.
 - iii. Transport area. Each building with a cultivation area shall have an area designed for the secure transfer of cannabis from a vehicle to the cultivation area.
 - iv. Storage area. Each building with a cultivation area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- (k) Signage. A cannabis cultivation permittee shall post in the lobby of the cultivation site signs that state the following:
- i. “This site is not open to the public.”
 - ii. “Retail sales of any goods and services is prohibited.”
 - iii. “Persons under 21 years of age are prohibited from entering this site.”
 - iv. “Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited.”

- v. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the cultivation site.
 - vi. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (l) Restricted Site. No cannabis cultivation permittee shall open their cultivation site to the public.
- i. No cannabis cultivation permittee shall allow anyone on the cultivation site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and distribution drivers.
 - ii. A manager must be on the cultivation site at all times that any other person, except for security guards, is on the site.
 - iii. While on the cultivation site, managers and staff of the cannabis cultivation business must maintain evidence of their cannabis employee permit, issued by the City, at all times.
 - iv. Any person other than managers or staff who are on the cultivation site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
 - v. Retail Sales Prohibited. No person shall conduct any retail sales of any good or services on or from a permitted cannabis cultivation site.
 - vi. Cannabis cultivation sites shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
 - vii. Location Requirements. Cannabis cultivation permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.340. Cannabis Distribution Permit Requirements

- (a) Permit Required. No person shall operate a cannabis distribution business in the City without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.
- (b) Permit Fee. A cannabis distribution permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.
- (c) Cannabis Business Permit(s) will only be issued for the following types of cannabis distribution businesses:
- i. Distributor (Type 11): Purchases, sells, arranges for testing, conducts quality assurance review of packaging and labeling, transports cannabis goods between licensees, and collects state cultivation tax from licensed cultivators.
 - ii. Distributor- Self-Distribution Only (Type 13): Transports only its own cannabis goods that it has cultivated or manufactured to testing facilities and retailers.
 - iii. Distributor- Transport Only (Type 13): Transports cannabis goods between licensees, but may not transport any cannabis goods, except for immature cannabis plants and/or seeds, to a retailer or to the retailer portion of a microbusiness.
- (d) The buildings on the sites of a Type-11 or Type-13 cannabis distribution permittee must comply with the following requirements:

- i. Entrances. All entrances into the buildings on the distribution site must be locked at all times with entry controlled by the cannabis distribution permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- ii. Main entrance and lobby. The distribution site must have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance must be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there must be a lobby to receive persons into the site and to verify whether they are allowed in the areas where cannabis or cannabis products are stored.
- iii. Storage area. The distribution site must have adequate storage space for cannabis and cannabis products being distributed. All storage areas in any building on the distribution site must be separated from the main entrance and lobby and must be secured by a lock accessible only to managers and employees from the lobby area.
- iv. Transport area. Each building with a storage area must have an area designed for the secure transfer of cannabis between a vehicle and the distribution site.

(e) Storage of cannabis and cannabis products.

- i. Type-11 and Type-13 (Self-Distribution Only) cannabis distribution permittees shall only store cannabis or cannabis products in a secured room within a limited access area that is covered by video cameras, in a fully enclosed building on the distribution site. No cannabis or cannabis products in possession of the cannabis distribution business may be stored in any other facility, such as a separate storage facility or a cannabis product manufacturing facility.
- ii. Type-11 and Type-13 (Self Distribution Only) cannabis distribution permittees shall not allow cannabis or cannabis products on the distribution site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.
- iii. Type-13 (Transport Only) cannabis distribution permittees shall not store cannabis or cannabis products on the distribution site.

(f) Transportation. The cannabis distribution business shall use and maintain computer software to record the following information relating to the transportation of cannabis and cannabis products:

- i. A shipping manifest that includes a specific description of the items being transported, whether each item is a medical cannabis or adult-use cannabis product, and the name, address, and license number of the cannabis business to which the items are to be transported;
- ii. The name of the person who transported the items;
- iii. The date and time of the transport; and
- iv. The name of the manager of the cannabis business who confirmed receipt of the items.
- v. A person transporting cannabis or cannabis products on behalf of a cannabis distribution business shall carry the following items:
 - A. A copy of the distributor's current cannabis distribution business permit;
 - B. The person's government-issued identification;
 - C. Evidence of the person's City-issued cannabis employee permit; and
 - D. A copy of the shipping manifest as described in subsection (f) i.

- vi. Upon demand of a peace officer or city employee authorized to enforce this chapter, a person transporting cannabis or cannabis products pursuant to this section shall present the items listed in subsection (f) v. for examination.
 - vii. No person shall transport cannabis or cannabis products to anyone except a lawfully operated cannabis business. The person transporting the cannabis or cannabis products shall obtain a signature from a manager of the cannabis business confirming receipt of the items listed in the shipping manifest, before leaving the items.
 - viii. A cannabis business shall maintain the information described in subsection (f) v. for at least three years on the site and shall produce the information upon request by the City.
- (g) **Restricted Site.** No cannabis distribution permittee shall open their distribution site to the public.
- i. No cannabis distribution permittee shall allow anyone on the distribution site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and distribution drivers.
 - ii. A manager must be on the distribution site at all times that any other person, except for security guards, is on the site.
 - iii. While on the distribution site, managers and staff of the cannabis distribution business must maintain evidence their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the distribution site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
- (h) **Signage.** A cannabis distribution permittee shall post in the lobby of the distribution site signs that state the following:
- i. "This site is not open to the public."
 - ii. "Retail sales of any goods and services is prohibited."
 - iii. "Persons under 21 years of age are prohibited from entering this site."
 - iv. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
 - v. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the distribution site.
 - vi. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (i) **Retail Sales Prohibited.** No person shall conduct any retail sales of any good or services on or from a permitted cannabis distribution site.
- (j) **Location Requirements.** Cannabis distribution permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.350 Cannabis Manufacturing Permit Requirements.

- (a) No person shall operate a cannabis manufacturing business in the City without a valid cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.
- (b) Permit Fee. A cannabis manufacturing permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.
- (c) Cannabis Business Permit(s) will only be issued for the following types of cannabis manufacturing businesses:
- i. Type 6 (non-volatile), for a business involving all aspects of a cannabis manufacturing business, including the extraction of substances from a cannabis plant and the activities allowed with a Type N and Type P permit as described below.
 - ii. Type N, for a business involving the production and preparation of cannabis products (such as infusing cannabis extracts or concentrates into edibles and topicals) and the activities allowed with a Type P permit as described below. A business holding a Type N permit cannot engage in the extraction of substances from a cannabis plant.
 - iii. Type P, for a business involving only the packaging and labeling of cannabis or cannabis products. A business holding a Type P permit cannot engage in the extraction of substances from a cannabis plant, or the production and preparation of cannabis products.
- (d) Indoor Only. A cannabis manufacturing permittee shall only manufacture cannabis in a fully enclosed building. Outdoor manufacturing of cannabis is expressly prohibited.
- (e) A cannabis manufacturing permittee shall not allow cannabis or cannabis products on the manufacturing site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.
- (f) A cannabis manufacturing permittee may conduct all activities permitted by the State License. This includes, but is not limited to, non-volatile extractions, repackaging and relabeling, and infusions.
- (g) Any manufacturing activity that will be conducted by the permittee shall be included on the permit application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City for that additional activity.
- (h) At all times, the cannabis manufacturing facility will be compliant with all state regulations for cannabis manufacturing including California Health and Safety Code 11362.775 and as it may be amended.
- (i) Inspections by the Fire Chief or designee may be conducted any time during the business's regular business hours.
- (j) Site Requirements. A cannabis manufacturing site shall comply with the following requirements:
- v. Entrances. All entrances into the buildings on the manufacturing site shall be locked at all times with entry controlled by the permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - vi. Manufacturing area. All manufacturing areas in any building on the manufacturing site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee from the lobby area.
 - vii. Transport area. Each building with a manufacturing area shall have an area

- designed for the secure transfer of cannabis from a vehicle to the manufacturing area.
- viii. Storage area. Each building with a manufacturing area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- (k) Signage. A cannabis manufacturing permittee shall post in the lobby of the manufacturing site signs that state the following:
- vii. "This site is not open to the public."
 - viii. "Retail sales of any goods and services is prohibited."
 - ix. "Persons under 21 years of age are prohibited from entering this site."
 - x. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
 - xi. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the manufacturing site.
 - xii. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (l) Restricted Site. No cannabis manufacturing permittee shall open their manufacturing site to the public.
- i. No cannabis manufacturing permittee shall allow anyone on the manufacturing site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and distribution drivers.
 - ii. A manager must be on the manufacturing site at all times that any other person, except for security guards, is on the site.
 - iii. While on the manufacturing site, managers and staff of the cannabis manufacturing business must maintain evidence of their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the manufacturing site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
 - vi. Retail Sales Prohibited. No person shall conduct any retail sales of any good or services on or from a permitted cannabis manufacturing site.
 - vii. Cannabis manufacturing sites shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
- (m) Location Requirements. Cannabis manufacturing permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.360 Cannabis Microbusiness Permit Requirements

- (a) No person shall operate a cannabis microbusiness in the City without a valid cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) Permit Fee. A cannabis microbusiness permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.

(c) All cannabis commercial activity that will be conducted by the permittee shall be included on the permit application. No additional cannabis activity can be conducted without applying for and receiving written permission from the City for that additional activity. Microbusinesses will count towards dispensary limit unless otherwise directed by the City Council.

(d) Location Requirements. Cannabis microbusiness permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.370 Cannabis Non-Storefront (Delivery Only) Retailer Permit Requirements.

(a) Permit Required. No person shall operate a cannabis delivery only business in the City (without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) Permit Fee. A cannabis delivery-only permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.

(c) Permissible Delivery Locations and Customers. Cannabis delivery-only retailers are subject to the following requirements:

- i. Cannabis, cannabis products and cannabis accessories shall only be delivered to customers located at a residential address including a nursing or assisted living facility;
- ii. The delivery of Cannabis, cannabis products and cannabis accessories to any location or facility owned, leased or occupied by a public agency, including but not limited to, a public school, library, and community center, is expressly prohibited;
- iii. No deliveries shall be conducted on private property open to the public, including but not limited to, business and professional offices, retail stores and their adjoining parking lots, places of assembly, eating and drinking establishments.

(d) All cannabis and cannabis products being delivered shall be obtained from the site of the cannabis business that is authorized to deliver cannabis. No cannabis or cannabis products may be delivered from any other facility, such as a separate storage facility or a cannabis product manufacturing facility.

(e) No person delivering cannabis, cannabis products and cannabis accessories shall possess more than \$3,000 worth of cannabis and cannabis products at any time.

(f) The cannabis delivery only business shall use and maintain computer software to record the following information relating to each delivery:

- i. A delivery request that includes the date of the request, the full name of the person requesting the delivery, a specific description of the items requested, whether each item is a medical cannabis or adult-use cannabis product, and the address to which the items are to be delivered;

- ii. The name of the person who delivered the items; and
- iii. The date and time of the delivery.

(g) A person delivering cannabis or cannabis products on behalf of a cannabis non-storefront retailer shall carry the following items:

- i. A copy of the dispensary's current dispensary permit;
- ii. The person's government-issued identification;
- iii. Evidence of the person's City-issued cannabis employee permit; and
- iv. A copy of the delivery request as described in subsection (f).

(h) Upon demand of a peace officer or City employee authorized to enforce this chapter, a person delivering cannabis or cannabis products pursuant to this section shall present the items listed in subsection (g) for examination.

(i) No person shall deliver cannabis to anyone except the person who requested the delivery. The person delivering the cannabis shall confirm compliance with sections 6.36.370 (g) (medical cannabis dispensing operations) and 6.36.370(f) (adult-use cannabis dispensing operations), as applicable, by inspecting the relevant identification and documentation before handing the cannabis or cannabis product to the customer.

(j) A cannabis delivery-only retailer shall maintain the information described in subsection (f) for at least three years on the site and shall produce the information to the city upon request.

(k) **Delivery-Only Vehicle Requirements.** Prior to commencing operations, a Cannabis Non-Storefront Retailer shall provide the City with all information requested by the Police Chief or designee(s) regarding the vehicles used to deliver cannabis to customers. Such information shall include, but not be limited to the following:

- i. Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver cannabis or cannabis products.
- ii. Proof of insurance as required in section 6.36.140 (b) for any and all vehicles being used to deliver cannabis or cannabis products.
- iii. The make, model, color, and license number of all vehicles owned or leased by the commercial cannabis retailer and used to deliver cannabis or cannabis products.

(l) **Retail Sales Prohibited.** No person shall conduct any retail sales of any good or services on or from a permitted cannabis delivery-only retailer site.

(m) **Location Requirements.** Cannabis non-storefront retail permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.380 Cannabis Storefront (Dispensary) Retailer Permit Requirements.

(a) **Permit Required.** No person shall operate a cannabis storefront retailer in the City without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) Permit Fee. A cannabis storefront retailer permit program fee is established and imposed. The City Council shall establish by resolution the amount of the cannabis business permit fee for a storefront retailer and any related penalties.

(c) Operating Hours. The maximum hours of operation for a cannabis storefront retailer shall be established by the conditional use permit issued by the City, provided that the hours shall not exceed the maximum hours of operation allowed under state law.

(d) Indoor Operations Only. A cannabis storefront retailer permittee shall not allow cannabis, cannabis products, or cannabis accessories on the dispensary site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

(e) Restricted Access to Cannabis Storefront Retailer Premises. An A-licensee shall not allow any person under 21 years of age access to a licensed cannabis dispensary, unless the A-licensee also holds an M-license and the licensed premises for the A-license and M-license are the same. A M-licensee may allow access to a licensed cannabis dispensary to any person 18 years of age or older who possesses a valid government-issued identification card and either a valid county-issued identification card under Section 11362.712 of the California Health and Safety Code, or who is a qualified patient in possession of a valid physician's recommendation in their name, or who is a primary caregiver for a person in possession of a valid physician's recommendation, or any person 21 years of age or older, if the M-licensee holds an A-license and the licensed premises for the M-license and A-license are the same.

(f) Adult Use Only. A cannabis storefront retailer with an A-license from the State shall only sell adult-use cannabis to persons who are 21 years of age or older, and who are in possession of a valid government-issued identification card.

(g) Medical Cannabis Dispensing Operations. A cannabis retailer that is expressly authorized to sell medical cannabis pursuant to this Chapter and state law shall sell medical cannabis only to:

- i. A person 18 years of age or older who possesses a valid government-issued identification card and either a valid county-issued identification card under Section 11362.712 of the California Health and Safety Code; or
- ii. Qualified patients with a currently valid physician's recommendation in compliance with the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code section 11362.7 et seq.), and valid government-issued identification such as a Department of Motor Vehicles driver's license or State Identification Card; or
- iii. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code section 11362.7 et seq.), and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.
- iv. No cannabis business that is expressly authorized to sell medical cannabis pursuant to this chapter shall have a physician on the dispensary site to evaluate patients or provide a recommendation for medical cannabis.

(h) Maintenance of Medical Cannabis Records. A cannabis retailer shall maintain records of the following information for each member and customer of the dispensary that purchases medical cannabis:

- i. The name, date of birth, physical address, and telephone number; and their status as a qualified patient or primary caregiver.
- ii. A copy of each qualified patient's written physician recommendation and their designation of a primary caregiver.
- iii. These records shall be maintained by the cannabis retailer for a period of not less than three years and shall be produced to the city within 24 hours after receipt of the City's request.
- iv. The storefront cannabis dispensary shall report any loss, damage or destruction of these records to the Police Chief within 24 hours of the loss, damage or destruction.

(i) Cannabis Accessories. A cannabis dispensary that is expressly authorized to sell cannabis pursuant to this chapter, whether medical cannabis or adult-use cannabis, may also sell cannabis accessories and display cannabis accessories.

(j) Restrictions on Alcoholic Beverages. No storefront cannabis dispensary or manager shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages; or operate a business on or adjacent to the dispensary site that sells alcoholic beverages.

(k) Site Requirements.

- i. Floor Plan. A cannabis storefront retailer must have a lobby waiting area at the entrance to receive persons to verify that they are members of that dispensary or are otherwise allowed to be on the dispensary site. A dispensary must also have a separate and secure area designated for selling cannabis, cannabis products, and cannabis accessories to its customers, provided that such secured areas do not violate the emergency egress requirements in the Building Code. The main entrance must be located and maintained clear of barriers, landscaping, and similar obstructions so that it is clearly visible from public streets or sidewalks.
- ii. Storage. A cannabis storefront retailer must have adequate locked storage on the dispensary site, identified and approved as a part of the security plan, for after-hours storage of cannabis and cannabis products. Cannabis and cannabis products must be stored at the dispensary site in secured rooms that are completely enclosed and do not violate the emergency egress requirements in the Building Code or in a safe that is bolted to the floor.

(l) Signage. A cannabis storefront retailer shall post in the lobby of the dispensary site signs that state the following:

- i. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
- ii. A cannabis storefront retailer that is only authorized to sell medical cannabis must have a sign stating, "Medical cannabis sales only. Only qualified patients and primary caregivers may enter. Any qualified patient or primary caregiver under 18 years of age must be in the presence of their parent or legal guardian."
- iii. A cannabis storefront retailer that is only authorized to sell adult-use cannabis must have a sign stating, "Adult-use cannabis sales only. Persons under 21 years of age are prohibited from entering."

- iv. A cannabis storefront dispensary that is authorized to sell both medical and adult-use cannabis must have a sign stating, "Medical and adult-use cannabis for sale. Persons under 21 years of age are prohibited from entering this property unless they are a qualified patient or a primary caregiver. Any qualified patient or primary caregiver under 18 years of age must be in the presence of their parent or legal guardian." If separate rooms are provided for medical cannabis and adult-use cannabis, the signs may be posted next to each room as appropriate.
 - v. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons in the normal course of a transaction.
 - vi. The signs must not obstruct the entrance or windows of the dispensary.
 - vii. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (m) **Restricted Site.**
- i. All entrances into a storefront cannabis dispensary's building shall be locked from the exterior at all times with entry controlled by dispensary personnel, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - ii. A manager must be on the dispensary site at all times that any other person, except for security guards, is on the site.
 - iii. While on the dispensary site, managers and staff of the cannabis dispensary permittee must maintain evidence of their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the dispensary site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
- (n) **Cannabis Cultivation Prohibited.** No cannabis storefront dispensary shall grow or cultivate cannabis, except for immature nursery stock cannabis plants, on the dispensary site.
- (o) **Location Requirements.** Cannabis storefront retail permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.390 Cannabis Testing Laboratory Requirements.

- (a) **Permit Required.** No person shall operate a cannabis testing laboratory business in the City without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.
- (b) **Permit Fee.** A cannabis testing laboratory permit program fee is established and imposed. The City Council shall establish by resolution the amount of the cannabis business permit fee for a cannabis testing laboratory and any related penalties.
- (c) **Indoor Testing Only.** A cannabis testing laboratory permittee shall only test cannabis in a fully enclosed building.
- (d) **Site Requirements.** A cannabis testing laboratory site shall comply with the following requirements:

- i. Entrances. All entrances into the buildings on the laboratory site shall be locked at all times with entry controlled by the cannabis testing laboratory permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - ii. Testing area. All testing areas in any building on the laboratory site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the cannabis testing laboratory permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - iii. Transport area. Each building with a testing area shall have an area designed for the secure transfer of cannabis from a vehicle to the testing area.
 - iv. Storage area. Each building with a testing area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the cannabis testing laboratory permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- (e) Signage. A cannabis testing laboratory permittee shall post in the lobby of the laboratory site signs that state the following:
- i. "This site is not open to the public."
 - ii. "Retail sales of any goods and services is prohibited."
 - iii. "Persons under 21 years of age are prohibited from entering this site."
 - iv. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
 - v. Each sign must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the testing site.
 - vi. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (f) Restricted Site. No cannabis testing laboratory permittee shall open their laboratory site to the public.
- i. No cannabis testing laboratory permittee shall allow anyone on the laboratory site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and cannabis transporters.
 - ii. A manager must be on the laboratory site at all times that any other person, except for security guards, is on the site.
 - iii. While on the laboratory site, managers and staff of the cannabis testing laboratory permittee must maintain evidence of their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the laboratory site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
- (g) Retail Sales Prohibited. No person shall conduct any retail sales of any good or services on or from a permitted cannabis testing laboratory site.
- (h) Location Requirements. Cannabis testing laboratory permittees shall locate in a site consistent with Section 10.08.3196.

Article 5. – Enforcement.

Section 6.36.400. Promulgation of Regulations, Requirements, Standards and Other Legal Duties.

(a) In addition to any regulations adopted by the City Council, the City Manager or designee is authorized to establish any additional regulations, requirements, and standards governing the issuance, denial or renewal of cannabis business permits; the operation of cannabis businesses that are necessary to protect the public health, safety and welfare; and the City's oversight of cannabis businesses, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter. Such regulations, requirements or standards shall take effect as determined by the City Manager or designee, and existing cannabis business permit holders shall comply as amended.

(b) Regulations shall be published on the City's website.

(c) Regulations promulgated by the City Manager or designee shall become effective as determined therein. Cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager or designee.

Section 6.36.410. Fees Deemed Debt to City of Tracy.

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City of Tracy that is recoverable via an authorized administrative process as set forth in the Tracy Municipal Code, or in any court of competent jurisdiction.

Section 6.36.420. Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City of Tracy, whether committed by the permittee or any employee, volunteer, or agent of the permittee, which violations occur in or about the premises of the cannabis business, and violations which occur during deliveries to off-site locations, whether or not said violations occur within the permit holder's presence.

Section 6.36.430. Inspection and Enforcement.

(a) The City Manager or designee(s), Chief of Police or designee(s), and Fire Chief or designee(s) charged with enforcing the provisions of the Tracy Municipal Code, or any provision thereof, may enter the location of a cannabis business during normal business hours, without notice, and inspect the location of any cannabis business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.

(b) It is unlawful for any person having responsibility over the operation of a cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a cannabis business under this Chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other

documents required to be maintained by a cannabis business under this Chapter or under state or local law.

Section 6.36.440. Compliance with State Regulations.

It is the stated intent of this Chapter to regulate commercial cannabis activity in the City of Tracy in compliance with all provisions MAUCRSA and any subsequent state legislation.

Section 6.36.450. Violations Declared a Public Nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

Section 6.36.460. Each Violation a Separate Offense.

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Tracy Municipal Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, and any permit issued pursuant to this Chapter shall be deemed null and void, entitling the City to disgorgement and payment to the City of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity, including the imposition of a civil penalty not to exceed one thousand dollars (\$1000) for each day, or part thereof, such violation or failure to comply occurs. The City of Tracy may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the cannabis business or persons related to, or associated with, the commercial cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the Police Chief or designee(s), may take immediate action to temporarily suspend a cannabis business permit issued by the City, pending a hearing before the City Manager.

Section 6.36.470. Criminal Penalties.

Each and every violation of the provisions of this Chapter may be prosecuted as a misdemeanor at the discretion of the City Attorney and upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 6.36.480. Remedies Cumulative and Not Exclusive.

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

Section 6.36.490 Service of Notices.

All notices required by this chapter are deemed issued and served upon the date they are either deposited in the United States mail, postage pre-paid, addressed to the applicant or cannabis business at the mailing address identified in its application, the last updated address on file with the City Manager's office, or the mailing address on the appeal form; or the date upon which personal service of the notice is provided to the applicant or a manager identified on the application or appeal form.

AGENDA ITEM 1.F

REQUEST

WAIVE SECOND READING AND ADOPT ORDINANCE 1278, AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.3196 OF CHAPTER 10.08 “ZONING REGULATIONS” OF TITLE 10 “PLANNING AND ZONING” OF THE TRACY MUNICIPAL CODE TO ESTABLISH LAND USE RESTRICTIONS ON COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

EXECUTIVE SUMMARY

Ordinance 1278 was introduced at the regular Council meeting held on November 19, 2019. Ordinance 1278 is before Council for adoption.

DISCUSSION

The proposed ordinance amends Section 10.08.3196 of the Tracy Municipal Code to establish zoning and location requirements for commercial cannabis activities or uses in the City of Tracy.

Ordinance 1278 is before City Council for adoption.

STRATEGIC PLAN

This agenda item supports Goal 2 and Objective 2.C of the Governance strategic priority:

Goal 2.Ensure Continued Fiscal Sustainability through Financial and Budgetary Stewardship

FISCAL IMPACT

The City Council has previously directed staff to establish fees related to the recovery of costs of the application and permit process. These fees will return to the City Council for consideration at a future meeting. The City Council may consider placing cannabis general tax measure on the November 2020 ballot. This item will return to the City Council in Spring 2020.

RECOMMENDATION

That City Council adopt Ordinance 1278.

Prepared by: Adrienne Richardson, City Clerk
Reviewed by: Midori Lichtwardt, Assistant City Manager
Approved by: Jenny Haruyama, City Manager

ORDINANCE 1278

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.3196 OF CHAPTER 10.08 "ZONING REGULATIONS" OF TITLE 10 "PLANNING AND ZONING" OF THE TRACY MUNICIPAL CODE TO ESTABLISH LAND USE RESTRICTIONS ON COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

WHEREAS, In November 1996, California voters approved the Compassionate Use Act of 1996 ("CUA") which authorized a limited defense to criminal charges for the use, possession or cultivation of marijuana (cannabis) for medical purposes when a qualified patient has a doctor's recommendation for the use of cannabis, and

WHEREAS, In November 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which legalized the use of non-medicinal (recreational) cannabis by adults and the cultivation of up to six cannabis plants for personal use; and the AUMA also created a statewide regulatory framework for the cultivation, production, and sale of non-medical cannabis for adult use, and

WHEREAS, In June 2017, the State Legislature adopted Senate Bill 94 creating a new statewide comprehensive regulatory system for medical and adult use commercial cannabis activity titled Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), and

WHEREAS, CUA, AUMA and MAUCRSA do not prohibit cities from enacting regulations regarding commercial cannabis activities and uses, and

WHEREAS, The City Council seeks to establish land use regulations for commercial cannabis activity in the City of Tracy to ensure such activities are conducted in a manner that mitigates negative impacts, protects the public health safety, and welfare of residents, and supports economic development, and

WHEREAS, The City of Tracy engaged in a comprehensive review and study of state and local cannabis regulations, conducted community outreach on this topic, and held various public meetings to discuss, provide policy direction to staff, and receive public input on the topic of commercial cannabis activity, and

WHEREAS, This amendment seeks to establish zoning and locational requirements on commercial cannabis activity to ensure that these uses are compatible with the City's General Plan and zoning restrictions.

WHEREAS, The Planning Commission considered this matter at a duly noticed public hearing held on October 23, 2019 and recommended that the City Council approve the proposed amendments to Section 10.08.3196, and

WHEREAS, The City Council considered this ordinance at a duly noticed public hearing held on November 5, 2019.

The City Council of the City of Tracy does ordain as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as findings.

SECTION 2. The City Council hereby amends Section 10.08.3196 as shown in Exhibit "A".

SECTION 3. If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 5. The City Council finds that this Ordinance is exempt from CEQA in accordance with Business and Professions Code section 26055(h) because it requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

SECTION 6. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

* * * * *

The foregoing Ordinance 1278 was introduced at a regular meeting of the Tracy City Council on the 19th day of November 2019, and finally adopted on the 3rd day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

Chapter 10.08 - Zoning Regulations

10.08.3196 – Cannabis Uses.

- (a) **Purpose and Intent.** The purpose of this section is to impose zoning restrictions on commercial and personal cannabis activities or uses. This section is not intended to give any person or entity authority to conduct commercial cannabis activities in the City of Tracy. If a commercial cannabis use is not specifically permitted in this Chapter it is not allowed in any zoning district within the City.
- (b) **Definitions.** Unless otherwise provided in this section, the definitions set forth in Chapter 10.08 (Zoning Regulations) and Chapter 6.36 (Commercial Cannabis Activity) apply. The following words shall have the meanings set forth below when used in this section:
- (1) “Day care center” means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers, as well as child care centers pursuant to Section 1596.951 of the California Health and Safety Code. This definition shall have the same meaning as set forth in Section 1596.76 of the California Health and Safety Code, as the same may be amended from time to time.
 - (2) “Fully enclosed and secure structure” means a space within a building, greenhouse, or other structure that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, and which is accessible only through one or more lockable doors.
 - (3) “Outdoors” means any location within the City of Tracy that is not within a fully enclosed and secure structure or private residence, as defined by California Health and Safety Code section 11362.2.
 - (4) “Personal use” shall mean an individual’s personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with state law, including but not limited to Health and Safety Code sections 11362.1 and 11362.2, as may be amended from time to time. Personal use does not include any commercial activity.
 - (5) “School” means those sites upon which full-time instruction in any of the grades K through 12 is provided where the primary purpose is education, as determined in the sole discretion of the Planning Commission. “School” includes public schools, private schools, and charter schools, but does not include any private site upon which education is primarily conducted in private homes.
 - (6) “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to: private youth membership organizations or clubs, social service teenage club facilities, video arcades where ten (10) or more video games or game machines or devices are operated, and where minors are legally permitted to accept services, or similar amusement park facilities. It shall also include a park, playground or recreational area

specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or in City, county, or state parks. This definition shall not include any private gym, martial arts, yoga, ballet, music, art studio or similar studio of this nature, nor shall it include any athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.

(c) Commercial Cannabis Uses.

- (1) All commercial cannabis uses are prohibited from operating in all zoning districts in the City, except as expressly permitted in this section as well as Chapter 6.36.
- (2) All commercial cannabis uses permitted by this section must, prior to establishing and commencing operations, obtain and maintain a City cannabis business permit pursuant to Chapter 6.36 and any other state or local license or permit, as applicable.
- (3) The following commercial cannabis uses are permitted to establish as a conditional use on property in the following zoning districts, subject to the granting of and compliance with terms of a City cannabis business permit pursuant to Chapter 6.36 and a conditional use permit issued pursuant to Section 10.08.4250:

(i) Storefront Retailer (dispensary):

a. Commercial Zone Districts:

- Tracy Hills Specific Plan – General Highway Commercial (GHC-TH)
- Tracy Hills Specific Plan – Mixed Use Business Park (MUBP-TH)
- Residential Areas Specific Plan – Neighborhood Shopping (NS)
- Residential Areas Specific Plan - General Highway Commercial (GHC)
- Industrial Areas Specific Plan – Neighborhood Shopping (NS)
- Industrial Areas Specific Plan – Village Center (VC)
- Industrial Areas Specific Plan – Flex Office (FO)
- Ellis Specific Plan – Limited Use (LU)
- Ellis Specific Plan – Village Center (VC)
- Northeast Industrial Areas Specific Plan – General Commercial (GC)
- I-205 Corridor Specific Plan – Commercial Center (CC)

I-205 Corridor Specific Plan – Freeway Commercial (FC)
I-205 Corridor Specific Plan – General Commercial (GC)
I-205 Corridor Specific Plan – General Commercial 2 (GC2)
I-205 Corridor Specific Plan –Service Commercial (SC)
Cordes Ranch Specific Plan – General Commercial (GC)
Community Shopping Center (CS)
Neighborhood Shopping Center (NS)
General Highway Commercial (GHC)
Highway Service (HS)
Central Business District (CBD)
Community Recreation Support Zone (CRS)
Planned Unit Development –West Clover Rd (City Council ordinance 789 c.s.)
Planned Unit Development - Southeast corner of Grantline Road and Corral Hollow Road (City Council ordinance 697 c.s.)
Planned Unit Development – Northwest corner of 6th Street and C Street (City Council Resolution 2012-053)
Planned Unit Development – northwest corner of 11th Street and East Street (City Council ordinance 742 c.s.)

b. Industrial Zone Districts:

Tracy Hills Specific Plan – Light Industrial (M1-TH)
Industrial Areas Specific Plan – General Industrial (GI)
Industrial Areas Specific Plan – Limited Industrial (LI)
Northeast Industrial Areas Specific Plan – Light Industrial (LI)
I-205 Corridor Specific Plan – Light Industrial (LI)
Cordes Ranch Specific Plan – Business Park Industrial (BPI)
Light Industrial – M1
Heavy Industrial – M2

Planned Unit Development – West Larch Road (City Council ordinance 1083)

(ii) Non-storefront retailer (Delivery), distribution, manufacturing, microbusiness, testing laboratory, indoor cultivation:

a. Industrial Zone Districts:

Tracy Hills Specific Plan – Light Industrial (M1-TH)

Industrial Areas Specific Plan – General Industrial (GI)

Industrial Areas Specific Plan – Limited Industrial (LI)

Northeast Industrial Areas Specific Plan – Light Industrial (LI)

I-205 Corridor Specific Plan – Light Industrial (LI)

Cordes Ranch Specific Plan – Business Park Industrial (BPI)

Light Industrial – M1

Heavy Industrial – M2

Planned Unit Development – 450 West Larch Road (City Council resolution)

(d) **Location Requirements.**

- (1) Any commercial cannabis use shall be located at least 600 feet from any parcel containing any of the following sensitive uses as of the date the conditional use permit is issued: school, day care center, or youth center; and
- (2) If located on separate parcels, the distance between the commercial cannabis use and the sensitive use property shall be measured from the outer boundaries of the sensitive use parcel to the closest structure containing a cannabis use, and
- (3) If located on the same parcel, the distance between the structures containing the cannabis use and any sensitive use shall be at least 600 feet.

(e) **Cultivation of Cannabis.**

- (1) All outdoor cultivation of cannabis within the City is prohibited, and shall be unlawful, as a principal use, conditional use, special use, or accessory use in any zone.
- (2) The indoor cultivation of cannabis shall comply with Chapter 6.36 and applicable state law. The cultivation of cannabis for personal use shall only be conducted indoor and in accordance with applicable state law.

(f) **Penalties.**

- (1) Violations of this chapter are hereby declared a public nuisance.
- (2) Violations of this section are punishable as misdemeanors and as otherwise set forth in Chapter 1.04 of this Code. Each day of operation of a commercial cannabis business or the outdoor cultivation of marijuana occurs, in violation of this section, constitutes a separate offense.

AGENDA ITEM 3.A

REQUEST

PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE PERMITTED USES IN THE GENERAL HIGHWAY COMMERCIAL ZONE OF THE RESIDENTIAL AREAS SPECIFIC PLAN (SPA19-0003) AND A DEVELOPMENT REVIEW PERMIT FOR AN ASSISTED LIVING AND MEMORY CARE FACILITY (D19-0019) ON APPROXIMATELY 2.73 ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND ALEGRE DRIVE (2050 W. GRANT LINE ROAD) – THE APPLICANT IS SUMMIT SENIOR LIFE, LLC.

EXECUTIVE SUMMARY

This agenda item is a request to amend the Residential Areas Specific Plan (RSP) to allow dependent living facilities in the General Highway Commercial Zone of the RSP and to approve a dependent living facility (Tracy Assisted Living and Memory Care) at the vacant site at the northwest corner of Corral Hollow Road and Alegre Drive.

DISCUSSION

Project Description

The proposal is to construct a 100-unit assisted living and memory care facility on the vacant, 2.73-acre site, at the northwest corner of Corral Hollow Road and Alegre Drive. Three of the units contain two bedrooms and the remaining 97 units are one-bedroom or studio units. The units do not have individual kitchens. Instead, food will be prepared in a centralized kitchen on the first floor and residents will eat in the dining room or meals will be brought to the residents in their rooms. Attachment A identifies the location of the proposed Project. The site is located on the rear (southern) parcel in the Grant Line Center (Chili's/Western Dental Care) commercial center.

Attachments B through F include the Project's site plan, floor plans, exterior building elevations, color renderings, and conceptual landscape plans.

The proposed building contains three floors, with a total of 84,107 square feet. The floor plans, Attachment C, show that the second floor contains less area than the first floor, and the third floor contains significantly less area than the second floor. Due to the second and third floor setback from the first floor, on the south side of the building, the result is a building that appears to be two and three stories from the north side, and appears to be one and two stories from the south side. This creates considerably less visual impact on the adjacent residential neighborhood to the south.

Care facilities, such as the one proposed, have limited parking demands, as most of the parking is used by employees or visitors. Accordingly, City standards require only one, off-street parking space per three beds. Based on this standard, the 103-bed facility would require 34 parking spaces. This Project exceeds that standard by providing 59 spaces.

The exterior building elevations and color renderings are depicted in Attachments D and E, respectively. Together with the site plan (Attachment B) and the floor plans (Attachment C), they illustrate the building's significant "movement" (horizontal relief) as one advances around the perimeter of the building.

The front (west end) of the building includes an open courtyard (loggia) with overhead trellis, bench seating, stone garden, a double-sided fireplace, a dining terrace with decorative pavers, ornamental landscaping, and other amenities. The east half of the building is designed to surround an outdoor courtyard containing flowering accent trees, decorative pavers and artificial turf, a raised planter surrounding a large focal point tree, and bench and lounge seating. The south side of the building contains a recessed dining terrace with a trellis, seating, a BBQ counter with sink, fireplace/pizza oven, and landscaping.

Land Use Compatibility

The Project site plan is integrated with the circulation and parking plan of the existing commercial center. Furthermore, the one- and two-story portions of the building facing south toward Alegre Drive are respectful of the scale of the single-family homes on the south side of Alegre Drive.

Recommended Condition of Approval B.16 requires the existing eight-foot-tall masonry wall adjacent to the Project's south boundary, along the north side of Alegre Drive, to be reduced in height to approximately four feet. The reason for this recommendation is related, primarily, to the appearance of Alegre Drive and the Project site, and also of the view from the first floor windows of the new facility. The eight-foot-tall, flat, masonry wall offers limited opportunity for aesthetic appeal. The proposed building, by contrast, will contain windows, wood siding, stucco with accent score lines, and three colors. The building will be located approximately 25 to 35 feet north of the Alegre Drive curb. This space will be occupied by trees, shrubs, ground cover, and a portion will contain a new walkway. City staff believes lowering the height of the wall will result in a more attractive view of the building and landscaping than the flat masonry wall.

The wall was required in the early 1990s when the residential subdivision was approved because the expectation, at the time, was that a grocery store/drug store shopping center would be built on the commercial side of the wall, and the wall would help mitigate noise and other impacts associated with deliveries, roll-up doors, and trash compactors of the shopping center. With the proposed assisted living facility, a wall will not be necessary to mitigate noise, light, or glare.

Residential Specific Plan Amendment

The Project includes a proposal to amend the permitted uses within the General Highway Commercial (GHC) Zone of the Residential Areas Specific Plan (RSP). Following is a list of the permitted and conditionally permitted uses within the GHC Zone of the RSP (Section 4.1.2.2) and the proposed amendment (underlined):

Permitted uses for GHC sites include:

Eating and/or drinking establishment (with or without entertainment¹),
without serving alcohol and providing entertainment¹ after 11:00
p.m.

Home Furnishings/Appliances/Furniture stores

Auto accessory shops

Auto rental services

General consumer and business services

Miscellaneous repair services

Auto repair services

Auto service stations

Motels

Dependent living facility: adult care which requires personnel who are
licensed to provide medical care in a commercially operated care
facility including but not limited to assisted living, skilled nursing,
and memory care

Conditionally permitted uses for GHC sites include:

Supermarkets

General merchandising retail

Community gardens, defined as land or facilities for recreational activity
consisting of the cultivation by persons other than, or in addition
to, the owner of land, of plant material not for sale

Eating and/or drinking establishment that serves alcohol and provides
entertainment¹ after 11:00 p.m.

Note 1: The definition of "entertainment" is such uses as live music, disc jockeys,
dancing, karaoke, comedy shows, modeling, or live performances.

The Project site is located within the Residential Areas Specific Plan (RSP), adopted by the City Council in 1987. The RSP has been amended from time to time, in response to roadway realignments, elementary school site relocations, and changing market conditions for residential and non-residential development. In fact, the RSP has been amended 38 times since it was first adopted. Today, the RSP is nearly completely built out, with few vacant parcels remaining.

The GHC Zone within the RSP permits a limited range of commercial land uses. Since the Specific Plan was adopted, land use expectations for commercial centers have changed as the City has become larger, more urbanized, and developed several hundred additional acres of commercial property beyond what was planned in 1987. When the RSP was adopted, this site was envisioned to be a grocery store/drug store shopping center. Subsequently, other grocery sites were developed (for example, Winco, Walmart, Costco, and Target), and in 2006, the General Plan designation of the subject property was changed from Commercial to Office. The proposed amendment of the GHC Zone in the RSP is consistent with the General Plan designation and will contemporize the permitted land uses within this commercial center.

Planning Commission Recommendation

The Planning Commission conducted a public hearing to consider the applications on October 23, 2019. Other than the applicant, who spoke in favor of the Project, there was no testimony presented during the public hearing. By a vote of four to zero (with one member absent), the Planning Commission recommended that the City Council approve the amendment to the Specific Plan and the Tracy Assisted Living and Memory Care Development Review Permit.

CEQA Documentation

Regarding the Residential Areas Specific Plan amendment, the Project is consistent with the development density established by the City General Plan, for which an Environmental Impact Report (EIR, SCH Number 2008092006) was certified (Resolution No. 2011-028). The General Plan designation is Office, which provides for medical and non-medical offices, hospitals, research and development uses, retail stores, restaurants, and other uses. The development density of the assisted living and memory care facility does not exceed the traffic, parking, City utilities, or other effects analyzed for the site in the General Plan EIR. Therefore, in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15183, no additional assessment is required.

Regarding the Development Review Permit, the Project is an infill development, consistent with the City's General Plan and zoning, on a site of less than five acres, substantially surrounded by urban uses, has no value as habitat for threatened or endangered species, and will not result in significant effects on City utilities or services. Therefore, the Project is categorically exempt from CEQA review in accordance with Guidelines Section 15332.

STRATEGIC PLAN

This agenda item is not related to any of the Council's Strategic Plans.

FISCAL IMPACT

This agenda item will not require the expenditure of funds. The applicant paid the application processing fee established by the City Council for the Specific Plan Amendment and the Development Review Permit, and paid for the public utility technical studies through a Cost Recovery Agreement with the City.

RECOMMENDATION

Staff and the Planning Commission recommend that the City Council take the following actions:

1. Approve the amendment to the Residential Areas Specific Plan Section 4.1.2.2, Application Number SPA19-0003, to permit dependent living facilities in the GHC Zone of the Residential Areas Specific Plan, as indicated in the City Council Resolution dated December 3, 2019; and

2. Approve the Development Review Permit for Tracy Assisted Living and Memory Care facility, Application Number D19-0019, as indicated in the City Council Resolution dated December 3, 2019.

Prepared by: Alan Bell, Senior Planner

Reviewed by: Bill Dean, Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

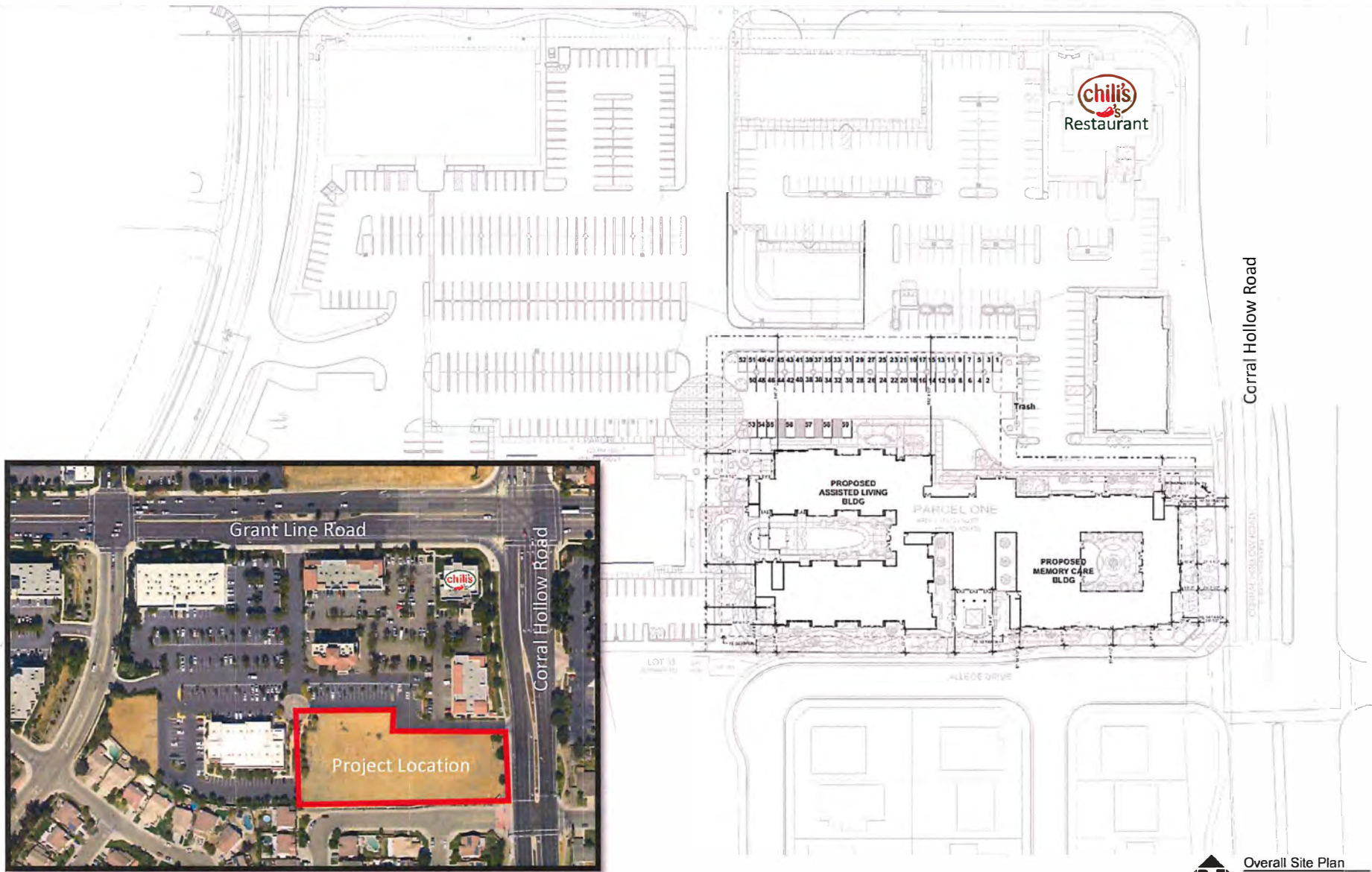
Approved by: Jenny Haruyama, City Manager

ATTACHMENTS


- Attachment A – Project Vicinity
- Attachment B – Site Plan
- Attachment C – Floor Plans (three pages)
- Attachment D – Exterior Elevations (three pages)
- Attachment E – Color Renderings (two pages)
- Attachment F – Conceptual Landscape Plans (two pages)

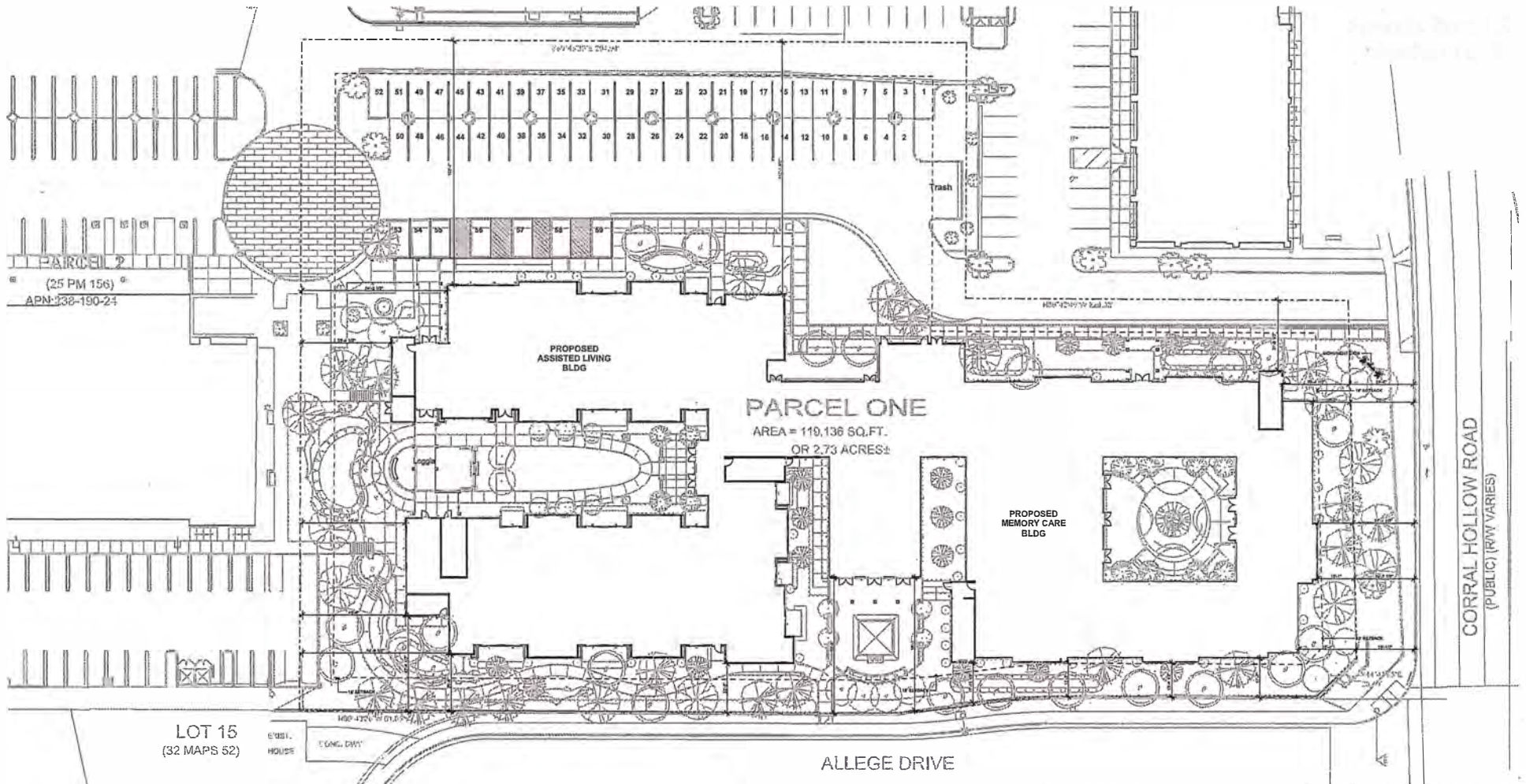
(The City Council has been provided full-sized copies of the Project plans. Color or full-sized plans may be reviewed on the City's website, and at Tracy City Hall, 333 Civic Center Plaza, Tracy).

Grant Line Road



Corral Hollow Road

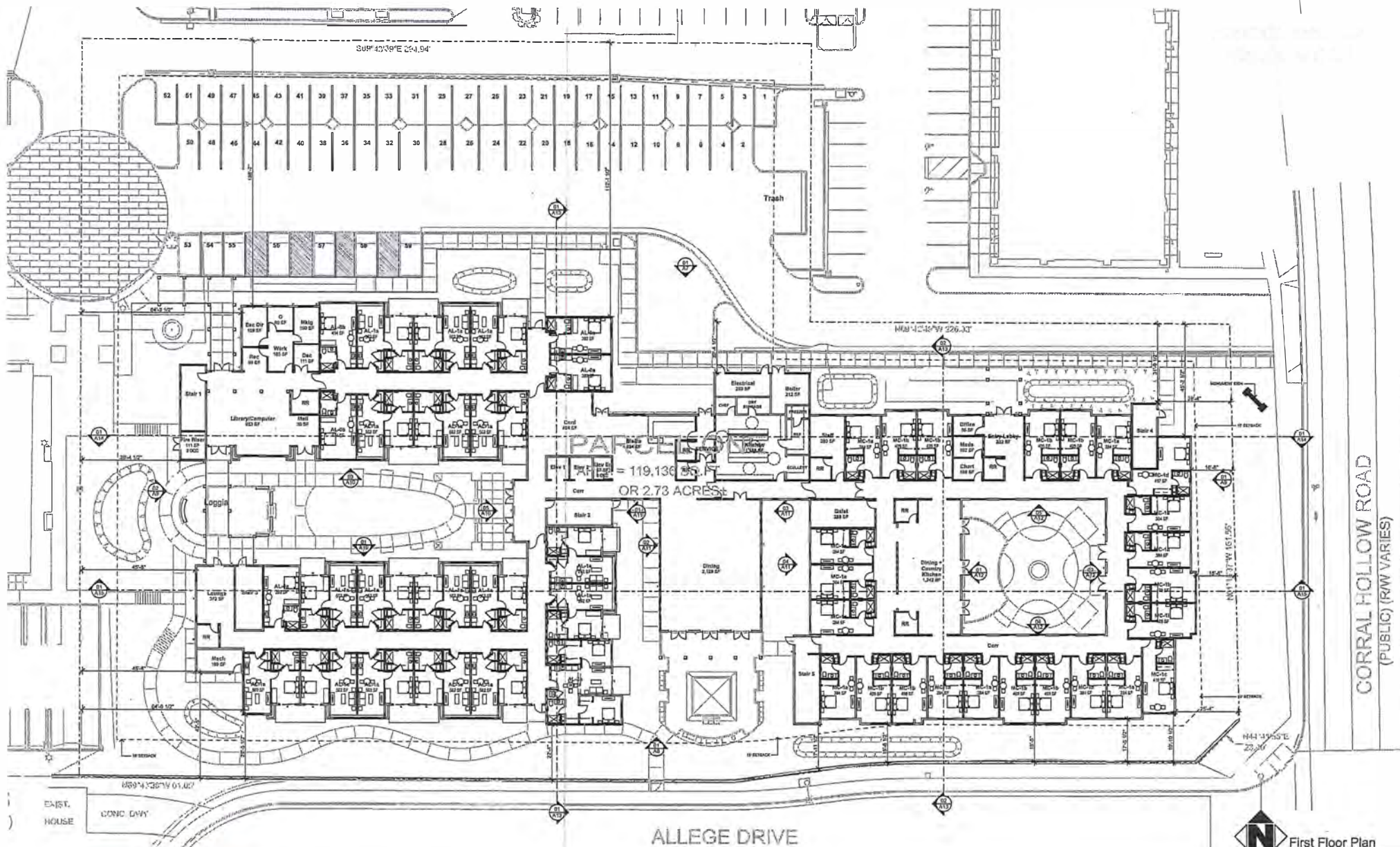
 Overall Site Plan
SCALE: 1" = 20'



AERIAL MAP



Enlarged Site Plan
SCALE: 1" = 20'



Tracy Assisted Living and Memory Care
 Summit Senior Living, LLC
 Corral Hollow Rd & Alegre Dr Tracy CA 95376

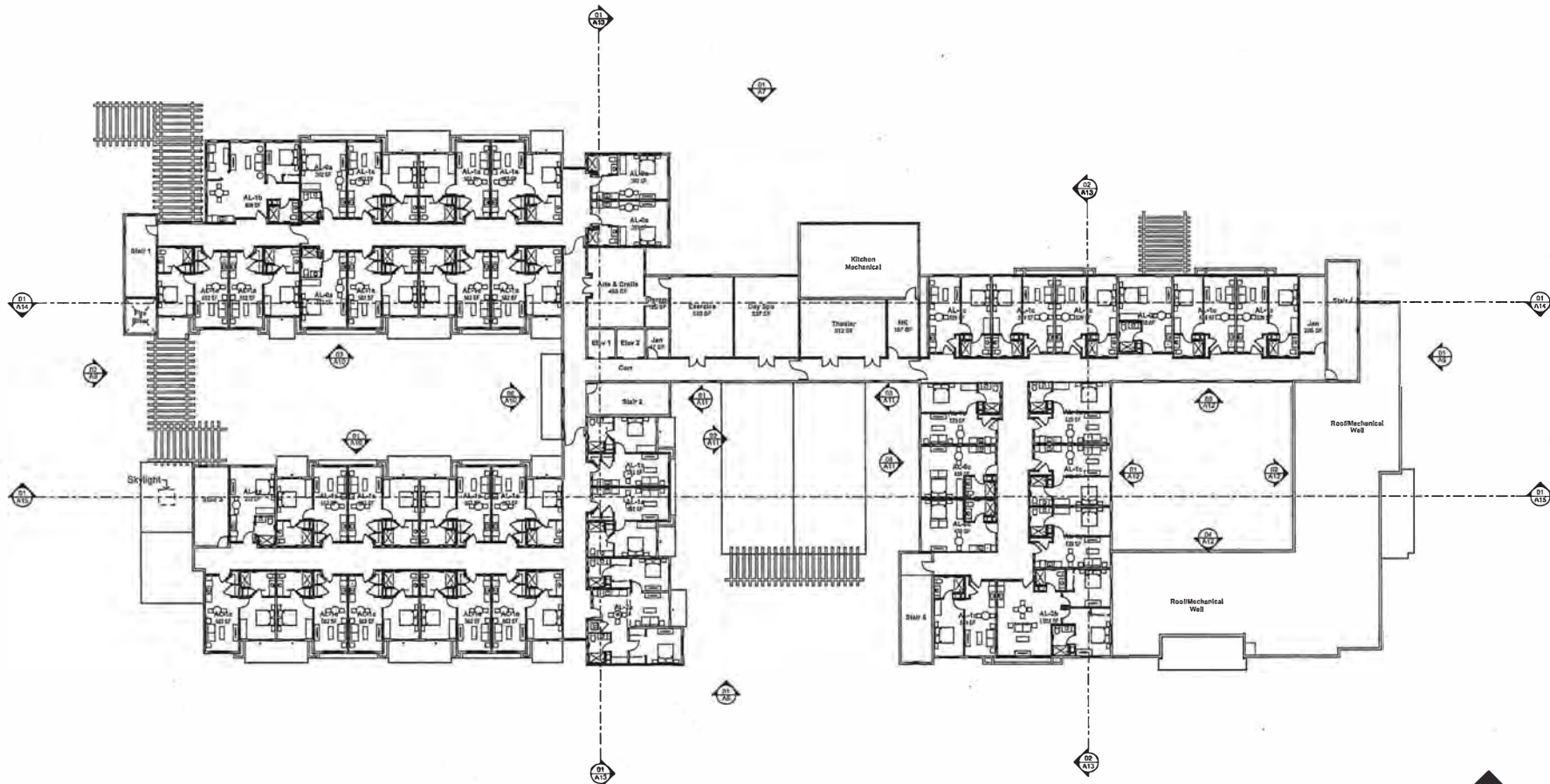
IPA IRWIN PARTNERS ARCHITECTS
 245 Fischer Avenue, Suite B-2 Costa Mesa CA 92626
 (714) 541-2446 www.ipaac.com
 ARCHITECTURE PLANNING CONSULTING

FIRST FLOOR PLAN
A3

PROJECT NO: 19000
 PLOT DATE: 8/20/2019
 19000 Tracy SD.pln

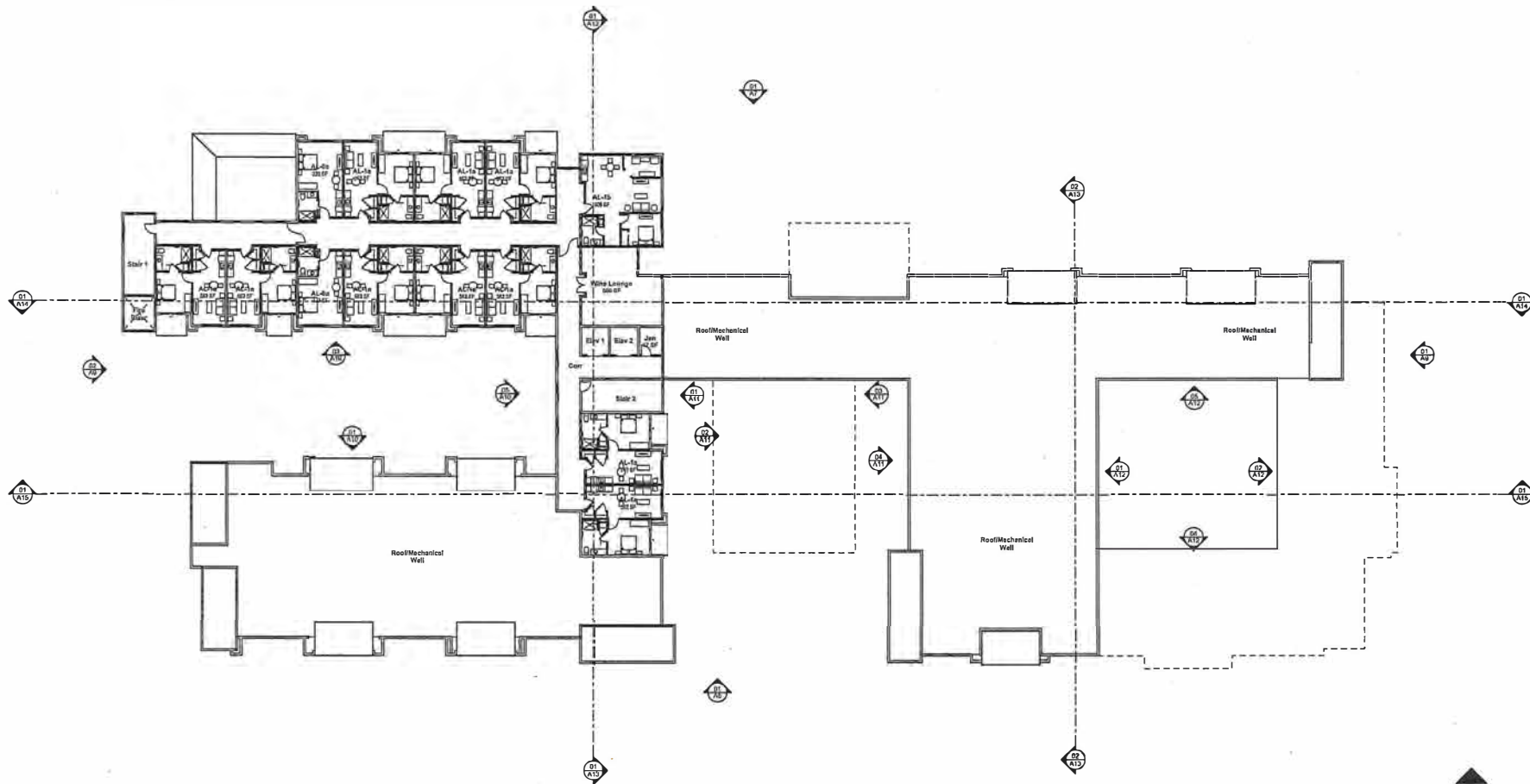
N First Floor Plan
 SCALE: 1/8" = 1'-0"

CORRAL HOLLOW ROAD
 (PUBLIC) (RW VARIES)



01 Second Floor Plan
 SCALE: 1/16" = 1'-0"





01 Third Floor Plan
SCALE: 1/8" = 1'-0"







01 East Elevation
SCALE: 1/8" = 1'-0"



02 West Elevation
SCALE: 1/8" = 1'-0"

Tracy Assisted Living and Memory Care

PROJECT DATA & INFORMATION

PROPOSED LAND USE - USE TITLE 6516-LICENSED RESIDENTIAL CARE FACILITY

SITE DATA	
SITE AREA	119,136 SF (2.73 ACRES)
BUILDING FOOTPRINT	42,909 SF
LOT COVERAGE	42,909 / 119,136 = .36
COVERAGE FACTOR	35%
TOTAL BUILDING AREA	84,107 SF
TOTAL PROPOSED DWELLING UNITS	100 UNITS / 51,348 SF
PROPOSED DENSITY (UNITS/NET ACRE)	100 / 2.73 = 36.63
ALLOWABLE AREA	165,000 SF/FLOOR PER CBC 2016 TABLE 506.2

PARKING	
SPACES REQUIRED	35 (1 SPACE/ 3 BEDS FOR A RESIDENTIAL/ GROUP CARE FACILITY PER SEC. 10.08.3480)
	103 BEDS/3 = 34.3
	35

ACCESSIBLE SPACES REQUIRED PER CBC TABLE 11a (2% OF 100 UNITS) = 2 SPACES (1 VAN & 1 ACCESSIBLE)

ELECTRIC VEHICLE CHARGING SPACE PER CAL GREEN CODE 4.106.4.2 (3% OF TOTAL PARKING SPACES) = 1,05

SPACES PROVIDED: 59

BUILDING CONSTRUCTION

OCCUPANCY TYPES: R2.1
 CONSTRUCTION TYPE: TYPE V-A, FULLY SPRINKLERED
 SPRINKLERS: YES
 ALLOWABLE BUILDING HEIGHT: 50'-0" PER CBC 504.3
 ACTUAL BUILDING HEIGHT: MAX. 42'-0"
 ACTUAL BUILDING AREA: 84,107 SF

UNIT MIX

Unit Name	Unit Type	Beds	Qty	Area (SF)	Total (SF)
AL					
AL-0a	ASSISTED LIVING - STUDIO	1	10	392	3,920
AL-0b	ASSISTED LIVING - STUDIO	1	2	414	828
AL-0c	ASSISTED LIVING - STUDIO	1	3	438	1,314
AL-1a	ASSISTED LIVING - 1 BED	1	46	882	25,852
AL-1b	ASSISTED LIVING - 1 BED	1	2	808	1,612
AL-1c	ASSISTED LIVING - 1 BED	1	10	520	5,200
AL-2a	ASSISTED LIVING - 2 BED	2	2	987	1,974
AL-2b	ASSISTED LIVING - 2 BED	2	1	1,025	1,025
		79	78		41,779 sq ft
MC					
MC-1a	MEMORY CARE - 1 BED	1	52	384	4,508
MC-1b	MEMORY CARE - 1 BED	1	10	409	4,090
MC-1c	MEMORY CARE - 1 BED	1	1	418	418
MC-1d	MEMORY CARE - 1 BED	1	1	457	457
		24	24		9,473 sq ft
		103	102		51,248 sq ft

Building Area Calculations		
Area Type	Qty	Area (SF)
Common Area		
ADMINISTRATION	11	1,402
CIRCULATION	6	15,227
CIRCULATION-VERTICAL	14	3,619
COMM KITCHEN	1	1,188
DINING	2	3,371
LOBBY	1	332
RESIDENT ACTIVITY	10	5,604
RESTROOMS	8	809
SERVICE	10	1,411
	62	32,759 sq ft
Dwelling Unit		
ASSISTED LIVING - 1 BED	68	32,754
ASSISTED LIVING - 2 BED	3	2,959
ASSISTED LIVING - STUDIO	15	6,062
MEMORY CARE - 1 BED	24	9,573
	110	51,348 sq ft
	102	84,107 sq ft

Proposed Additional Parking	
Qty	
EV	2
HC	1
P	55
VAN	1
59	



SHEET INDEX

CivE	C-1.1	COVER SHEET
CivE	C-2.1	HORIZONTAL CONTROL PLAN
CivE	C-3.1	UTILITY PLAN
CivE	C-4.1	GRADING PLAN
CivE	C-5.1	STORMWATER CONTROL PLAN
CivE	C-6.2	STORMWATER CONTROL PLAN
Architectural	A1	OVERALL SITE PLAN-FIRE PLAN
Architectural	A2	ENLARGED SITE PLAN
Architectural	A3	FIRST FLOOR PLAN
Architectural	A4	SECOND FLOOR PLAN
Architectural	A5	THIRD FLOOR PLAN
Architectural	A6	ROOF PLAN
Architectural	A7	EXTERIOR ELEVATIONS
Architectural	A8	EXTERIOR ELEVATIONS
Architectural	A9	EXTERIOR ELEVATIONS
Architectural	A10	AL COURTYARD ELEVATIONS
Architectural	A11	COMMON AREA ELEVATIONS
Architectural	A12	MC COURTYARD ELEVATIONS
Architectural	A13	CROSS SECTIONS
Architectural	A14	CROSS SECTIONS
Architectural	A15	CROSS SECTIONS
Architectural	A16	UNIT PLANS
Architectural	A17	UNIT PLANS
Architectural	A18	UNIT PLANS
Architectural	A19	NEIGHBORHOOD VIEWS & MATERIALS
Landscape	L-1	CONCEPTUAL LANDSCAPE PLAN
Landscape	L-2	CONCEPTUAL LANDSCAPE PLAN

CODE REQUIREMENTS

APPLICABLE CODES:
 ALL WORK SHALL BE IN CONFORMANCE WITH THE CODES IDENTIFIED IN THE GOVERNING CODES LISTED BELOW.

2016 CALIFORNIA BUILDING CODE
 2016 CALIFORNIA ELECTRICAL CODE
 2016 CALIFORNIA MECHANICAL CODE
 2016 CALIFORNIA FIRE CODE
 2016 CALIFORNIA FIRE CODE
 TRACY CODES AND ORDINANCES

ACCESSIBILITY REQUIREMENTS PER THE FEDERAL ADA, AND 117.1-2003 AND 2016 CBC 09-06 AMENDED BY STATE OR LOCAL REGULATIONS, WHICH IS MORE RESTRICTIVE.

ASSESSOR'S PARCEL NUMBER:
 238-190-28

SCOPE OF WORK:
 PROPOSED 3-STORY MEMORY CARE & ASSISTED LIVING FACILITY CONTAINING 24 MC BEDS AND 20 AL BEDS.

VICINITY MAP



PROJECT TEAM

OWNER
 Summit Senior Living, LLC
 4340 Von Karman Avenue, Suite 140
 Newport Beach, CA 92660
 T: 949-544-3539
 Craig Morris

ARCHITECT
 Irwin Partners Architects
 245 Fischer Avenue, Suite B2
 Costa Mesa, CA 92626
 T: 714 557 2448
 F: 714 556 1572
 www.ipaoc.com
 Greg Irwin

CIVIL ENGINEER
 AMS Associates, Inc.
 801 Ygnacio Valley Road, Suite 220
 Walnut Creek, CA 94596
 T: 925-943-2777
 F: 925-943-2778
 http://amsassociates.us/
 Al Shaghghi

LANDSCAPE ARCHITECT
 Conceptual Design and Planning Company
 3195-C Airport Loop Drive
 Costa Mesa, CA 92626
 T: 949-399-0870
 W: https://www.cdpcinc.com/
 Matt Kohlenberger

DEFERRED SUBMITTALS

DEFERRED SUBMITTAL ITEMS:
SUBJECT TO REVIEW AND APPROVAL OF FIRE AUTHORITY:
 FIRE SPRINKLERS NFPA TO REQUIREMENTS
 FIRE ALARM
 COMMERCIAL TYPE I HOOD
SUBJECT TO REVIEW AND APPROVAL OF LOCAL BUILDING DEPT:
 ROOF TRUSSES
 SUBMITTAL DOCUMENTS FOR DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED TO THE ARCHITECT OR ENGINEER OF RECORD, WHO SHALL REVIEW THEM AND FORWARD THEM TO THE BUILDING OFFICIAL WITH A NOTATION INDICATING THAT THE DEFERRED SUBMITTAL DOCUMENTS HAVE BEEN REVIEWED AND THAT THEY HAVE BEEN FOUND TO BE IN GENERAL CONFORMANCE WITH THE DESIGN OF THE BUILDING. THE DEFERRED SUBMITTAL ITEMS SHALL NOT BE INSTALLED UNTIL THEIR DESIGN AND SUBMITTAL DOCUMENTS HAVE BEEN APPROVED BY THE BUILDING OFFICIAL.
 PLANS FOR THE DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED TO THE BUILDING OFFICIAL IN A TIMELY MANNER THAT ALLOWS A MINIMUM OF 30 WORKING DAYS FOR INITIAL PLAN REVIEW. ALL COMMENTS RELATED TO THE DEFERRED SUBMITTAL MUST BE ADDRESSED TO THE SATISFACTION OF THE BUILDING OFFICIAL PRIOR TO APPROVAL OF THE SUBMITTAL ITEMS.



The Garland Company
Standing Seam Roof



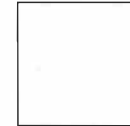
Manteca Lighting
Lighthouse Outdoor Light



DET 423
Red Craft
Horizontal Siding



DE 6077
Deep Brown
Wood Trim



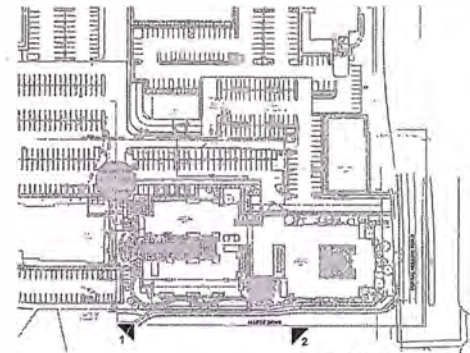
DEW 380
White
Accent Trim &
Window Trim



DE 6285
Linden Spear
Horizontal Siding

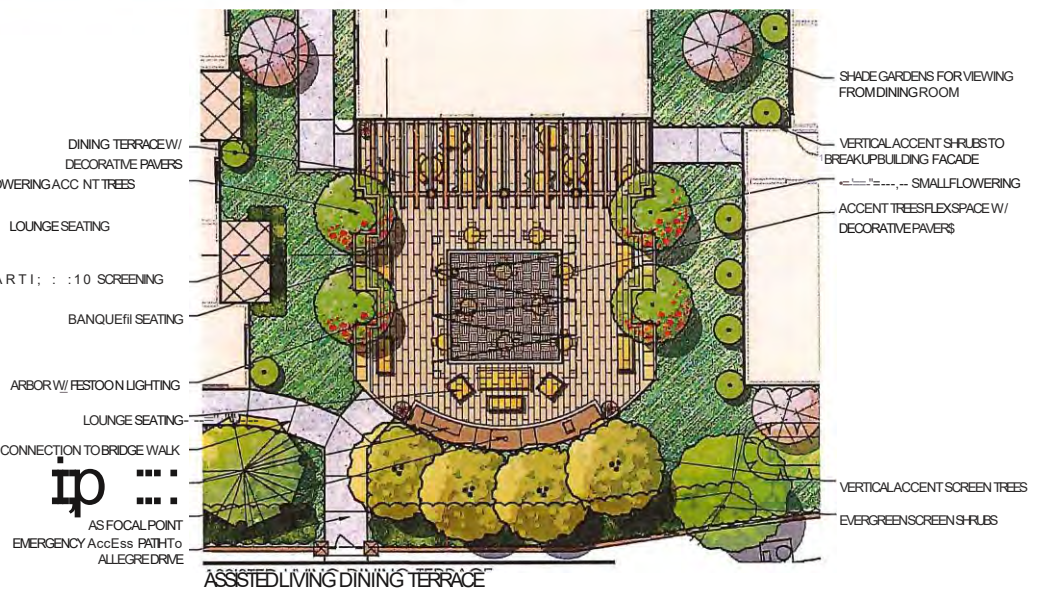
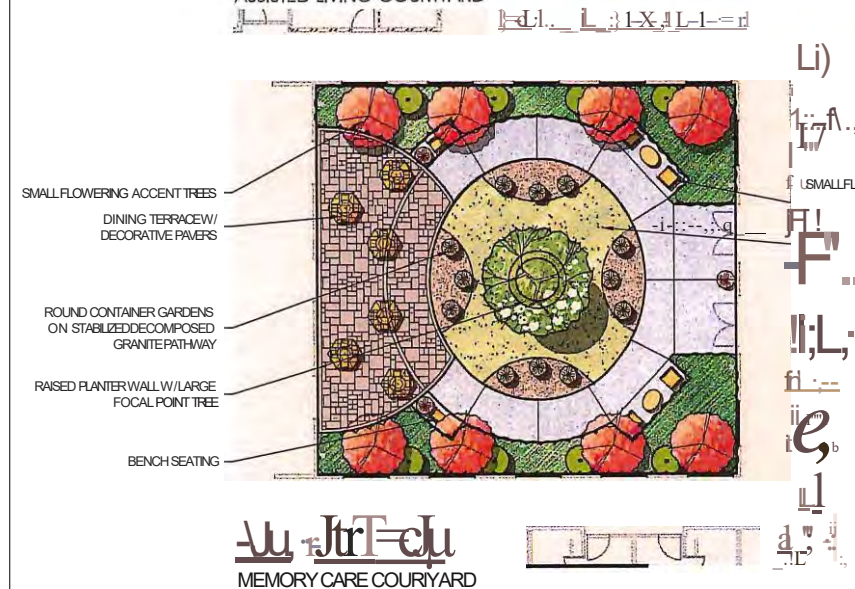
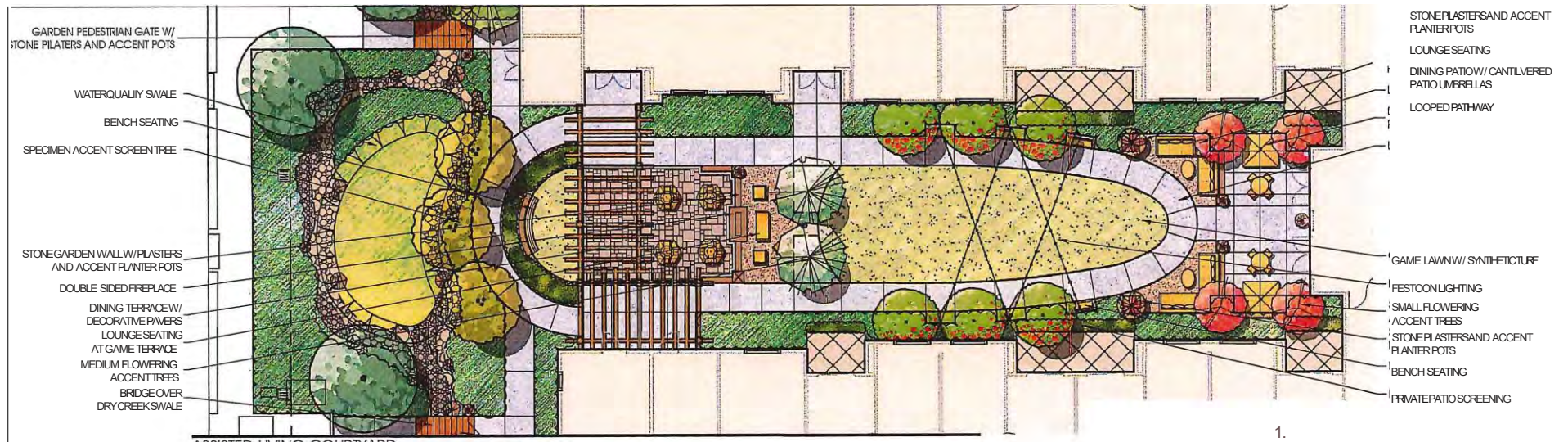


DEC 760
Desert Gray
Base Stucco



01 Neighborhood View Key
SCALE: 1" = 100'





CONCEPTUAL LANDSCAPE PLAN
 CORRAL HOLLOW ASSISTED LIVING & MEMORY CARE
 TRACY, CA

SUMMIT SENIOR LIVING

conceptual design & planning company
 Corporate Office: 3110 C Street, Suite 100, San Jose, CA 95128
 Phone: (408) 251-2800
 Website: www.cdpc.com

CDPC logo

Scale: 1/8" = 1'-0"
 CDPC PROJECT NO. 19019
 AUGUST 19, 2019

CDPC MESA • AMASCARDO • SAN JOSE

RESOLUTION 2019-_____

APPROVING AN AMENDMENT TO THE RESIDENTIAL AREAS SPECIFIC PLAN – PERMITTED USES WITHIN THE GENERAL HIGHWAY COMMERCIAL ZONE – SECTION 4.1.2.2. THE APPLICANT IS SUMMIT SENIOR LIVING. APPLICATION NUMBER SPA19-0003

WHEREAS, The City Council adopted the 1,472-acre, Residential Areas Specific Plan (RSP) on June 2, 1987 (Resolution No. 87-114), and

WHEREAS, Since 1987, the City Council has amended the RSP from time to time in response to market changes or to improve implementation of the RSP, and

WHEREAS, Summit Senior Life, LLC has submitted an application to amend the RSP to allow a dependent living facility on a vacant site within the GHC Zone at 2050 W. Grant Line Road (near the southwest corner of Grant Line Road and Corral Hollow Road, APNs 238-190-25 and -26), and

WHEREAS, The RSP includes mostly residential property, and also includes two sites zoned General Highway Commercial (GHC) (the commercial center at the southwest corner of Grant Line Road and Corral Hollow Road (with Chili's Restaurant), and the Gateway Plaza Shopping Center (with Food Maxx) at the southeast corner of Eleventh Street and Corral Hollow Road), and

WHEREAS, The proposal is consistent with the General Plan because the General Plan designation of the subject property is Office, which provides for medical/hospital, daycare centers, and similar uses, such as dependent living facilities, and

WHEREAS, The proposal is consistent with the improvement requirements of the City infrastructure master plans, will pay its fair share of development impact fees, and thereby, its proportionate cost of the infrastructure master plans, and

WHEREAS, The GHC Zone of the RSP is well suited for dependent living facilities as the Zone includes a broad range of retail, office (medical and non-medical), and consumer services, compatible with parking, visitor hours of operation, and similar characteristics of dependent living facilities, and

WHEREAS, The Project does not increase the development density established by the City's General Plan (regarding traffic, parking, utilities, or other impacts), and therefore, in accordance with CEQA Guidelines Section 15183, no further environmental assessment is required, and

WHEREAS, On October 23, 2019, the Planning Commission conducted a public hearing and recommended approval of the Project, and

WHEREAS, The City Council conducted a public hearing to review the Project on December 3, 2019;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves an amendment to the Residential Areas Specific Plan, Section 4.1.2.2, adding dependent living facility (underlined portion) as a permitted use in the General Highway

Commercial Zone, as follows:

“Permitted uses for GHC sites include:

Eating and/or drinking establishment (with or without entertainment¹),
without serving alcohol and providing entertainment¹ after 11:00
p.m.

Home Furnishings/Appliances/Furniture stores

Auto accessory shops

Auto rental services

General consumer and business services

Miscellaneous repair services

Auto repair services

Auto service stations

Motels

Dependent living facility: care of people which requires personnel who are
licensed to provide medical care in a commercially operated facility
including but not limited to assisted living, skilled nursing, and
memory care

Conditionally permitted uses for GHC sites include:

Supermarkets

General merchandising retail

Community gardens, defined as land or facilities for recreational activity
consisting of the cultivation by persons other than, or in addition to,
the owner of land, of plant material not for sale

Eating and/or drinking establishment that serves alcohol and provides
entertainment¹ after 11:00 p.m.

Note 1: The definition of “entertainment” is such uses as live music, disc jockeys,
dancing, karaoke, comedy shows, modeling, or live performances.”

* * * * *

The foregoing Resolution 2019-_____ was adopted by the City Council on the
3rd day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

RESOLUTION 2019-_____

APPROVING DEVELOPMENT REVIEW APPLICATION NUMBER D19-0019 FOR TRACY ASSISTED LIVING AND MEMORY CARE LOCATED ON APPROXIMATELY 2.73 ACRES AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND ALEGRE DRIVE, (2050 W. GRANT LINE ROAD, ASSESSOR'S PARCEL NUMBERS 238-190-25 AND -26)

WHEREAS, Summit Senior Life, LLC submitted a Development Review Permit Application (D19-0019) to construct an approximately 87,107 square foot Assisted Living and Memory Care facility at the northwest corner of Grant Line Road and Alegre Drive (2050 W. Grant Line Road, Assessor's Parcel Numbers 238-190-25 and -26), and

WHEREAS, The approximately 2.73-acre property is located within the General Highway Commercial Zone of the Residential Areas Specific Plan, and

WHEREAS, The Project is an infill development, on a site of less than five acres, substantially surrounded by urban uses, can be served by all required utilities and public services, and therefore, is categorically exempt from California Environmental Quality Act review in accordance with Guidelines Section 15332, and

WHEREAS, On October 23, 2019, the Planning Commission conducted a public hearing and recommended that the City Council approve the Project, and

WHEREAS, The City Council conducted a public hearing to review the Project on December 3, 2019;

NOW, THEREFORE BE IT RESOLVED, That the City Council of the City of Tracy hereby approves Development Review Application Number D19-0019 for Tracy Assisted Living and Memory Care facility on approximately 2.73 acres at the northwest corner of Corral Hollow Road and Alegre Drive (2050 W. Grant Line Road, Assessor's Parcel Numbers 238-190-25 and -26), subject to the conditions contained in Exhibit 1 and based on the following findings:

1. The proposal increases the quality of the Project site, and enhances the property in a manner that therefore improves the property in relation to the surrounding area and the citizens of Tracy.

The Project involves the construction of an approximately 84,107 square foot Assisted Living and Memory Care facility with 59 off-street parking spaces, associated landscaping, irrigation, utilities, and site work.

The facility and site design is compatible with the single-family home neighborhood to the south of the Project site because the Assisted Living and Memory Care facility will have less traffic than retail, restaurant, or consumer-service businesses of comparable size (also permitted at the site), and therefore, less traffic noise, light and glare that could affect the adjacent residential neighborhood; vehicle driveways, loading, parking, and other vehicle circulation will occur on the north, east, and west sides of the building, directed away from the adjacent residential neighborhood, thus minimizing traffic noise and other effects of the Project on adjacent residences. The proposed building, located within an existing commercial center, is at the rear of the site, has very limited visibility from Grant

Line Road, and therefore, is well suited for this low-impact, destination land use that does not rely on pass-by traffic for marketing, as would a retail or consumer-oriented use. The building architecture is consistent with building materials and color themes of surrounding uses, and includes meaningful exterior glazing, trim, accent features, and vertical and horizontal relief to create an attractive building for this site.

- 2. The proposal conforms to Tracy Municipal Code Chapter 10.08, the General Plan, the Design Goals and Standards, and the City’s Infrastructure Master Plans.

The subject property is designated Office by the City’s General Plan and General Highway Commercial within the Residential Areas Specific Plan (RSP). The Assisted Living and Memory Care facility is a permitted use within the General Plan and zoning of the site. The Project documents compliance with the City’s landscaping, parking requirements, and architectural guidelines; and the storm drainage, water, wastewater, traffic and other improvements are consistent with the requirements of the infrastructure master plans.

The foregoing Resolution 2019-_____ was adopted by the City Council on the 3^d day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

**Tracy Assisted Living and Memory Care
Conditions of Approval
Application Number D19-0019
City Council
December 3, 2019**

These Conditions of Approval shall apply to the real property described as Tracy Assisted Living and Memory Care, Development Review Application Number D19-0019. The approximately 2.73-acre subject property is located at the northwest corner of Corral Hollow Road and Alegre Drive, 2050 W. Grant Line Road (Assessor's Parcel Numbers 238-190-25 and -26).

- A. The following definitions shall apply to these Conditions of Approval:
1. "Applicant" means any person, or other legal entity, defined as a "Developer".
 2. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
 3. "City Regulations" means all written laws, rules and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design documents (the Streets and Utilities Standard Plans, Design Standards, Parks and Streetscape Standard Plans, Standard Specifications, Multi-Agency Post-Construction Stormwater Standards Manual, and Relevant Public Facilities Master Plans).
 4. "Conditions of Approval" shall mean the conditions of approval applicable to the Tracy Assisted Living and Memory Care facility, Development Review Application Number D19-0019.
 5. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
 6. "Developer" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.
- B. General Conditions of Approval:
1. Unless specifically modified by these Conditions of Approval, the Project shall comply with all City Regulations.
 2. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated February 1, 2011.
 3. Pursuant to Government Code section 66020, including section 66020(d)(1), the City

HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

4. Except as otherwise modified by these Conditions of Approval, all construction shall be consistent with the plans received by the Development Services Department on August 22, 2019.
5. Prior to the issuance of a building permit, the applicant shall provide a detailed landscape and irrigation plan consistent with City landscape and irrigation standards, including, but not limited to Tracy Municipal Code Section 10.08.3560, and the City's Design Goals and Standards, to the satisfaction of the Development Services Director, and consistent with the applicable Department of Water Resources 2015 Model Efficient Landscape Ordinance on private property and Tracy Municipal Code Chapter 11.28 to the satisfaction of the Utilities Director; and the applicant shall prepare and submit an electronic MWELO Project Information Sheet to the satisfaction of the Utilities Director. Said landscape plans shall include documentation which demonstrates there is no less than 20 percent of the new parking area in landscaping, and 40 percent canopy tree coverage at tree maturity in accordance with City Regulations. Newly planted, on-site trees shall be a minimum size of 24-inch box and shrubs shall be a minimum size of five gallons. Root barriers (two-feet deep by eight feet long) shall be installed along all buildings or edge of planter where a tree is within ten feet of building or edge of planter.
6. Prior to the issuance of a building permit, an Agreement for Maintenance of Landscape and Irrigation Improvements shall be executed and financial security submitted to the Development Services Department. The Agreement shall ensure maintenance of the on-site landscape and irrigation improvements for a period of two years. Said security shall be equal to the actual material and labor costs for installation of the on-site landscape and irrigation improvements, or \$2.50 per square foot of on-site landscape area.
7. Prior to final inspection or certificate of occupancy, all exterior and parking area lighting shall be directed downward or shielded, to prevent glare or direct spray of light onto adjacent residential property, to the satisfaction of the Development Services Director.
8. Prior to the issuance of a building permit, the developer shall document compliance with Tracy Municipal Code Chapter 11.34 and the City of Tracy Multi-Agency Post-Construction Stormwater Standards Manual (Manual) to the satisfaction of the Utilities Director, which includes the requirement for Site Design Control Measures, Source Control Measures and Treatment Control Measures under the guidelines in a project Stormwater Quality Control Plan (SWQCP). Compliance with the Manual includes, but is not limited to, addressing outdoor storage areas, loading and unloading areas, trash enclosures, parking areas, any wash areas and maintenance areas. The

SWQCP must conform to the content and format requirements indicated in Appendix D of the Manual and must be approved by the Utilities Director prior to issuance of grading or building permits.

9. All on-site construction activity associated with development of this Tracy Assisted Living and Memory Care facility shall be limited to daylight hours or 7:00 a.m. to 8:00 p.m.
10. No roof mounted equipment, including, but not limited to, HVAC units, fans, antennas, vents, ladders, and dishes whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from Corral Hollow Road, Alegre Drive, Grant Line Road, or any other public right-of-way to the satisfaction of the Development Services Director. The building permit construction documents shall demonstrate that the building's exterior parapet wall is at least as tall as all HVAC units, vents, fans, antennas, or any other roof equipment or utilities.
11. All vents, gutters, downspouts, flashing, electrical conduit, gas meters, electrical panels and doors, and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.
12. Prior to the issuance of a building permit, bicycle parking spaces shall be provided in accordance with Tracy Municipal Code Section 10.08.3510 to the satisfaction of the Development Services Director.
13. All PG&E transformers, phone company boxes, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development Services Director.
14. Prior to the installation of any signs, the applicant shall submit a sign permit application and receive approval from the Development Services Director in accordance with City Regulations.
15. Prior to the issuance of a building permit, the building permit construction documents shall include an enclosure for all trash or recycling receptacles. The trash enclosure exterior wall shall be of masonry construction, finished with stucco material and color to match the existing trash enclosures on site; include solid metal doors painted to match the enclosure; and a solid roof (painted to match the color(s) of the building) to the extent required by City stormwater quality regulations. The enclosure should also contain an interior concrete curb to prevent the trash dumpsters and containers from hitting and damaging the walls.
16. The approximately eight-foot tall, masonry wall along the north side of Alegre Drive shall be reduced in height to approximately four feet tall (excluding where adjacent to the lot at 2193 Misquez Lane, APN 238-140-15). The wall shall include a decorative trim cap along the top of the wall. Prior to the issuance of a building permit, the developer shall include plans detailing how this will be designed, to the satisfaction

of the Development Services Director, and the wall shall be completed prior to the occupancy or final inspection. An opening with a gate shall be installed along the wall in accordance with the California Fire Code standards to the satisfaction of the Fire Marshal.

17. Prior to the issuance of a building permit, the developer shall submit to the City and cause to be recorded, a lot line adjustment or other instrument to effectively merge lots or otherwise relocate property lines, consistent with City standards, to result in no property lines passing through or underneath buildings, to the satisfaction of the Development Services Director. The developer shall prepare and record easement(s), agreement(s), or other instruments to ensure all lots affected by this Project have access to utilities, parking, and circulation, to the satisfaction of the Development Services Director.
18. Prior to occupancy or final inspection, all dead or missing trees or other on-site landscaping shall be replaced or restored in accordance with City standards to the satisfaction of the Development Services Director.
19. Developer shall comply with all performance, monitoring, and reporting requirements of the San Joaquin Valley Air Pollution Control District, as identified in APCD correspondence dated July 24, 2019, to the satisfaction of the District.

C. Engineering Division Conditions of Approval:

C.1. General Conditions

Developer shall comply with the applicable sections of approved documents and/or recommendations of the technical analyses/reports prepared for the Project listed as follows:

- 1) Traffic Memorandum prepared by Kimley Horn and Associates dated October 17, 2019.
- 2) Storm Drain Memorandum by Storm Water Consultants dated October 7, 2019.
- 3) Water Supply Memorandum by Black Water Consulting Engineers dated October 17, 2019.
- 4) Sanitary Sewer Memorandum by Black Water Consulting Engineers yet to be completed.

C.2. RESERVED

C.3. RESERVED

C.4. Grading Permit

All grading work (on-site and off-site) shall require a Grading Plan. All grading work shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Geotechnical Engineer. The City will not accept a Grading Permit application for the Project until Developer provides all documents related to said Grading Permit required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

- C.4.1 Developer has completed all requirements set forth in this section.
- C.4.2 Developer has obtained the approval (i.e. recorded easements for slopes, drainage, utilities, access, parking, etc.) of all other public agencies and/or private entities with jurisdiction over the required public and/or private facilities and/or property. Written permission from affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit.
- C.4.3 Developer has obtained a demolition permit to remove any existing structure located within the Project's limits.
- C.4.4 All existing on-site water well(s), septic system(s), and leech field(s), if any, shall be abandoned or removed in accordance with the City and San Joaquin County requirements. Developer shall be responsible for all costs associated with the abandonment or removal of the existing well(s), septic system(s), and leech field(s) including the cost of permit(s) and inspection. Developer shall submit a copy of written approval(s) or permit(s) obtained from San Joaquin County regarding the removal and abandonment of any existing well(s), prior to the issuance of the Grading Permit.
- C.4.5 The Improvement Plans for all improvements to serve the Project (on-site and off-site) including the Grading and Drainage Plans shall be prepared in accordance with the City's Subdivision Ordinance (TMC Chapter 12.36), City Design Documents as defined in Title 12 of the TMC, and these Conditions of Approval.
- C.4.6 On-site Grading/Drainage Plans and Improvement Plans shall be prepared on a twenty-four (24) inch x thirty-six (36) inch size four (4) millimeter thick polyester film (mylar). These plans shall use the City's Title Block. Improvement Plans shall be prepared under the supervision of, stamped and signed by a Registered Civil Engineer and Registered Geotechnical Engineer. Developer shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by the Fire Marshal prior to submitting the mylars to Engineering Division for City Engineer's signature. Erosion control measures shall be implemented in accordance with the Improvement Plans approved by the City Engineer for all grading work. All grading work not completed before October 15 may be subject to additional requirements as applicable. Improvement Plans shall specify all proposed erosion control methods and construction details to be employed and specify materials to be used during and after the construction.
- C.4.7 Payment of the applicable Grading Permit fees which include grading plan checking and inspection fees, and other applicable fees as required by these Conditions of Approval.
- C.4.8 For Projects on property larger than one (1) acre: Prior to the issuance of the Grading Permit, Developer shall submit to the Utilities Department (stephanie.hiestand@cityoftracy.org) one (1) electronic copy and one (1) hard

copy of the Storm Water Pollution Prevention Plan (SWPPP) as submitted in Stormwater Multiple Applications and Reporting Tracker System (SMARTS) along with either a copy of the Notice of Intent (NOI) with the state-issued Wastewater Discharge Identification number (WDID) or a copy of the receipt for the NOI. After the completion of the Project, the Developer is responsible for filing the Notice of Termination (NOT) required by SWQCB, and shall provide the City, a copy of the completed Notice of Termination. Cost of preparing the SWPPP, NOI and NOT including the annual storm drainage fees and the filing fees of the NOI and NOT shall be paid by the Developer. Developer shall comply with all the requirements of the SWPPP, applicable Best Management Practices (BMPs) and the Stormwater Post-Construction Standards adopted by the City in 2015 and any subsequent amendment(s).

For Projects on property smaller than one (1) acre: Prior to the issuance of the Grading Permit, the Developer shall submit to the Utilities Department (stephanie.hiestand@cityoftracy.org) one (1) electronic copy and 1 hard copy of the City of Tracy Erosion and Sediment Control Plan (ESCP) for approval. Cost of preparing the ESCP including any annual storm drainage fees shall be paid by the Developer. Developer shall comply with all the requirements of the ESCP, applicable BMPs and the Post-Construction Stormwater Standards adopted by the City in 2015 and any subsequent amendment(s).

- C.4.9 Developer shall provide a PDF copy of the Project's Geotechnical Report signed and stamped by a Registered Geotechnical Engineer. The technical report must include relevant information related to soil types and characteristics, soil bearing capacity, compaction recommendations, retaining wall recommendations, if necessary, paving recommendations, paving calculations such as gravel factors, gravel equivalence, etc., slope recommendations, and elevation of the highest observed groundwater level.
- C.4.10 Minor Retaining – Developer shall use reinforced or engineered masonry blocks for retaining soil at property lines when the grade differential among the in-tract lots exceeds twelve (12) inches. Developer will include construction details of these minor retaining walls with the on-site Grading and Drainage Plan. Developer may use slopes among the lots to address the grade differential but said slope shall not exceed a slope gradient of 3 (horizontal) to 1 (vertical) unless a California licensed geotechnical engineer signs and stamps a geotechnical report letter that supports a steeper slope gradient. Slope easements may be required and will be subject to approval by the City Engineer.

Minor Retaining along Project Perimeter – Developer shall use reinforced or engineered masonry blocks for retaining soil along the Project boundary and adjacent property(s) when the grade differential exceeds 12-inches. Developer will include construction details for these minor retaining walls with the on-site Grading and Drainage Plan. Developer may use slopes to address the grade differential but said slope shall not exceed a slope gradient of 3 (horizontal) to 1 (vertical). Slope easements may be subject to approval by the City Engineer and if adjacent and affected property(s) owner(s) grants said easements.

Slopes are an acceptable option as a substitute to engineered retaining walls, where cuts or fills do not match existing ground or final grade with the adjacent property or public right of way, up to a maximum grade differential of two (2) feet, subject to approval by the City Engineer.

Slope easements will be recorded, prior to the issuance of the Grading Permit. The Developer shall be responsible to obtain and record slope easement(s) on private properties, where it is needed to protect private improvements constructed within and outside the Project, and a copy of the recorded easement document must be provided to the City, prior to the issuance of the Grading Permit.

Walls - Developer shall show proposed retaining walls and masonry walls on the on-site Grading and Drainage Plan. The Developer is required to submit improvement plans, construction details, and structural calculations for retaining walls and masonry walls to Building and Safety. Retaining wall and masonry wall design parameters will be included in the geotechnical report.

- C.4.11 Developer shall provide a copy of the approved Incidental Take Minimization Measures (ITMM) habitat survey [San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)] from San Joaquin Council of Governments (SJCOG), if applicable.
- C.4.12 Developer shall provide a copy of the approved Air Impact Assessment (AIA) with an Indirect Source Review (ISR) from San Joaquin Valley Air Pollution Control District (SJVAPCD).
- C.4.13 Developer shall abandon or remove all existing irrigation structures, channels and pipes, if any, as directed by the City after coordination with the irrigation district, if the facilities are no longer required for irrigation purposes. If irrigation facilities including tile drains, if any, are required to remain to serve existing adjacent agricultural uses, the Developer will design, coordinate and construct required modifications to the facilities to the satisfaction of the affected agency and the City. Written permission from irrigation district or affected owner(s) will be required to be submitted to the City prior to the issuance of the Grading Permit. The cost of relocating and/or removing irrigation facilities and/or tile drains is the sole responsibility of the Developer.
- C.4.14 If the Project contains overhead utilities, the Developer shall underground existing overhead utilities such as electric, TV cable, telephone, and others. Each dry utility shall be installed at the location approved by the respective owner(s) of dry utility and the Developer shall coordinate such activities with each utility owner. All costs associated with the undergrounding shall be the sole responsibility of the Developer and no reimbursement will be due from the City. Developer shall submit undergrounding plans. Exempt from this condition are high voltage power lines along the Project's northerly property line, if any.

- C.4.15 If at any point during grading that the Developer, its contractor, its engineers, and their respective officials, employees, subcontractor, and/or subconsultant exposes/encounters/uncovers any archeological, historical, or other paleontological findings, the Developer shall address the findings as required per the General Plan Cultural Resource Policy and General Plan EIR; and subsequent Cultural Resource Policy or mitigation in any applicable environmental document.
- C.4.16 Per the recommendation of SWC, Developer shall set the building's finish floor at least one (1) foot above a top-of-curb elevation. Please review SWC's technical memorandum for the precise location and other mitigations.

C.5. Improvement Agreement(s)

All construction activity involving public improvements will require a fully executed improvement agreement (Off-site, Subdivision, and/or Inspection). Any construction activity involving public improvements without a fully executed improvement agreement is prohibited. All public improvements shall be performed and completed in accordance with the recommendation(s) of the Project's Registered Civil Engineer. The City will not start writing any improvement agreement or schedule any improvement agreement to be approved by City Council for the Project until the Developer provides all documents related to said improvements required by the applicable City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to, the following:

C.5.1. Off-site and/or Public Infrastructure Improvement Plans prepared on a 24-inch x 36-inch size 4-millimeter thick mylar that incorporate all requirements described in the documents described in these Conditions of Approval, the City's Design Documents as defined in Title 12 of the Tracy Municipal Code. Developer shall use the latest title block and, if necessary, contain a signature block for the Fire Marshal. Improvement Plans shall be prepared under the supervision of, and stamped and signed by a Registered Civil, Traffic, Electrical, Mechanical Engineer, and Registered Landscape Architect for the relevant work. Developer shall obtain all applicable signatures by City departments and outside agencies (where applicable) on the mylars including signatures by Fire Marshal to submitting the mylars to Engineering Division for City Engineer's signature. The improvement plans shall be prepared to specifically include, but not be limited to, the following items:

- C.5.1.a. All existing and proposed utilities such as domestic water line, irrigation service, fire service line, storm drain, and sanitary sewer, including the size and location of the pipes.
- C.5.1.b. All supporting engineering calculations, materials information or technical specifications, cost estimate, and technical reports. All improvement plans shall contain a note stating that the Developer (or Contractor) will be responsible to preserve and protect all existing survey monuments and other survey markers such as benchmarks.

C.5.1.c. A PDF copy of the Project's Geotechnical/Soils Report, prepared or signed and stamped by a Registered Geotechnical Engineer. The technical report must include relevant information related to street pavement thickness, materials, compaction and other pertinent information.

C.5.1.d. Storm Water - The Project's on-site storm water drainage connection to the City's storm water system shall be approved by the City Engineer. Drainage calculations for the sizing of the on-site storm drainage system. Improvement Plans to be submitted with the hydrology and storm water.

Storm drainage release point is a location at the boundary of the Project adjacent public right-of-way where storm water leaves the Property, in a storm event and that the Property's on-site storm drainage system fails to function or it is clogged. Site grading shall be designed such that the Project's storm drainage overland release point will be directly to an adjacent public right-of-way with a functional storm drainage system and the existing storm drainage line has adequate capacity to drain storm water from the Property. The storm drainage release point is recommended to be at least 0.70-feet lower than the building finish floor elevation and shall be designed and improved to the satisfaction of the City Engineer.

The Project's permanent storm drainage connection(s) shall be designed and constructed in accordance with City Regulations. The design of the permanent storm drainage connection shall be shown on the Grading and Drainage Plans with calculations for the sizing of the storm drain pipe(s), and shall comply with the applicable requirements of the City's storm water regulations adopted by the City Council in 2012 and any subsequent amendments.

Developer shall construct a storm water quality treatment basin.

Developer and its heirs (i.e. apartment complex owner) shall be responsible for repairing and maintaining the on-site storm water system and treatment basin at the Developer's (and heirs') sole cost and expense.

C.5.1.e. Sanitary Sewer - It is the Developer's responsibility to design and construct the Project's permanent on-site sanitary sewer (sewer) improvements including the Project's sewer connection in accordance with the City's Design Standards, City Regulations and Standard Specifications. Sewer improvements shall include but not limited to, replacing asphalt concrete pavement, reconstructing curb, gutter and sidewalk, restoring pavement marking and striping, and other improvements that are disturbed as a result of installing

the Project's permanent sewer connection. Developer shall submit improvement plans that include the design of the sewer line from the Property to the point of connection. Developer shall also construct the recommended mitigations from the sanitary sewer technical memorandum.

- C.5.1.g. Water Distribution - Developer shall design and construct domestic and irrigation water service that comply with the City Regulations. Water line sizing, layout and looping requirements for this Project shall comply with City Regulations. During the construction of the Project, the Developer is responsible for providing water infrastructure (temporary or permanent) capable of delivering adequate fire flows and pressure appropriate to the various stages of construction and as approved by the Fire Marshal.

Interruption to the water supply to the existing businesses and other users will not be allowed to facilitate construction of improvements related to the Project. Developer shall be responsible for notifying business owner(s) and users, regarding construction work. The written notice, as approved by the City Engineer, shall be delivered to the affected residents or business owner(s) at least seventy-two (72) hours before start of work. Prior to starting the work described in this section, the Developer shall submit a Work Plan acceptable to the City that demonstrates no interruptions to the water supply, and Traffic Control Plan to be used during the installation of the off-site water mains and connections.

The Project's water service connections shall use a remote-read (radio-read) master water meter (the water meter to be located within City's right-of-way) and a Reduced Pressure Type back-flow protection device in accordance with City Regulations. The domestic and irrigation water service connection(s) must be completed before the inspection of the building. The location of the meters shall be approved by the City Engineer.

After improvement acceptance, repair and maintenance of the water service from the water meter to the point of connection with the water distribution main in the street shall be the responsibility of the City. Water service repairs after the water meter is the responsibility of the Developer or individual lot owner(s).

Prior to improvement acceptance, repair and maintenance of all on-site water lines, laterals, sub-water meters, valves, fittings, fire hydrant and appurtenances shall be the responsibility of the Developer or the individual lot owner(s).

All costs associated with the installation of the Project's water connection(s) including the cost of removing and replacing asphalt

concrete pavement, pavement marking and striping such as crosswalk lines and lane line markings on existing street or parking area(s) that may be disturbed with the installation of the permanent water connection(s), or domestic water service, and other improvements shall be paid by the Developer.

Fire Service Line – Location and construction details of fire service line including fire hydrant(s) that are to serve the Project shall be approved by the Fire Marshal. Prior to the approval of the Improvement Plans by the City Engineer, the Developer shall obtain written approval from the Fire Marshal, for the design, location and construction details of the fire service connection to the Project, and for the location and spacing of fire hydrants that are to be installed or planned to serve the Project.

- C.5.1.h. Streets – Developer shall construct their frontage improvements. Frontage improvements include but are not limited to the following: curb, gutter, sidewalk, street widening, landscaping, street lighting, undergrounding of overhead utilities and other improvements. All streets and utilities improvements within City right-of-way shall be designed and constructed in accordance with City Regulations, and City's Design Standards including the City's Facilities Master Plan for storm drainage, roadways, wastewater, and water as adopted, amended, and updated by the City, or as otherwise specifically approved by the City.

All proposed public street widths and cross sections shall conform to the 2012 Transportation Master Plan (TMP).

Corral Hollow Road

Developer will construct the new commercial driveways per Standard Detail 133. Developer shall dedicate a ten (10) feet wide Public Utility Easement on all public streets if the easement is not present.

Developer shall construct driveways that conform to Section 3.09(F) of the 2008 Design Standards. Driveways shall have one and half (1.5) feet of full-height (i.e. six (6) inches) of vertical curb from the driveway's edge. Driveways shall be fire truck accessible to the satisfaction of the City Engineer.

Developer shall use existing utility stubs. If the stubs are not present or unusable or additional utility connections are required, the pavement restoration shall conform to C.8.1 of these Conditions.

On the west side of Corral Hollow Road, Developer shall landscape and irrigate the existing area as per current adopted City landscape standards. Landscape and irrigation plans shall be prepared on a

24-inch x 36-inch size 4-millimeter thick mylar that incorporate all requirements described in the documents described in these Conditions of Approval, the City's Design Documents as defined in Title 12 of the Tracy Municipal Code. Developer shall use the latest title block. Said landscape and irrigation plan shall be prepared by a California licensed landscape architect. Developer can either protect-in-place the existing sidewalk and repair any cracked, settled, and/or damaged sidewalk or remove and replace the sidewalk so long as the replacement sidewalk is similar to the current sidewalk, i.e. similar width, meanders, etc. Developer shall also install street trees in the landscaped area between the existing meandering sidewalk and the curb and gutter. On the opposite side of the sidewalk, Developer shall install additional street trees, shrubs, ground cover, and other landscaping as required. The landscaping and irrigation shall conform to MWELo standards. If recommended, Developer shall use structural soil if the street trees' well is narrower than five (5) feet wide. Developer shall also remove existing sign monument and its appurtenances, and any other existing items such as bollards, mailboxes, etc.

- C.5.2. Joint Trench Plans and Composite Utility Plans, prepared on a twenty-four (24) inch x thirty-six (36) inch size four (4) millimeter thick mylar for the installation of dry utilities such as electric, gas, TV cable, telephone, and others that will be located within the twenty-four (24) feet wide to forty-six (46) feet wide (the width varies) PUE to be installed to serve the Project. All private utility services to serve Project must be installed underground or relocated to be underground, and to be installed at the location approved by the respective owner(s) of the utilities from the street or an existing or proposed utility easement to the building(s). If necessary, the Developer shall dedicate twenty-two (22) feet wide PUE for access to these new utilities for re-installation, replacement, repair, and maintenance work to be performed by the respective utility owner(s) in the future.
- C.5.3. Signed and stamped Engineer's Estimate that summarizes the cost of constructing all the public improvements shown on the Improvement Plans. The cost estimate shall show the cost of designing the public improvements.

Payment of applicable fees required by these Conditions of Approval and City Regulations, including but not limited to, plan checking, grading and encroachment permits and agreement processing, construction inspection, and testing fees. The engineering review fees will be calculated based on the fee rate adopted by the City Council on September 2, 2014, per Resolution No. 2014-141 and on May 16, 2017, per Resolution No. 2017-098. Developer shall submit payment in the form of a check for the aforementioned fees.

- C.5.5. Traffic Control Plan - Prior to starting the work for any work within City's right-of-way, the Developer shall submit a Traffic Control Plan (TCP). TCP can be split among the different construction phases. TCP will show the method and

type of construction signs to be used for regulating traffic at the work areas within these streets. TCP shall conform to the Manual on Uniform Traffic Control Devices as amended by the State of California, latest edition (MUTCD-CA). TCP shall be prepared under the supervision of, signed and stamped by a Registered Civil Engineer or Registered Traffic Engineer.

Access and Traffic Circulation to Existing Businesses/Residents - Developer shall take all steps necessary to plan and construct site improvements such that construction operations do not impact safety and access (including emergency vehicles) to the existing businesses and residents throughout the duration of construction. Developer shall coordinate with the owners and cooperate to minimize impacts on existing businesses. All costs of measures needed to provide safe and functional access shall be borne by the Developer.

- C.5.6. No street trench shall be left open, uncovered, and/or unprotected during night hours and when the Developer's contractor is not performing construction activities. Appropriate signs and barricades shall be installed on the street and on all trenches during such times. If the Developer or its contractor elects to use steel plates to cover street trenches, said steel plates will be skid-resistance, and shall be ramped on all sides. Ramps will be a minimum two-foot wide and will run the entire length of each side.
- C.5.7. If at any point during utility installation or construction in general that the Developer, its contractor, its engineers, and their respective officials, employees, subcontractor, and/or subconsultant exposes/encounters/uncovers any archeological, historical, or other paleontological findings, the Developer shall address the findings as required per the General Plan Cultural Resource Policy and General Plan EIR; and subsequent Cultural Resource Policy or mitigation in any applicable environmental document.
- C.5.8 On-site Private Improvements - Prior to the Developer commencing construction of on-site, in-tract public and private improvements, Developer shall possess a fully executed Grading Permit. Developer shall also complete all of the following requirements to the satisfaction of the City Engineer:

Developer has received City signed improvement plans.

Developer has paid all required processing fees including plan check and inspection fees.

~~Improvement Security - Developer shall provide improvement security for all public facilities, as required by the Improvement Agreement. The form of the improvement security may be a bond, or other form in accordance with the Government Code, and the TMC. The amount of the improvement security shall be in accordance with Title 12 of the TMC. Monumentation Bonds shall be seven hundred fifty (\$750.00) dollars multiplied by the total number of~~

~~street centerline monuments plus one hundred twenty five (\$125) dollars multiplied by the total number of legal lots that are shown on the Final Map.~~

~~Insurance – Developer shall provide written evidence of insurance coverage that meets the terms of the Improvement Agreement.~~

- C.5.9 Off-site Public Improvements - Prior to the Developer commencing construction of off-site public improvements, Developer shall possess a fully executed Off-site Improvement Agreement (OIA). Developer shall also complete all of the following requirements to the satisfaction of the City Engineer:

Developer has received City signed improvement plans.

Developer has paid all required processing fees including plan check and inspection fees.

Improvement Security - Developer shall provide improvement security for all public facilities, as required by the Improvement Agreement. The form of the improvement security may be a bond, or other form in accordance with the Government Code, and the TMC. The amount of the improvement security shall be in accordance with Title 12 of the TMC.

Insurance – Developer shall provide written evidence of insurance coverage that meets the terms of the Improvement Agreement.

C.6. Building Permit

No building permit within the Project boundaries will be approved by the City until the Developer demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.6.1 Developer has completed all requirements set forth in Condition C.1, through C.5, above.
- C.6.2 Developer pays the applicable development impact fees as required in the TMC, these Conditions of Approval, and City Regulations.

C.7 Acceptance of Public Improvements

Public improvements will not be considered for City Council's acceptance until after the Developer demonstrates to the reasonable satisfaction of the City Engineer, completion of the following:

- C.7.1 Developer has satisfied all the requirements set forth in these Conditions of Approval.
- C.7.2 Developer submitted the Storm Water Treatment Facilities Maintenance Agreement (STFMA) to the Utilities Department.

- C.7.3 Developer has satisfactory completed construction of all required/conditioned improvements. Unless specifically provided in these Conditions of Approval, or some other applicable City Regulations, the Developer shall use diligent and good faith efforts in taking all actions necessary to construct all public facilities required to serve the Project, and the Developer shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).
- C.7.4 Certified "As-Built" Improvement Plans (or Record Drawings). Upon completion of the construction by the Developer, the City, at its sole discretion, temporarily release the original mylars of the Improvement Plans to the Developer so that the Developer will be able to document revisions to show the "As-Built" configuration of all improvements. Developer shall also provide the Project's CADD files to the City.
- C.7.5 Developer shall be responsible for any repairs or reconstruction of street pavement, curb, gutter and sidewalk and other public improvements along the frontage of the Project, if determined by the City Engineer to be in poor condition or damaged by construction activities related to the Project.
- C.7.6 Developer has completed the ninety (90) day public landscaping maintenance period.
- C.7.7 Per Section 21107.5 of the California Vehicle Code, Developer shall install signs at all entrance(s) of the Project stating that the streets are privately owned and maintained and are not subject to the public traffic regulations or control. Said signs must be conspicuously placed, plainly visible, and legible during daylight hours from a distance of one hundred (100) feet.
- C.7.8 Release of Security – Release of improvement security shall be in accordance with the requirements of Title 12 of the TMC. Monumentation Bond will be released to the Developer after City Council's acceptance of the public improvements and if the Developer meets the terms set in Section 66497(c) of the Subdivision Map Act. All survey monuments shown on the Final Map must be installed. Any altered, damaged, or destroyed survey monuments and/or benchmarks shall be re-established. Developer shall submit centerline tie sheets or a record of survey for the following: new public streets; re-established survey monuments, and/or benchmarks. If the Developer destroyed, altered, and/or reconstructed any existing curb returns, Developer shall also submit corner records. Any survey document will be submitted the City and to the San Joaquin County Surveyor to comply with California Business and Professions Code Section 8771(c). Said work shall be executed by a California licensed Land Surveyor at the Developer's sole expense.

C.8 Special Conditions

- C.8.1 When street cuts are made for the installation of utilities, the Developer shall conform to Section 3.14 of the 2008 Design Standards and is required install a two (2) inch thick asphalt concrete (AC) overlay with reinforcing fabric at least twenty-five (25) feet from all sides of each utility trench. A two (2) inch deep grind on the existing AC pavement will be required where the AC overlay will be applied and shall be uniform thickness in order to maintain current pavement grades, cross and longitudinal slopes. This pavement repair requirement is when cuts/trenches are perpendicular and parallel to the street's direction.
- C.8.2 Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. This Condition of Approval does not preclude the City from requiring pertinent revisions and additional requirements to the improvement plans, prior to the City Engineer's signature on the improvement plans, and prior to issuance of Grading Permit, Encroachment Permit, Building Permit, if the City Engineer finds it necessary due to public health and safety reasons, and it is in the best interest of the City. The Developer shall bear all the cost for the inclusion, design, and implementations of such additions and requirements, without reimbursement or any payment from the City.
- C.8.3 If water is required for the Project, the Developer shall obtain an account for the water service and register the water meter with the Finance Department. Developer shall pay all fees associated with obtaining the account number for the water service.
- C.8.4 Developer shall obtain an account for the water service to the Project and register the water meter with the Finance Department. Developer shall prepare and submit a map depicting the location of the water meter on a 8.5-inch X 11-inch sheet to Finance Department.
- C.8.5 Project Entrance: As stipulated by Section 5.17 of the 2008 Design Standards, a PCC valley gutter is prohibited in the City's right-of-way.

AGENDA ITEM 3.B

REQUEST

INTRODUCE AN ORDINANCE AMENDING CHAPTER 11.12 “UNIFORM BILLING, COLLECTION AND DELINQUENCY PROCEDURES FOR CITY SERVICES” AND ADOPT RESOLUTION ESTABLISHING POLICY ON DISCONTINUATION OF RESIDENTIAL WATER SERVICE FOR NONPAYMENT TO IMPLEMENT SENATE BILL 998

EXECUTIVE SUMMARY

On September 28, 2018, Governor Brown signed into law Senate Bill (“SB”) 998, known as the “Water Shutoff Protection Act,” (Attachment A) codified as Health and Safety Code section 116900, et seq. SB 998 establishes the requirements and procedures that urban and community water systems such as the City of Tracy (“City”) must follow concerning the discontinuation of residential water service for nonpayment beginning February 1, 2020.

To implement the requirements of SB 998, staff has amended provisions of Chapter 11.12 regarding billing, collection and delinquency procedures for City services and drafted a written policy, to be adopted by resolution, containing the rules and procedures as mandated by the statute. In addition, staff has made amendments to address certain administrative provisions and to clean up sections within Chapter 11.12.

DISCUSSION

SB 998 is intended to minimize the number of Californians who lose access to water service due to inability to pay by providing additional procedural protections and expand upon the existing procedural safeguards in the California Public Utilities Code and Government Code. The statute requires that an “urban and community water system” and “urban water supplier” act in accordance with rules and procedures prior to shutting off residential water service. “Residential water service” includes water service to a residential connection to a single-family home, multi-family homes, mobile homes including those in mobile home parks and farmworker housing. As an urban and community water system, the City is required to comply with the new requirements by February 1, 2020.

Rules and Procedures Required By SB 998:

Policy on Discontinuation of Residential Water Service for Nonpayment

SB 998 requires the City to adopt a written policy concerning shut-off of residential water service for nonpayment and to make that policy available on the City’s website. The policy must be available in English and certain other languages provided in Civil Code

Section 1632 (e.g., Spanish, Chinese, Korean, Vietnamese, and Tagalog), and any other language spoken by at least 10 percent of the people residing in the City's service area. A review of the most recent Census data information demonstrates that the City does not have a population meeting this 10% threshold. The policy shall include the following information:

- Alternative payment arrangements;
- A formal mechanism for a customer to review or appeal a bill;
- A telephone number for a customer to contact the City to discuss options to prevent discontinuation of service for nonpayment.

Staff has drafted a Policy on Discontinuation of Residential Water Service for Nonpayment ("Policy"; Attachment B). The proposed Policy satisfies the requirements under SB 998 and contains the following procedures related to the shut-off of residential water service for nonpayment, which include:

- Refraining from disconnecting residential water service for nonpayment until the payment is delinquent for at least 60 days;
- Providing notice of termination of residential water service at least 7 business days prior to disconnection, either in writing or by phone. These notices must be provided in English and the languages provided in Civil Code Section 1632, and any other language spoken by at least 10 percent of the people residing in the City's service area;
- If the City is unable to provide notice using the above methods, it must post a notice of imminent termination and include a copy of the written policy at the residence;
- Providing notice to tenants in situations where the landlord is the customer of record and allowing tenants to become customers upon agreeing to terms and conditions for residential water service.

Chapter 11.12 outlines the City's current process for the discontinuation of water service which differs from the requirements under SB 998. The proposed amendments to Chapter 11.12 (Attachment C) and the proposed Policy establish the following new procedures:

Restrictions on Discontinuing Residential Water Service and Alternative Payment Arrangements

As mentioned above, the City may only discontinue residential water service if a payment has been delinquent for at least 60 days.

If a customer requests to have a bill reviewed or appeals a bill, the City shall not discontinue residential water service during the review or appeal period.

The City may not discontinue services if all of the following conditions have been met:

- Customer provides certification from primary care giver that termination of water service would be life threatening or a serious threat to health and safety of a resident where the water service is provided;
- Customer demonstrates financial inability to pay bill (e.g., someone in household receives government assistance or customer declares household's annual income is less than 200% of the federal poverty level); and
- Customer is willing to enter in alternative payment arrangement; the City may choose which payment arrangement and apply parameters for payment.

If a customer meeting all of the conditions above, defaults on their alternative payment arrangement, or does not pay their current residential water service charge for 60 days or more, then the City must post a final notice of intent to disconnect water service in a prominent and conspicuous location on the property at least 5 business days before shutting off service.

If service is shut-off, the City must provide information on how to restore service.

SB 998 also requires that, for a residential water service customer who demonstrates that the household income is below 200% of the federal poverty line, the City shall set a reconnection service fee at \$50, but not to exceed the actual cost of reconnection if it is less for service during normal operating hours. For reconnection of residential service during nonoperational hours, the reconnection fee shall be set at \$150, but not to exceed the actual cost of reconnection if it is less. Additionally, for a residential water service customer with this financial hardship, the City is required to waive interest charges on delinquent bills once every 12 months.

Currently, the City charges a fee of \$35 for restoring water service to a customer when service is discontinued for failure to pay a delinquent account. (Tracy Municipal Code § 11.12.060 (a).) As this \$35 fee is less than the reconnection fee amounts provided in SB 998, no changes are proposed at this time to the Tracy Municipal Code regarding reconnection fees for restoration of residential service. However, the proposed policy includes the requirement to waive interest charges on delinquent bills once every 12 months for qualifying customers.

Annual Reporting Requirements:

SB 998 also mandates that the City report annually on its website and to the State Water Resources Control Board the number of service discontinuations for inability to pay. The State Water Resources Control Board (State Board) must post that information on its website. The Policy includes this reporting requirement.

STRATEGIC PLAN

This agenda Item is not related to the City Council's Strategic Plans.

FISCAL IMPACT

No direct fiscal impact is anticipated; however, there may be a delay in received revenue from the customers who fall under the conditions for SB 998.

RECOMMENDATION

That the City Council take the following actions for the City to implement SB 998:

1. Introduce and waive full reading of an ordinance amending of Chapter 11.12 concerning uniform billing, collection, and delinquency procedures for City services, and
2. Adopt, by resolution, a Policy on Discontinuation of Residential Water Service for Nonpayment.

Prepared by: Guadalupe Peña, Accountant
Bianca Rodriguez, Deputy City Attorney

Reviewed by: Martha Garcia, Finance Manager
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

Attachments:

Attachment A – Full text of SB 998

Attachment B – Policy on Discontinuation of Residential Water Service for Nonpayment

Attachment C - Redline Copy of Proposed Amendments to Chapter 11.12 "Uniform Billing, Collection and Delinquency Procedures for City Services"



Senate Bill No. 998

CHAPTER 891

An act to add Chapter 6 (commencing with Section 116900) to Part 12 of Division 104 of the Health and Safety Code, relating to water.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 998, Dodd. Discontinuation of residential water service: urban and community water systems.

Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water corporations. Existing law requires certain notice to be given before a water corporation, public utility district, municipal utility district, or a municipally owned or operated public utility furnishing water may terminate residential service for nonpayment of a delinquent account, as prescribed.

This bill would require an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, to have a written policy on discontinuation of water service to certain types of residences for nonpayment available in prescribed languages. The bill would require the policy to include certain components, be available on the system's Internet Web site, and be provided to customers in writing, upon request. The bill would provide for enforcement of these provisions, including making a violation of these provisions punishable by a civil penalty issued by the board in an amount not to exceed \$1,000 for each day in which the violation occurs, and would require the enforcement moneys collected by the board to be deposited in the Safe Drinking Water Account. The bill would prohibit an urban and community water system from discontinuing residential service for nonpayment until a payment by a customer has been delinquent for at least 60 days. The bill would require an urban and community water system to contact the customer named on the account and provide the customer with the urban and community water system's policy on discontinuation of residential service for nonpayment no less than 7 business days before discontinuation of residential service, as prescribed.

This bill would prohibit residential service from being discontinued under specified circumstances. The bill would require an urban and community

water system that discontinues residential service to provide the customer with information on how to restore service. The bill would require an urban and community water system to waive interest charges on delinquent bills for, and would limit the amount of a reconnection of service fee imposed on, a residential customer who demonstrates, as prescribed, to the urban and community water system household income below 200% of the federal poverty line. The bill would require an urban and community water system that furnishes individually metered residential service to residential occupants of a detached single-family dwelling, a multiunit structure, mobilehome park, or permanent residential structure in a labor camp, and that the owner, manager, or operator of the dwelling, structure, or park is the customer of record, to make every good faith effort to inform the residential occupants by written notice that service will be terminated and that the residential occupants have the right to become customers, as specified. The bill would require an urban and community water system to report the number of annual discontinuations of residential service for inability to pay on its Internet Web site and to the board, and the bill would require the board to post on its Internet Web site the information reported. The bill would require an urban water supplier, as defined, or an urban and community water system regulated by the commission, to comply with the bill's provisions on and after February 1, 2020, and any other urban and community water system to comply with the bill's provisions on and after April 1, 2020. The bill would provide that the provisions of the bill are in addition to the provisions in existing law duplicative of the bill and that where the provisions are inconsistent, the provisions described in the bill apply.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

- (a) All Californians have the right to safe, accessible, and affordable water as declared by Section 106.3 of the Water Code.
- (b) It is the intent of the Legislature to minimize the number of Californians who lose access to water service due to inability to pay.
- (c) Water service discontinuations threaten human health and well-being, and have disproportionate impact on infants, children, the elderly, low-income families, communities of color, people for whom English is a second language, physically disabled persons, and persons with life-threatening medical conditions.
- (d) When there is a delinquent bill, all Californians, regardless of whether they pay a water bill directly, should be treated fairly, and fair treatment includes the ability to contest a bill, seek alternative payment schedules, and demonstrate medical need and severe economic hardship.
- (e) The loss of water service causes tremendous hardship and undue stress, including increased health risks to vulnerable populations.
- (f) It is the intent of the Legislature that this act provide additional procedural protections and expand upon the procedural safeguards contained

in the Public Utilities Code and Government Code as of January 1, 2018, relating to utility service disconnections.

SEC. 2. Chapter 6 (commencing with Section 116900) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

CHAPTER 6. DISCONTINUATION OF RESIDENTIAL WATER SERVICE

116900. This chapter shall be known, and may be cited, as the Water Shutoff Protection Act.

116902. For the purposes of this chapter, the following definitions apply:

- (a) "Board" means the State Water Resources Control Board.
- (b) "Public water system" has the same meaning as defined in Section 116275.
- (c) "Residential service" means water service to a residential connection that includes single-family residences, multifamily residences, mobilehomes, including, but not limited to, mobilehomes in mobilehome parks, or farmworker housing.
- (d) "Urban and community water system" means a public water system that supplies water to more than 200 service connections.
- (e) "Urban water supplier" has the same meaning as defined in Section 10617 of the Water Code.

116904. (a) An urban water supplier not regulated by the Public Utilities Commission shall comply with this chapter on and after February 1, 2020.

(b) An urban and community water system regulated by the Public Utilities Commission shall comply with this chapter on and after February 1, 2020. The urban and community water system regulated by the Public Utilities Commission shall file advice letters with the commission to conform with this chapter.

(c) An urban and community water system not described in subdivision (a) or (b) shall comply with this chapter on and after April 1, 2020.

116906. (a) An urban and community water system shall have a written policy on discontinuation of residential service for nonpayment available in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by at least 10 percent of the people residing in its service area. The policy shall include all of the following:

- (1) A plan for deferred or reduced payments.
- (2) Alternative payment schedules.
- (3) A formal mechanism for a customer to contest or appeal a bill.
- (4) A telephone number for a customer to contact to discuss options for averting discontinuation of residential service for nonpayment.

(b) The policy shall be available on the urban and community water system's Internet Web site, if an Internet Web site exists. If an Internet Web site does not exist, the urban and community water system shall provide the policy to customers in writing, upon request.

(c) (1) The board may enforce the requirements of this section pursuant to Sections 116577, 116650, and 116655. The provisions of Section 116585

and Article 10 (commencing with Section 116700) of Chapter 4 apply to enforcement undertaken for a violation of this section.

(2) All moneys collected pursuant to this subdivision shall be deposited in the Safe Drinking Water Account established pursuant to Section 116590.

116908. (a) (1) (A) An urban and community water system shall not discontinue residential service for nonpayment until a payment by a customer has been delinquent for at least 60 days. No less than seven business days before discontinuation of residential service for nonpayment, an urban and community water system shall contact the customer named on the account by telephone or written notice.

(B) When the urban and community water system contacts the customer named on the account by telephone pursuant to subparagraph (A), it shall offer to provide in writing to the customer the urban and community water system's policy on discontinuation of residential service for nonpayment. An urban and community water system shall offer to discuss options to avert discontinuation of residential service for nonpayment, including, but not limited to, alternative payment schedules, deferred payments, minimum payments, procedures for requesting amortization of the unpaid balance, and petition for bill review and appeal.

(C) When the urban and community water system contacts the customer named on the account by written notice pursuant to subparagraph (A), the written notice of payment delinquency and impending discontinuation shall be mailed to the customer of the residence to which the residential service is provided. If the customer's address is not the address of the property to which residential service is provided, the notice also shall be sent to the address of the property to which residential service is provided, addressed to "Occupant." The notice shall include, but is not limited to, all of the following information in a clear and legible format:

(i) The customer's name and address.
(ii) The amount of the delinquency.
(iii) The date by which payment or arrangement for payment is required in order to avoid discontinuation of residential service.

(iv) A description of the process to apply for an extension of time to pay the delinquent charges.

(v) A description of the procedure to petition for bill review and appeal.

(vi) A description of the procedure by which the customer may request a deferred, reduced, or alternative payment schedule, including an amortization of the delinquent residential service charges, consistent with the written policies provided pursuant to subdivision (a) of Section 116906.

(2) If the urban and community water system is unable to make contact with the customer or an adult occupying the residence by telephone, and written notice is returned through the mail as undeliverable, the urban and community water system shall make a good faith effort to visit the residence and leave, or make other arrangements for placement in a conspicuous place of, a notice of imminent discontinuation of residential service for nonpayment and the urban and community water system's policy for discontinuation of residential service for nonpayment.

(b) If an adult at the residence appeals the water bill to the urban and community water system or any other administrative or legal body to which such an appeal may be lawfully taken, the urban and community water system shall not discontinue residential service while the appeal is pending.

116910. (a) An urban and community water system shall not discontinue residential service for nonpayment if all of the following conditions are met:

(1) The customer, or a tenant of the customer, submits to the urban and community water system the certification of a primary care provider, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 14088 of the Welfare and Institutions Code, that discontinuation of residential service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided.

(2) The customer demonstrates that he or she is financially unable to pay for residential service within the urban and community water system's normal billing cycle. The customer shall be deemed financially unable to pay for residential service within the urban and community water system's normal billing cycle if any member of the customer's household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or the customer declares that the household's annual income is less than 200 percent of the federal poverty level.

(3) The customer is willing to enter into an amortization agreement, alternative payment schedule, or a plan for deferred or reduced payment, consistent with the written policies provided pursuant to subdivision (a) of Section 116906, with respect to all delinquent charges.

(b) (1) If the conditions listed in subdivision (a) are met, the urban and community water system shall offer the customer one or more of the following options:

(A) Amortization of the unpaid balance.

(B) Participation in an alternative payment schedule.

(C) A partial or full reduction of the unpaid balance financed without additional charges to other ratepayers.

(D) Temporary deferral of payment.

(2) The urban and community water system may choose which of the payment options described in paragraph (1) the customer undertakes and may set the parameters of that payment option. Ordinarily, the repayment option offered should result in repayment of any remaining outstanding balance within 12 months. An urban and community water system may grant a longer repayment period if it finds the longer period is necessary to avoid undue hardship to the customer based on the circumstances of the individual case.

(3) Residential service may be discontinued no sooner than 5 business days after the urban and community water system posts a final notice of intent to disconnect service in a prominent and conspicuous location at the property under either of the following circumstances:

(A) The customer fails to comply with an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges for 60 days or more.

(B) While undertaking an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges, the customer does not pay his or her current residential service charges for 60 days or more.

116912. An urban and community water system that discontinues residential service for nonpayment shall provide the customer with information on how to restore residential service.

116914. (a) For a residential customer who demonstrates to an urban and community water system household income below 200 percent of the federal poverty line, the urban and community water system shall do both of the following:

(1) Set a reconnection of service fee for reconnection during normal operating hours at fifty dollars (\$50), but not to exceed the actual cost of reconnection if it is less. Reconnection fees shall be subject to an annual adjustment for changes in the Consumer Price Index beginning January 1, 2021. For the reconnection of residential service during nonoperational hours, an urban and community water system shall set a reconnection of service fee at one hundred fifty dollars (\$150), but not to exceed the actual cost of reconnection if it is less. Reconnection fees shall be subject to an annual adjustment for changes in the Consumer Price Index beginning January 1, 2021.

(2) Waive interest charges on delinquent bills once every 12 months.

(b) An urban and community water system shall deem a residential customer to have a household income below 200 percent of the federal poverty line if any member of the household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or the customer declares that the household's annual income is less than 200 percent of the federal poverty level.

116916. (a) This section applies if there is a landlord-tenant relationship between the residential occupants and the owner, manager, or operator of the dwelling.

(b) If an urban and community water system furnishes individually metered residential service to residential occupants of a detached single-family dwelling, a multiunit residential structure, mobilehome park, or permanent residential structure in a labor camp as defined in Section 17008, and the owner, manager, or operator of the dwelling, structure, or park is the customer of record, the urban and community water system shall make every good faith effort to inform the residential occupants, by means of written notice, when the account is in arrears that service will be terminated at least 10 days prior to the termination. The written notice shall further inform the residential occupants that they have the right to become

customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account.

(c) The urban and community water system is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service and meets the requirements of law and the urban and community water system's rules and tariffs. However, if one or more of the residential occupants are willing and able to assume responsibility for the subsequent charges to the account to the satisfaction of the urban and community water system, or if there is a physical means legally available to the urban and community water system of selectively terminating service to those residential occupants who have not met the requirements of the urban and community water system's rules and tariffs, the urban and community water system shall make service available to those residential occupants who have met those requirements.

(d) If prior service for a period of time is a condition for establishing credit with the urban and community water system, residence and proof of prompt payment of rent or other credit obligation acceptable to the urban and community water system for that period of time is a satisfactory equivalent.

(e) Any residential occupant who becomes a customer of the urban and community water system pursuant to this section whose periodic payments, such as rental payments, include charges for residential water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the urban and community water system for those services during the preceding payment period.

(f) In the case of a detached single-family dwelling, the urban and community water system may do any of the following:

(1) Give notice of termination at least seven days prior to the proposed termination.

(2) In order for the amount due on the delinquent account to be waived, require an occupant who becomes a customer to verify that the delinquent account customer of record is or was the landlord, manager, or agent of the dwelling. Verification may include, but is not limited to, a lease or rental agreement, rent receipts, a government document indicating that the occupant is renting the property, or information disclosed pursuant to Section 1962 of the Civil Code.

116918. An urban and community water system shall report the number of annual discontinuations of residential service for inability to pay on the urban and community water system's Internet Web site, if an Internet Web site exists, and to the board. The board shall post on its Internet Web site the information reported.

116920. (a) The Attorney General, at the request of the board or upon his or her own motion, may bring an action in state court to restrain by temporary or permanent injunction the use of any method, act, or practice declared in this chapter to be unlawful.

(b) For an urban and community water system regulated by the Public Utilities Commission, the commission may bring an action in state court to restrain by temporary or permanent injunction the use by an urban and community water system regulated by the commission of any method, act, or practice declared in this chapter to be unlawful.

116922. All written notices required under this chapter shall be provided in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by 10 percent or more of the customers in the urban and community water system's service area.

116924. Where provisions of existing law are duplicative of this chapter, compliance with one shall be deemed compliance with the other. Where those provisions are inconsistent, the provisions of this chapter shall apply. Nothing in this chapter shall be construed to limit or restrict the procedural safeguards against the disconnection of residential water service existing as of December 31, 2018.

116926. This chapter does not apply to the termination of a service connection by an urban and community water system due to an unauthorized action of a customer.

City of Tracy
Policy on Discontinuation of Residential Water Service for Nonpayment

1. Purpose/Background:

This Policy has been established pursuant to Senate Bill 998, known as the “Water Shutoff Protection Act” (California Health and Safety Code §§ 116900-116926).

2. Application:

This Policy applies only to the discontinuation of residential water service for nonpayment. The City of Tracy’s existing ordinances, resolutions, policies and procedures shall continue to apply to any non-residential water service accounts and to discontinuation of residential water service for other reasons, including, the termination of a service connection by the City of Tracy (“City”) due to a customer violation of any other ordinance, regulation or policy of the City.

3. Availability of Policy:

The City shall provide this Policy in English, and in the languages listed in Civil Code Section 1632, which includes Spanish, Chinese, Tagalog, Vietnamese, and Korean, and any other language spoken by at least 10 percent (10%) of the people residing in the City’s service area. This Policy will be made available to the public on the City’s website.

4. Telephone Number:

The City’s Finance Department can be contacted by phone at (209) 831-6800 for assistance concerning the payment of water bills and to discuss options for preventing discontinuation of residential water service for nonpayment under the terms of this Policy.

5. Requirements Preceding Discontinuation of Residential Water Service for Nonpayment:

a. 60-day Delinquency Period

The City shall not discontinue residential water service for nonpayment until payment by the customer has been delinquent for at least 60 days.

b. Notice

The City will contact the customer by written notice at least 7 business days before discontinuation of residential water service for nonpayment. The written notice shall be provided in English, the languages listed in Civil Code Section 1632, and any other language spoken by at least 10 percent (10%) of the people residing in the City’s service area.

- i. The written notice of payment delinquency and impending discontinuation of residential water service shall be sent to the mailing address designated on the account. If the mailing address and the address of the property to which residential water service is provided are different, the written notice will also be mailed to the service address and addressed to “Occupant”.

- ii. The written disconnection notice will include:
 - A. The customer's name and address.
 - B. The amount of the delinquency.
 - C. The date by which payment or payment arrangements are required to avoid discontinuation of residential water service.
 - D. A description of the process to apply for an extension of time to pay the delinquent charges.
 - E. A description of the process to petition for bill review and appeal.
 - F. A description of the procedure by which the customer may requested a deferred, reduced, or alternative payment schedule, including an amortization of the delinquent residential water service charges, consistent with this Policy.
 - G. The City's phone number, business address, and hours of operation of the Finance Department customer service desk.
- iii. The City may alternatively provide notice to the customer of the impending discontinuation of residential water service by telephone. If notice is provided by telephone, the City shall offer to provide the customer with a copy of this Policy and also offer to discuss with the customer options for alternative payments and the procedures for review and appeal of the customer's bill.
- iv. If the City is unable to make contact with the customer or an adult occupying the residence by telephone, and written notice is returned through the mail as undeliverable, the City shall make a good faith effort to visit the residence and leave, or place in a conspicuous place, a notice of imminent discontinuation of residential water service for nonpayment and a copy of this Policy.

c. 48-Hour Notice of Termination

The City will make a reasonable, good faith effort to notify the customer 48 hours in advance of discontinuation of residential water service for nonpayment. The means of notification will be based upon the notification preference (text, phone, or email) selected by the customer. Customers who have not selected a means of notification will be notified by phone. If the City is unable to make contact by text, phone, or email, the City will make a good faith effort to visit the residence and leave a notice of termination of residential water service in a conspicuous location.

6. Service Restoration Information:

Upon discontinuation of residential water service for nonpayment, the City shall provide the customer with information on how to restore residential water service.

7. Restrictions on Discontinuation of Residential Water Service:

- a. The City shall not discontinue residential water service for nonpayment if **all** of the following conditions are met:
 - i. The customer, or a tenant of the customer, provides certification of a primary care provider, as defined in Welfare and Institutions Code Section 14088(b)(A)(1), that discontinuation of residential water service will be life-threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential water service is provided.

- ii. The customer demonstrates that he or she is financially unable to pay for residential water service within the City's normal billing cycle.
 - A. The customer shall be deemed financially unable to pay for residential water service within the City's normal billing cycle if any member of the customer's household is a current recipient of:
 - 1) CalWORKs,
 - 2) CalFresh,
 - 3) General assistance,
 - 4) Medi-Cal,
 - 5) Supplemental Security Income/State Supplementary Payment Program, or
 - 6) California Special Supplemental Nutrition Program for Women, Infants and Children, or
 - 7) The customer declares that the household's annual income is less than 200 percent (200%) of the federal poverty level.
- iii. The customer is willing to enter into an amortization agreement, alternative payment schedule, or a plan for deferred or reduced payment, consistent with Section 7.b. of this Policy.

b. Alternative Payment Arrangements

- i. If the customer meets all of the conditions listed in Section 7.a. above, the City shall offer the customer one or more of the following options:
 - A. Amortization of the unpaid balance.
 - B. Participation in an alternative payment schedule.
 - C. A partial or full reduction of the unpaid balance financed without additional changes to other ratepayers.
 - D. Temporary deferral of payment.
- ii. The Finance Director, or designee, may choose which of the payment options described in Section 7.b.i. above, may be available to the customer and may set the parameters of that payment option. Ordinarily, the repayment option offered should result in repayment of any remaining outstanding balance within 12 months. The City may grant a longer repayment period if it finds the longer period is necessary to avoid undue hardship to the customer based on the circumstances of the individual case.

c. Customer Obligations

The customer must remain current on residential water service as charges accrue in each subsequent billing period. The customer may not request further amortization or reduction of any subsequent unpaid charges while paying delinquent charges pursuant to an alternative payment arrangement. Commencing on the date the first payment arrangement is entered into, customers who fail to comply with an agreed payment arrangement will not be eligible to establish future payment arrangements for a period of 12 months, except as otherwise prohibited by law.

d. Disconnection after Failure to Comply with Alternative Payment Arrangements

- i. The City may disconnect service no sooner than 5 business days after the City posts a final notice of intent to disconnect residential water service in a prominent and conspicuous location at the property under either of the following circumstances:

- A. The customer fails to comply with an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges for 60 days or more.
- B. While undertaking an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges, the customer does not pay his or her current residential water service charges for 60 days or more.

8. Services Involving Landlord-Tenant Relationships:

a. Notice to Residential Tenants/Occupants in Master Meter Landlord-Tenant Situations

If the City furnishes individually metered residential water service to residential tenants/occupants of a detached single-family dwelling, a multiunit residential structure, mobile home park, or permanent residential structure in a labor camp as defined in Health and Safety Code Section 17008, and the owner, manager, or operator of the dwelling, structure, or park is the customer of record, the City will make a reasonable, good faith effort to inform the tenants/occupants, by means of written notice, when the residential water service account is in arrears and subject to disconnection at least 10 days before residential water service is shut off. The written notice will advise the tenants/occupants that they have the right to become customers of the City without being required to pay the amount due on the delinquent account, as long as they are willing to assume financial responsibility for subsequent charges for residential water service at that address.

b. Service to Tenants/Occupants

The City shall not make service available to the residential tenants/occupants unless each residential tenant/occupant agrees to the City's terms and conditions for residential water service and meets the requirements of law and the City's ordinances, resolutions, regulations and/or policies. However, if one or more of the residential tenant/occupants are willing and able to assume responsibility for the subsequent charges for water service to the satisfaction of the City, or if there is a physical means legally available to the City, of selectively terminating service to those residential tenants/occupants who have not met the requirements for service, the City will make service available to those residential tenants/occupants who have met those requirements.

c. Detached Single-Family Dwellings

In the case of a detached single-family dwelling, the City may do any of the following:

- i. Give notice of termination of residential water service at least 7 days prior to the proposed termination.
- ii. In order for the amount due on the delinquent account to be waived, require a tenant/occupant who becomes a customer to verify tenancy in the form of a rental agreement.

9. Additional Service Restoration Considerations Based on Financial Hardship:

- a. If a residential water service customer demonstrates to the City household income below 200 percent (200%) of the federal poverty line, the City shall do both of the following:
 - i. Charge a fee for restoring residential water service as set forth in Tracy Municipal Code Section 11.12.060(a).
 - ii. Waive interest charges on delinquent bills once every 12 months.

- b. The City shall deem a residential water service customer to have a household income below 200 percent (200%) of the federal poverty line if:
 - i. Any member of the household is a current recipient of:
 - A. CalWORKs,
 - B. CalFresh,
 - C. General assistance,
 - D. Medi-Cal,
 - E. Supplemental Security Income/State Supplementary Payment Program, or
 - F. California Special Supplemental Nutrition Program for Women, Infants and Children, or
 - G. The customer declares that the household's annual income is less than 200 percent (200%) of the federal poverty level.

10. Procedure to Review or Appeal a Bill:

If a residential water service customer wishes to review or appeal any bill or charge rendered by the City, the customer may do any of the following:

- a. Review of bill:
 - i. Customer has the right to request a review of the bill by contacting the Finance Department.
 - ii. During the City's review of the bill, the City shall not disconnect residential water service to the customer.
- b. Appeal of bill:
 - i. An appeal of a residential water service bill may be made to the Finance Director in accordance with the procedures provided in Tracy Municipal Code Section 1.12.010(a).
 - ii. If the customer is unable to resolve the dispute with his or her bill as provided in Section 10. b. ii., above, then an appeal of a residential water service bill may be made to the City Manager in accordance with the procedures provided in Tracy Municipal Code Section 1.12.010.
 - iii. While the appeal of the bill is pending, the City shall not disconnect residential water service to the customer.

11. Reporting Requirements:

The City shall report the number of annual discontinuations of residential water service for nonpayment on the City's website and to the State Water Resources Control Board.

Chapter 11.12 - UNIFORM BILLING, COLLECTION AND DELINQUENCY PROCEDURES FOR CITY SERVICES

11.12.010 - Purpose.

It is the purpose of this chapter to establish uniform procedures for the submission of billings, the collection of moneys, and the administration of delinquent accounts for those consumers of garden refuse collection, garbage collection, and water and sewage services. The City Manager, or ~~his designee~~~~ated representative~~, may modify the requirements imposed by the provisions of this chapter, using reasonable judgment, in individual cases where he or she considers sufficient mitigating circumstances exist.

(Prior code § 11-3.01)

11.12.020 - Enforcement.

The City Manager shall enforce the provisions of this chapter by coordinating the actions of the Director of Public Works, the Finance Director, and any other officers and employees of the City.

(Prior code § 11-3.02)

11.12.030 - Billing procedures.

- (a) Every owner, tenant, or occupant of premises receiving one or more of the services enumerated in section 11.12.010 of this chapter shall be billed for such services once every month. The City shall be divided into service areas, each of which shall be assigned a specific numbered day of each calendar month which will be the ending day of that area's month for service and billing purposes. Bills shall contain charges for services for the preceding month as follows: for water services, the monthly service fee plus the charge for water consumed between two (2) consecutive meter readings, the last of which shall be taken within fifteen (15) calendar days prior to the submission of the bill, and for sewer, garbage, and garden refuse services, including the toter fee.
- (b) Each bill shall include advice that the bill will become delinquent if not paid on or before the delinquency date as specified on the bill.

(Prior code § 11-3.03)

11.12.040 - Payment of bills.

- (a) Payments may be made ~~only by United States mail to the City as specified on the bill or directly at the Finance Department and may be accepted only by the Finance Director or by employees under his supervision.~~
- (b) Bills shall be paid in full, including any penalties. Payments from which the customer has made unauthorized deductions may not be accepted.
- ~~(c) Customer's deposits may be applied to any amounts in closing bills.~~

(Prior code § 11-3.04)

11.12.050 - Delinquent accounts.

- (a) Whenever payment for a bill which was properly rendered has not been received by the Finance Department at the close of business on the ~~delinquency current billing due~~ date as specified on the bill, the total amount of the bill shall become a delinquent account. If the ~~delinquent due~~ date is a nonbusiness day, the account shall become delinquent at the close of business on the first business day thereafter.
- (b) Delinquent amounts not paid by the time the next bill is prepared shall be separately stated on the next bill rendered to the customer, and such amount shall be subject to a late charge, and such statement shall constitute notice of the delinquency to the customer. The amount of the late charge shall be ten (10%) percent of the delinquent amount, ~~or Six and no/100ths (\$6.00) Dollars, whichever is greater.~~
- (c) If the bill is not paid within fifteen (15) days after the notice specified in subsection (b) of this section, a final notice shall be mailed to the customer advising that service will be discontinued if payment of the entire amount then due is not made within five (5) days after the date such notice was mailed.
- (d) If the bill has not been paid by the close of business on the date specified in subsection (c) of this section, water, garbage, and garden disposal services may be discontinued.

(e) Notwithstanding subsections (c) and (d) of this section, discontinuation of service for delinquent accounts for residential service will be permitted only as set forth in the City of Tracy Policy on Discontinuation of Residential Water Service for Nonpayment ("Policy"). For the purposes of this Chapter, "residential service" shall have the same meaning as set forth in California Health and Safety Code Section 116902.

(Prior code § 11-3.05, as amended by § 1, Ord. 968 C.S., eff. February 19, 1998)

11.12.060 - Delinquent accounts—Charges for restoration of service.

- (a) A fee [of] Thirty-five and no/100ths (\$35.00) dollars shall be charged for restoring water service to the same user when it is discontinued for failure to pay a delinquent account.
- (b) In the event it is necessary to lock a water meter because of a delinquency and the lock is subsequently found damaged or cut, a fee of Fifty and no/100ths (\$50.00) dollars shall be charged in addition to the fee set forth in subsection (a) of this section.
- (c) If it is necessary to remove a water meter because of a delinquency, a fee of One hundred and no/100ths (\$100.00) dollars shall be charged in addition to the fee set forth in subsection (a) of this section.
- (d) A fee of Twenty-five and no/100ths (\$25.00) dollars may be charged for all checks returned by banks for nonsufficient funds. The fee shall be added to the customer's utility account.
- (e) All charges set forth in this section shall be added to the amount of the delinquent account.
- (f) The entire amount of a delinquent account, including all fees which have been billed for services and all charges or fees set forth in this section, shall be paid in order for service to be continued or restored.

(Prior code § 11-3.06)

(Ord. No. 1161, § 1, 7-5-2011)

11.12.070 - Multiple accounts.

- (a) Whenever a person shall fail to pay a closed account within thirty (30) days after a billing is rendered or shall become subject on a current account to the provisions of subsection (d) of section 11.12.050 of this chapter, the City may discontinue services to all the other utility accounts for which such person is responsible.
- (b) No person who owes delinquent accounts to the City on either a closed or current account may open a new utility account until all such delinquent accounts have been paid.

(Prior code § 11-3.07)

11.12.080 - Advance deposits.

Any tenant, either residential or commercial, ~~upon application that has requested for~~ City utility services, shall make a deposit of One hundred seventy-five and no/100ths (\$175.00) dollars. The deposit is required for any, or all, services of water, sewer, garbage and garden to be provided by the City.

The deposit shall remain on the account until satisfactory status has been reached. For purposes of this Chapter, "Satisfactory status" is defined as an account having no delinquent amounts or fees added in a consecutive twelve-month period.

For each utility service location, either residential or commercial, a new account will be opened and a new deposit will be required to start services.

(Ord. 1105 § 1, 2007: prior code § 11-3.08)

(Ord. No. 1161, § 2, 7-5-2011)

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 11.12 OF THE TRACY MUNICIPAL CODE RELATING TO UNIFORM BILLING, COLLECTION AND DELINQUENCY PROCEDURES OF CITY SERVICES

WHEREAS, Chapter 11.12 of the Tracy Municipal Code provides rules and procedures relating to uniform billing, collection and delinquency for City utility services, and

WHEREAS, On September 28, 2018, Governor Brown signed into law SB 998, known as the "Water Shutoff Protection Act," adding to the Health and Safety Code (Section 116900, et seq.), and

WHEREAS, SB 998 establishes the requirements and procedures that urban and community water systems such as the City of Tracy ("City") must follow concerning the discontinuation of residential water service for nonpayment beginning February 1, 2020, and

WHEREAS, The proposed amendments to Chapter 11.12 relating to rules and procedures regarding utility services are in accordance with the mandates of SB 998 and include additional modifications to certain administrative provisions;

NOW THEREFORE, The City Council of the City of Tracy does ordain as follows:

SECTION 1. Amended Sections. Sections 11.12.010, 11.12.040, 11.12.050, and 11.12.080 of Chapter 11.12, Uniform Billing, Collection and Delinquency Procedures for City Services, of Title 11, Public Utilities, of the Tracy Municipal Code are amended to read as follows:

11.12.010 - Purpose.

It is the purpose of this chapter to establish uniform procedures for the submission of billings, the collection of moneys, and the administration of delinquent accounts for those consumers of garden refuse collection, garbage collection, and water and sewage services. The City Manager, or designee, may modify the requirements imposed by the provisions of this chapter, using reasonable judgment, in individual cases where he or she considers sufficient mitigating circumstances exist.

11.12.040 - Payment of bills.

- (a) Payments may be made to the City as specified on the bill.
- (b) Bills shall be paid in full, including any penalties. Payments from which the customer has made unauthorized deductions may not be accepted.

11.12.050 - Delinquent accounts.

- (a) Whenever payment for a bill which was properly rendered has not been received by the Finance Department at the close of business on the current billing due date as specified on the bill, the total amount of the bill shall become a delinquent account. If the due date is a

nonbusiness day, the account shall become delinquent at the close of business on the first business day thereafter.

(b) Delinquent amounts not paid by the time the next bill is prepared shall be separately stated on the next bill rendered to the customer, and such amount shall be subject to a late charge, and such statement shall constitute notice of the delinquency to the customer. The amount of the late charge shall be ten (10%) percent of the delinquent amount.

(c) If the bill is not paid within fifteen (15) days after the notice specified in subsection (b) of this section, a final notice shall be mailed to the customer advising that service will be discontinued if payment of the entire amount then due is not made within five (5) days after the date such notice was mailed.

(d) If the bill has not been paid by the close of business on the date specified in subsection (c) of this section, water, garbage, and garden disposal services may be discontinued.

(e) Notwithstanding subsections (c) and (d) of this section, discontinuation of service for delinquent accounts for residential service will be permitted only as set forth in the City of Tracy Policy on Discontinuation of Residential Water Service for Nonpayment ("Policy"). For the purposes of this Chapter, "residential service" shall have the same meaning as set forth in California Health and Safety Code Section 116902.

11.12.080 - Advance deposits.

Any tenant, either residential or commercial, that has requested City utility services, shall make a deposit of One hundred seventy-five and no/100ths (\$175.00) dollars. The deposit is required for any, or all, services of water, sewer, garbage and garden to be provided by the City.

The deposit shall remain on the account until satisfactory status has been reached. For purposes of this Chapter, "Satisfactory status" is defined as an account having no delinquent amounts or fees added in a consecutive twelve-month period.

For each utility service location, either residential or commercial, a new account will be opened and a new deposit will be required to start services."

SECTION 2. Except as herein added or changed, the remaining sections of the Tracy Municipal Code not set forth above, shall remain in full force.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. This Ordinance takes effect 30 days after its final passage and adoption.

SECTION 5. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the Ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the Ordinance. (Gov't. Code §36933.)

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 3rd day of December, 2019, and finally adopted on the 17th day of December 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

RESOLUTION _____

ESTABLISHING A POLICY ON DISCONTINUATION OF RESIDENTIAL WATER SERVICE FOR NONPAYMENT

WHEREAS, On September 28, 2018, Governor Brown signed into law SB 998, known as the "Water Shutoff Protection Act," adding to the Health and Safety Code section 116900, et seq., and

WHEREAS, SB 998 establishes the requirements and procedures that urban and community water systems such as the City of Tracy ("City") must follow concerning the discontinuation of residential water service for nonpayment beginning February 1, 2020, and

WHEREAS, The proposed policy relating to rules and procedures regarding discontinuation of residential water service for nonpayment is in accordance with the mandates of SB 998;

NOW, THEREFORE, BE IT RESOLVED That the City Council of the City of Tracy hereby adopts the policy on discontinuation of residential water service for nonpayment attached hereto as Exhibit "A."

* * * * *

The foregoing Resolution _____ is hereby passed and adopted by the Tracy City Council this 3rd day of December 2019, by the following vote:

- AYES: COUNCIL MEMBERS
- NOES: COUNCIL MEMBERS
- ABSENT: COUNCIL MEMBERS
- ABSTAIN: COUNCIL MEMBERS

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3.C

REQUEST

CONDUCT A HEARING TO APPROVE A SALES TAX AGREEMENT WITH HOME DEPOT U.S.A., INC. AS PART OF THE CITY'S OFFICE/INDUSTRIAL INCENTIVE PROGRAM

EXECUTIVE SUMMARY

The Council directed staff to market the Office/Industrial Incentive program as part of the City's economic development efforts and to return to Council to approve financial incentives for clients looking to locate in office and industrial areas. The City has received a request from Home Depot U.S.A., Inc. (Home Depot) to enter into a Sales Tax Agreement (Agreement) with the City for the new Home Depot distribution center located in the International Park of Commerce. Home Depot will establish a local distribution center that will generate taxable retail sales within the City. The Agreement proposes that Home Depot receive a rebate on the City's portion of the Bradley Burns sales tax generated at the facility.

Staff is requesting that City Council make findings consistent with the City's Office/Industrial Incentive Program, identify information required under California Government Code Section 53083 relating to economic development subsidies, and approve the Agreement with Home Depot.

DISCUSSION

On December 21, 2011, the Office/Industrial Incentive Program (Attachment "A") was approved by the City Council to be implemented to help attract office and industrial users that may contribute to the City's sales and use tax revenue. Sales and use tax revenue is typically generated through retail establishments. There are, however, certain office or industrial uses that can also generate sales and use taxes for a local jurisdiction. An example of the type of office and industrial use that might generate sales and use taxes is a software development firm selling to other businesses or a medical equipment manufacturer selling to hospitals.

The approved Office/Industrial Incentive Program is consistent with the Tracy General Plan, Economic Development Element:

- ED-3 A supportive business environment
- ED-6 Healthy, key economic activity centers
- ED-8 Responsiveness to change and opportunities
- ED-9 A financially sound and viable City of Tracy

Pursuant to the approved program, City Council may approve a financial incentive with developer owners, prospective tenants, or tenant representatives for clients looking to locate in our office and or industrial areas. The Office/Industrial financial

incentive is targeted for developers-owners, prospective tenants, or tenant representatives that meet all of the following criteria:

- Generate annual gross sales of \$100,000,000 or more;
- Generate sales or use tax to the City corresponding to the gross sales;
- Provide a minimum of 1,000 full time equivalent (FTE) jobs;

The financial incentive may be either: (1) a sales or use tax rebate; or (2) direct financial assistance with security, tied to future sales and use tax generation. If direct financial assistance is requested, the funds must be used only for tenant improvements associated with the specific location. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney.

The Bradley Burns ("Bradley Burns") Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the law. The Bradley Burns tax applies to the sales of tangible personal property in which a percentage of California's sales and use tax rate is distributed back to the jurisdiction where sales were generated to support local general funds. For many jurisdictions, this amount is one percent (1%). Sales tax is payable to the City from the State Board of Equalization, and a sales tax rebate is issued to the business owner from the jurisdiction where funds are generated.

The City has received a request from Home Depot to enter into a Sales Tax Agreement with the City of Tracy through which Home Depot will receive a sales tax rebate. Home Depot is a home improvement retailer, supplying tools, construction products and services in more than 2,200 stores in the U.S., Canada and Mexico. A Home Depot distribution center is currently under construction and will occupy a 725,000 square foot building in the Prologis International Park of Commerce.

Facility construction completion is expected in Winter/Spring 2021 with operations commencing by Summer of 2021. Home Depot has requested a sales tax rebate incentive from the City in return for establishing, locating, and operating a sales office in the City of Tracy where it will provide taxable sales and sales tax revenue. This request presented by Home Depot is a result of establishing a point of sale location in Tracy, California.

Home Depot expects gross sales of approximately \$175-\$200 million annually with a minimum of 100-150 FTE jobs at opening in Summer 2021, with a projected increase to 250 FTE jobs following its first full year of operations. While Home Depot does not anticipate meeting the minimum job creation criteria established in the Office/Industrial Incentive program, staff has brought this request forward for Council consideration.

With approval of the Agreement, the City may realize approximately \$1.75-\$2 million annually from its share of direct sales tax revenue. Home Depot is requesting that fifty percent (50%) of the annual direct sales tax revenue to the City be rebated, approximately \$875,000-\$1,000,000 annually, in return for establishing the City as the point-of-sale for all sales consummated at the Tracy facility. The sales tax rebate is only for the City's portion of the Bradley Burns local sales tax and not Measure V.

Staff has coordinated to develop and finalize terms of the Agreement (Attachment "B"). Key terms of the Agreement include, but are not limited to:

- Home Depot will receive 50% of the local sales tax generated in the form of a sales tax rebate (approximately \$875,000-\$1,000,000 annually).
- City shall receive 50% of the local sales tax generated (approximately \$875,000-\$1,000,000 annually).
- Agreement will be effective once Council approves the Agreement, the Parties execute the Agreement and Home Depot commences operations at the Distribution Center. Thus, the effective date will likely be in the Summer of 2021.
- Term of 20 years, with an option to renew for 20 years

The approved Office/Industrial Incentive Program requires that all financial incentive agreements must include a provision that the company promote, market, and hold at least one hiring fair exclusively to residents of Tracy prior to conduct hiring interviews for employees outside the area. Economic Development staff is available to assist the client with promotion and community related coordination of this effort. In addition, Home Depot will support local community benefit programs consistent with their corporate contributions policies.

State Law and City of Tracy Program Requirements

California Government Code Section 53083 pertaining to economic development subsidies, requires the City provide written information to the public prior to approving any form of economic development subsidy within its jurisdiction. Staff has provided a summary response to Government Code Section 53083 (Attachment "C").

Consistent with the Office/Industrial Incentive Program requirements, all financial incentive agreements must be approved by City Council only after making specific findings. These specific findings are consistent with the Office/Industrial Incentive program:

1. The net financial benefit to the public is larger than the financial incentive;

Under the Office/Industrial Incentive program, the City will be entering into an Agreement to rebate 50% of generated sales tax revenue to Home Depot U.S.A., Inc. in return for generating approximately \$175-\$200 million in taxable sales. This incentive to Home Depot U.S.A., Inc. is equal to approximately \$875,000-\$1,000,000 annually. The potential sales tax revenue under this agreement for the City is equal to approximately \$875,000 - \$1,000,000 annually. This economic benefit, in addition to 50% of the generated sales tax, are positive impacts that would not otherwise be realized by the City of Tracy without the Agreement.

2. The agreement represents a direct public benefit (as defined);

“Direct public benefit” in the Office/Industrial Incentive Program is defined as “benefits to the City and community which justify a public incentive under this program. It may include, but is not limited to: (1) whether the business is a regional draw; (2) the amount of net new sales tax to be received by the City over a fixed period of time; (3) the creation of jobs; (4) capital investment by the business; (5) other benefits identified in the performance contract.”

The Agreement represents a direct public benefit in that Home Depot U.S.A., Inc. will generate an estimated:

- Approximately \$175-\$200 million in total economic impact annually.
 - Approximately \$10 million in annual labor income.
 - Up to, or exceeding 250 full time equivalent (FTE) jobs.
 - Approximately \$84 million in capital income due to project investment.
 - Approximately \$1.72-\$2M in annual tax revenues to the City with a tax-sharing of 50/50 (approximately \$875,000-\$1,000,000 each).
3. There are identified City or other funds that are available to make the financial incentive;

The incentive requested is for future sales tax revenue, and will not result in a fiscal impact to any existing fund balances. This agreement ensures that sales tax dollars remain local and are not diverted to the statewide/countywide pools. In addition, the City will likely see an increase in Measure V Local Sales Tax related to this agreement.

4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

No financial security is necessary as part of this sales tax incentive.

STRATEGIC PLAN

This agenda is consistent with the Economic Development Strategic Plan to create head-of-household jobs reflective of the City’s target industries and those that best match the skill sets of the local labor force.

FISCAL IMPACT

The Office/Industrial Incentive Program will not result in a fiscal impact to any existing fund balances. Partial sales tax rebates for a limited period of time will result in a loss of potential future revenue to the General Fund. However, this agreement ensures that sales tax dollars remain local and are not diverted to the statewide/countywide pools. In addition, the City will likely see an increase in Measure V Local Sales Tax related to this agreement.

RECOMMENDATION

Staff recommends that City Council approve, by resolution, a Sales Tax Sharing Agreement with Home Depot U.S.A., Inc.

Prepared by: Vanessa Carrera, Economic Development Management Analyst
Barbara Harb, Economic Development Management Analyst

Reviewed by: Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jennifer Haruyama, City Manager

ATTACHMENTS:

A – City of Tracy Retail, Office, and Industrial Incentive Program

B – Tax Sharing Agreement with Home Depot U.S.A., Inc.

C – Summary Response to Government Code Section 53083

CITY OF TRACY

**RETAIL, OFFICE, AND INDUSTRIAL INCENTIVE
PROGRAMS**

Approved by the Tracy City Council Resolution 2008-138

Revised Resolution 2010-057

Revised Resolution 2011-228

Revised Resolution 2017-061

Components

RETAIL INCENTIVE PROGRAMS

- I. Citywide Retail Incentive Program
- II. West Valley Mall Revitalization Program
- III. Hospitality, Entertainment & Recreation Program (HER)

OFFICE AND INDUSTRIAL INCENTIVE PROGRAM

CITY OF TRACY RETAIL INCENTIVE PROGRAMS

INTRODUCTION AND DEFINITIONS.

A. Introduction.

The Retail Incentive Programs generally are meant to stimulate the private sector to invest in the future of Tracy so that Tracy can retain its existing share of the regional market in light of increasing regional competition.

The Retail Incentive Programs are consistent with the following goals of the Tracy General Plan, Economic Development Element:

- ED-2 Support for and promotion of existing businesses
- ED-3 A supportive business environment
- ED-6 Healthy, key economic activity centers
- ED-8, Responsiveness to change and opportunities
- ED-9, A financially sound and viable City

This Retail Incentive Program has three major components:

- I. Citywide Retail Incentive Program
- II. West Valley Mall Revitalization Program
- III. Hospitality, Entertainment & Recreation Program (HER)

It is not the intent of these programs to divert sales tax dollars from other communities, in violation of Government Code sections 53084 and 53084.5.

B. Definitions.

ELIGIBLE APPLICANT means an applicant who meets the eligibility requirements for a particular program.

CITYWIDE refers to all areas within the City limits that are zoned for commercial retail uses.

DIRECT PUBLIC BENEFITS means benefits to the City and community which justify a public incentive under this program. It may include, but is not limited to: (1) whether the business is a regional draw; (2) the amount of net new sales tax to be received by the City over a fixed period of time; (3) the creation of jobs; (4) capital investment by the business; (5) other benefits identified in the performance contract.

HOSPITALITY, ENTERTAINMENT & RECREATION refers to entities that offer multiple uses within one identified establishment, such as a full service resort with overnight accommodations, conference room or concert hall, restaurant, and recreation facilities for public access.

Definitions (continued)

PERFORMANCE CONTRACT means the contract containing retail incentives which may ultimately be signed between an applicant and the City. (See Sections II. E. and III. C. below).

PRIMARY TRADE AREA means the area shown on Exhibit B, attached.

RETAIL SALES means sales as defined in the Bradley-Burns Uniform Local Sales and Use Tax Law, at California Revenue and Taxation Code section 7200 and following.

SMALL BUSINESS is defined as a new or expanding entity with at least 5 and not more than 25 full-time employees.

UNIQUE BUSINESS means a business that is a regional draw for customers within a 30-mile radius. The applicant will need to demonstrate that consumers typically are willing to travel 30 minutes or more to their location, by providing data from other locations.

I. CITYWIDE RETAIL INCENTIVE PROGRAM.

A. Purpose:

The purpose of the Citywide Retail Incentive Program is to attract “unique businesses” to Tracy to encourage unique retail development. This program is meant to attract new investment dollars by retailers that are not currently serving the Primary Trade Area.

There are two program options under the Citywide Retail Incentive -- a sales tax rebate, and a Building & Planning Fee Rebate. A portion of the Building & Planning Fee Rebate program is reserved for small business entities, as defined, on a first come-first serve basis.

B. Eligibility and Thresholds:

To be an “eligible applicant” for one or all of the Retail Incentive Programs, a business must meet the following criteria:

Sales Tax Rebate	Building & Plan Fee Rebate
1. It must be the entity that will actually engage in “retail sales” within the City;	
2. Its point of sale must be the City of Tracy;	
3. It must be located within the City Limits;	
4. It must not currently be located within the primary trade area;	
5. It may not be a vehicle dealer or big box retailer, which is relocating from another jurisdiction within the same market area and is subject to the provisions of Government Code section 53084; and	
6. It must be a “unique business”, as defined;	Small business, as defined, may be eligible on a first come-first serve basis
7. It must provide 5 years’ worth of actual annual sales for its two closest locations;	Not applicable
8. It must generate a minimum of \$10 million in sales tax generating annual sales.	Not applicable

C. Program(s)

Sales Tax Rebate Incentive

If the eligible applicant generates a minimum of:	Then the applicant is eligible to receive a % sales tax rebate on the portion of sales tax collected by the City.
\$30M	50%
\$20M	40%
\$15M	30%
\$10M	20%

Building & Plan Fee Rebate

An eligible company for a rebate of a portion of the building, plumbing, mechanical, and electrical permit and plan check fees paid for as part of a commercial or tenant improvement building permit application. The City will rebate 75% of the building permit and plan check fees, up to a maximum of \$20,000, for fees associated with tenant improvement or equipment installation costs. In addition, the fees paid as part of a Development Review application or those associated with other discretionary permits from the Planning Division, may also be eligible for a rebate up to a maximum of \$10,000. Any rebate of Building and/or Planning fees will be contingent upon the issuance of a Certificate of Occupancy.

New or expanding Small Business, as defined, may be eligible for the Building and Planning Fee Rebate program. The City will rebate a Small Business 75% of the building permit and plan check fees, up to a maximum of \$5,000, for fees associated with tenant improvement or equipment installation costs. In addition, the fees paid as part of a Development Review application or those associated with other discretionary permits from the Planning Division, may also be eligible for a rebate up to a maximum of \$2,500. Any rebate of Building and/or Planning fees will be contingent upon the issuance of a Certificate of Occupancy. The Small Business portion of the Building and Planning Fee Rebate program are limited and will be available on a first come, first serve basis until designated funds have been exhausted.

Eligible building and plan check fee categories will be limited to:

BUILDING FEE CATEGORIES: Building Permit Fee, Building Plan Review Fee, Agreement Processing Fee, Grading Permit Fee, Public Improvement Inspection Agreement, Sign Permit

PLANNING FEE CATEGORIES: Development Review Fee, Conditional Use Permit Fee, Planned Unit Development (PUD) Amendment, Specific Plan Amendment, Variance, Zone Change, Zone Text Amendment

D. Procedure:

1. Application. An Eligible Applicant must complete a standard application form. The application form requires each applicant to provide basic information about its business including, but not limited to: a description of the business; projected annual sales; the number of jobs it will create; and what improvements it will complete.

2. Evaluation and preparation of performance contract. Staff will review the application form for completeness. If it is complete and meets the thresholds specified in subsection I.B. above, Staff will prepare a written performance contract (the "Performance Contract") in a form approved by the City Attorney, which includes (but is not limited to) the following provisions:

- a. Term, including the period of time the sales tax rebate remains in effect;
- b. A requirements not to open the same business within the Primary Trade Area for the term of the agreement;
- c. A requirement to pay prevailing wages pursuant to Labor Code section 1720 and following;
- d. A requirement that the business' books, records and accounts be open to and available for inspection by the City for monitoring purposes, upon reasonable notice;
- e. A requirement that the business obtain a City business license and comply with all laws and regulations; and
- f. A provision indemnifying the City against any claim of violation of Government Code sections 53084 or 53084.5 regarding financial assistance that affects another public agency.

3. City Council review and decision. The proposed performance contract will be submitted to the City Council for its review and decision. Approval of a performance contract is within the complete discretion of the City Council.

In making a decision whether to approve a performance contract, the City Council will take into account the direct public benefits to the City. (See Section B., under Instructions and Definitions, above.)

II. TRACY MALL REVITALIZATION PROGRAM

A. Goals and Objectives.

The purpose of the Tracy Mall Revitalization Program is to support and sustain the West Valley Mall, a vital part of the City's economic base and a significant source of sales tax revenue to the City. This program is intended to provide financial assistance in attracting and retaining an appropriate anchor tenant at the West Valley Mall.

B. Program Guidelines.

The City Council may approve a financial incentive to the owners of the West Valley Mall and/or to a prospective tenant of the West Valley Mall. The financial incentive must be used only for tenant improvements to an anchor tenant space of 100,000 square feet or more. The financial incentive may be either: (1) a sales tax rebate; or (2) direct financial assistance with security, tied to future sales tax generation. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney.

Each financial incentive agreement must be approved by the City Council only after making findings that:

1. The net financial benefit to the public is larger than the financial incentive;
2. The agreement represents a direct public benefit (as defined);
3. There are identified City or other funds that are available to make the financial incentive; and
4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

C. City Council review and decision.

The proposed performance contract will be submitted to the City Council for its review and decision, based on the findings set forth in subsection I.B., under Eligibility and Thresholds, above. Approval of a performance contract is within the complete discretion of the City Council.

Attachments:

- A. Primary Trade Area

III. HOSPITALITY, ENTERTAINMENT & RECREATION (HER)

A. Goals and Objectives

The purpose of the Hospitality, Entertainment & Recreation (HER) incentive is to support and enhance the City's economic development efforts to attract a "unique retail" entity that offers a full service establishment that offers hospitality, recreation and entertainment venues. Studies have shown that some public investment is often needed to augment the large private capital that is required to develop hotel and tourism facilities. This program is intended to provide financial incentives to developer-owners, prospective tenants, or tenant representatives of eligible projects seeking to locate within the City limits of Tracy.

B. Eligibility Thresholds

To be an "eligible applicant" for the one or all of the Retail Incentive Programs, a business must meet the following criteria:

1. It must be the entity that will actually engage in "retail sales" and "transient occupancy tax" within the City;
2. Its point of sale must be the City of Tracy;
3. It must be located within the City Limits;
4. It must not currently be located within the primary trade area;
5. It must be a "unique business", as defined;
6. It must provide 5 years' worth of actual annual sales for its two closest locations;
7. It must generate a minimum of \$10 million in sales tax generating annual sales.
8. Must operate a minimum of 250 overnight rooms at one location.

C. Program(s)

The City Council may approve a financial incentive to eligible applicants, as defined under the HER program, in the form: (1) a sales tax rebate; or (2) direct financial assistance with security, tied to future sales tax generation; 3) building & planning rebates; and/or, 4) a transit occupancy tax rebate. The details of financial incentive(s) must be reflected in a written agreement, in a form approved by the City Attorney.

Each financial incentive agreement must be approved by the City Council only after making findings that:

1. The net financial benefit to the public is larger than the financial incentive;
2. The agreement represents a direct public benefit (as defined);

3. There are identified City or other funds that are available to make the financial incentive; and
4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

D. City Council review and decision.

The proposed performance contract will be submitted to the City Council for its review and decision, based on the findings set forth in subsection III.B above. Approval of a performance contract is within the complete discretion of the City Council.

OFFICE AND INDUSTRIAL INCENTIVE PROGRAM

A. Goals and Objectives.

The purpose of the Office and Industrial Incentive Program is to support and enhance the City's economic development efforts relative to attracting new businesses and creating jobs in the community. This program is intended to provide financial incentives to eligible developer-owners, prospective tenants, or tenant representatives for clients looking to locate in the City's office or industrial areas.

B. Program Guidelines.

The City Council may approve a financial incentive with developer- owners, prospective tenants, or tenant representatives for clients looking to locate in our office and or industrial areas. The Office / Industrial financial incentive will be targeted for developers and or prospective tenants that meet the following criteria:

- Generate annual gross sales of \$100,000,000 or more;
- Generate sales tax to the City corresponding to the gross sales;
- Provide a minimum of 1,000 FTE jobs;

C. Incentive Program(s)

Eligible applicant(s) may receive one or a combination of financial incentive(s) listed below:

- (1) a sales tax rebate; or
- (2) direct financial assistance with security, tied to future sales tax generation, and
- (3) building & planning rebates, and
- (4) high wage incentive.

1. Sales Tax Rebate

Applicants who generate a minimum of \$100,000,000 in annual gross taxable sales may be eligible to negotiate a percentage rebate on the portion of sales tax collected by the City.

2. Direct Financial Assistance

If direct financial assistance is requested, the funds must be used only for tenant improvements associated with the specific location. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney. All financial incentive agreements must include a provision that the company promote, market, and hold at least one hiring fair exclusively to residents of Tracy prior to conducting hiring interviews for employees outside the area.

Each financial incentive agreement must be approved by the City Council only after making findings that:

- The net financial benefit to the public is larger than the financial incentive;
- The agreement represents a direct public benefit (as defined);
- There are identified City or other funds that are available to make the financial incentive; and
- The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

3. Building & Plan Fee Rebate

An eligible company for a rebate of a portion of the building, plumbing, mechanical, and electrical permit and plan check fees paid for as part of a commercial or tenant improvement building permit application. The City will rebate 75% of the building permit and plan check fees, up to a maximum of \$20,000, for fees associated with tenant improvement or equipment installation costs. In addition, the fees paid as part of a Development Review application or those associated with other discretionary permits from the Planning Division, may also be eligible for a rebate up to a maximum of \$10,000. Any rebate of Building and/or Planning fees will be contingent upon the issuance of a Certificate of Occupancy.

New or expanding Small Business, as defined, may be eligible for the Building and Planning Fee Rebate program. The City will rebate a Small Business 75% of the building permit and plan check fees, up to a maximum of \$5,000, for fees associated with tenant improvement or equipment installation costs. In addition, the fees paid as part of a Development Review application or those associated with other discretionary permits from the Planning Division, may also be eligible for a rebate up to a maximum of \$2,500. Any rebate of Building and/or Planning fees will be contingent upon the issuance of a Certificate of Occupancy. The Small Business portion of the Building and Planning Fee Rebate program are limited and will be available on a first come, first serve basis until designated funds have been exhausted.

Eligible building and plan check fee categories will be limited to:

BUILDING FEE CATEGORIES: Building Permit Fee, Building Plan Review Fee, Agreement Processing Fee, Grading Permit Fee, Public Improvement Inspection Agreement, Sign Permit

PLANNING FEE CATEGORIES: Development Review Fee, Conditional Use Permit Fee, Planned Unit Development (PUD) Amendment, Specific Plan Amendment, Variance, Zone Change, Zone Text Amendment

4. High Wage Incentive

The High Wage Incentive may be available to office or industrial companies that create and/or relocate a minimum of 100 jobs, which meet the “Head-of-Household” threshold approved by City Council. For purposes of this program, “Head of Household” is defined as a job which is compensated at an annual amount above \$72,000 and which receives some level of employer sponsored healthcare benefits. The “Head of Household” compensation requirement will be re-evaluated on an annual basis to ensure it is in-line with current City Council policies.

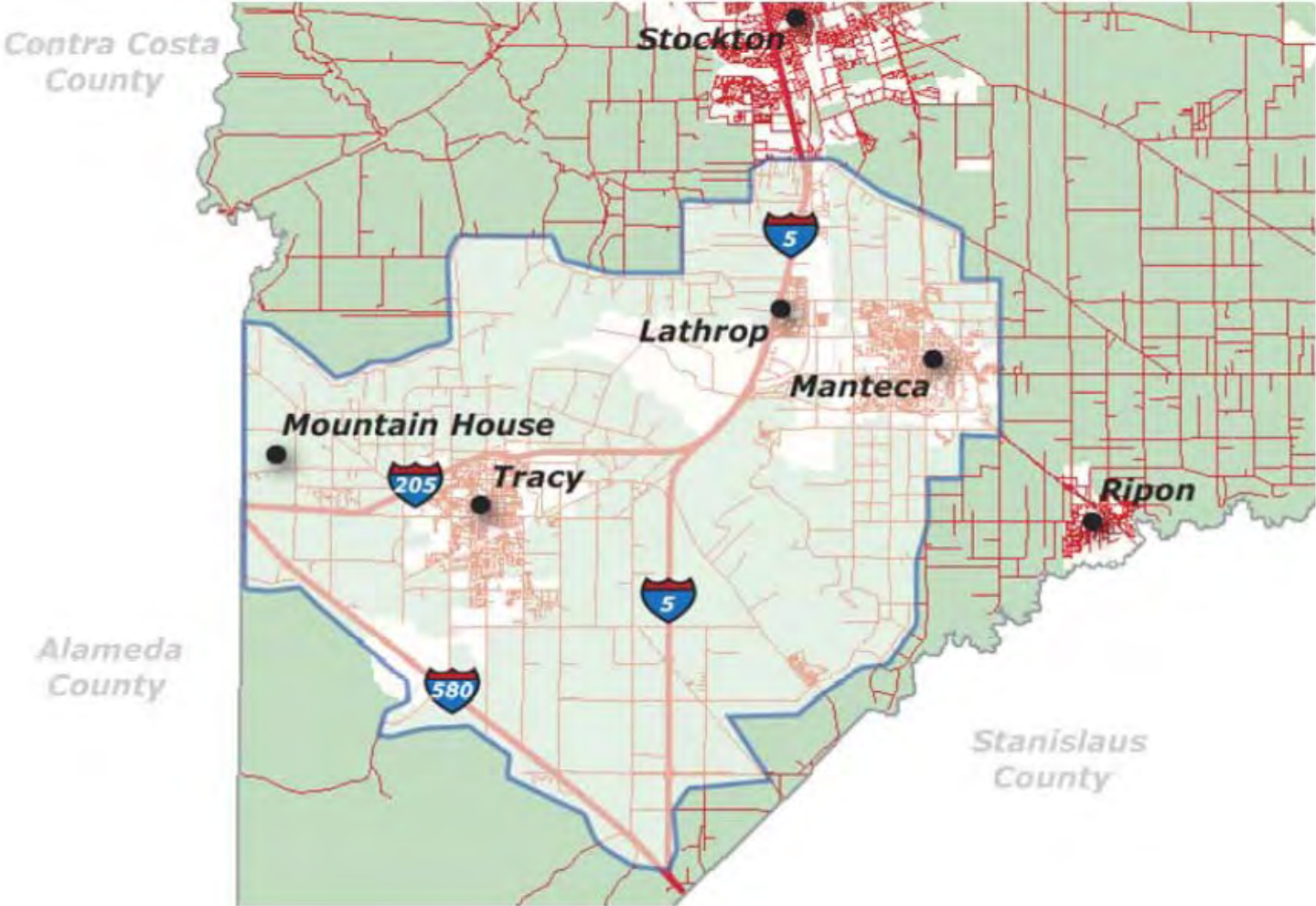
To receive the high wage incentive, new Office or Industrial companies must have at least 50% of their workforce at the “Head of Household” level. Existing businesses must have expanded their workforce by a minimum of 25% with new “Head of Household” jobs to participate in the program. All “Head of Household” jobs must be permanent, full-time positions.

The high wage incentive includes a payment of \$1,000 per eligible employee, per year, for a period of up to 5 years. All jobs created and or/relocated must be maintained for a period of 12 months. Companies must also verify applicable salaries and the required length of employment.

D. City Council review and decision.

The proposed performance contract will be submitted to the City Council for its review and decision, based on the findings set forth in subsection III.B above. Approval of a performance contract is within the complete discretion of the City Council.

EXHIBIT A
Primary Trade Area



TAX SHARING AGREEMENT

This Tax Sharing Agreement (“Agreement”) is entered into by and between the City of Tracy (“City”), a California municipal corporation, and HOME DEPOT U.S.A., INC., a Delaware corporation (“Home Depot”). City and Home Depot are sometimes referred to individually as “Party” and collectively as “Parties” herein.

RECITALS

This Agreement is made in reference to the following matters to which the Parties mutually agree and adopt as a statement of mutual understanding and intent.

A. Home Depot, a company with its principal executive offices in Atlanta, Georgia, sells products into the retail market and other goods and services to its customers in California and elsewhere.

B. Home Depot has evaluated several locations for a new distribution center and determined that the City best suited its needs because of its geographical location and its labor force. Therefore, Home Depot has entered into a lease agreement with the owner of the selected site in the City pursuant to which the property owner will construct a new distribution center on such site which will be leased to Home Depot.

C. Home Depot has requested assistance from City in return for establishing, locating and operating such distribution center in the City.

D. The City has evaluated the costs and benefits of entering into this Agreement with Home Depot and has determined that it is in the City’s interests because of the community benefits, including increased capital investment, job creation, and receipt of new net sales tax.

NOW, THEREFORE, City and Home Depot enter into this Agreement to accomplish their respective and mutual purposes as set forth above.

1. DEFINITIONS.

Unless the context otherwise requires, the terms defined in this Section will have the meanings defined herein.

1.1 “City” means the City of Tracy, a California municipal corporation.

1.2 “City Payment” means, as to a particular Fiscal Quarter during the Term, the obligation of City to pay to Home Depot for such Fiscal Quarter a payment equaling fifty percent (50%) of the Local Sales Tax Revenues attributable to E-Commerce Retail Sales for that Fiscal Quarter.

1.3 “Business Day” means a day which is not a Saturday, Sunday or legal holiday on

which banking institutions in the State of California or City are closed.

1.4 “CDTFA” means the California Department of Tax and Fee Administration and any successor agency.

1.5 “Data and Documentation” has the meaning set forth in Section 2.7.

1.6 “Designated Sales Territory” means the geographical boundaries of the distribution area served by the Distribution Center which is located within the jurisdiction of City. Except as otherwise provided in this Agreement, Home Depot will have the right in its business discretion to adjust or modify the Designated Sales Territory to correspond to its business needs and requirements.

1.7 “Dispute Notice” has the meaning set forth in Section 22.1.

1.8 “Distribution Center” means the distribution center and/or sales/administrative office operated by Home Depot within the City at which E-Commerce Retail Sales and other sales transactions are consummated pursuant to the Sales Tax Law.

1.9 “E-Commerce Retail Sales” means all sales of Material conducted electronically on the internet to any person or entity consummated at the Distribution Center, which is subject to the Sales Tax Law and which generates Local Sales Tax Revenues.

1.10 “E-Commerce Retail Sales Threshold” means E-Commerce Retail Sales in the amount of \$10 million dollars or more in a calendar year during the Term of this Agreement.

1.11 “Effective Date” has the meaning set forth in Section 4.

1.12 “Enforced Delays” has the meaning set forth in Section 19.

1.13 “Event of Default” has the meaning set forth in Section 2.14.

1.14 “Fiscal Quarter” means one three-month period, or portion thereof, within the Term and commencing on February 1, May 1, August 1, or November 1, and ending on, as applicable, the immediately following April 30, July 31, October 31, or January 31.

1.15 “Local Sales Tax Revenues” means that portion of the Sales Tax paid by Home Depot and which is allocated and paid to the City pursuant to the Sales Tax Law. Local Sales Tax Revenues will not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Joaquin, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation, (v) any Sales Tax attributable to any transaction other than E-Commerce Retail Sales, (vi) any Sales Tax attributable to any transaction not consummated within the Term, (vii) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid

over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund, or (viii) any Sales Tax paid in error or which is subject to correction, adjustment or offset pursuant to an amended return or otherwise where the effect of the error, adjustment or amendment is to change the amount of Sales Tax attributable to Taxable Sales and allocated to the City.

1.16 "Material" means any and all tangible personal property which is offered for sale or lease by Home Depot which is subject to the Sales Tax Law.

1.17 "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payments of Sales Tax and which are levied, assessed or otherwise collected from Home Depot.

1.18 "Prohibited Financial Assistance" means any direct or indirect payment, subsidy, rebate or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financings, property or sales tax relief or rebates, relief from public improvement obligations, payment for public improvements to or for the benefit of Home Depot, and any action contrary to any applicable laws.

1.19 "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law attributable to E-Commerce Retail Sales, excluding Sales Tax which is to be refunded to Home Depot because of an overpayment of Sales Tax.

1.20 "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. Tax Code § 7200 et seq.), and any successor law thereto, (ii) any legislation allowing other public agency with jurisdiction in the City to levy any form of Sales Tax on the operations of Home Depot and/or the Distribution Center, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

1.21 "Term" means the period commencing on the Effective Date, and ending 20 years after the Effective Date, unless otherwise extended or terminated in accordance with this Agreement.

2. LOCATION AND OPERATION; APPLICABILITY TO LOCAL SALES AND USE TAXES.

2.1 Location and Operation Covenant. Home Depot hereby represents, warrants and covenants that it shall establish a Distribution Center within the jurisdictional boundaries of the City and, for the Term, conduct any E-Commerce Retail Sales operations for the Designated Sales Territory through the Distribution Center in accordance with this Agreement, the Sales Tax Law, and all other applicable provisions of local, state and federal law.

2.2 Distribution Center Covenant Not Exclusive: Waiver and Release of Claims. City understands, acknowledges and agrees that Home Depot has established and may establish other Distribution Centers (“Additional Offices”) outside the City. With the exception of Prohibited Financial Assistance, nothing in this Agreement limits Home Depot’s right to conduct sales and other business and operations at or from the other locations. In consideration of the mutual promises, conditions and covenants of this Agreement, City hereby waives and releases any objections, claims or demands of any kind with respect to (i) the Additional Offices, (ii) the payment of taxes for sales conducted by or through the Additional Offices, (iii) the existence of or course of performance by Home Depot under Tax Sharing Agreements that comply with all applicable laws, including without limitation Cal. Govt. Code. Section 53084.5, and are similar in concept to this Agreement entered into by Home Depot with any of the cities in which such Additional Offices are located, or (iv) the allocation of taxable activity to those cities by Home Depot in the course of its business and operations in California. City likewise covenants not to sue, and not to commence arbitration proceedings under this Agreement or to commence administrative proceedings of any nature before the CDTFA or otherwise, or to challenge such allocations or activities in any way to the extent of objections, claims or demands of any kind which are waived or released by this Section 2.2. The waivers and releases provided in this Section 2.2 do not limit City’s right to enforce this Agreement under Section 22 and any other provision of this Agreement related to the enforcement of rights created by this Agreement.

2.3 No Prohibited Financial Assistance. Notwithstanding anything in Section 2.2, Home Depot covenants and agrees for the Term that Home Depot will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity, to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in either Home Depot’s relocation from the City or an Event of Default by Home Depot.

2.4 City as Point-of-Sale. Without limiting the generality of the foregoing, Home Depot will maintain a retail sales tax permit from the CDTFA. Home Depot agrees to conduct its business so that the place of sale for all E-Commerce Retail Sales consummated at or occurring through the Distribution Center during the Term will be the City pursuant to the Sales Tax Law. In all sales reports filed by Home Depot with the CDTFA relating to E-Commerce Retail Sales consummated at or through the Distribution Center, where such a designation is permitted or required under the Sales Tax Law, Home Depot will specify the City as the place of sale.

2.5 Payment of City Payment. In consideration of the promises, covenants, terms and conditions of this Agreement, City will make the City Payment to Home Depot as follows:

2.5.1 Consistent with the definition set forth in Section 1.2 of this Agreement, City will pay Home Depot, for each Fiscal Quarter during the Term, a payment equaling fifty percent (50%) of the Local Sales Tax Revenues received by the City and attributable to Home Depot’s E-Commerce Retail Sales reported for that Fiscal Quarter.

2.5.2 Within thirty (30) days following the later of: (i) City’s receipt of final reconciliation reports from the CDTFA for a Fiscal Quarter occurring within the Term, and (ii) City’s receipt from Home Depot of any and all Data and Documentation applicable to such Fiscal

Quarter, City will determine and pay to Home Depot the City Payment due for such Fiscal Quarter.

2.6 Conditions Precedent to City Payments. City's obligations under Section 2.6 hereof are contingent upon Home Depot meeting the E-Commerce Retail Sales Threshold in a calendar year. For clarity, upon Home Depot meeting the E-Commerce Retail Sales Threshold in a calendar year, the City Payment shall be calculated from dollar-one of the Local Sales Tax Revenues for that year. In addition, City's obligations under Section 2.5 hereof are contingent on a Fiscal Quarter-to-Fiscal Quarter basis upon the satisfaction of the following conditions precedent in each Fiscal Quarter after Home Depot has commenced E-Commerce Retail Sales in the City:

2.6.1 Home Depot having, for the entirety of such Fiscal Quarter, completely fulfilled its material obligations under this Agreement; and

2.6.2 The City's receipt of the Local Sales Tax Revenues attributable to the Fiscal Quarter and the City's receipt and reasonable approval of the Data and Documentation, certified as complete and accurate by an authorized Home Depot officer (or its authorized designee).

Should any one or more of the foregoing conditions precedent not be satisfied for each Fiscal Quarter, then City will have no obligation to make any City Payment to Home Depot for such Fiscal Quarter until such conditions precedent are met. If City elects to delay any payment on account of any such purported noncompliance by Home Depot, City must promptly give Home Depot written notice pursuant to Section 15 of all such material obligations that City alleges have not been fulfilled and cooperate with Home Depot's efforts to effect a cure or remedy with respect thereto.

2.7 Data and Documentation. For the purposes of this Agreement, the term "Data and Documentation" means copies of Home Depot's quarterly reports to the CDTFA for the applicable Fiscal Quarter which sets forth the amount of Sales Taxes paid to the CDTFA during the Fiscal Quarter arising from E-Commerce Retail Sales during such Fiscal Quarter.

2.8 No Other Compensation. Both City and Home Depot expressly acknowledge and agree that Home Depot will receive no compensation under this Agreement other than the City Payment. Home Depot will not be entitled to any reimbursement or other compensation from City for any costs incurred by Home Depot in performing or preparing to perform its obligations under this Agreement. The City Payments shall not be reduced or offset for any costs or expenses incurred by City in performing or preparing to perform its duties under this Agreement.

2.9 Source of City Payment. City Payments shall be payable from any source of legally available funds of City. City covenants to reasonably consider such actions as may be necessary to include all City Payments owed hereunder in each of its annual budgets during the Term and to reasonably consider the necessary annual budgetary appropriations for all such City Payments.

2.10 Recapture of City Payments. If, at any time during or after the Term of this Agreement, CDTFA or any court makes a final determination that all or any portion of the Local

Sales Tax Revenues received by City were improperly allocated and/or paid to City, and if CDTFA or any court requires repayment of or offsets against any future Sales Tax payments, or otherwise recaptures from City any such Local Sales Tax Revenues finally determined by CDTFA or the court to have been improperly allocated and/or paid, then Home Depot will, within thirty (30) days after written demand from City, together with reasonable documentation, repay all City Payments (or applicable portions thereof) theretofore paid to Home Depot which are attributable to such repaid, offset, or recaptured Local Sales Tax Revenues. If Home Depot fails to make such repayment within thirty (30) days after City's written demand, together with reasonable documentation, then such obligation will accrue interest from the date of City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Nothing in this Section 2.10 will require repayment by Home Depot of any City Payments made or received with respect to Local Sales Tax Revenues for any periods other than those periods for which the CDTFA or the court has required redistribution, repayment, offset, or recapture by or against City. The City will promptly contact Home Depot regarding any communication from the CDTFA pertaining to Sales Tax allocations associated with Home Depot's Distribution Center.

2.11 Underpayment by CDTFA. In order to further the goals of this Agreement, City hereby allows Home Depot, upon reasonable notice and within the limits of the California Public Records Act, to review records regarding the receipt of Local Sales Tax Revenues by City from CDTFA relating to Home Depot. City and Home Depot agree that, in the event of an underpayment of Local Sales Tax Revenues by CDTFA, City will (at the request of Home Depot) engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Costs associated for such efforts will be borne by both City and Home Depot in proportion to their respective percentage interests in the Local Sales Tax Revenue. For purposes of this paragraph, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board members.

2.12 Authorization to Release Information. Home Depot, to the extent such consent is required by any applicable legal provision, consents to the City's review and use of the information contained in the Data and Documentation and as otherwise required by this Agreement to the extent necessary for the City to fulfill its obligations under this Agreement and any applicable laws.

2.13 CDTFA Determination; Reconciliation.

2.13.1 Each Party agrees that, for purposes of accounting and reconciliation of E-Commerce Retail Sales, to rely upon the CDTFA's determination of E-Commerce Retail Sales and the corresponding sales tax allocation. Either Party may rely on the CDTFA accounting or record keeping for a determination of the amount of E-Commerce Retail Sales made or sales tax distributed. This provision in no way limits either Party's ability to challenge CDTFA discretionary decision making.

2.13.2 Each City Payment will be accompanied by a statement setting forth the calculations made to determine the amount of such disbursement and setting forth all disbursements made to date. Each Party will have the right to contest any of the calculations or

information contained in said statement or the determined amount of payment upon written notice to the other Party within sixty (60) calendar days of the date of the statement or City Payment. If the challenging Party can show to the reasonable satisfaction of the other Party, within sixty (60) calendar days of receiving such notice, that the amount of a City Payment was incorrect, either City will disburse to Home Depot the correct amount due, or Home Depot will reimburse City for any amount received in excess of the correct amount due, as applicable.

2.14 Default. Each of the following will constitute an "Event of Default":

2.14.1 Failure by either Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period or notice requirement is specified under any other section of this Agreement, then the specific provision shall control. Notwithstanding the foregoing, any failure to comply with and/or observe any of the conditions, terms or covenants set forth in Section 5.1 or Section 5.2 of this Agreement shall not be an Event of Default hereunder.

2.14.2 Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made.

3. REPRESENTATIONS AND WARRANTIES.

3.1 City's Representations and Warranties. City represents and warrants to Home Depot that, to City's actual current knowledge:

3.1.1 City is a public agency and political subdivision of the State of California, exercising governmental functions and powers as granted or delegated by the Constitution and laws of the State of California;

3.1.2 City has taken all actions required by law to approve the execution of this Agreement;

3.1.3 City's entry into this Agreement and the performance of City's obligations under this Agreement do not violate any contract, agreement, or other legal obligation of City;

3.1.4 There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement; and

3.1.5 City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance

of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

3.2 Material Consideration. The representations and warranties set forth above are of material consideration to Home Depot and City acknowledges that Home Depot is relying upon the representations set forth above in undertaking Home Depot's obligations set forth in this Agreement.

3.3 Binding. All of the terms, covenants and conditions of this Agreement will be binding on and will inure to the benefit of City and its nominees, successors and assigns.

3.4 Home Depot's Representations and Warranties. Home Depot represents and warrants to City that, to Home Depot's actual current knowledge:

3.4.1 Home Depot is a duly formed corporation under the laws of the State of Delaware, and is in good standing and qualified to do business under the laws of the State of California;

3.4.2 Home Depot has taken all actions required by law to approve this Agreement;

3.4.3 Home Depot's entry into this Agreement and the performance of Home Depot's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Home Depot;

3.4.4 There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Home Depot's obligations under this Agreement; and

3.4.5 Home Depot has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Home Depot is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

3.5 Material Consideration. The representations and warranties set forth herein are material consideration to City and Home Depot acknowledges that City is relying upon the representations set forth above in undertaking City's obligations set forth above.

3.6 Binding. All of the terms, covenants and conditions of this Agreement will be binding on and will inure to the benefit of Home Depot and its permitted nominees, successors and assigns. Wherever the term "Home Depot" is used herein or therein, such term will include any permitted nominee, assignee or successor of Home Depot.

4. EFFECTIVE DATE.

This Agreement will become effective (“Effective Date”) at the earliest when all of the following are true: (i) this Agreement has been approved by the City Council of City following all legally required notices and hearings; (ii) this Agreement has been executed by the appropriate authorities of City and Home Depot; and (iii) Home Depot has commenced operations at the Distribution Center.

5. PUBLIC BENEFITS.

5.1 Community Participation. As additional consideration for the benefits conferred under this Agreement, Home Depot further agrees to participate in supporting community benefit events and activities consistent with Home Depot’s practices and policies.

5.2 Employment Outreach for Local Residents. A goal of the City in entering into this Agreement is to foster employment opportunities for Tracy residents. To that end, Home Depot will use commercially reasonable efforts to recruit and hire local residents for any full and part time employment opportunities as determined by Home Depot in its sole discretion. To the extent Home Depot conducts any local on-site and/or off-site Job Recruitment Fairs, which are defined as Home Depot’s pre-scheduled events open to the public with the purpose of filling 20 or more job positions at Home Depot’s Distribution Center, Home Depot will notify the City’s Economic Development Department of the location, dates and times for such Job Recruitment Fairs prior to the date of accepting applications. Any such notice shall not be subject to the requirements of Section 15 of this Agreement and may be provided by any reasonable means, including but not limited to, by e-mail to econdev@cityoftracy.org, by telephone (209-831-6400) or by delivery of a written notice to the City’s address set forth in Section 15. Job Recruitment Fairs exclude any recruitment activities or events hosted by Home Depot’s staffing agencies or third-party vendors which may be used to fill temporary job positions at Home Depot’s Distribution Center. The City shall be authorized to post and advertise the job recruitment information provided to the City on the City’s website and other jobs available and job recruitment sites within the region. Any offers of employment will be at Home Depot’s sole discretion and all employment will be at-will employment. Nothing in this paragraph will require Home Depot to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 5.2 are not intended, and will not be construed, to benefit or be enforceable by any person whatsoever other than City.

6. TERMINATION.

6.1 Event of Default. This Agreement may be terminated by a Party at its option in the event of the other Party’s Event of Default. Such termination will not limit or otherwise modify the rights and remedies available to the non-defaulting Party. Termination will be effective thirty (30) days after a notice of termination is received.

6.2 Reserved.

6.3 Home Depot Termination. Notwithstanding any other provision of this Agreement, but subject to Section 2.3, Home Depot may, at its option, upon written notice to City, terminate this Agreement and/or relocate the Distribution Center to any other city or county in California or elsewhere and reallocate E-Commerce Retail Sales accordingly and in conformance with applicable Sales Tax Law.

7. OPTION TO RENEW.

This Agreement and the Term hereof is subject to renewal for one additional 20-year term at the option of Home Depot upon notice given to City not later than six months prior to the expiration of the original term.

8. AMENDMENT; MODIFICATION.

At any time, City and Home Depot may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason. Any such amendment to this Agreement will only be by written agreement between City and Home Depot. City and Home Depot agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counselor financial consultants, although neither Party will be obligated to approve any such amendment. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and Home Depot.

9. CALIFORNIA LAW.

This Agreement will be construed and governed in accordance with the procedural and substantive laws of the State of California, without regard to conflict of laws principles.

10. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and all of which will constitute but one (1) and the same instrument.

11. BUSINESS DAYS.

Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year will be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

12. TAX CONSEQUENCES.

Home Depot will be responsible for federal, state and/or local income taxes resulting from its receipt of City Payments.

13. RIGHTS NOT GRANTED.

This Agreement is not, and will not be construed to be, a statutory development agreement under

California Government Code Section 65864 et seq. or a disposition and development agreement under California Health and Safety Code Section 33000 et seq. This Agreement is not, and will not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by City concerning any project, development, or construction by Home Depot in the City. This Agreement does not, and will not be construed to, exempt Home Depot in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, construction, maintenance and operation of any project by Home Depot within the City. This Agreement does not, and will not be construed to, exempt Home Depot from the application and/or exercise of City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

14. CONSENT.

Whenever consent or approval of any Party is required under this Agreement, that Party will not unreasonably withhold, delay, or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

15. NOTICES AND DEMANDS.

All notices or other communications required or permitted between City and Home Depot under this Agreement will be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the following addresses, subject to the right of either Party to designate a different address for itself by notice similarly given:

To City:

City Clerk's Office
333 Civic Center
Plaza Tracy, CA
95376

With a copy to:

City Attorney's Office
333 Civic Center
Plaza Tracy, CA
95376

To Home Depot:

Home Depot U.S.A., Inc.
2455 Paces Ferry Road, N.W.
Atlanta, Georgia 30339

Attn: Property Manager

With a copy to:

Home Depot U.S.A., Inc.
2455 Paces Ferry Road, N.W.
Atlanta, Georgia 30339
Attn: Jessica Borgert, Esq.

Any notice so given by registered or certified United States mail will be deemed to have been received on the fourth Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), will be deemed received upon actual receipt of the same by the Party to whom the notice is given.

16. NONLIABILITY OF PARTIES' OFFICIALS AND EMPLOYEES.

16.1 No officer, elected official, contractor, consultant attorney or employee of City will be personally liable to Home Depot, any voluntary or involuntary successors or assignees of Home Depot, or any lender or other party holding an interest in Home Depot's property, in the event of any default or breach by City, or for any amount which may become due to Home Depot or to its successors or assignees, or on any obligations arising under this Agreement.

16.2 No officer, official, contractor, consultant, attorney or employee of Home Depot will be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by Home Depot, or for any amount which may become due to City or to its successors or assignees, or on any obligations arising under this Agreement.

17. CONFLICT OF INTERESTS.

No officer, elected official, contractor, consultant, attorney or employee of City will have any personal interest, direct or indirect, in this Agreement nor will any such officer, elected official, contractor, consultant, attorney or employee participate in any decision relating to this Agreement which unlawfully affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

18. ENTIRE AGREEMENT.

This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement will be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement.

19. EXTENSIONS AND DELAYS; NO EXCUSE DUE TO ECONOMIC CHANGES.

Time is of the essence in the performance of the obligations of City and Home Depot under this

Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder will be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation or orders and judgments of courts of competent jurisdiction; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time will be only for the period of the Enforced Delays; and provided further, that the obligations of both Parties are equally suspended during the Enforced Delay. In no event will either Party be deemed in default of this Agreement because of an Enforced Delay event.

20. THIRD PARTY CHALLENGES.

The Parties will work in good faith with each other to beneficially resolve any third party demands, suits, proceedings, causes of action or claims of any kind arising under the Sales Tax Law or any other alleged ground or basis to the extent arising from this Agreement or the Parties' performance thereof, including, without limitation, the payment or reporting of City Payments by City to Home Depot ("Third Party Challenge").

21. ATTORNEYS' FEES.

In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement, each Party will be responsible for all of its own costs and expenses, including attorneys' fees and expert witness fees.

22. INFORMAL DISPUTE RESOLUTION.

22.1 The Parties will attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior officials of the Parties who have authority to settle the difference or controversy, in accordance with state law and Tracy Municipal Code. The disputing Party may give the other Party written notice that a dispute exists between them so that the provision of this Sections 22 will apply ("Dispute Notice").

22.2 Within twenty (20) days after receipt of a Dispute Notice, the receiving Party will submit to the disputing Party a written response. The Dispute Notice and response will include (a) a statement of each Party's position and a summary of the evidence and arguments supporting its position, and (b) the name and title of the official who will represent that Party. The senior officials will meet at a mutually acceptable time and place or by telephone conference within thirty (30) days of the date of the Dispute Notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. In the event any Party fails to provide a response to a Dispute Notice in accordance with this section or fails to

cooperate in the scheduling of, or to attend, the meetings, described above, to resolve the dispute, then, with respect to that Party, the dispute may immediately be subject to legal action.

23. JURISDICTION AND VENUE.

Any legal action or proceeding concerning this Agreement will be filed and prosecuted in the appropriate State of California court in the County of San Joaquin, California. Both Parties irrevocably consent to the personal jurisdiction of that court.

24. INTERPRETATION.

City and Home Depot acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document will be construed against the drafter of that document will have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

25. NO WAIVER.

Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof will not be deemed a waiver by any Party of such term, covenant or condition, nor will any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

26. SUCCESSORS AND ASSIGNS.

The terms, covenants and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

27. NO THIRD PARTY BENEFICIARIES.

The performance of the respective obligations of City and Home Depot under this Agreement are not intended to benefit any party other than City or Home Depot. No person or entity not a signatory to this Agreement will have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

28. WARRANTY AGAINST PAYMENT OF CONSIDERATION.

Home Depot warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 28, will not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are

considered necessary by Home Depot.

29. SEVERABILITY.

City and Home Depot declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision will be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

30. FURTHER ACTS.

City and Home Depot each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder. The foregoing will not, however, be deemed to require City to exercise its discretion in any particular fashion or to provide to Home Depot any remedy or claim for damages against City based on the lawful exercise of City's discretion.

31. NO ASSIGNMENT, TRANSFER, PLEDGE OR HYPOTHECATION.

Home Depot may not assign, transfer, encumber or hypothecate its rights or obligations under this Agreement without the express written consent of City, which may be withheld in City's sole and absolute discretion. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation, or any attempt to do so, will not confer any rights upon the purported assignee or transferee and will constitute Home Depot's immediate and incurable material default of this Agreement, and City may, without providing Home Depot notice or opportunity to cure, exercise those remedies available to City pursuant to Section 6.1. Notwithstanding the foregoing, Home Depot shall have the right to assign this Agreement or any right or obligation hereunder to its immediate or ultimate parent, or to an affiliate, by providing advance written notice to City. An "affiliate" shall mean any legal entity that, at the applicable time, directly or indirectly controls, is controlled with or by, or is under common control with, Home Depot.

32. RELATIONSHIP OF PARTIES.

The Parties will not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor will either Party be an agent, representative, trustee or fiduciary of the other. Neither Party will have any authority to bind the other to any agreement.

33. NON-DEDICATION OF PROPERTY.

The execution of this Agreement by Home Depot does not result in the dedication of any Home Depot property for public use.

34. INDEMNIFICATION FOR POTENTIAL CLAIMS

Home Depot will defend (with counsel approved by City), fully indemnify, and hold harmless

City, any agency or instrumentality thereof, and its/their respective agents, officers, officials, attorneys, consultants, employees, and volunteers (each, a "City Party") from and against any and all administrative and/or legal claims, actions, or proceedings arising out this Agreement (a) made by a city or other taxing authority, provided such actions include at least one (1) claim under California Government Code Section 53084.5, or (b) made by any other claimant to the extent, and only to the extent, that such claims, actions or proceedings arise under California Government Code Section 53084.5 ("Covered Claims"). Home Depot's indemnity obligations will not be limited by any coverage exclusions or other provisions in any policy of insurance.

City will promptly notify Home Depot of any Covered Claims, will cooperate fully in the defense thereof, and will have the right to pre-approve any material decision involved in defending any Covered Claims, including settlement, which approval shall not unreasonably be withheld or delayed. If Home Depot does not promptly defend any such Covered Claims, City may (but is not obligated to) defend and/or settle such Covered Claims in the time and manner that City, in its sole discretion, determines appropriate. Home Depot will bear any and all losses, damages, injuries, liabilities, costs, and expenses (including fees, costs, and expenses for attorneys, consultants, expert witnesses, court costs, litigation and alternative dispute resolution) arising out of or related to any Covered Claims, whether incurred or payable by Home Depot, City, or awarded to any third party, and Home Depot will pay to City, within ten days after City's written demand therefor, any such costs incurred or payable by City.

The provisions of this Section 34 will survive expiration or termination of this Agreement.

35. COMPLIANCE WITH APPLICABLE LAW

Each Party shall comply with all applicable laws, regulations and final court orders.

The individual(s) executing this Agreement is or are authorized to execute this Agreement on behalf of the respective Party.

WHEREFORE the Parties have entered into this Agreement as of the date of approval by the City Council of City as attested to by its authorized officer below.

CITY OF TRACY

AS APPROVED _____


Attested and agreed:

Approved as to Form:

[Name and Title]

[Name and Title]

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: 
Jessica Borgert
Assistant General Counsel

Dated: 11/15/2019

Attachment C

Summary Response to California Government Code Section 53083

Gov. Code 53083: Economic Development subsidies

1. Name and address of all corporations that are the beneficiary of the economic subsidy.

Home Depot U.S.A., Inc., a Delaware corporation
2711 Centerville Road, Suite 400
Wilmington, DE 19808

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

Start Date – The Agreement will be effective once Council approves the Agreement, the Parties execute the Agreement and Home Depot commences operations at the Distribution Center. Thus, the effective date will likely be in the Summer of 2021. The term of the Agreement is for 20 years with an optional 20 year extension.

3. A description of the economic development subsidy, including the estimated total amount of the public funds, or of revenue lost to, the local agency as a result of the economic development subsidy.

Home Depot is a home improvement retailer, supplying tools, construction products and services in more than 2,200 stores in the U.S., Canada and Mexico. A Home Depot distribution center is currently under construction in Tracy, California and will occupy a 725,000 square foot building in the Prologis International Park of Commerce. By entering into a Location Agreement with the City of Tracy, a portion of the sales tax associated with the new Tracy facility could be distributed to the City. The proposed sales tax split is 50% Home Depot and 50% to the City of Tracy over a 20 year term.

Home Depot expects gross sales of approximately \$175-\$200 million annually, and is requesting that fifty percent (50%) of the annual direct sales tax revenue to the City be rebated, approximately \$875,000 annually, in return for establishing a local sales office and generating taxable sales.

4. Statement of Public Purpose:

The public purpose of the subsidy are significant to the economic vitality of the City of Tracy.

Job Creation: Home Depot will create a minimum of 100-150 full time equivalent (FTE) jobs at opening in Summer 2021, with a projected increase to 250 FTE jobs following its first full year of operations. Unemployment in Tracy, California is 3.4% as of November 2019, under the California average of 3.9%. Creation of 250 FTE jobs could assist in dropping the local unemployment rate in Tracy further.

Attachment C

Capital Investment: Home Depot will cause direct, indirect and induced benefits in the estimated amount of \$84 million in the City of Tracy and surrounding communities through the construction of their facilities, labor trade contracting and subcontracting, permits, fees and spending in hotels, restaurants and other services during the course of construction.

Community Partner: Home Depot is invested in the long-term growth of its business operations and success in the local community.

5. Projected Tax Revenue:

According to Home Depot, the gross sales proposed for the Tracy facility are estimated at approximately \$175,000,000, which equates to a local sales tax distribution of \$1,750,000 annually. At 50%, the City would receive \$875,000 in local sales tax that it does not currently receive. With a term of 20 years with an optional 20 year extension, the 50% sales tax distributed to both the City and Home Depot would range between \$17.5 and \$35 million respectively.

6. Estimate of the number of jobs created by the subsidy:

Home Depot has estimated the creation of 100 to 250 full time equivalent jobs at its Tracy, California facility. It is envisioned that by entering into this Agreement, the investment by Home Depot U.S.A., Inc. into the facility and the community could be expanded as part of granting the economic development subsidy.

RESOLUTION 2019- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY, CALIFORNIA,
APPROVING A SALES TAX AGREEMENT BY AND BETWEEN THE CITY OF TRACY
AND HOME DEPOT U.S.A, INC.

WHEREAS, Home Depot U.S.A., Inc. (“Home Depot”), a Delaware corporation with its principal executive offices in Wilmington, Delaware, sells home improvement supplies and other goods and services to its customers in California and elsewhere; and

WHEREAS A Home Depot distribution center is currently under construction and will occupy a 725,000 square foot building in the Prologis International Park of Commerce; and

WHEREAS . Home Depot has requested a sales tax rebate incentive from the City in return for establishing, locating, and operating a distribution center (“Distribution Center”) in the City of Tracy where it will provide taxable sales and sales tax revenue; and

WHEREAS Home Depot requested that the City of Tracy enter into a Sales Tax Sharing Agreement to govern the allocation of sales taxes from products that are sold, stored, and shipped from the Tracy facility; and

WHEREAS, The Distribution Center and the Agreement will provide the City with significant public benefits, including sales tax revenues, property tax revenues, business license fees, the creation of 250 jobs, community benefits to Tracy residents, and employment opportunities for local residents; and

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby resolves as follows:

Section 1. The foregoing recitals are determined to be true and correct;

Section 2. The City Council hereby finds and determines, based on substantial evidence in the record that the Sales Tax Agreement will provide the City significant economic and public benefits as outlined in the staff report and in accordance with the City’s Retail, Office, and Industrial Incentive Programs.

Section 3. The City Council hereby approves the Sales Tax Sharing Agreement by and between the City of Tracy and Home Depot U.S.A., Inc. substantive in form and content to that attached hereto Attachment “B” along with any non-substantive changes as may be mutually agreed upon by the City Manager (or designee), City Attorney and Home Depot U.S.A., Inc. Copies of the final form of the Sales Tax Agreement, upon mutual execution, shall be placed on file in the office of the City Clerk.

The foregoing Resolution 2019-_____ was adopted by the Tracy City Council on the 3rd day of December 2019 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.D

REQUEST

RECEIVE PRESENTATION BY VERIZON WIRELESS ABOUT SMALL WIRELESS FACILITIES AND 5G WIRELESS TECHNOLOGY

EXECUTIVE SUMMARY

Verizon Wireless is providing a presentation to City Council about the deployment of small wireless facilities known as “small cells” and 5G wireless technology in California and their request to enter into a Master License Agreement (MLA) with the City of Tracy to place small cells on the City’s vertical assets (e.g. light poles or traffic signals) in the right-of-way in accordance with federal and state regulations.

This item requests that Council receive a presentation from Verizon. Staff will return to Council on December 17 with an ordinance amending the Tracy Municipal Code to establish regulations regarding telecommunications facilities in the right-of-way, a City policy regarding small wireless facilities cells as required by federal law, and the proposed MLA with Verizon.

DISCUSSION

Background

The federal government regulates interstate and international communications by radio, television, wire, satellite, and cable. The Federal Communications Commission (FCC) is responsible for implementing and enforcing federal communications laws and regulations including rules regarding telecommunications facilities such as cell towers and small cells. Federal law such as the Telecommunications Act of 1996 generally limits local control over telecommunications facilities. For example, local agencies must take action on applications to install wireless communication facilities within a reasonable period of time (referred to as a “shot clock”) or the application will be deemed approved. Also, a state or local jurisdiction is prohibited from regulating “the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with” FCC rules. State legislation has codified a number of federal telecommunications regulations including the shot clocks (Gov. Code § 65964.1) and standards for approving certain wireless facility requests (Gov. Code § 65850.6). In addition, the California Public Utilities Code grants telephone companies the right to place equipment in the public rights of way, subject to some local control.

Last fall the FCC issued order an order that further limited the ability of local jurisdictions to regulate small wireless facilities or small cells, which are key to the deployment of 5G, the next generation of wireless technology and the subject of Verizon’s presentation at this meeting. The FCC order took effect January 14, 2019 and essentially prohibits local jurisdictions from enacting actual or effective prohibitions on the deployment of small cells in their jurisdictions. The FCC order requires that local jurisdictions review applications to install small cells on existing structures within 60 days and for new

structures 90 days. The FCC order also establishes reasonable amounts that a local jurisdiction can charge for the processing of applications and rent for the installation of small cells on City-owned assets (i.e. pole attachments). While a number of jurisdictions have filed legal challenges to the FCC order and new federal legislation has been introduced that proposes to undo these FCC regulations, it is recommended that the City strive to meet the mandates of the FCC order in the event those efforts fail. Thus, staff is working with outside counsel to prepare an ordinance and a small wireless facility policy that meet the requirements of the latest FCC order.

Tonight's Presentation

The City of Tracy was approached by Verizon Wireless in 2017 to discuss the possibility of placing small cells on City-owned assets in the public right-of-way. Verizon has entered into MLAs with various jurisdictions such as Los Angeles, Sacramento, San Mateo, and Dublin which allow Verizon to install small cells on City-owned assets and where Verizon has agreed to various terms and conditions including but not limited to the payment of fees, relocation of facilities in the event of street widening, maintenance and repair responsibilities, and indemnification and insurance requirements. MLAs and other similar type agreements are useful tools in ensuring communication and collaboration between telecommunication companies installing small cells and cities.

Staff will return to Council on December 17 with an ordinance amending the Tracy Municipal Code to establish regulations regarding telecommunications facilities in the right-of-way, a City policy regarding the deployment of small cells as required by federal law, and the proposed MLA with Verizon.

STRATEGIC PLAN

This agenda item does not relate to the Council's Strategic Plans.

FISCAL IMPACT

Verizon's presentation has no fiscal impact. However, the costs associated with negotiating a MLA will be absorbed in the existing City Attorney's Office budget. In addition, all fiscal impacts relating to the MLA include revenue generated and costs associated with the review of applications to install small cells will be reviewed and presented to Council.

RECOMMENDATION

Staff recommends City Council accept the presentation from Verizon about small wireless facilities and 5G wireless technology.

Prepared by: Robert Armijo, City Engineer / Assistant Development Services Director
Kul Sharma, Utilities Director

Reviewed by: Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

AGENDA ITEM 3.E

REQUEST

ADOPT COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE

EXECUTIVE SUMMARY

The City Council last adopted “Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings” in April 2015 by Resolution No. 2015-052 (Attachment A). During Council’s development of a Code of Ethics last fiscal year, Council expressed a desire to update these procedures to ensure Council meetings are conducted in an efficient and transparent manner.

On October 15, 2019, Council held a workshop to discuss the Council Meeting Protocols and Rules of Procedures (“Protocols”) and provided direction to staff. Staff has revised the Protocols in accordance with that direction and now presents them to Council for further review and approval.

DISCUSSION

During Council’s review of a Code of Ethics last fiscal year (FY 2018-2019), Council expressed a desire to update their Council meeting procedures to ensure Council meetings are conducted in an efficient and transparent manner. On July 16, 2019, the City Manager and City Attorney presented a proposed work plan to Council regarding various items relating to the Grand Jury’s report, which included the presentation of these Protocols to Council on October 15, 2019.

Government Code section 36813 authorizes legislative bodies to establish rules for the conduct of their proceedings. These rules must comport with the Ralph M. Brown Act (“Brown Act”; Government Code sections 54950 et seq.) which applies to all meetings of “legislative bodies” within California, including the Tracy City Council and advisory boards and commissions.

A Council workshop was held on October 15, 2019 during which Council provided feedback and direction to staff about the proposed Protocols. The Protocols have been amended to be consistent with the direction given at that workshop. (Attachment B). The following sections were revised:

- Section 2.3: Re-ordered sentences.
- Section 3.4.2: Added citation to Government Code regarding remedies for violating the confidentiality of closed session discussions.
- Section 4.3.1: Added language about limiting discussions regarding placing items on the agenda to only two Council members if occurring outside of a Council meeting.
- Section 5.7.1: Changed maximum time limit for per speaker to five minutes and added a new Section 5.7.1.1 regarding the maximum time allowed per speaker being reduced to three minutes if there are more

than 15 people wishing to speak on any agenda item. Similar change made to Section 5.8.

- Section 5.14.1: Added clarifying language encouraging Council to disclose the reason for an abstention prior to Council engaging in discussion on that item.
- Section 6.1: Added clarifying language regarding items that are within the Council's subject matter jurisdiction.
- Section 6.4: Adding citation to Penal Code section 403 regarding disruptive conduct at a public meeting.

Other changes made by staff include removing the summary of motions under Rosenberg's Rules of Order as an appendix and fixing typographical errors. The summary of motions document ("cheat sheet") will be prepared after a training is held on Rosenberg's Rules. That training will be open to Council and all boards and commissions.

Staff requests that Council review and adopt the revised Protocols and also rescind Resolution No. 2015-052.

STRATEGIC PLAN

This is a routine operational item and is not related to any of the Council Strategic Plans.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

That the City Council adopt, by resolution, the proposed Council Meeting Protocols and Rules of Procedure and rescind Resolution No. 2015-052.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Adrienne Richardson, City Clerk

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

- A – Resolution No. 2015-052
- B – Proposed Council Meeting Protocols and Rules of Procedure
- C - Rosenberg's Rules of Order

RESOLUTION 2015-052

RESCINDING RESOLUTION 2015-012 AND
ESTABLISHING UPDATED COUNCIL POLICIES AND PROCEDURES

WHEREAS, On January 20, 2015, the Tracy City Council adopted Resolution 2015-012 which revised the City Council Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings ("City Council Policies and Procedures"), and

WHEREAS, On April 7, 2015, the City Council amended the City Council Policies and Procedures to establish a new policy for Council Member requests for matters to be discussed by Council.

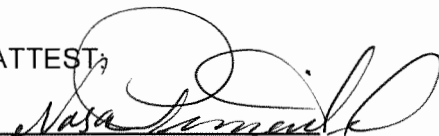
NOW, THEREFORE, BE IT RESOLVED, that the City Council rescinds Resolution 2015-012 and adopts the Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings attached as Exhibit "A."

The foregoing Resolution 2015-052, was passed and adopted by the Tracy City Council on the 7th day of April, 2015, by the following vote:

- AYES: COUNCIL MEMBERS: MITRACOS, RICKMAN, VARGAS, YOUNG, MACIEL
- NOES: COUNCIL MEMBERS: NONE
- ABSENT: COUNCIL MEMBERS: NONE
- ABSTAIN: COUNCIL MEMBERS: NONE



 MAYOR

ATTEST:


 CITY CLERK

**PROCEDURES FOR PREPARATION, POSTING
AND DISTRIBUTION OF AGENDA
AND THE CONDUCT OF PUBLIC MEETINGS**

(Exhibit "A" to Resolution No. 2015-052)

Applicability

The procedures outlined below relating to the preparation, posting and distribution of agendas apply to the City Council, the Successor Agency to the Community Development Agency, the South County Fire Authority, the Public Facilities Corporation, the Tracy Operating Partnership Joint Powers Authority, and all City Boards, Commissions, and Committees. The procedures outlined below relating to the conduct of Council meetings apply only to the City Council. All City Council meetings shall be open to the public; however, the City Council may hold closed sessions as authorized by state law.

A. Preparation, Posting and Distribution of Agenda

Purpose of Agenda

The agenda process serves four purposes:

- As a communication mechanism, the agenda informs City staff, City Council, the public and the press.
- As a compliance mechanism, the agenda process ensures compliance with mandated state laws.
- As a decision-making mechanism, the agenda process regularly brings City business to the City Council for consideration and action. Agenda items should contain enough background information so City Council can obtain a full understanding of the issues. The agenda item should conclude with a staff recommendation so City Council has the benefit of staff input prior to making a final decision.
- As a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

Agenda

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. Staff shall work within the policies established by Council and not place matters on the agenda that are outside the scope of existing work programs and priorities except as approved by a majority of the Council, or matters necessary to the proper operation and well-being of the City.

The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

Distribution of Agenda

At a minimum the posting and distribution of all agendas shall be done in accordance with the Ralph M. Brown Act ("Brown Act") (California Government Code sections 54950 et seq.). Agendas for regular meetings shall be posted 72 hours prior to the meeting; special meeting agendas shall be posted not less than 24 hours prior to the meeting. All agendas shall be posted in the following locations: City Hall, the library, the City's website, and other locations as may be required by a particular Board or Commission's Bylaws. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

The agenda packets are provided to City Council Members on the Thursday (or Friday) prior to City Council meeting. Distribution to the staff, public and media shall occur immediately after distribution to the City Council. The City will provide, by mail, a copy of the agenda cover sheet and the specific item relating to any individual and/or company which has an item on any given Council agenda.

Agenda subscriptions are available from the City Clerk's Office, 333 Civic Center Plaza, Tracy, (Tel: 209/831-6105). Copies of the agenda, and of individual agenda items, are available at costs established in the City's Master Fee Schedule. Copies of the agenda are also available at the Library and the agenda is posted on the City's website www.ci.tracy.ca.us.

Public Access to Written Materials after the Agenda has been Posted or Distributed at Council Meetings

On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agendized item or handed out during Items from the Audience. Upon the Council receiving these written materials they become a public record. For materials related to an agendized item, a copy will be kept on file at the City Clerk's Office and will typically be posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the Council meeting.

B. Conduct of Council Meetings

Council Meetings

Council meetings are held on the first and third Tuesdays of the month, unless the meeting date falls on a holiday as defined in California Government Code Section 6700. No meeting shall be held on such a holiday, but a regular meeting shall be held at 7:00 p.m. on the next business day thereafter, as required by California Government Code Section 54954. Special meetings are scheduled as necessary.

Council meetings are broadcast live on Channel 26. Reruns of the preceding Council meeting are shown every Wednesday at 8:00 p.m. and every Saturday at 9:00 a.m. on Channel 26. Videotapes and DVD recordings of City Council meetings are available at costs established in the City's Master Fee Schedule.

Order of Business

The suggested order of business of Council meetings shall be as follows. However, the City Manager may make exceptions to the order as needed.

1. Roll Call
2. Pledge of Allegiance
3. Invocation
4. Proclamations and Awards
5. Consent Calendar
6. Items from the Audience
7. Continued Public Hearings
8. New Public Hearings
9. Regular Items including Introduction and Second Readings of Ordinances
10. Items from the Audience
11. Staff Items
12. Council Items
13. Adjournment

The regular order of business may be changed or suspended for any purpose at any particular meeting by the Mayor.

The Council may determine whether it will consider any new items after 11:00 p.m. and shall determine which specific items will be considered. If an item is continued due to the lateness of the hour, the item shall be automatically placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of the Council.

Consent Calendar

All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction. One motion, a second and a roll call vote may enact the items listed on the Consent Calendar. No separate discussion of Consent Calendar items shall take place unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Public Access/Items from the Audience

It is the policy of the City Council that members of the public be allowed to address the Council on any agenda item or other matter within the Council's jurisdiction. Each member of the public will be allowed a maximum of five minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. The Mayor shall request that individuals addressing the Council state their names and addresses for the record, to ensure accuracy in the minutes and for contact information. An individual's failure to state his or her name or address shall not preclude the individual from addressing the Council. The public shall be given an opportunity to speak on "Items of Interest to the Public." Agendas for regular meetings will have two opportunities for "Items from the Audience." The first opportunity will be limited to a 15-minute maximum period. The second opportunity will not have a maximum time limit. The five minute maximum time limit per speaker will apply to all "Items from the Audience." The City Clerk shall be the timekeeper.

Non-Agendized Items (Items from the Audience and Council Items)

No matters, other than those on the posted agenda, shall be acted upon by the Council. However, items may be added to the agenda (such as emergency matters) as permitted in the

Brown Act. Brief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda.

Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need if permitted under state law.

Council Member Request for Matters to be Discussed by Council

Council Members wishing to have a matter discussed by the City Council may request that it be placed on a future City Council agenda during a Council meeting, under "Council Items," or by contacting the City Manager, or his/her designee, via telephone, email, or in person. Upon the request of a Council Member, the item will be placed on a future City Council agenda as long as one other Council Member concurs with the request. The City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations and the effect on City Council established priorities.

Members of the Public - Request for Agenda Items

When a member of the public raises an item at a Council meeting which requires attention, such items shall be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his/her question, the member of the public may request a Council Member to sponsor his/her item for discussion at a future Council meeting. In such cases, the sponsoring Council Member shall follow those procedures described under "Council Member Request for Agenda Items." Placing an item from a member of the public on a Council agenda does not imply or guarantee a decision or action different from that taken by staff in the initial follow-up to the question or request.

Public Hearings

Public hearings are required for a variety of City Council actions such as most changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five minutes for public input or testimony. At the Mayor's discretion, additional time for testimony may be granted. The City Clerk shall be the timekeeper.

Presentations to the Council

Letters and written communications: Speakers are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Letters submitted with a request that they be read into the record will be done so only upon a request of the majority of the Council.

PowerPoint (or similar): Staff and members of the public who wish to make PowerPoint, Video or similar presentations to the Council will utilize the City's audio/visual equipment. Staff and members of the public are required to provide the City Clerk's Office with the DVD/CD/Video (or email copy) of the presentation no later than 24 hours prior to the Council meeting.

Additionally, eight hard copies of the presentation material shall be provided to the City Clerk's Office for inclusion in the record of the meeting and for distribution to Council, City Attorney and City Manager.

Americans with Disabilities Act

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City meeting, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

Workshops

The purpose of a workshop is to inform the policy body on complex issues. Workshops provide an opportunity for the Council to review documents and request additional information. However, no final Council action shall be taken during the workshop on workshop items.

Procedure for Invocations

Any member of the public who wishes to offer an invocation prior to the opening of a regular City Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.

Minutes

The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall include a public report on any action taken and the vote or abstention on such action of each Council Member present for the action. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.

No minutes or written record of closed sessions of the City Council shall be kept, except as required by state law or as directed by the majority vote of the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Government Code Section 54957.1.

The City Clerk shall include a report on posting of the agenda in the minutes.

Rules of Decorum – Enforcement

While the Council is in session, all persons shall preserve the order and decorum of the session. The standards of order and decorum shall be governed by common sense. Any person who disrupts the orderly course of the meeting is guilty of an infraction and may be called out of order by the Mayor and barred from further participation during that session of the Council in accordance with the Brown Act and the California Penal Code.

(Exhibit "A" to Resolution No. 2015-052)



COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE

Adopted by Resolution No. 2019-_____

City of Tracy – Council Meeting Protocols and Rules of Procedures

Table of Contents

Section 1 –Purpose and Applicability

Section 2 –Duties (Roles and Responsibilities)

Section 3 – Meeting Types

Section 4 – Meeting Agendas

Section 5 –Conduct of Meetings

Section 6 – Conduct of the Public

Section 7 – Miscellaneous

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 1 –Purpose and Applicability

1. Purpose and Applicability

- 1.1. The purpose of these Council Meeting Protocols and Rules of Procedures (“Protocols”) are to provide clear guidelines to assist the City Council, staff and the public to conduct meetings in an efficient and transparent manner and in accordance with the Ralph M. Brown Act (“Brown Act”; Government Code sections 54950-54963) and all applicable laws.¹ These Protocols are adopted pursuant to Section 36813. In the event of a conflict between the Brown Act and these Protocols, the Brown Act shall control.
- 1.2. These Protocols shall apply to the City Council, the Successor Agency to the Community Development Agency, the Tracy Public Facilities Corporation, the Tracy Industrial Development Authority, and all City Boards, Commissions, and Committees.
- 1.3. Suspension of Protocols. Any rule set forth herein may be suspended by a supermajority vote of Council.
- 1.4. Review and Changes to Protocols. These Protocols shall be reviewed by December 31st of every odd numbered year. A majority vote of the Council shall be necessary to amend these Protocols.
- 1.5. A copy of these Protocols shall be available for public review at the City Clerk’s Office and City’s website (www.cityoftracy.org).

¹ All references to statutes are to the California Government Code unless otherwise specified.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 2 –Duties (Roles and Responsibilities)

2. Roles and Responsibilities' at Council Meetings

- 2.1. Mayor. The Mayor is the Presiding Officer of all meetings of the Council. The Presiding Officer is the primary, but not the only, person responsible for ensuring that the Council, staff, and members of the public adhere to these Protocols during Council meetings. (Section 36802). The Chair of a City board or commission shall act as the Presiding Officer.
- 2.2. Mayor Pro Tem. The Mayor Pro Tem shall serve as the Presiding Officer in the absence of the Mayor. Upon arrival of the Mayor, the Mayor Pro Tem shall immediately relinquish the role of Presiding Officer at the conclusion of the business then before Council. (Section 36802) The Vice Chair of a City board or commission shall act as the Presiding Officer in the absence of the Chair.
- 2.3. Council. **All members of Council shall comply with the Council Code of Conduct at meetings. Newly elected Council members shall be sworn in and seated at the first regular Council meeting after receipt of the certified election results from the County Registrar of Voters.**
- 2.4. Sergeant-at-Arms. The Sergeant-at-arms is the law enforcement official charged with maintaining security during meetings of the Council. The Sergeant-at-arms of the Council shall be a police officer assigned by the Police Chief. There shall be at least one member so assigned and present at each meeting of the Council. The officer shall maintain order and enforce the orders of the Council and Presiding Officer.
- 2.5. City Manager. Pursuant to the Council-Manager form of government established by Chapter 2.08 of the Tracy Municipal Code, the City Manager sets the Council agenda and once published, may withdraw an item(s). The City Manager may consult with the Mayor regarding the development of the agenda.
- 2.6. City Clerk. The City Clerk shall attend all meetings of the Council unless excused. The Deputy City Clerk shall attend Council meetings in the City Clerk's absence. The City Clerk shall record, prepare, and maintain the official records of the Council and perform other duties as directed by the City Manager. (Section 36804)
 - 2.6.1. Minutes. The City Clerk's office shall be responsible for the preparation and distribution of the Council minutes. The minutes shall include a public report on any action taken and the vote or abstention on such action of each Council Member present for the action. Unless a reading of the minutes is requested by a Council Member, the minutes may be approved as a Consent Calendar item.
 - 2.6.1.1. No minutes or written record of closed sessions of the City Council shall be kept, except as required by state law or as directed by the majority vote of the City Council. The Council shall report at a public meeting any action taken in closed session, as required by Section 54957.1.

City of Tracy – Council Meeting Protocols and Rules of Procedures

- 2.6.1.2. The City Clerk shall include a report on posting of the agenda in the minutes.
- 2.7. City Staff. City staff shall (a) prepare balanced staff reports and provide accompanying documents on all agenda items in accordance with the agenda preparation schedule; (b) be available for questions from Council in accordance with the Brown Act prior to and during meetings; and (c) respond to questions from the public during meetings only when requested to do so by the Council or the City Manager.
- 2.8. City Attorney. The City Attorney shall attend all meetings of the Council unless excused. The Assistant City Attorney shall attend Council meetings in the City Attorney's absence. The City Attorney shall give opinions upon request from Council, either in writing or verbally, on questions of law. The City Attorney shall advise the Council at meetings on legal issues, including these Protocols.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 3 – Meeting Types

3. Council Meeting Types

- 3.1. Regular Meetings. Regular Council meetings are held on the first and third Tuesdays of the month at 7:00 p.m. at City Hall Council Chambers, 333 Civic Center Plaza, Tracy, California 95376, unless otherwise noticed and as allowed under Section 54954. No meeting shall be held on a holiday as defined by Section 6700. (Section 36805)
- 3.2. Special Meetings. The City Manager, Mayor, or a majority of the members of Council may call a special meeting. (Section 54956). The City Attorney is also authorized to call a special meeting for the sole purpose of convening a closed session in accordance with the Brown Act. (Section 36807)
- 3.3. Workshops. The purpose of a workshop is to inform Council of complex issues and provide an opportunity for the Council to review documents and request additional information. However, no final Council action shall be taken during the workshop on workshop items. Workshops are open to the public and are meetings for the purpose of the Brown Act.
- 3.4. Closed Sessions.
 - 3.4.1. Closed sessions shall be held in accordance with the Brown Act. Non-agendized matters shall not be discussed in closed session. Closed sessions may precede or follow a Council meeting.
 - 3.4.2. All closed session information, verbal or written, is privileged and confidential and shall not be shared with any person not at the closed session. Any member sharing information in violation of this rule may be subject to censure by the Council or other legal remedies as set forth in Section 54963.
 - 3.4.3. The public may speak regarding any closed session item prior to the closed session as required by the Brown Act.
 - 3.4.4. The Presiding Officer shall report out in public session any reportable actions there taken by Council and the vote on such actions in accordance with the Brown Act.
- 3.5. Teleconferenced Meetings. The City Council may hold a meeting by teleconference, meaning a meeting of the Council in which members are in different locations and connected by electronic means, through either audio or video, or both. Any teleconference meeting of the Council must be comply with the requirements under Section 54953, including but not limited to the requirement that all votes taken shall be by roll call.
- 3.6. Emergency Meetings. In the case of an emergency as defined by Section 54956.5, as may be amended from time to time, a majority of Council may call a meeting and dispense

City of Tracy – Council Meeting Protocols and Rules of Procedures

with the special meeting notice and posting requirements under the Brown Act. Any emergency meeting held shall comply with the applicable Brown Act provisions.

- 3.7. The City Clerk shall ensure that the applicable noticing and posting requirements under the Brown Act are followed for all meetings of the Council.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 4 – Meeting Agendas

4. Meetings Agendas

4.1. Purpose of Agenda. The Council meeting agenda documents serve four purposes:

- To communicate and inform City Council, City staff, the public and the press about City business.
- To comply with mandated state laws.
- To facilitate the decision-making process by including sufficient background information so that the City Council can obtain a full understanding of the issues and staff's analysis and recommendation prior to their consideration and action.
- To serve as a historical reference that can be kept as a record of proceedings and actions as needed for future actions and/or litigation.

As set forth above, the purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council programs, goals and budget. The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting.

4.2. Posting and Distribution of Agendas. At a minimum the posting and distribution of all agendas shall be done in accordance with the Brown Act. Agendas for regular meetings shall be posted not less than 72 hours prior to the meeting (Section 54954.2(a)(1)); special meeting agendas shall be posted not less than 24 hours prior to the meeting (Section 54956).

4.2.1. All agendas shall be posted in the following locations: City Hall, the Tracy Library, the City's website, and other locations as may be required by the bylaws of a particular Board or Commission. Posting of agendas at City Hall shall be the official location for purposes of Brown Act compliance.

4.2.2. Agenda packets are provided electronically to City Council Members on the Thursday prior to a City Council meeting unless technical difficulties occur. If technical difficulties occur, the City Clerk will endeavor to provide Council with hard copies of the agenda as soon as reasonably possible. Distribution to the staff, public and media shall occur immediately after distribution to the City Council. Members of the public may sign up to receive notification that a Council meeting agenda has been posted on the City's website (www.cityoftracy.org). The City Clerk will mail copies of the agenda or particular agenda items to any person submitting a request. (Section 54954.1) Said requests will be valid for one year. Copies of the agenda, and of individual agenda items, are available at costs established in the City's Master Fee Schedule. Copies of the agenda are also available for inspection at the Tracy Library and City Clerk's office. Agendas for Council meetings are posted on the City's website (www.cityoftracy.org).

City of Tracy – Council Meeting Protocols and Rules of Procedures

4.3. Agenda Item Submission

4.3.1. Council Member Request for Agenda Items. Council Members wishing to have a matter discussed by the City Council may request that it be placed on a future City Council agenda during a Council meeting, under "Council Items and Comments," or by contacting the City Manager, or their designee, via telephone, email, or in person. Upon the request of a Council Member, the item will be placed on a future City Council agenda as long as one other Council Member concurs with the request. In the interest of transparency and Brown Act compliance, Council is encouraged to limit discussions outside of Council meetings about requests to support agenda items to a maximum of two Council Members.

4.3.1.1. The City Manager shall notify the rest of Council when two Council Members request an item to be placed on the agenda. The City Manager will determine when to place the item on a future agenda based on time necessary to complete the research and staff workload considerations.

4.3.2. Other Public Agencies. Agenda items such as presentations and proposals from other public entities must be sponsored for agenda placement by two Council members or the City Manager.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 5 –Conduct of Meetings

5. Conduct of Meetings

- 5.1. Order of Business. The suggested order of business of Council meetings shall be as follows. However, the Mayor may reorder the items unless a majority of Council members object.
 1. Call to Order
 2. Roll Call
 3. Pledge of Allegiance
 4. Invocation
 5. Presentations/Proclamations and Awards
 6. Consent Calendar
 7. Items from the Audience/Public Comment
 8. Continued Public Hearings
 9. Public Hearings
 10. Regular Items
 11. Items from the Audience/Public Comment
 12. Staff Items
 13. Council Items and Comments
 14. Adjournment
- 5.2. Call to Order. The Presiding Officer shall take the chair at the hour appointed for the meeting and shall immediately call the meeting to order.
- 5.3. Roll Call. A majority of the members of the Council then in office shall constitute a quorum. (Section 36810)
- 5.4. Invocations. Any member of the public who wishes to offer an invocation prior to the opening of a regular Council meeting shall contact the City Clerk. The City Clerk shall select a mutually agreeable City Council meeting date for the invocation.
- 5.5. Presentations/Proclamations and Awards. This portion of the Agenda is dedicated for presentations, such as proclamations and awards, employee of the month recognitions, board and commission recognitions, and employee swearing-ins, and shall be limited to a 15-minute maximum period.
- 5.6. Consent Calendar. All items listed on the Consent Calendar are considered to be routine matters or consistent with previous City Council direction, such as resolutions confirming action from a previous meeting or the adoption of an ordinance previously introduced by Council. One motion, a second, and a roll call vote may enact the items listed on the Consent Calendar. No separate discussion of Consent Calendar items shall take place unless a member of the City Council, City staff or the public request discussion on a specific item.
- 5.7. Items from the Audience/Public Comment. It is the policy of the City Council that members of the public be allowed to address the Council on any item of interest to the

City of Tracy – Council Meeting Protocols and Rules of Procedures

public, before or during its consideration of that item, that is within the Council's subject matter jurisdiction. (Section 54954.3(a)).

5.7.1. Agendas for regular meetings will have two opportunities for "Items from the Audience/Public Comment." (Section 54954.3(a)). In the interest of allowing Council to have adequate time to address the agenda items of business, the first public comment opportunity will be limited to a 15-minute maximum period. (Section 54954.3(b)). The second opportunity will not have a maximum time limit. **A five-minute maximum time limit per speaker will apply to all individuals speaking during the "Items from the Audience/Public Comment" portion of the agenda.** The City Clerk shall be the timekeeper. Speakers may not concede any part of their allotted time to another speaker.

5.7.1.1. **However, in the event there are 15 or more individuals wishing to speak regarding any agenda item including the "Items from the Audience/Public Comment" portion of the agenda and regular items, the maximum amount of time allowed per speaker will be three minutes**

5.7.2. Each speaker shall avoid repetition of the remarks of the prior speakers, and when speaking under a specific agenda item, shall speak only to that agenda item. To promote time efficiency and an orderly meeting, the Presiding Officer may request that a spokesperson be designated to represent similar views. A designated spokesperson shall have 10 minutes to speak.

5.7.3. Speaker Cards. To facilitate the orderly process of public comment and to assist the Council to conduct its business as efficiently as possible, members of the public wishing to address the Council are requested to, but not required to, hand a speaker card, which includes the speaker's name or other identifying designation and address, to the City Clerk prior to the agenda item being called. Generally, once the City Council begins its consideration of an item, no more speaker cards will be accepted. An individual's failure to present a speaker card or state their name shall not preclude the individual from addressing the Council. (Section 54953.3)

5.8. Public Hearings. Public hearings are required for a variety of City Council actions such as changes to the Tracy Municipal Code, zoning revisions, some annexations, street vacations, weed abatement, liens, fee increases, etc. Whenever the law provides that publication of a notice shall be made, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner required. Each speaker will be allowed a maximum of five minutes for public input or testimony. **However, in the event there are 15 or more individuals wishing to speak regarding a public hearing item, the maximum amount of time allowed per speaker will be three minutes.** The City Clerk shall be the timekeeper.

5.8.1. Public Hearings for Land Use and Other Matters. The Presiding Officer may designate individuals as the "Proponent/Appellant" or "Opponent" and provide each with additional time for comments and the opportunity to present a rebuttal.

City of Tracy – Council Meeting Protocols and Rules of Procedures

- 5.9. Regular Items. This portion of the Agenda is for non-public hearing agenda items that require Council action or direction such as status or informational reports from staff and Council requests for agenda items.
- 5.10. Staff Items. This portion of the agenda provides an opportunity for the City Manager, City Attorney, and City staff to provide information of community interest to the City Council.
- 5.11. Council Items and Comments. This portion of the agenda is for each member of the City Council to provide brief reports on any intergovernmental agency meetings, conferences, community meetings, meetings of other legislative bodies, or other events of interest to the community that they attended, as well as meetings attended at the City's expense. This portion of the agenda is also for the City Council to provide guidance and direction to staff concerning items to be included on future agendas and information to be provided in response to questions raised during "Items from the Audience/Public Comment." Under this portion of the agenda, two Council members may request staff to provide information, perform studies, or undertake other action. If the requested action is routine in nature, the City Manager will direct staff to proceed. However, if the request cannot be accomplished within the approved budget or City Council priorities, or if it will involve substantial staff resources, the City Manager will report to the City Council at a subsequent City Council meeting and request further direction. At that time, the consensus of a majority of the City Council will be required to proceed.
- 5.12. Adjournment. If a Council meeting is still in session at 11:00 p.m., the Presiding Officer shall ask the question of whether Council desires to consider any new items after 11:00 p.m. Council shall determine, by motion, which specific items will be considered or continued. City Manager shall inform Council of any time sensitive items. Any item continued due to the lateness of the hour shall automatically be placed on the agenda for the next regularly scheduled City Council meeting unless otherwise scheduled by motion action of the Council.
- 5.13. Non-Agendized Items. The Brown Act prohibits Council from discussing or acting upon any non-agendized matter, unless an exception under Section 54954.2 applies. For non-agendized items, Council members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff person; or request that the matter be placed on a future agenda or that staff provide additional information to Council. However, items may be added to the agenda (such as emergency matters) as permitted in the Brown Act. Brief announcements, brief responses, or questions seeking clarifications, may be made to statements or questions raised on items not on the agenda (Section 54954.2(a)(3)). Action on any item not on the agenda shall be deferred until the item is properly listed on the agenda for a subsequent Council meeting unless added due to an immediate need if permitted under state law.

City of Tracy – Council Meeting Protocols and Rules of Procedures

- 5.14. Voting Requirements. All ordinances, resolutions, and orders for payment of money require a majority vote of the total membership of the Council in accordance with Section 36936, unless otherwise required by state law.
- 5.14.1. It is a best practice that all Council members vote on every item of business unless prevented from doing so by virtue of an actual or potential conflict of law or other valid abstention under applicable laws. **Council Members are encouraged to disclose the reason for that abstention prior to Council engaging in discussion on that item.**
- 5.15. Parliamentary Procedures. Council meetings shall be conducted in accordance with the Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century unless otherwise specified herein. (Appendix A - Rosenberg's Rules of Order, Revised 2011, as may be amended).
- 5.15.1. Point of Order. Any Council member may ask for a point of order, at which time the Presiding Officer will ask for an explanation. Points of order relate to matters that a Council member considers inappropriate conduct for the meeting, such as the failure to adhere to these Protocols. The Presiding Officer shall rule on matter. Any member can move to appeal the Presiding Officer's ruling, with a second from another Council member. Following debate, the ruling of the Presiding Officer may be reversed by a majority vote.
- 5.16. Written Communications from the City and the Public. The City Clerk shall manage communications to members regarding meeting topics to ensure compliance with the Brown Act.
- 5.16.1. Except for records exempt from disclosure under the California Public Records Act and otherwise by law, agendas or any other writings distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public, and shall be made available upon request without delay.
- 5.16.2. Materials distributed to the members during the meeting shall be available for viewing by the public during the meeting if the materials were prepared by the City or a Council member, or posted on the City's website within 48 hours the conclusion of the meeting if prepared by another person.
- 5.17. Written Materials after the Council Agenda has been Distributed. On occasion, Council may receive written materials either after the Agenda has been posted or at a Council meeting. These written materials are typically related to an agenda item or handed out during "Items from the Audience/Public Comment." Upon the Council receiving these written materials they become a public record. For materials related to an agenda item, a copy will be kept on file at the City Clerk's Office and will typically be posted on the City's website under "Materials Distributed at Council Meetings" 48 hours after the Council meeting.

City of Tracy – Council Meeting Protocols and Rules of Procedures

5.17.1. Any materials about an agenda item that are received less than 72 hours before a Council meeting that are distributed to a majority of Council will be made available at the Council meeting for the public to review.

5.17.2. Interested parties or their authorized representatives may address the Council by written communications regarding agenda items.

5.17.2.1. Documents (6 copies are recommended) that members of the public submit to the City Council at the meeting shall be given directly to the City Clerk for distribution and shall not be given directly to the Council. The documents will be available to the public on the City's website within 48 hours of the conclusion of the meeting.

5.18. Compliance with the Americans with Disabilities Act (ADA). The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled. To allow for such reasonable accommodations, persons requiring assistance or auxiliary aids to participate at a City meeting, should contact the City Clerk's Office at (209) 831-6105 at least 24 hours prior to the meeting.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 6 – Conduct of the Public

6. Conduct of the Public

- 6.1. Purpose of Public Comment. The City, in accordance with the Brown Act, provides the public the opportunity to address the Council body as a whole and express their opinions regarding agenda items and non-agenda matters within the subject matter jurisdiction of the City Council. (Section 54954.3) **Items are generally considered to be within the Council's subject matter jurisdiction if they are within the City Council's purview.**
- 6.1.1. Nothing in these Protocols shall be construed as prohibiting public criticism of the City's policies, procedures, programs or services, or the acts or omissions of the Council. However, these Protocols are not intended to confer any privilege or protection for expression beyond that otherwise provided by law. (Section 54954.3(c)).
- 6.1.2. Public comments should not be addressed to individual Council members nor City staff, but rather to the Council as a whole.
- 6.1.3. While members of the public may speak their opinions on City business, personal attacks on members and City officials, use of swear words, and verbal or non-verbal signs or displays of disrespect for individuals are discouraged as they impede good communication with the Council.
- 6.1.4. Consistent with the Brown Act, the Council is limited in its ability to respond to public comments regarding non-agenda matters. The limited circumstances under which members may respond to public comments are set out in Rule 5.13.
- 6.2. In the interest of conducting an efficient meeting, the Presiding Officer may stop a member of the public whose comments are not confined to the agenda item being heard. In addition, during the "Items from the Audience/Public Comment" portion of the agenda, the Presiding Officer may stop a member of the public whose comments are not within the subject matter jurisdiction of the City.
- 6.3. Rules of Decorum. While the Council is in session, no person in the audience at a Council meeting shall engage in conduct that disrupts the orderly conduct of a Council meeting, including, but not limited to, the utterance of loud, threatening or abusive language, refusing to abide speaker time limits and leave the podium when directed; whistling, clapping, stamping of feet, yelling or shouting or interrupting a speaker who is addressing the Council; repeated waving of arms; or other disruptive acts.
- 6.4. Any person who disrupts the orderly course of the meeting may be issued a criminal citation **pursuant to Penal Code section 403 and/or** called out of order by the Presiding Officer and barred from further participation during that session of the Council in accordance with the Brown Act.

City of Tracy – Council Meeting Protocols and Rules of Procedures

- 6.4.1. All persons attending a Council meeting shall obey any lawful order or direction of the Presiding Officer or Sergeant-at-Arms.
 - 6.4.2. The Sergeant-at-arms shall assist the Presiding Officer in enforcing these rules of decorum at Council meetings, including but not limited, removing disruptive audience members. Additionally, any Council member may at any time call for a point of order, to request the timely enforcement of these rules of decorum.
- 6.5. Location of Speaker. Members of the public wishing to address the Council must approach the podium when recognized by the Presiding Officer and shall speak only from the podium.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Section 7 – Miscellaneous

7. Miscellaneous

- 7.1. Conflicts of Interests. It is the responsibility of every Council member to disclose conflicts of interest in accordance with state and local conflict of interest laws.
- 7.2. Proclamations. The Mayor issues proclamations to provide special recognition by the City to an individual, event, issue etc. Proclamations are not statements of policy and do not require the official approval or action of Council.
- 7.3. Broadcasting of Council Meetings. Generally Council meetings are broadcast live on Channel 26 and the City's website (www.cityoftracy.org), unless technical difficulties make that infeasible. Reruns of the preceding Council meeting are shown every Wednesday at 8:00 p.m., every Thursday at 10:00 a.m., and every Saturday at 9:00 a.m. on Channel 26.
 - 7.3.1. Recordings of Council meetings shall be accessible on the City's website (www.cityoftracy.org) by the end of the following business day. DVD recordings of Council meetings are available at costs established in the City's Master Fee Schedule.

City of Tracy – Council Meeting Protocols and Rules of Procedures

Appendices

A. Rosenberg's Rules of Order



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.



TABLE OF CONTENTS

About the Author	ii
Introduction	2
Establishing a Quorum.....	2
The Role of the Chair.....	2
The Basic Format for an Agenda Item Discussion	2
Motions in General.....	3
The Three Basic Motions.....	3
Multiple Motions Before the Body.....	4
To Debate or Not to Debate.....	4
Majority and Super-Majority Votes	5
Counting Votes.....	5
The Motion to Reconsider.....	6
Courtesy and Decorum	7
Special Notes About Public Input	7

INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.


The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:



First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move . . .”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice?

Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.




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RESOLUTION 2019-_____

ADOPTING COUNCIL MEETING PROTOCOLS AND RULES OF PROCEDURE AND
RESCINDING RESOLUTION NO. 2015-052

WHEREAS, Government Code section 36813 authorizes legislative bodies to establish rules for the conduct of their proceedings. These rules must comport with the Ralph M. Brown Act ("Brown Act"; Government Code sections 54950 et seq.) which applies to all meetings of "legislative bodies" within California, including the Tracy City Council and advisory boards and commissions; and

WHEREAS, On April 7, 2015, Council adopted "Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings" by Resolution No. 2015-052; and

WHEREAS, During the development of a Code of Conduct, Council expressed a desire to revise their policies regarding meetings; and

WHEREAS, On October 15, 2019, staff presented draft Council Meeting Protocols and Rules of Procedures ("Protocols") and Council discussed and provided policy direction to staff regarding the proposed Protocols;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby adopts the attached Council Meeting Protocols and Rules of Procedure and rescinds Resolution No. 2015-052.

The foregoing Resolution 2019-_____ was adopted by Tracy City Council on the 3rd day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.F

REQUEST

DISCUSS COUNCIL VACANCY POLICY AND PROVIDE DIRECTION TO STAFF

EXECUTIVE SUMMARY

The 2019 San Joaquin Grand Jury Report recommended that the Council consider amending its appointment policy for filling City Council vacancies to appoint the next highest vote-getter. This staff report provides a summary of applicable law, an overview of the City's current vacancy policy adopted by Resolution No. 2017-001, and outlines potential options for the Council to consider implementing if they desire. Staff requests that Council discuss and provide direction to staff.

DISCUSSION

A. Grand Jury Report Recommendation

The 2019 San Joaquin Grand Jury Report on the Council made several recommendations for the Council to consider implementing, one of which was giving the "Tracy voters more control over Council vacancy appointments." The Grand Jury found that the Council's use of its appointment process to fill Council vacancies had "fostered loyalty, allegiance, and personal obligation by appointed Council members and has resulted in consistent voting blocs and facilitated divisiveness amongst the Council members." Additionally, the Grand Jury found that the current adopted appointment process does not take into account the "will of the voters" and is a process that has not been endorsed by the City's voters.

The Grand Jury recommended that the Council amend the City's Council vacancy filling policy to automatically appoint the "next highest vote-getter" from the previous election, who would thereby serve out the remainder of the vacant Council seat's term. The Grand Jury recommended that this action take place by December 31, 2019.

B. Filling of Council Vacancies – Special Election or Appointment

California Government Code section 36512(b) requires the Council, within 60 days from the commencement of the vacancy, to either fill the vacancy by appointment or call a special election to fill the vacancy.

Regardless of the process of filling the vacant Council seat, only persons that are an elector of the City and a registered voter are permitted to hold office as Council Member. (Government Code section 36502). An "elector" of the City is a United States citizen, 18 years of age or older, who is a resident of the City.

Filling Vacancy by Special Election

The Council may elect to fill a Council vacancy through a special election and must call for the election to be held at the next regularly established election date, however, the election cannot be held less than 114 days from the call for the special election. (Government Code section 36512(b))

The City would be responsible for covering the costs of the special election incurred by the San Joaquin Registrar of Voters as well as City staff time preparing for the special election. In 2017, based upon a per-voter cost estimate provided by the San Joaquin Registrar of Voters Office, City staff projected that the cost of holding a special election would be close to \$375,000.

Filling Vacancy by Appointment

The Council also has the option to fill a vacant Council seat by appointment. The Brown Act requires that all interviews conducted to fill a Council vacancy by appointment be properly noticed and conducted in open session. Aside from this requirement, there are no additional statutory requirements detailing how the Council must conduct the appointment process.

C. Statutory Authority to Adopt Ordinance For Filling Vacancy

Government Code section 36512(c) grants the City the authority to adopt an ordinance that specifies that all vacancies be filled by special election, a vacancy be filled by special election if requested by petition of the electorate, or officials appointed to fill vacancies may only serve until a special election is held. This is a permissive right of the City, and the City is under no obligation to adopt such an ordinance.

D. City's Current Council Vacancy Policy

In 2014, the Council adopted City Council Policy Number C-10, "The City Council Policy on Filling Council Vacancies." In 2017, the Council adopted Resolution No. 2017-001, which amended the Policy, to place certain limits on the time for interviews and establish the overall framework for filling Council vacancies by the appointment process. (Attachment A)

Generally, the Policy establishes the appointment process as the method of filling vacancies on the Council and outlines the interview process to be utilized for the appointment.

As mentioned previously, the Council's adopted Policy was called into question by the San Joaquin Grand Jury in its findings. The Grand Jury highlighted that the appointment process utilized in 2012 and 2014, resulted in "contentious" debates and split Council votes on who to appoint to fill the vacancies. The Grand Jury stated that although the appointment process in 2016 resulted in "less contentious," than the previous appointment processes, they nevertheless concluded that the Council's current policy is not "responsive to the will of the Tracy voters," which is why the Grand Jury recommended that the Council amend its policy to appoint the next-highest vote-getter from the most recent election.

E. Survey of Other Jurisdictions

City staff analyzed a cross-section of California cities to determine what methods other jurisdictions utilized to fill their respective council vacancies. Below is a summary of the analysis:

CITY	METHOD OF FILLING VACANCY
Lathrop	Appointment by City Council
Los Angeles	Council decision: special election or appointment
Modesto	Appointment by City Council within 30 days of vacancy, after 30 days special election is required
Pleasanton	Special election
Fremont	Council decision: special election or appointment, but decision must be within 60 days of vacancy
Santa Barbara	Special election
Hayward	Appointment by City Council within 30 days, unless period for nomination paper may be filed for general municipal election; after 30 days of vacancy, special election is required
Sacramento	Special election
Anaheim	Appointment by City Council

It should be noted that a significant amount of cities have no policy or municipal code provision dictating the method for filling Council vacancies.

During Council’s discussion of the Grand Jury report, a question was raised about the use of Rank Choice Voting (RCV). RCV, also known as instant runoff, is a method of voting used in some cities, like Berkeley, Oakland, and San Leandro that allows voters to rank a first, second and third choice candidate for a single office. If a candidate receives more than 50% of the first choice votes, they are declared the winner. Under current California law, only charter cities are allowed to implement RCV. During this past legislative session, Senate Bill (SB) 212 was passed by the State Legislature which would have allowed general law cities to utilize RCV. However, SB 212 was not signed by the Governor and was therefore not enacted. As a general law city, the City of Tracy cannot implement RCV.

City staff is seeking direction from Council on whether it wishes to amend its current policy on filling Council vacancies, and if so, what changes should be made to the policy going forward.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council’s four strategic priorities.

FISCAL IMPACT

None as of right now; there may be fiscal impacts identified after Council provides direction.

RECOMMENDATION

City staff is requesting direction from Council as to whether Council wishes to amend its current policy regarding the filling of Council vacancies, and if so, what process Council would like to utilize to fill Council vacancies.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Adrienne Richardson, City Clerk
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT:

- A. City Council Policy C-10 on Filling City Council Vacancies (Resolution No. 2017-001)

RESOLUTION 2017-001

AMENDING CITY COUNCIL POLICY FOR FILLING CITY COUNCIL VACANCIES

WHEREAS, State law provides that if a vacancy occurs in the City Council, the Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy, and

WHEREAS, State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires, and

WHEREAS, The City Council adopted a policy regarding filling City Council vacancies on October 21, 2014 via Resolution 2014-180, and

WHEREAS, The City Council wishes to amend that policy to place certain limits on the time for interviews and other matters as set forth in the amended policy.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Tracy that it hereby adopts the attached amended policy regarding filling City Council vacancies.

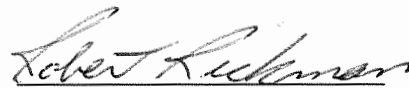
The foregoing Resolution 2017-001 was passed and adopted by the Tracy City Council on the 3rd day of January, 2017, by the following vote:


AYES: COUNCIL MEMBERS: RANSOM, VARGAS, YOUNG, RICKMAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:

CITY CLERK

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

I. BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy if the City Council chooses to fill such a vacancy by appointment rather than by special election:

A. Schedule

At the earliest possible time after a vacancy occurs, the City Council shall adopt a time schedule:

1. Setting a time and date by which any qualified person interested in being appointed shall submit an application;
2. Setting a time and date by which questions for the applicants may be submitted by the public; and
3. Setting a date or dates on which applicants will be interviewed by the City Council at a public meeting.

B. Applications

The application of a person interested in being appointed to the City Council shall state background, qualifications and why he or she wishes to be appointed. In addition to completing an application any person applying for the vacancy shall be required to file with the City Clerk the following additional documents:

1. A Nomination Form containing valid signatures of at least 20 registered voters of the City of Tracy. The fact that a voter has signed nomination papers for more than one applicant shall not invalidate the signature; and

2. A completed Statement of Economic Interests (Form 700) provided by the Fair Political Practices Commission.

C. Disclosure of Applications

Following the deadline set by the City Council for the submittal of applications, copies of all applications and the names of the applicants shall be filed in the City Clerk's office and made public. No information shall be disclosed prior to the close of the application deadline.

D. Questions from the Public

Questions for or concerning applicants may be submitted in writing by the public to the City Clerk. Following the deadline set by the City Council for the submittal of questions, all such questions shall be forwarded to City Council Members, who may use them in the applicant interviews.

E. Questions for Applicants

The City Council may choose to present questions in advance of the interviews to the applicants and may choose to require applicants to answer such questions at the interviews and/or provide written responses to such questions prior to the interviews. Questions may be suggested by the public, individual City Council Members or may be drafted by an ad hoc committee of the City Council appointed by the Mayor for that purpose.

F. City Council Interviews

Applicant interviews shall be conducted in a public meeting, which may be televised and recorded. The first round of interviews, under the Voting Procedure set forth below, shall be limited to ten minutes per applicant. During the first round of interviews under the Voting Procedures set forth below, all applicants will be asked to respond to the same or standard questions approved by a majority Council vote. The order of interviews will be based on a random drawing. At the time and date set for applicant interviews, each applicant shall be interviewed separately and shall be given the opportunity to make a brief statement concerning his or her qualifications and to answer question(s) approved by the City Council. For the second round of interviews, in addition to the same or standard questions approved by a majority of the City Council and asked of each remaining applicant, each City Council Member may question each remaining applicant on any subject he or she feels is relevant to that applicant's qualifications to sit on the City Council. The second round of interviews shall be limited to fifteen minutes per applicant, provided, however, that based on the time available and the number of candidates, the City Council, by majority vote, may extend the time limit on interviews.

G. Voting Procedure

The person to fill the City Council vacancy shall be selected from all applicants by the following process of elimination:

1. If one or two applicants exist:
 - a. each City Council Member shall vote for one applicant; and
 - b. the applicant who receives a majority vote shall be appointed to fill the vacancy.

2. If three or more applicants exist:
 - a. each City Council Member shall vote for two applicants; and
 - b. all applicants receiving the least number of votes (including no votes) shall be eliminated; and
 - c. subsequent votes shall be taken with each City Council Member voting for two applicants until one or two applicants remain; and
 - d. each City Council Member shall then vote for one applicant and the applicant who receives a majority vote shall be appointed to fill the vacancy.
 - i. In the event of a tie between two or more applicants with the highest number of votes, Council may ask those applicants to respond to additional questions. Council may also choose to resolve a tie between two or more applicants with the highest number of votes by any method approved by a majority vote.
3. If no applicant receives a majority vote, the City Council may adopt such other procedures to fill the vacancy as it deems appropriate.
4. Notwithstanding the voting procedure described above, at any time during the appointment process, the City Council in its discretion may abandon the process and call a special election to fill the vacancy.
5. If no applicant receives a majority vote within 60 days of the commencement of the vacancy, the City Council shall call a special election to fill the vacancy.

H. Appointment by the City Council

The appointment to fill the vacancy shall be made by resolution of the City Council.

AGENDA ITEM 3.G

REQUEST

**RECEIVE INFORMATIONAL REPORT ON THE TRACY CONSOLIDATED
LANDSCAPE MAINTENANCE DISTRICT**

EXECUTIVE SUMMARY

The Tracy Consolidated Landscape Maintenance District (LMD) consists of 41 Zones. Of the 41 Zones, only sixteen are fully funded and five do not currently require services. The remaining twenty Zones are either “underfunded” or “at risk” resulting in reduced service levels, deferred maintenance, and/or canceled capital replacement projects to preserve funding for basic services. Staff is requesting Council receive an informational report on the LMD and discuss outreach efforts.

DISCUSSION

Over the years, Tracy’s Consolidated Landscape Maintenance District (LMD) has presented numerous opportunities and challenges. The goal of providing quality park and landscape services within the LMD on a uniform and consistent basis has not always been met. This report, in conjunction with the accompanying presentation, seeks to provide information regarding the LMD and the challenges facing the City in achieving the desired goals for community aesthetics.

The California Streets and Highway Code, Sections 22500-22509, governs the Landscaping and Lighting Act of 1972. The Act established a funding mechanism to pay for improvements and services provided to areas within a District, and which are determined to receive special benefits from those improvements and services. The City of Tracy formed its first LMD in 1985 with two subdivisions. Since then, the City has required any larger development to annex into the LMD to provide funding for the amenities built within that specific area. The size and complexity of Tracy’s LMD has grown dramatically since its inception.

The current LMD includes 9.6 million square feet of landscaping with 49 parks. This square footage is located throughout 41 different Zones. These Zones were established based on the improvements and services provided and the benefits received by those properties that are within its boundaries. Under the Streets and Highway Code, improvements and services (often referred to as “amenities”) include but are not limited to: landscaping, trees, playgrounds, play courts, irrigation systems, water, trash receptacles and collection, benches, fences, soundwalls and much more.

In order to pay for the maintenance, repair and replacement of amenities, revenues are generated by placing an assessment on each parcel within the District. During the formation of a Zone, costs were calculated for routine and cyclical maintenance, as well as capital replacement of those amenities. This calculation establishes the Initial

Maximum Levy per Equivalent Dwelling Unit (EDU)¹ for each Zone. By law, a Zone's revenues cannot be combined with another Zone's revenues.

Initial budget projections for each year are calculated by averaging out the most recent two years of expenses. Increases above the average to each Zones budget is made based on needs identified by Public Works staff for additional projects and/or maintenance, increases in costs for contracted services (e.g. CPI increases provided for within agreements), increased employee costs or anticipated utility cost increases.

The expense calculations are provided to the LMD Engineer for verification and they prepare the Annual Engineer's Report, which calculates the annual assessments (projected revenues). The Engineer's Report is brought before Council in a two-step process. The first Council meeting initiates the intent to levy and establish a public hearing date. No less than 10 days after public noticing, a second meeting is held to conduct the public hearing and approve the Engineer's Report. This provides approval for the LMD Engineer to place the assessments onto the tax roll.

Unfortunately, not all Zones have been able to keep up with the needed funding to maintain the desired standards of care (levels of service). Staff has had to defer maintenance, be creative with approaches to certain repairs, or remove amenities to ensure that some Zones have funding for basic services. The drought, economic downturn, and the cap on the allowable annual revenue increases (based upon CPI) has added to the funding strain for certain Zones.

The City gives each Zone a funding status annually. "Underfunded," means that there is no money for capital improvement projects or cyclical maintenance - expenditures out pace revenues; "At Risk" is a Zone where expenses currently, or are close to, exceeding revenues and there is less than three years' worth of maintenance costs in reserves; "Funded" means that revenues exceed expenses and there is enough reserves to fund minor capital improvement projects. Currently, six zones are "Underfunded", fourteen are "At Risk" and sixteen are "Funded." Note: Five zones are dormant because of HOA's or no amenities have been installed to date.

"Proposition 218 gave taxpayers the right to vote on all local taxes and assessments, and requires taxpayer approval of new or increased property related assessments and fees."² With the passage of Prop 218, an increase on assessments, above the established CPI formula³ requires a vote of the property owners to be assessed via ballot. If a majority of the weighted votes does not opposes the assessments, then the Council may vote to levy the assessment. While not many, Zones that have had a successful ballot measure also have a "funded" status.

Given the number of Zones that are either underfunded or at risk, staff will develop a comprehensive, citywide outreach program to inform LMD property owners about the LMD funding structure, zone funding status, and how to adjust existing service levels and funding. Targeted property owner outreach would be prioritized based on zone funding

¹ EDU method uses the single-family residence as the basic unit of assessment, and is assigned 1 EDU. All other land uses are converted to EDU's based on the type, size, or number of dwelling units. The Engineer's Report provides a full description.

² "What is Proposition 218?" a paper by California Tax Data

³ "maximum rates to be increased by three percent or the percentage increase of the Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose Area Region, whichever is less", Staff Report from 7.16.19 City Council Meeting

status. Council input about the outreach approach is encouraged. Staff is also in the process of exploring alternative funding approaches (e.g. CFDs) that could help improve service levels citywide.

FISCAL IMPACT

None at this time.

STRATEGIC PLAN

This agenda item is consistent with the priority of Quality of Life Goal, Section 1, “identify amenities in demand based on community feedback” and Section 3, “explore cost recovery opportunities to protect and preserve our current amenities”.

RECOMMENDATION

It is recommended that Council receive an informational report on the Tracy Consolidated Landscape Maintenance District (LMD).

Prepared by Robin Kloepfer, Management Analyst II

Reviewed by Don Scholl, Director of Public Works
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by Jennifer Haruyama, City Manager

AGENDA ITEM 3.H

REQUEST

DISCUSS POTENTIAL ORDINANCE REGULATING THE SALE OF E-CIGARETTES/VAPING AND/OR THE SALE OF FLAVORED TOBACCO AND PROVIDE DIRECTION TO STAFF

EXECUTIVE SUMMARY

The use of electronic cigarettes, commonly known as vapes, has increased dramatically in recent years. In particular, electronic cigarettes (“e-cigarettes”) are the tobacco product mostly commonly used by youth and young adults.

To address the possible harms caused by increased e-cigarette use, especially among youth, many jurisdictions in California have prohibited the sale of flavored tobacco products. In addition, a small number of jurisdictions, namely San Francisco, have prohibited the sale of all e-cigarettes. This item is being presented to City Council at the request of Council Members Ransom and Arriola. In addition, the City has heard from various speakers during public comment and community stakeholders on this issue and its impact on youth and young adults in Tracy.

DISCUSSION

Background

E-Cigarettes first entered the marketplace around 2007, and have been used with increasing frequency over the last few years, and are now the most commonly used tobacco product. In particular, use of e-cigarettes among minors and young adults is relatively high. This increased use of e-cigarettes is causing an increase in rates of youth tobacco use, which had previously been declining for many years. According to the Center for Disease Control and Prevention, 4.9 million middle and high school students used tobacco products in 2018, up from 3.6 million in 2017. It is well established that the use of tobacco products containing nicotine carries with it numerous potential health risks. In addition, recent reports have identified that the use of e-cigarettes may cause specific risks that other types of tobacco use do not cause, such as acute vaping-related lung injuries. On the other hand, some medical professionals believe that e-cigarettes are actually less harmful than traditional cigarettes and can be used as an important tobacco cessation tool.

Federal law and regulations currently prohibit the sale of flavored traditional cigarettes, except for menthol flavoring. However, there is no similar prohibition on the sale of other flavored tobacco products, including e-cigarettes. Many e-cigarette companies produce a variety of flavored products, such as grape, watermelon, cotton candy, and apple. Some companies appear to have specifically targeted and marketed these flavored products toward youth.

The use and sale of tobacco products is heavily regulated by both the state and federal government. However, with the exception of advertising regulations and minimums age requirements, local jurisdictions are generally not preempted from enacting more stringent regulations. Congress enacted the Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”) in 2009. Among other things, the Tobacco Control Act requires pre-market review of all new tobacco products, which are defined as any product not on the market as of February 15, 2007. Specifically, a new product cannot be sold until the FDA has reviewed the product and made certain required determinations, which are based on the risks

and benefits of the product. Most e-cigarette products entered the market after 2007, but have not undergone pre-market review by the FDA. In 2017, the FDA issued guidance that provides e-cigarette manufactures until August 8, 2022 to submit applications for pre-market review and permits e-cigarettes to be sold in the interim. Some believe that this guidance from the FDA is illegal under the Tobacco Control Act.

In an attempt to decrease the use of e-cigarettes, especially among youth, many jurisdictions have prohibited the sale of flavored tobacco products. Approximately 50 cities and counties in California have enacted this type of ban (Attachment A). Some of these cities have enacted tobacco retailers licensing programs in which businesses must receive a license or permit from the City in order to sell selling tobacco products. Some cities have also enacted restrictions on the sale of e-cigarettes near sensitive uses such as schools. On the federal level, the Trump Administration has announced that the FDA will develop rules to prohibit all flavored e-cigarettes. However, it is not clear when such a ban would go into effect, and no draft regulations have been published yet.

A smaller number of jurisdictions have enacted complete bans on the sale of e-cigarettes. San Francisco adopted such a ban in June, becoming the first major jurisdiction to do so. Specifically, the ordinance prohibits the sale of all e-cigarette products until the FDA completes its pre-market review process. In response, e-cigarette manufactures, primarily Juul Labs, qualified a measure that, if passed by the voters, would have overturned the ban. Although Juul Labs initially made significant financial donations in favor of the measure, they eventually pulled financial support, and the measure was defeated by San Francisco voters on November 5, 2019. In general, jurisdictions that have prohibited flavored tobacco products and e-cigarettes have delayed implementation for between 90 days and 18 months to allow local retailers to sell existing supplies.

The Tracy Municipal Code generally does not regulate the sale of tobacco products, other than a prohibition on vending machines that dispense tobacco products. Staff recommends that the City Council provide direction on whether staff should prepare an ordinance regulating the sale of e-cigarettes and/or flavored tobacco products.

Potential Ordinance

This item has been placed on the agenda in order for the City Council to consider and provide direction regarding whether the City should adopt an ordinance regulating e-cigarettes. Below is a summary of the Council's primary options:

1. Adopt no new regulations;
2. Adopt a prohibition on the sale of flavored tobacco products; or
3. Adopt a prohibition on the sale all e-cigarette products until approved by the FDA.

In addition, if the City Council decides to direct staff to prepare an ordinance adopting new regulations, the Council should also provide direction on when any regulations should take effect.

In considering a potential ordinance to regulate e-cigarettes, the Council should be aware of potential issues related to enforcement. If the City adopts some type of regulations, enforcement of those regulations will necessarily involve staff time and resources. The more proactive the City is in enforcing the regulations, likely the greater the staff time and resources that will be involved. Enforcement, including educating impacted retailers, is likely to be the most resource intensive during the first few months after the regulations go into effect. Violations of a potential ordinance could result in fines of up to \$500 per violation.

If the City prohibits the sale of e-cigarette products, that is unlikely, on its own, to eliminate the use of e-cigarettes in Tracy. While San Joaquin County officials have discussed banning the sale of e-cigarettes, no jurisdiction within San Joaquin County has this type of ban in place. As a result of this, Tracy residents will continue to be able to buy those types of products in neighboring jurisdictions. In addition, there are numerous methods for purchasing e-cigarette products online. While a proposed ordinance could purport to prohibit the online sales of those products within Tracy, that type of ban would be extremely difficult to enforce.

STRATEGIC PLAN

This item relates to Council's Strategic Plan Goal to Promote Public Health, Safety, and Community Welfare Throughout the Community.

FISCAL IMPACT

If the City enacts an ordinance regulating e-cigarette products, there will be a cost to the City in terms of staff time and resources to implement and enforce the new regulations. It is possible there could also be a small decline in tax revenue from lost sales of e-cigarette products. The amount of these impacts would be dependent on a number of factors, including the scope of the potential ordinance, and are unknown at this time.

RECOMMENDATION

Staff recommends that the City Council provide direction on whether staff should prepare an ordinance regulating the sale of e-cigarettes and/or flavored tobacco products.

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Alex Neicu, Interim Police Chief
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT

- A – Matrix of Local Ordinances Restricting the Sale of Flavored Tobacco Products, Prepared by American Lung Association's Center of Tobacco Policy & Organizing
- B- Matrix of Strong Local Tobacco Retailer Licensing Ordinances, Prepared by American Lung Association's Center of Tobacco Policy & Organizing

Matrix of Local Ordinances Restricting the Sale of Flavored Tobacco Products



MAY 2019

The tobacco industry has a long history of using flavored tobacco to target youth and communities of color. The majority of youth who start experimenting with tobacco begin with flavored tobacco.¹ These products come in a variety of candy-like flavors including bubble gum, grape, menthol and cotton candy and include e-cigarettes, hookah tobacco, cigars, smokeless tobacco, and even flavored accessories such as blunt wraps.

Since 2009, the United States Food and Drug Administration (FDA) has banned flavored cigarettes nationwide. However, this ban included an exemption for menthol flavored cigarettes and doesn't extend to non-cigarette tobacco products. There are currently no state laws in California restricting the sale of flavored tobacco products. It is up to local communities to take action to protect their youth from the lure of enticing flavored tobacco.

The first community to restrict the sale of flavored tobacco in California was Santa Clara County in 2010. Since then, thirty-five communities have passed similar policies.

What products may be included?

- 1. E-Cigarettes** – Restricts the sale of flavored electronic cigarettes.
- 2. Menthol** – Restricts the sale of tobacco products labelled as menthol, including cigarettes, smokeless tobacco, little cigars, etc.
- 3. Little Cigars** – Restricts the sale of flavored little cigars, which are small, usually filtered cigars wrapped in brown paper containing tobacco leaf. Little cigars became a popular alternative following the FDA's ban on flavored cigarettes.
- 4. Smokeless Tobacco** – Restricts the sale of flavored smokeless tobacco such as chewing tobacco, dip, snus and snuff.

5. Components & Accessories – Restricts the sale of flavored accessory products such as blunt wraps and e-juice additives. These products cannot be smoked alone and serve as a delivery system for smoked products.

6. Products Marketed as Flavored – Tobacco companies sometimes try to circumvent flavor restrictions by marketing products as flavored without directly labelling them as such. This policy option allows communities to broaden the definition of flavored tobacco to include these products.

What exemptions are allowed?

- 1. Adult-Only Stores Exempted** – Adult-only retailers are limited to customers who are 21 and over. This limits sales of flavored tobacco to stores that youth do not have access to.
- 2. Grandfathered Retailers Exempted** – Allows retailers that were in operation prior to a specified date to continue selling flavored tobacco products.
- 3. Limited to Youth-Populated Areas** – Retailers are required to be a certain distance away from schools, parks, or other youth-oriented locations. Since many flavored tobacco products target youth, including buffer zones is a way to limit their access to flavored products.

Resources

The Center has additional resources on tobacco retailer licensing ordinances, plug-in policies, and ordinances restricting menthol tobacco available at: <http://center4tobaccopolicy.org/tobacco-policy/tobacco-retail-environment/>. ChangeLab Solutions has model ordinance language available for ordinances restricting flavored tobacco at: <http://changelabsolutions.org>.

City/County Date Passed	Products Included						Exemptions		
	E-Cigs	Menthol	Little Cigars	Smokeless	Components & Accessories	Products marketed as flavored	Adult-Only Stores Exempted	Grandfathered Retailers Exempted?	Limited to Youth-Populated Areas?
San Carlos April 2019	X	X	X	X	X	X			
Larkspur April 2019	X	X	X	X	X	X			
Sacramento April 2019	X	X	X	X	X	X			
Albany April 2019	X	X	X	X	X	X			
Corte Madera March 2019	X	X	X	X	X	X			
Hermosa Beach Jan 2019	X	X	X	X	X	X	X		
San Pablo Dec 2018	X	X	X	X	X	X			
Alameda Nov 2018	X	X	X	X	X	X			
Santa Cruz Nov 2018	X	X	X	X	X	X			
Marin County Nov 2018	X	X	X	X	X	X			
Saratoga Oct 2018	X		X	X	X	X			
Half Moon Bay Oct 2018	X	X	X	X	X	X			
Portola Valley Sep 2018	X	X	X	X	X	X			
Beverly Hills August 2018	X	X	X	X	X	X			
Richmond July 2018	X	X	X	X	X	X			
Sausalito July 2018	X	X	X	X	X				
San Mateo County June 2018	X	X	X	X	X	X			
San Francisco June 2018	X	X	X	X	X	X			
Mono County July 2018	X								
Windsor March 2018	X		X**	X	X	X			

City/County Date Passed	Products Included						Exemptions		
	E-Cigs	Menthol	Little Cigars	Smokeless	Components & Accessories	Products marketed as flavored	Adult-Only Stores Exempted	Grandfathered Retailers Exempted?	Limited to Youth-Populated Areas?
Cloverdale Dec 2017	X		X	X		X			
Fairfax Dec 2017	X		X**	X	X	X			
San Leandro Oct 2017	X		X	X	X	X			
Palo Alto Oct 2017	X	X	X	X	X	X	X		
Oakland Sep 2017	X	X	X	X	X	X	X		
Contra Costa County July 2017	X	X	X	X	X	X			X 1000 ft
Los Gatos May 2017	X	X	X	X	X	X	X		
Novato Jan 2017	X		X**	X	X	X			
Santa Clara County Oct 2016	X	X	X	X	X	X	X		
Yolo County Oct 2016	X	X	X	X	X				
Manhattan Beach Dec 2015	X		X	X	X	X	X		
El Cerrito Oct 2015	X	X*	X	X	X	X			
Berkeley Sep 2015	X	X	X	X	X	X			X 600 ft
Sonoma June 2015	X		X**	X	X	X			
Hayward July 2014	X	X*	X	X	X	X		X	X 500 ft

¹ Ambrose, B.K., et al., Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. JAMA, 2015; p.1-3.

*Does not include menthol cigarettes

**Exempts packages of at least 5 or more

***Doesn't apply to pipe tobacco

Matrix of Strong Local Tobacco Retailer Licensing



MAY 2019

In order to reduce illegal sales of tobacco products to minors, many cities and counties in California have adopted strong local tobacco retailer licensing ordinances. This document highlights the 156 ordinances that are considered strong, as well as the fee and enforcement provisions. A strong local tobacco licensing law is defined as one that includes the following four components:

- Requirements that all retailers that sell tobacco products must obtain a license and renew it annually.
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

Below is a list of the 156 local ordinances in California that have met the requirements for a strong local tobacco retailer licensing ordinance along with basic information about the community population, license fee and designated

enforcement agencies. The jurisdictions are listed in alphabetical order under each county in order to make it easy to compare fee and enforcement details for similar jurisdictions.

For the table below, the agencies that enforce these ordinances have been categorized in the following way:

- **Law Enforcement:** Includes Police Departments and Sheriff Departments
- **Health Department:** Includes Environmental Health Services, Departments of Public Health, Health Services Department, and Health and Human Services Divisions.
- **City Officials:** Includes City Manager, City Attorney, and any authorized city official
- **Other:** Includes Community Development Services, Department of Finance, code enforcement agencies/ services, Administrative Services, Neighborhood Preservation Division, neighborhood services inspectors, Business License Division, and District Attorneys

Other documents on tobacco retailer licensing, including a fact sheet on the effectiveness of these ordinances, are available at: <http://Center4TobaccoPolicy.org/tobacco-policy/tobacco-retail-environment>

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Alameda County							
Alameda	November 2018	70,177	TBD	X			
Albany	February 2009	18,988	\$250	X			
Berkeley	December 2002	121,238	\$427*	X	X		
Hayward	July 2014	161,040	\$400				X
Oakland	April 2008	426,074	\$1500**	X			
San Leandro	March 2018	90,553	\$500	X			
Union City	November 2010	73,452	\$665	X			
Butte County							
Oroville	March 2013	18037	\$30			X	
Contra Costa County							
Clayton	June 2001	21,405	\$93 (initial) \$46 (renew)	X			
Concord	September 2006	128,370	\$160	X			
Contra Costa County	January 2003	173,454	\$287*		X		
El Cerrito	October 2015	24,600	\$485 (initial) \$439 (renew)	X			X
Oakley	December 2018	41,714	\$484.18				
Richmond	June 2009	111,785	\$1,602.44**	X			
San Pablo	April 2004	31,053	\$196				X
Fresno County							
Firebaugh	August 2009	8,202	\$190	X			
Parlier	April 2012	15,500	\$200	X			
Imperial County							
Calexico	February 2004	40,921	TBD	X		X	
Kern County							
Arvin	September 2016	21,157	\$275-\$655		X		
California City	February 2007	14,248	\$275-\$655		X		
Delano	June 2008	53,152	\$275-\$655	X			
Kern County	November 2006	311,015	\$275-\$655		X		
McFarland	May 2007	14,919	\$275-\$655		X		
Shafter	November 2016	18,868	\$275-\$655		X		

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Taft	August 2016	9,492	\$275-\$655		X		
Tehachapi	February 2007	12,280	\$275-\$655		X		
Wasco	March 2007	26,980	\$275-\$655		X		
Los Angeles County							
Artesia	January 2009	16,904	TBD	X		X	
Baldwin Park	October 2008	75,537	\$342	X			X
Beverly Hills	August 2010	34,646	No Fee Planned	X			
Burbank	February 2007	105,033	\$181	X			
Calabasas	June 2009	24,202	No Fee Planned*			X	
Carson	November 2006	93,674	\$500	X			X
Cerritos	January 2008	50,039	\$50*	X			
Compton	July 2007	100,050	\$500	X			X
Culver City	July 2009	40,103	\$235	X			X
Duarte	May 2013	22,033	\$100	X			
El Monte	November 2011	114,268	\$300	X			X
El Segundo	June 2010	16,717	\$250	X			
Gardena	July 2008	60,721	\$120 **	X			X
Glendale	September 2007	201,748	\$255	X			
Hawaiian Gardens	July 2011	14,753	\$246				X
Hawthorne	July 2009	87,662	\$375	X			X
Hermosa Beach	January 2019	19,708	\$404 (initial) \$344 (renew)	X			
Huntington Park	November 2011	59,383	No Fee Planned	X			
Inglewood	October 2007	114,900	\$350	X			X
La Canada Flintridge	June 2009	20,497	\$50*	X		X	
La Verne	January 2017	32,389	\$300	X		X	
Lancaster	June 2006	157,820	\$261	X			
Lawndale	October 2009	33,365	\$150				X
Lomita	May 2007	20,403	\$150	X			X
Long Beach	February 2008	480,173	\$442	X	X	X	
Los Angeles (City)	September 2005	4,041,707	\$300		X	X	X
Los Angeles County	December 2007	1,053,030	\$235	X	X		
Lynwood	October 2012	71,997	TBD			X	

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Manhattan Beach	November 2015	35,924	TBD			X	
Malibu	November 2011	12,742	No Fee Planned*				X
Maywood	August 2006	27,6333	\$46 (initial) \$11.50 (renew)				X
Montebello	September 2009	63,917	\$300	X			
Monterey Park	April 2010	61,606	\$40*	X			
Palmdale	January 2010	158,605	\$350			X	
Pasadena	February 2004	143,333	\$225	X	X		
San Fernando	October 2008	24,486	\$250				X
San Gabriel	March 2010	41,020	\$300	X			
Santa Monica	November 2008	93,834	\$135			X	
Sierra Madre	November 2006	11,010	\$30	X			
South El Monte	September 2014	20,883	\$120				X
South Pasadena	February 2009	25,992	\$150				X
Temple City	December 2012	36,389	\$320 (initial) \$75 (renew)	X			
Marin County							
Corte Madera	March 2019	69,214	TBD		X		
Fairfax	December 2017	7,598	TBD			X	
Larkspur	April 2019	12,396	TBD		X		
Marin County	May 2012	69,214	\$25		X		
Mill Valley	September 2012	14,910	\$25	X			
Novato	January 2017	54,522	\$50 or less			X	
San Rafael	August 1991	60,842	\$48 (initial) \$10 (renew)				X
Sausalito	November 2018	7,601	\$50			X	
Mendocino County							
Fort Bragg	December 2012	7,772	\$195			X	
Mendocino County	April 2010	59,668	\$350		X		
Ukiah	December 2012	16,314	\$35	X		X	
Willits	October 2003	4,928	\$75		X		
Modoc County							
Alturas	February 2016	2,537	\$100 (initial) \$25(renew)	X			

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Monterey County							
Carmel-By-The-Sea	June 2013	3,842	\$286	X	X		
Monterey	November 2014	28,828	\$286	X	X		
Monterey County	May 2012	107,009	\$286	X	X		
Salinas	January 2015	162,470	\$286	X	X		
Nevada County							
Grass Valley	November 2009	12,859	\$100	X			
Nevada City	November 2006	3,208	\$100	X			
Orange County							
Santa Ana	October 2006	341,341	\$635	X	X		
Riverside County							
Banning	August 2006	31,068	\$444		X		
Beaumont	December 2006	46,179	\$444		X		
Calimesa	June 2007	8,637	\$444		X		
Cathedral City	January 2016	52,381	\$444		X		
Canyon Lake	June 2009	10,891	\$444		X		
Coachella	July 2007	45,551	\$444		X		
Corona	October 2005	167,759	\$444		X		
Desert Hot Springs	August 2007	29,111	\$444		X		
Eastvale	October 2010	64,613	\$444		X		
Hemet	March 2008	81,868	\$444		X		
Jurupa Valley	September 2011	101,315	\$444		X		
Lake Elsinore	August 2007	62,092	\$444		X		
Menifee	December 2009	90,660	\$444		X		
Moreno Valley	September 2007	206,750	\$444		X		
Murrieta	May 2006	114,914	\$444		X		
Norco	March 2006	26,882	\$444		X		
Palm Springs	October 2018	48,142	\$444		X		
Perris	August 2008	75,739	\$444		X		
Rancho Mirage	May 2017	18,194	\$444		X		
Riverside (City)	May 2006	326,792	\$444		X		
Riverside County	January 2010	373,755	\$444		X		
San Jacinto	June 2006	47,925	\$444		X		

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Temecula	June 2006	111,024	\$444		X		
Wildomar	July 2008	35,782	\$444		X		
Sacramento County							
Elk Grove	September 2004	171,059	\$270	X			
Rancho Cordova	February 2005	73,872	\$218	X			
Sacramento (City)	April 2019	493,025	\$370	X			X
Sacramento County	May 2004	584,729	\$309	X	X		
San Benito County							
Hollister	May 2006	36,677	\$269	X			X
San Diego County							
Chula Vista	March 2018	243,916	TBD	X		X	X
El Cajon	June 2004	102,803	\$675				X
Lemon Grove	December 2018	27,108	TBD	X			
San Marcos	July 2016	94,042	\$190	X			
Solana Beach	July 2009	13,527	\$110**				X
Vista	May 2005	101,797	\$250	X			
San Francisco County							
San Francisco	November 2003	874,228	\$315	X	X		
San Luis Obispo County							
Arroyo Grande	February 2005	17,736	\$208	X			
Grover Beach	September 2005	13,438	\$224	X			
San Luis Obispo (City)	August 2003	46,724	\$278	X			
San Luis Obispo County	October 2008	120,549	\$342	X			
San Mateo County							
Half Moon Bay	October 2018	12,870	\$153	X			
Pacifica	February 2008	38,124	\$79	X			X
Santa Barbara County							
Carpinteria	April 2013	13,943	\$379	X	X		
Goleta	May 2014	31,760	\$534	X	X		

*City or County fee does not fully cover administration and enforcement of the tobacco retailer license. Rather, the fee is supplemented with another stable source of funds, such as Master Settlement Agreement (MSA) funds or general funds.

** Fees may have additional restrictions, charges or may be combined with another fee.

Sources: Population figures are from California Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — Jan. 1, 2016 and 2017.

Community	Date Passed	Population	Fee	Designated Administration/Enforcement Agencies			
				Law Enforcement	Health Department	City Officials	Other
Santa Barbara County	November 2010	143,439	\$409*	X	X		
Santa Clara County							
Campbell	December 2012	42,726	\$51	X			
Gilroy	November 2014	55,936	\$100	X			
Los Gatos	May 2017	31,314	\$425	X	X		
Morgan Hill	April 2014	44,145	\$125				X
Palo Alto	October 2017	65,412	\$425	X			
Santa Clara County	November 2010	87,764	\$425	X	X		
Saratoga	June 2015	30,569	\$50*	X		X	
Santa Cruz County							
Santa Cruz	October 2012	65,070	\$425	X			
Santa Cruz County	April 2011	136,193	\$318	X	X		
Scotts Valley	December 2015	12,163	No Fee Planned				
Watsonville	October 2012	53,015	\$255-\$382			X	
Sonoma County							
Healdsburg	November 2014	11,800	\$445	X			
Sonoma	June 2015	10,989	\$246	X			
Sonoma County	April 2016	151,371	\$350		X		
Windsor	March 2018	27,555	\$350		X	X	
Stanislaus County							
Riverbank	July 2010	24,610	\$25-\$200	X		X	
Ventura County							
Oxnard	February 2012	207,772	\$51*				X
Yolo County							
Davis	August 2007	68,740	\$344		X		X
Winters	January 2016	7,255	\$344		X		X
Woodland	June 2015	59,616	\$360				X
Yolo County	May 2006	30,122	\$344		X		X

AGENDA ITEM 3.I

REQUEST**PROVIDE DIRECTION ON FY 2019/20 STRATEGIC PRIORITIES AND APPROVE COUNCIL WORKSHOP REPORT AS OCTOBER 2, 2019 SPECIAL MEETING MINUTES**EXECUTIVE SUMMARY

On October 2, 2019, the Tracy City Council held a Special Meeting at the Grand Theater in downtown Tracy to discuss strategic planning priorities as part of its annual goal setting process. More specifically, the workshop was an opportunity for Council to agree on norms, clarify roles, and set priorities for the coming year. Rod Gould and Nancy Hetrick of Management Partners facilitated the workshop. The City Manager also provided an update on the state of the organization and city finances. The attached Special Meeting Council Strategic Priorities Workshop report summarizes the workshop discussion, activities, and outcomes.

DISCUSSION

As a group, the Council performed a dot prioritization exercise to identify priorities for FY 2019/20 and agreed its top tier priorities were to ensure (1) short and long term financial sustainability and inform the public about the City's fiscal challenges, and (2) facilitate the construction of a Measure V amenity (See Table 1). They also noted that completing and implementing the Council Code of Conduct policy was critical. The Code of Conduct policy was subsequently adopted via resolution on October 15, 2019.

Table 1 – Top Tier Priorities

Top Tier Priorities	Dots
Plan to get financial house in order and educate the public	All
Measure V – get something in the ground	All
Adopt a Code of Conduct	All

Councilmembers were also asked to identify their top organizational priorities. The results of the dot voting exercise are summarized in Table 2 below.

Table 2 – Organizational Priorities

Organizational Priorities	Dots
Valley Link/infrastructure/traffic	5
Economic Development (targeted)	3
Transit-oriented development (TOD)	2
Homelessness strategy	2
Crime prevention plan (hold study session)	1
Governance; clarify role of commissions	1
Cannabis regulation	1
Complete the Emergency Preparedness Plan	0
Youth programs	0
Labor agreements	0
Workforce/affordable housing	0

Based on Council discussion and direction at the October 2, 2019 workshop, the Council majority (3 or more) identified the following priorities for FY 2019/20:

- Ensure Short and Long Term Financial Sustainability
- Enhance Public Awareness around City Finances and other Civic Matters
- Facilitate the Completion of Measure V Amenities
- Continue to Support Valley Link
- Facilitate Infrastructure Projects to Improve Citywide Traffic Conditions
- Encourage the Development of Good Governance Policies

Based on Council direction provided by the workshop, staff developed a draft workplan for Council discussion and consideration. Table 3 reflects the Council’s top strategic priorities and goals, and suggested objectives to be accomplished over the next fiscal year. Historically, Council goals and objectives have been organized under the following categories: Quality of Life; Economic Development; Public Safety; and Governance. Please note that some priorities will be listed under more than one category.

Additionally, while not identified by a majority of Council as a top priority, Transit Oriented Development (TOD), Homelessness Strategic Planning, and Cannabis Regulations were included as these projects are currently underway and are expected to be completed in FY 2019/20.

Table 3 – Draft Strategic Priorities Workplan

Council Strategic Priorities and Objectives	
Quality of Life	<p>Goal 1: Facilitate the Completion of Measure V Amenities</p> <p><i>Objective 1: Implement Council Direction to Partner with Developer (Surland) to Develop Conceptual Design Plan Reflecting Key Aquatic Elements not to Exceed \$65 Million</i></p> <p><i>Objective 2: Provide Update to Council Regarding Measure V Project Priorities and Develop a Implementation Plan</i></p> <p>Goal 2: Facilitate Infrastructure Projects to Improve Citywide Traffic Conditions</p> <p><i>Objective 1: Pursue Grant Funding to Accelerate Roadway Infrastructure Projects (e.g. EDA, BUILD, INFRA)</i></p> <p><i>Objective 2: Work with San Joaquin County and CalTrans to Modify Regional Traffic Signals to Improve Commuter Flow for Tracy Residents</i></p> <p><i>Objective 3: Consolidate Finance and Implementation Plan (FIP) Areas to Advance Funding for Priority Roadway Infrastructure Projects</i></p>

<p>Quality of Life (con't)</p>	<p>Goal 3: Develop a Homelessness Strategic Plan</p> <p><i>Objective 1: Work with Residents, Local Businesses, and Social/Community Service Partners to Identify Strategic Initiatives to Address Homelessness in Tracy</i></p> <p><i>Objective 2: Explore Opportunities to Provide Temporary and/or Permanent Housing for Homeless in Tracy</i></p> <p><i>Objective 3: Facilitate Partnerships and Implement Strategies to Enhance Resources to Proactively Address Citywide Encampments</i></p>
<p>Economic Development</p>	<p>Goal 1: Continue to Support Valley Link</p> <p><i>Objective 1: Work with Regional Rail Authority and Area Partners to Expand Support for Transportation Initiatives</i></p> <p><i>Objective 2: Continue to Prioritize Valley Link Within the Local, State and Federal Lobbying Efforts</i></p> <p>Goal 2: Develop and Implement Cannabis Regulations</p> <p><i>Objective 1: Establish Application and Permit Process</i></p> <p><i>Objective 2: Facilitate Partnerships with Cannabis Businesses</i></p> <p><i>Objective 3: Accept Applications in Spring 2020</i></p> <p>Goal 3: Continue to Advance Transit Oriented Development Opportunities</p> <p><i>Objective 1: Work with Downtown Property Owners and Other Stakeholders to Develop a Transit Oriented Development District</i></p> <p><i>Objective 2: Work with Valley Link and Other Stakeholders to Develop the Downtown Station</i></p> <p><i>Objective 3: Identify Other Key Opportunity Sites to Facilitate Development of TOD Plan, Upon Adoption</i></p> <p>Goal 4: Attract Businesses in Targeted Industries that Meet the Needs and Desires of the Community</p> <p><i>Objective 1: Issue Community Retail & Entertainment Survey to Determine the Needs and Desires of the Community</i></p> <p><i>Objective 2: Implement Marketing Campaign to Target Specific Businesses & Industries that provide Head-of-Household Jobs</i></p> <p><i>Objective 3: Collaborate with Statewide, Regional, and Local Economic Development Organizations to Promote Tracy for Corporate Business Expansion</i></p>

Economic Development (con't)	<i>Objective 4: Attend Industry Conferences and Tradeshows to Augment Marketing Campaign to reach Targeted Businesses & Industries</i>
Public Safety	<p>Goal 1: Support Efforts to Enhance Citywide Traffic Conditions</p> <p><i>Objective 1: Identify Trends to Inform Traffic Management Approach and Resource Allocation</i></p> <p><i>Objective 2: Coordinate Multi-Department/Stakeholder Team to Address Issues (e.g. PD, Engineering, TUSD, CHP)</i></p> <p><i>Objective 3: Implement a System to Solicit Community Feedback and Assess Effectiveness of Police Response of the Response and Recommend Adjustments as Necessary</i></p> <p>Goal 2: Develop a Homelessness Strategic Plan</p> <p><i>Objective 1: Work with Residents, Local Businesses, and Social/Community Service Partners to Identify Strategic Initiatives to Address Public Health and Safety Issues</i></p> <p><i>Objective 2: Facilitate Public Safety and Community Partnerships to Proactively Address Citywide Encampments</i></p> <p><i>Objective 3: Identify and Pursue Resources to Enhance Our Response to Homelessness-related Issues</i></p>
Governance	<p>Goal 1: Enhance Public Awareness Around City Finances and Other Civic Matters</p> <p><i>Objective 1: Expand Resident Police Academy to Include Civic Matters, Including City Finances</i></p> <p><i>Objective 2: Partner with the Chamber of Commerce to Enhance Civics Presentation on City Finances</i></p> <p><i>Objective 3: Update Website Navigation to Enhance User Experience and Information Accessibility, and Incorporate Social Media Outreach Efforts</i></p> <p>Goal 2: Encourage the Development of Good Governance Policies</p> <p><i>Objective 1: Adopt and Implement Council Code of Conduct Policy</i></p> <p><i>Objective 2: Adopt and Implement Revised Council Protocols and Procedures</i></p> <p><i>Objective 3: Develop and Adopt a Council Vacancy Policy</i></p> <p>Goal 3: Ensure Short and Long Term Financial Sustainability</p> <p><i>Objective 1: Develop Cost Containment and Revenue Enhancement Strategies for Consideration as part of the FY 2020/21 Budget Development Process</i></p>

Governance (con't)	<i>Objective 2: Develop a Policy Requiring a Fiscal Analysis for Proposed Annexations</i> <i>Objective 3: Develop and Implement a Performance Measures Program to Inform Policy Development and Operational Decision Making</i>
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The draft strategic priorities workplan will be updated to reflect any additional input and/or feedback provided by Council. Council will be able to adjust the workplan during the fiscal year with the understanding that the addition of new priorities would significantly delay or result in the elimination of other projects. Staff will commit to reporting on progress toward Council priorities quarterly.

FISCAL IMPACT

There is no fiscal impact associated with the approval of a Council strategic priorities workplan.

RECOMMENDATION

It is recommended that Council provide direction regarding the draft FY 2019/20 Strategic Priorities and approve the attached workshop report as the October 2, 2019 Special Meeting minutes.

Prepared/Approved by: Jennifer D. Haruyama, City Manager

ATTACHMENTS

October 2, 2019 Special Meeting Council Strategic Priorities Workshop Report



Think Inside the Triangle™

City of Tracy

City Council Workshop on October 2, 2019

**Management
Partners**



Table of Contents

Workshop Report	1
Workshop Objectives and Agenda	1
Learn More About Councilmembers’ Service to Tracy	3
Discuss Council Norms	4
<i>Council Agreements</i>	5
Reflect on City Achievements and Contributing Factors	6
Clarify Governance Roles.....	6
Break.....	7
Identify Opportunities and Challenges for Tracy	7
<i>Opportunities</i>	7
<i>Challenges</i>	8
<i>Looking Ahead</i>	8
City Manager Update	8
Brainstorm and Discuss Priorities for FY 2019-20	8
Review Agreements and Commitments and Wrap Up.....	9
Attachment – City Manager’s Update Slides	10

Workshop Report

The Tracy City Council held a Special Meeting on October 2, 2019 at the Grand Theater in downtown Tracy. The workshop was an opportunity for Council to agree on norms, clarify roles, and set priorities for the coming year. Rod Gould and Nancy Hetrick of Management Partners facilitated the workshop.

Workshop Objectives and Agenda

Objectives

- Council agreement on norms for working together and working with staff on behalf of the community
- Clarify roles and enhanced trust
- Discuss opportunities and challenges on the horizon for the City of Tracy
- Set priorities for the coming year

Agenda

- Welcome and Public Comment
- Agenda Review
- Learn More About Councilmembers' Service to Tracy
- Discuss Council Norms
- Reflect on City Achievements and Contributing Factors
- Clarify Governance Roles
- Identify Opportunities and Challenges for Tracy
- Hear City Manager Update
- Brainstorm and Discuss Priorities for FY 2019-20
- Review Agreements and Commitments and Wrap Up

Participants

Councilmembers

**Mayor
Robert Rickman**



**Vice Mayor
Nancy Young**



**Councilmember
Dan Arriola**



**Councilmember
Rhodesia Ransom**



**Councilmember
Veronica Vargas**



City Staff

- Jenny Haruyama, City Manager
- Leticia Ramirez, Interim City Attorney
- Members of the Executive Team (afternoon only)

Workshop Ground Rules. At the start of the workshop, the facilitators suggested several ground rules to help the group have a successful workshop.

- Seek consensus
- Listen to understand
- Participate
- Stay focused
- Assume good intent
- Speak up if we need a course correction

Bike Rack. The facilitators explained that items that were brought up but would not receive immediate attention would be added to a “bike rack.” It was used as a placeholder for later discussions during the session. Bike rack items were ultimately incorporated into the list of priorities presented later in this report.

Workshop Preparation. In preparation for the workshop, Rod Gould conducted individual interviews with each Council member, and discussed the workshop with the City Manager. An agenda and PowerPoint presentation were prepared.

Learn More About Councilmembers’ Service to Tracy

To set the stage for a productive workshop, Council members shared their experiences related to their service to Tracy. Council members responded to the following prompts:

- What propelled you to serve on the City Council?
- What do you hope to accomplish through your service on the City Council?
- What about your service on the City Council do you find most satisfying?
- What legacy would you like to leave the community?

A variety of themes emerged and are summarized below.

- Grew up in Tracy and want to give back; “this is home”
- Pride in community
- Desire to represent under-served communities
- Add a new voice to the table and have a seat at the table to address issues that affect generations (now and in the future)
- Amplify the voices of those not heard
- Bring diversity to the Council
- Service
- To get things done; generate meaningful results – be a part of the solution
- Connect neighborhoods
- Address issues related to transportation, design, connections
- Address cleanliness of the community
- Ensure equity of service (e.g., amenities for the poor, more services for senior, youth, Measure V)
- Connect to BART
- Putting Tracy first

Discuss Council Norms

The facilitators provided materials on high-performing councils and examples of council norms in advance of the workshop to inform the discussion. The group discussed the common elements and norms from the materials and how some could be incorporated into Tracy's governance culture.

First, Council members reflected on an article entitled, "**Attributes of Exceptional Councils**" (*Institute for Local Government*). Notes from that discussion are provided below.

- Need a framework to get things done so we can disagree agreeably, within a process with specific roles
- Sense of team/partnership is critical to getting results
- Work together without hierarchy
- Take time to develop a team and invest time to build the team
- Ensure effectiveness of both staff and Council (lowest common denominator will prevail) – respect and trust are essential
- Basic respect on and off the dais fosters trust for the success of the team
 - Trust the process will be fair
 - We know/stay in our lanes
- City manager honors and carries out the will of the whole Council
- Continual learning is critically important and enables continual professional development
 - Find a means for supporting professional development (help for future Council members)
 - Learn from others (best practices; new approaches)

Next, Council members reflected on an article entitled, "**A Key Ingredient for Success: An Effective City Council/City Manager Relationship**" (by Kevin Duggan, ICMA West Coast Regional Director, ICMA). Notes from that discussion are presented below.

- Performance management
 - Use data to balance emotion
 - Be intentionally performance-based
 - Use facts to make decisions
- Trust professional staff (City Manager/City Attorney)
 - "Feel free to disagree with me"
 - City Manager provides technical information to inform decision making
 - Be open to new information to inform the best path forward

- “Disagreement” does not equal “attack”
- Working through personal/political disagreements should not occur at the dais – seek information/discussion privately.
 - Build trust
 - Resolve issues and ask questions early on – be honest/frank
- Listen to all voices; you may disagree, but let others be heard (“I can live with it”)
- Ensure the public is informed about how recommendations are developed (focus extra time on the big/controversial items)
- Avoid win/lose dead ends, find common ground, work together
- Communicate council decisions without negative tone. Ok to be in disagreement. Share differing opinions with phrases like, “The Council decided...”, “I still believe...,” and “I hope to get there.”
- Desire to be informed and to collaborate
- Ensure everyone is provided the same information; Council reports are provided as a means to do this
- For sensitive issues, begin by presenting options for discussion (some issues may not need/benefit from this approach)

Council Agreements

Council members agreed on the following norms to guide and hold themselves accountable to each other.

- Do not take ourselves so seriously
- Assume positive intentions
- Disagree agreeably
- Support continual learning
- Stop personal attacks
- Stay objective and focus on the issue (use data to balance emotion)
- Ask questions of the City Manager early on
- Be clear and consistent on time limits and public input
 - Clarify and hold to time limits
 - Must be on the agenda for public comment
 - Exercise finesse regarding public personal attacks; request respect and focus on the issue/topic
- City Council/City Manager briefings are valued
 - Technical briefings including staff are OK, but don’t sacrifice all one-on-one time
- Staff requests must to go through the City Manager for now (until we build trust)
- Solicit City Attorney guidance early – she is available for questions/input

The Council also discussed adding norms and values as an Attachment A to code of conduct.

Reflect on City Achievements and Contributing Factors

Prior to the Council workshop, staff prepared a list of recent City accomplishments. This was provided to Council to use as a resource as they contemplated what has made them successful in the past.

Clarify Governance Roles

The facilitators reviewed the roles of the key players in local government: Council, Mayor, City Manager, City Attorney, City Treasurer, staff, commissions, committees, and boards. A summary of the information presented is in Table 1.

Table 1. Governance Roles Overview

Position(s)	Role
City Council	<ul style="list-style-type: none"> • Sets policy and overall direction • Keeps in touch with community concerns
Individual Council members	<ul style="list-style-type: none"> • Do what is in the best long-term interest of the community • Respect the chain of command • Work through the City Manager (or department heads with copy to City Manager) • Meet with the City Manager on a regular basis
Mayor	<ul style="list-style-type: none"> • Run the Council meetings • Serve as chief representative of the City • Meet with the City Manager regularly to discuss issues collaboratively • Work with the City Manager to anticipate future issues and plan the City's response • Carry out all of the roles listed for Council members
City Manager	<ul style="list-style-type: none"> • Implement Council policy • Handle day-to-day operations • Offer policy advice • Manage staff • Serve as chief executive officer of the municipal organization • Guide and develop staff and create a productive organization culture • Provide advice to the City Council • Help make the Council productive and successful and help each member of Council to succeed • Help staff achieve the Council's goals
City Attorney	<ul style="list-style-type: none"> • Represent the whole organization, not individual Council members or members of the public • Provide clear and accurate legal advice on a myriad of complex laws • Be fair and impartial • Provide full disclosure • Use candor and diplomacy

Break

The group took a break for lunch, during which, Executive Staff joined for the afternoon session.

Identify Opportunities and Challenges for Tracy

The facilitator framed the discussion by posing the following questions to the group:

- What are Tracy's significant opportunities in the next year?
- What are Tracy's major challenges in the next year?
- What would you like to see change in Tracy in the next four years?

Opportunities

Council members identified the following significant *opportunities for the next year*.

- Transit-Oriented Development (TOD)/Valley Link
- Crime prevention
- Equitable distribution of resources
- Disaster preparedness/safety plan
- Addressing homelessness
- Targeted recruitment of businesses
- Workforce education
- Focus on Measure V
- Affordable housing, housing policy
- Supportive youth
- Modern infrastructure
- Traffic calming
- Restoring trust
- Fiscal stability, balanced budget
- Civic engagement
- Revisit/clarify role of commissions
- Amenities – revisit and build
- Citizens academy
- Infrastructure
- Honest dialogue
- Economic development attraction

Challenges

Council members identified the following *challenges for the next year*.

- Election year
- Council turnover
- Finances – limitations
- Negotiations
- Communications
- Realism – limited staff capacity and financial resources

Looking Ahead

Council members identified the following *changes they would like to see in Tracy in the next four years*.

- Get amenities built (Measure V)
- Culture change – team trust
- Higher performing City (pride)(data)(metrics)
- Stronger finances
- Plans are implemented
- Succession plan for facilities
- Succession plan for people
- Grow our own
- Organization development
- Speedier development approval process; permit streamlining

City Manager Update

City Manager Jenny Haruyama provided an update on the state of the organization. The slides used in her presentation can be found in the attachment.

Brainstorm and Discuss Priorities for FY 2019-20

As a group, Council brainstormed priorities for the coming year. Before brainstorming, Council members all agreed that “Getting the financial house in order” and “Getting a Measure V amenity in the ground” must be a top priority. They added the code of conduct approval and implementation to the short list of top tier priorities.

Table 2. Top Tier Priorities

Top Tier Priorities	Dots
Plan to get financial house in order and educate the public	All
Measure V – get something in the ground	All
Adopt a Code of Conduct	All

Organizational priorities were written up on a flipchart and each councilmember was given three dots to allocate to their top three organizational priorities. The results of the dot voting exercise are summarized below in Table 3.

Table 3. Organizational Priorities

Organizational Priorities	Dots
Valley Link/infrastructure/traffic	5
Economic Development (targeted)	3
Transit-oriented development (TOD)	2
Homelessness strategy	2
Crime prevention plan (hold study session)	1
Governance; clarify role of commissions	1
Cannabis regulation	1
Complete the Emergency Preparedness Plan	0
Youth programs	0
Labor agreements	0
Workforce/affordable housing	0

The City Manager explained that staff will return with a work plan based on the full set of strategic priorities identified for the coming year, with timeframes consistent with staffing and budgetary resources for Council adoption at an upcoming City Council meeting.

Council will be able to adjust the work plan during the fiscal year with the understanding that the addition of new priorities and projects will require delaying or dropping others. Staff will commit to reporting on progress toward Council priorities quarterly.

Review Agreements and Commitments and Wrap Up

City staff was invited to make clarifying comments and the group reviewed the commitments made as a result of the day's workshop. The facilitators explain that following the workshop, Management Partners would produce this summary report on the discussion.

Attachment – City Manager’s Update Slides



Discussion Outline

1. State of the Organization
2. Citywide Strategic Efforts
 - Organizational Workload
 - Priority/Project Focus Areas
3. Financial Outlook and Sustainability

Think Inside the Triangle™




State of the Organization



- Resilient
- Adaptable
- Strong
- Opportunistic
- Vulnerable
- Transitional
- Uncertain
- Distracted

Think Inside the Triangle™



Citywide Efforts




90%

- Daily Operations
- Calls for Service, Code Enforcement
- Park/Building Maintenance
- Processing Applications


10%

- Community Outreach/Inquiries
- Council Decisions/Request Initiatives
- Citywide Strategic Priorities

Think Inside the Triangle™



Priority Focus Areas



- Governance Best Practices, Strategic Specific Plan, Downtown Revitalization
- Organizational Engagement & Health, Climate Change Preparedness, Financial Sustainability Initiatives
- Infrastructure Planning, Repair & Replacement, Alternative and Concrete Imaging, Recreational Activity & Program Planning
- Citizens Creativity, Engagement Efforts, Public Safety, Traffic Displacement Efforts, Safety Technology Initiatives

Think Inside the Triangle™



Budget Snapshot


TOTAL CITY BUDGET \$220 MILLION

Citywide Bond Rating Aa2



General Fund \$79M + Capital \$32M + Other Funds \$109M = Total Operating \$220M


Think Inside the Triangle™



Budget Snapshot

Why do we focus on the General Fund?

1. It is the largest fund.
2. It provides the only source of discretionary funding for the City.



General Fund \$79M, All Other Funds \$56M

General Fund Expenditures

Think Inside the Triangle™




Budget Snapshot

How do we spend General Fund dollars?




- 4% CULTURAL AND RECREATION SERVICES
- 12% INFRASTRUCTURE MAINTENANCE (Roads, Parks, Building Maintenance)
- 21% GENERAL GOVERNMENT
- 63% PUBLIC SAFETY (Police, Fire, EMS) Represents a majority of General Fund Budget

Think Inside the Triangle™



Financial Outlook

Are we living within our means?



Y-axis: \$0 to \$100,000. X-axis: FY 2017 to FY 2022.

Think Inside the Triangle™



Future Obligations
 What should financial focus be?

LONG-TERM OBLIGATIONS	ANNUAL FUNDING	REQUIRED	
Building, Vehicle/Equipment, Deferred Maintenance	\$3.5M-\$4M	\$9M-\$9.5M	\$2.5M-\$4M
Road & Street Maintenance	\$2.8M	\$6.8M	\$4M

OTHER LIABILITIES	ANNUAL CONTRIBUTION	AMOUNT UNFUNDED
Retirees Medical	\$450,000	\$1M
Pension	\$10.4M*	\$91.3M

*Expected to increase 5-10% over next 3 years

Long-Term Financial Sustainability

Key Financial Approaches

1. Focus on long term impacts.
2. Maintain adequate reserves to provide financial flexibility.
3. Use one-time revenues for one-time expenses.

The General Fund is in **cautionary** status.

The slide features a traffic light graphic with red, yellow, and green lights. The yellow light is illuminated, and an arrow points from the text 'The General Fund is in cautionary status.' to the yellow light.

AGENDA ITEM 3.J

REQUEST

CONSIDER AN ORDINANCE AMENDING THE COMPENSATION FOR THE COUNCIL AND MAYOR IN ACCORDANCE WITH STATE LAW

EXECUTIVE SUMMARY

Government Code section 36516 provides that the salaries of city council members of a general law city may be enacted by ordinance and establishes restrictions on the monthly salaries of council members based on the population of a city. The City of Tracy is a general law city. The salaries for the Tracy City Council and Mayor were last reviewed in 2006.

This item requests that Council review the salaries of its members and consider adopting an ordinance to amend these salaries in accordance with state law. A salary adjustment for Council members shall take effect after the next municipal election on November 3, 2020.

DISCUSSION

Government Code section 36516 provides that the salaries of city council members in a general law city may be enacted by ordinance. Section 36516 also establishes maximum monthly salary amounts for council members depending on population (\$600 per month for cities with a population between 75,001 and 150,000) and restricts annual increases to salaries to five percent (5%) per calendar year for each calendar year (simple, non-compounded basis) from when the last salary adjustment was enacted. Section 36516.5 further provides that council salary increases shall not take effect until one of the council members commences a new term (i.e. the next municipal election). Section 36516.1 authorizes additional compensation for a directly elected mayor in recognition of their mayoral duties. The Attorney General's Office has opined that adjustments to the additional compensation received by a mayor can take effect immediately. (See 89 Ops. Cal. Atty. Gen. 159). State law does not allow automatic future increases in salary (Section 36516(a)(4)). Section 6.1.2 of the Council's recently adopted Code of Conduct states that the salaries of the Mayor and Council shall be reviewed every two years.

Currently the monthly salaries of Tracy Council members are \$585. The Mayor receives an additional \$100 per month. These salary amounts were established pursuant to Ordinance 1094 adopted on April 18, 2006.

Pursuant to state law, the monthly salaries of Council members may be increased up to \$351, which is a sixty percent (60%) increase over the current amount of \$585. This would result in a monthly salary of \$936.

	Current Monthly Salary	Allowable Increase (5% x 12 years)	Total Maximum Salary Allowed
Council Members	\$585	\$351	\$ 936
Mayor	\$685	\$351	\$1,036

The Council may elect to increase its salaries to the maximum amount of \$936 (an increase of \$351). If approved, the Mayor's total salary would be \$1,036. Staff has prepared a draft ordinance (Attachment A) that would codify the salaries of Council Members and the Mayor in the Tracy Municipal Code. The draft includes language setting Council salaries to the maximum amount allowed by state law (\$936) and maintains the additional compensation for the Mayor at \$100. This amount may be amended by Council at the meeting.

FISCAL IMPACT

Depending on Council's direction for an increase in salary, staff will make appropriate adjustment to the FY 2020/21 base budget as the salary increase would go into effect upon the commencement of newly elected City Council members' terms in December 2020

STRATEGIC PLAN

This agenda item is a routine operational item that does not relate to the Council's Strategic Plans.

RECOMMENDATION

Staff recommends Council consider the following options:

1. No increase in Council and Mayor monthly salaries; or
2. Increase Council Member monthly salaries by an amount between \$0 and \$351.
 - a. If so, introduce and waive the first reading of an ordinance amending Chapter 2.04 (City Council Organization and Procedure) of Title 2 (Administration) of the Tracy Municipal Code to add Section 2.04.060 "Council Member and Elected Mayor Compensation."

Prepared by: Leticia Ramirez, City Attorney

Reviewed by: Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT:

A - Proposed Ordinance

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 2.04 (CITY COUNCIL ORGANIZATION AND PROCEDURE) OF TITLE 2 (ADMINISTRATION) OF THE TRACY MUNICIPAL CODE TO ADD SECTION 2.04.060 "COUNCIL MEMBER AND ELECTED MAYOR COMPENSATION"

WHEREAS, On April 4, 2006, pursuant to Government code section 36516, the City Council of the City of Tracy adopted Ordinance No. 1094 setting the salary of Tracy City Council members at Five Hundred Eighty Five Dollars (585.00) per month; and

WHEREAS, Pursuant to Government Code section 36516.1 which permits an elected Mayor to receive additional compensation, the salary for the Mayor was set as an additional One Hundred Dollars (\$100) per month; and

WHEREAS, Pursuant to Government Code section 36516(a)(4) the City Council may set salaries for Council members up to Six Hundred Dollars (\$600.00) per month based on a population between 75,001 and 150,000; and

WHEREAS, The California Department of Finance determined the total population of the City of Tracy is 92,800 as of May 2019; and

WHEREAS, Pursuant to Government Code section 36516(c) any adjustment to council member salaries may not exceed an amount equal to five percent (5%) for each calendar year from the operative date of the last adjustment; and

WHEREAS, The last adjustment to the salaries of Tracy City Council members was operative on January 1, 2007, thus the maximum salary increase allowed under state law is a 60% percent increase of the current \$585 per month salaries for Council Members.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:

SECTION 1: The following shall be added as Section 2.04.060 to Chapter 2.04 of Title 2 of the Tracy Municipal Code:

"Section 2.04.060 Council Member and Elected Mayor Compensation:

- (a) The salary of each member of the City Council of the City of Tracy shall be set at Nine Hundred Thirty Six Dollars (\$936.00) per month.
- (b) The Mayor shall receive an additional \$100 per month in compensation."

SECTION 2: This ordinance shall take effect thirty (30) days after the final passage and adoption, however, pursuant to Government Code section 36516.5, this change in compensation shall be effective January 1, 2021, following certification of the results of the November 2020 City Council election.

SECTION 3. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 3rd day of December 2019, and finally adopted on the ____ day of _____, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.K

REQUEST

**CONSIDER URGENCY ORDINANCE TO PROVIDE TENANTS WITH JUST CAUSE
EVICTION PROTECTION AND INTERIM RENT STABILIZATION UNTIL ASSEMBLY BILL
1482 TAKES EFFECT ON JANUARY 1, 2020**

EXECUTIVE SUMMARY

The California Legislature passed the Tenant Protection Act of 2019, Assembly Bill 1482 (“AB 1482” or “the Act”), effective on January 1, 2020, which prohibits the eviction of tenants without “just cause” and prohibits owners of residential rental property from increasing rents each year more than five percent (5%) plus the percentage change in the cost of living or ten percent (10%), whichever is lower. Since AB 1482 was signed by Governor Newsom on October 8, 2019, tenants across the state, including in Tracy, have reported landlords evicting residents or increasing rents in anticipation of the bill taking effect.

On November 19, 2019, Councilmembers Ransom and Arriola and Mayor Pro Tem Young moved to bring this item to Council. This item requests that Council consider adopting an urgency ordinance to enact the AB 1482 provisions regarding “just cause” evictions and limits on rental rate increases in Tracy prior to January 1, 2020.

DISCUSSION

On September 11, 2019, the California Legislature passed the Tenant Protection Act of 2019, AB 1482, an act adding Sections 1946.2, 1947.12, and 1947.13 of the California Civil Code, effective on January 1, 2020, which prohibit the eviction of tenants without “just cause” and prohibit owners of residential rental property from increasing rents each year more than five percent (5%) plus the percentage change in the cost of living or ten percent (10%), whichever is lower, among other provisions regarding rental housing. (Attachment A). Governor Newsom signed AB 1482 on October 8, 2019.

A “just cause” eviction means the owner has a valid reason for terminating a tenancy. The bill differentiates between “at-fault” just cause evictions which are reasons under the control of the tenant and “no-fault” just cause evictions are reasons such as the owner deciding to withdraw the unit from the rental market or the owner intending to occupy the rental unit. AB 1482 requires that tenants who have lived in a unit for 12 months or more only be evicted for just cause, unless an exception applies. The bill also requires that owners who evict a tenant on no-fault just cause provide the tenant with relocation assistance.

AB 1482 also establishes a cap on rent increases that would allow a landlord to raise the rents by 5% per year plus the percentage change in the cost of living, or 10%, whichever is lower, unless the rental unit is exempt. The increase is tied to annual April/April Bay Area Consumer Price Index (CPI). Tracy is subject to the Bay Area CPI which increased by 4% from April 2018 to April 2019. This means under the bill rents can only be increased by 9% once AB 1482 becomes effective.

In addition to receiving Council direction to bring the urgency ordinance forward, the City received correspondence and messages on social media about tenants receiving no-fault eviction notices and landlords increasing rents in excess of the limits established by AB 1482. This issue was covered by the Tracy Press and the subject of a letter to the editor. (Attachment B).

Councilmember Ransom reached out to the City Attorney's Office and suggested that an exception be included in the proposed urgency ordinance. This exception can be found in subsection (d)(1) of Section 2 of the Ordinance that would exempt owners from the rental rate increase limit whose monthly financial obligations (mortgage, utilities, and insurance) exceed the current rental rate amount.

Proposed Urgency Ordinance

Subsection (b) of Government Code section 36937 allows an ordinance to take effect immediately, "if it is an ordinance ...[f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council." In this case, the City is experiencing rapidly increasing housing costs, a limited housing inventory, and a lack of affordable rental housing. By protecting tenants from evictions without just cause and prohibiting exorbitant rent increases implemented in anticipation of AB 1482, the City is taking action to stop the displacement of renters and ensure fairness and certainty in the Tracy rental housing market. The displacement of renters and instability in housing leads to homelessness; loss of community and familial relationships; financial hardship due to additional expenses associated with establishing a rental residence such as security deposits and applications fees; stress and anxiety for those affected, job insecurity due to increased commutes and need for work absences to address housing needs; and interruptions in the education of children in the affected homes.

The City Attorney's Office prepared the proposed urgency ordinance (Attachment C) that incorporates AB 1482's just cause eviction protections and rental rate increase limits. The exception proposed by Councilmember Ransom can be found in subsection (d)(1) of Section 2 of the Ordinance. If adopted, these provisions would take effect immediately. The rental rate increase limits would apply to any rent increase notices sent after October 8, 2019 when the Governor signed the bill that will take effect on or after December 3, 2019. The proposed ordinance would be repealed on January 1, 2020, once AB 1482 takes effect.

STRATEGIC PLAN

This item relates to Council's Strategic Plan Goal to Promote Public Health, Safety, and Community Welfare Throughout the Community.

FISCAL IMPACT

Staff will respond to any inquires from the public about this item and direct them to any applicable state and county resources.

RECOMMENDATION

Staff recommends that the City Council adopt an Urgency Ordinance providing tenants in Tracy with just cause eviction protection and interim rent stabilization until Assembly Bill 1482 takes effect on January 1, 2020 by a four-fifths (4/5) vote.

Prepared by: Leticia M. Ramirez, City Attorney

Reviewed by: Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT

- A – Assembly Bill 1482 – Tenant Protection Act of 2019
- B – Correspondence from the Public and Tracy Press Article and Letter to the Editor
- C – Proposed Urgency Ordinance

Assembly Bill No. 1482

CHAPTER 597

An act to add and repeal Sections 1946.2, 1947.12, and 1947.13 of the Civil Code, relating to tenancy.

[Approved by Governor October 8, 2019. Filed with Secretary of State October 8, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1482, Chiu. Tenant Protection Act of 2019: tenancy: rent caps.

Existing law specifies that a hiring of residential real property, for a term not specified by the parties, is deemed to be renewed at the end of the term implied by law unless one of the parties gives written notice to the other of that party's intention to terminate. Existing law requires an owner of a residential dwelling to give notice at least 60 days prior to the proposed date of termination, or at least 30 days prior to the proposed date of termination if any tenant or resident has resided in the dwelling for less than one year, as specified. Existing law requires any notice given by an owner to be given in a prescribed manner, to contain certain information, and to be formatted, as specified.

This bill would, with certain exceptions, prohibit an owner, as defined, of residential real property from terminating a tenancy without just cause, as defined, which the bill would require to be stated in the written notice to terminate tenancy when the tenant has continuously and lawfully occupied the residential real property for 12 months, except as provided. The bill would require, for certain just cause terminations that are curable, that the owner give a notice of violation and an opportunity to cure the violation prior to issuing the notice of termination. The bill, if the violation is not cured within the time period set forth in the notice, would authorize a 3-day notice to quit without an opportunity to cure to be served to terminate the tenancy. The bill would require, for no-fault just cause terminations, as specified, that the owner, at the owner's option, either assist certain tenants to relocate, regardless of the tenant's income, by providing a direct payment of one month's rent to the tenant, as specified, or waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due. The bill would require the actual amount of relocation assistance or rent waiver provided to a tenant that fails to vacate after the expiration of the notice to terminate the tenancy to be recoverable as damages in an action to recover possession. The bill would provide that if the owner does not provide relocation assistance, the notice of termination is void. The bill would except certain properties and circumstances from the application of its provisions. The bill would require an owner of residential property to provide prescribed notice to a tenant of the tenant's rights under these

provisions. The bill would not apply to residential real property subject to a local ordinance requiring just cause for termination adopted on or before September 1, 2019, or to residential real property subject to a local ordinance requiring just cause for termination adopted or amended after September 1, 2019, that is more protective than these provisions, as defined. The bill would void any waiver of the rights under these provisions. The bill would repeal these provisions as of January 1, 2030.

Existing law governs the hiring of residential dwelling units and requires a landlord to provide specified notice to tenants prior to an increase in rent. Existing law, the Costa-Hawkins Rental Housing Act, prescribes statewide limits on the application of local rent control with regard to certain properties. That act, among other things, authorizes an owner of residential real property to establish the initial and all subsequent rental rates for a dwelling or unit that meets specified criteria, subject to certain limitations.

This bill would, until January 1, 2030, prohibit an owner of residential real property from, over the course of any 12-month period, increasing the gross rental rate for a dwelling or unit more than 5% plus the percentage change in the cost of living, as defined, or 10%, whichever is lower, of the lowest gross rental rate charged for the immediately preceding 12 months, subject to specified conditions. The bill would prohibit an owner of a unit of residential real property from increasing the gross rental rate for the unit in more than 2 increments over a 12-month period, after the tenant remains in occupancy of the unit over a 12-month period. The bill would exempt certain properties from these provisions. The bill would require the Legislative Analyst's Office to submit a report, on or before January 1, 2030, to the Legislature regarding the effectiveness of these provisions. The bill would provide that these provisions apply to all rent increases occurring on or after March 15, 2019. The bill would provide that in the event that an owner increased the rent by more than the amount specified above between March 15, 2019, and January 1, 2020, the applicable rent on January 1, 2020, shall be the rent as of March 15, 2019, plus the maximum permissible increase, and the owner shall not be liable to the tenant for any corresponding rent overpayment. The bill would authorize an owner who increased the rent by less than the amount specified above between March 15, 2019, and January 1, 2020, to increase the rent twice within 12 months of March 15, 2019, but not by more than the amount specified above. The bill would void any waiver of the rights under these provisions.

The Planning and Zoning Law requires the owner of an assisted housing development in which there will be an expiration of rental restrictions to, among other things, provide notice of the proposed change to each affected tenant household residing in the assisted housing development subject to specified procedures and requirements, and to also provide specified entities notice and an opportunity to submit an offer to purchase the development prior to the expiration of the rental restrictions.

This bill would authorize an owner of an assisted housing development, who demonstrates, under penalty of perjury, compliance with the provisions described above with regard to the expiration of rental restrictions, to

establish the initial unassisted rental rate for units without regard to the cap on rent increases discussed above, but would require the owner to comply with the above cap on rent increases for subsequent rent increases in the development. The bill would authorize an owner of a deed-restricted affordable housing unit or an affordable housing unit subject to a regulatory restriction contained in an agreement with a government agency limiting rental rates that is not within an assisted housing development to establish the initial rental rate for the unit upon the expiration of the restriction, but would require the owner to comply with the above cap on rent increases for subsequent rent increases for the unit. The bill would repeal these provisions on January 1, 2030. The bill would void any waiver of the rights under these provisions. By requiring an owner of an assisted housing development to demonstrate compliance with specified provisions under penalty of perjury, this bill would expand the existing crime of perjury and thus would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Tenant Protection Act of 2019.

SEC. 2. Section 1946.2 is added to the Civil Code, to read:

1946.2. (a) Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied:

(1) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.

(2) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

(b) For purposes of this section, “just cause” includes either of the following:

(1) At-fault just cause, which is any of the following:

(A) Default in the payment of rent.

(B) A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.

(C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(D) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(E) The tenant had a written lease that terminated on or after January 1, 2020, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

(F) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat, as defined in subdivision (a) of Section 422 of the Penal Code, on or off the residential real property, that is directed at any owner or agent of the owner of the residential real property.

(G) Assigning or subletting the premises in violation of the tenant's lease, as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(H) The tenant's refusal to allow the owner to enter the residential real property as authorized by Sections 1101.5 and 1954 of this code, and Sections 13113.7 and 17926.1 of the Health and Safety Code.

(I) Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(J) The employee, agent, or licensee's failure to vacate after their termination as an employee, agent, or a licensee as described in paragraph (1) of Section 1161 of the Code of Civil Procedure.

(K) When the tenant fails to deliver possession of the residential real property after providing the owner written notice as provided in Section 1946 of the tenant's intention to terminate the hiring of the real property, or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the Code of Civil Procedure.

(2) No-fault just cause, which includes any of the following:

(A) (i) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.

(ii) For leases entered into on or after July 1, 2020, clause (i) shall apply only if the tenant agrees, in writing, to the termination, or if a provision of the lease allows the owner to terminate the lease if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, unilaterally decides to occupy the residential real property. Addition of a provision allowing the owner to terminate the lease as described in this clause to a new or renewed rental agreement or fixed-term lease constitutes a similar provision for the purposes of subparagraph (E) of paragraph (1).

(B) Withdrawal of the residential real property from the rental market.

(C) (i) The owner complying with any of the following:

(I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.

(II) An order issued by a government agency or court to vacate the residential real property.

(III) A local ordinance that necessitates vacating the residential real property.

(ii) If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering the order or need to vacate under clause (i), the tenant shall not be entitled to relocation assistance as outlined in paragraph (3) of subdivision (d).

(D) (i) Intent to demolish or to substantially remodel the residential real property.

(ii) For purposes of this subparagraph, “substantially remodel” means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

(c) Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.

(d) (1) For a tenancy for which just cause is required to terminate the tenancy under subdivision (a), if an owner of residential real property issues a termination notice based on a no-fault just cause described in paragraph (2) of subdivision (b), the owner shall, regardless of the tenant’s income, at the owner’s option, do one of the following:

(A) Assist the tenant to relocate by providing a direct payment to the tenant as described in paragraph (3).

(B) Waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due.

(2) If an owner issues a notice to terminate a tenancy for no-fault just cause, the owner shall notify the tenant of the tenant’s right to relocation assistance or rent waiver pursuant to this section. If the owner elects to waive the rent for the final month of the tenancy as provided in subparagraph (B) of paragraph (1), the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.

(3) (A) The amount of relocation assistance or rent waiver shall be equal to one month of the tenant’s rent that was in effect when the owner issued

the notice to terminate the tenancy. Any relocation assistance shall be provided within 15 calendar days of service of the notice.

(B) If a tenant fails to vacate after the expiration of the notice to terminate the tenancy, the actual amount of any relocation assistance or rent waiver provided pursuant to this subdivision shall be recoverable as damages in an action to recover possession.

(C) The relocation assistance or rent waiver required by this subdivision shall be credited against any other relocation assistance required by any other law.

(4) An owner's failure to strictly comply with this subdivision shall render the notice of termination void.

(e) This section shall not apply to the following types of residential real properties or residential circumstances:

(1) Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940.

(2) Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

(3) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.

(5) Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

(6) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(7) Housing that has been issued a certificate of occupancy within the previous 15 years.

(8) Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:

(A) The owner is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(B) (i) The tenants have been provided written notice that the residential property is exempt from this section using the following statement:

“This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (d)(5) and 1946.2 (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

(ii) For a tenancy existing before July 1, 2020, the notice required under clause (i) may, but is not required to, be provided in the rental agreement.

(iii) For any tenancy commenced or renewed on or after July 1, 2020, the notice required under clause (i) must be provided in the rental agreement.

(iv) Addition of a provision containing the notice required under clause (i) to any new or renewed rental agreement or fixed-term lease constitutes a similar provision for the purposes of subparagraph (E) of paragraph (1) of subdivision (b).

(9) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.

(f) An owner of residential real property subject to this section shall provide notice to the tenant as follows:

(1) For any tenancy commenced or renewed on or after July 1, 2020, as an addendum to the lease or rental agreement, or as a written notice signed by the tenant, with a copy provided to the tenant.

(2) For a tenancy existing prior to July 1, 2020, by written notice to the tenant no later than August 1, 2020, or as an addendum to the lease or rental agreement.

(3) The notification or lease provision shall be in no less than 12-point type, and shall include the following:

“California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.”

The provision of the notice shall be subject to Section 1632.

(g) (1) This section does not apply to the following residential real property:

(A) Residential real property subject to a local ordinance requiring just cause for termination of a residential tenancy adopted on or before September 1, 2019, in which case the local ordinance shall apply.

(B) Residential real property subject to a local ordinance requiring just cause for termination of a residential tenancy adopted or amended after September 1, 2019, that is more protective than this section, in which case the local ordinance shall apply. For purposes of this subparagraph, an ordinance is “more protective” if it meets all of the following criteria:

(i) The just cause for termination of a residential tenancy under the local ordinance is consistent with this section.

(ii) The ordinance further limits the reasons for termination of a residential tenancy, provides for higher relocation assistance amounts, or provides additional tenant protections that are not prohibited by any other provision of law.

(iii) The local government has made a binding finding within their local ordinance that the ordinance is more protective than the provisions of this section.

(2) A residential real property shall not be subject to both a local ordinance requiring just cause for termination of a residential tenancy and this section.

(3) A local ordinance adopted after September 1, 2019, that is less protective than this section shall not be enforced unless this section is repealed.

(h) Any waiver of the rights under this section shall be void as contrary to public policy.

(i) For the purposes of this section, the following definitions shall apply:

(1) “Owner” and “residential real property” have the same meaning as those terms are defined in Section 1954.51.

(2) “Tenancy” means the lawful occupation of residential real property and includes a lease or sublease.

(j) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 3. Section 1947.12 is added to the Civil Code, to read:

1947.12. (a) (1) Subject to subdivision (b), an owner of residential real property shall not, over the course of any 12-month period, increase the gross rental rate for a dwelling or a unit more than 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower, of the lowest gross rental rate charged for that dwelling or unit at any time during the 12 months prior to the effective date of the increase. In determining the lowest gross rental amount pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner of such unit of residential real property and accepted by the tenant shall be excluded. The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.

(2) If the same tenant remains in occupancy of a unit of residential real property over any 12-month period, the gross rental rate for the unit of residential real property shall not be increased in more than two increments over that 12-month period, subject to the other restrictions of this subdivision governing gross rental rate increase.

(b) For a new tenancy in which no tenant from the prior tenancy remains in lawful possession of the residential real property, the owner may establish the initial rental rate not subject to subdivision (a). Subdivision (a) is only applicable to subsequent increases after that initial rental rate has been established.

(c) A tenant of residential real property subject to this section shall not enter into a sublease that results in a total rent for the premises that exceeds the allowable rental rate authorized by subdivision (a). Nothing in this subdivision authorizes a tenant to sublet or assign the tenant's interest where otherwise prohibited.

(d) This section shall not apply to the following residential real properties:

(1) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.

(2) Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.

(3) Housing subject to rent or price control through a public entity's valid exercise of its police power consistent with Chapter 2.7 (commencing with Section 1954.50) that restricts annual increases in the rental rate to an amount less than that provided in subdivision (a).

(4) Housing that has been issued a certificate of occupancy within the previous 15 years.

(5) Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:

(A) The owner is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(B) (i) The tenants have been provided written notice that the residential real property is exempt from this section using the following statement:

“This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections

1947.12 (c)(5) and 1946.2 (e)(7) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

(ii) For a tenancy existing before July 1, 2020, the notice required under clause (i) may, but is not required to, be provided in the rental agreement.

(iii) For a tenancy commenced or renewed on or after July 1, 2020, the notice required under clause (i) must be provided in the rental agreement.

(iv) Addition of a provision containing the notice required under clause (i) to any new or renewed rental agreement or fixed-term lease constitutes a similar provision for the purposes of subparagraph (E) of paragraph (1) of subdivision (b) of Section 1946.2.

(6) A duplex in which the owner occupied one of the units as the owner’s principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(e) An owner shall provide notice of any increase in the rental rate, pursuant to subdivision (a), to each tenant in accordance with Section 827.

(f) (1) On or before January 1, 2030, the Legislative Analyst’s Office shall report to the Legislature regarding the effectiveness of this section and Section 1947.13. The report shall include, but not be limited to, the impact of the rental rate cap pursuant to subdivision (a) on the housing market within the state.

(2) The report required by paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(g) For the purposes of this section, the following definitions shall apply:

(1) “Owner” and “residential real property” shall have the same meaning as those terms are defined in Section 1954.51.

(2) “Percentage change in the cost of living” means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.

(3) “Tenancy” means the lawful occupation of residential real property and includes a lease or sublease.

(h) (1) This section shall apply to all rent increases subject to subdivision (a) occurring on or after March 15, 2019. This section shall become operative January 1, 2020.

(2) In the event that an owner has increased the rent by more than the amount permissible under subdivision (a) between March 15, 2019, and January 1, 2020, both of the following shall apply:

(A) The applicable rent on January 1, 2020, shall be the rent as of March 15, 2019, plus the maximum permissible increase under subdivision (a).

(B) An owner shall not be liable to the tenant for any corresponding rent overpayment.

(3) An owner of residential real property subject to subdivision (a) who increased the rental rate on that residential real property on or after March 15, 2019, but prior to January 1, 2020, by an amount less than the rental rate increase permitted by subdivision (a) shall be allowed to increase the rental rate twice, as provided in paragraph (2) of subdivision (a), within 12 months of March 15, 2019, but in no event shall that rental rate increase exceed the maximum rental rate increase permitted by subdivision (a).

(i) Any waiver of the rights under this section shall be void as contrary to public policy.

(j) This section shall remain in effect until January 1, 2030, and as of that date is repealed.

(k) (1) The Legislature finds and declares that the unique circumstances of the current housing crisis require a statewide response to address rent gouging by establishing statewide limitations on gross rental rate increases.

(2) It is the intent of the Legislature that this section should apply only for the limited time needed to address the current statewide housing crisis, as described in paragraph (1). This section is not intended to expand or limit the authority of local governments to establish local policies regulating rents consistent with Chapter 2.7 (commencing with Section 1954.50), nor is it a statement regarding the appropriate, allowable rental rate increase when a local government adopts a policy regulating rent that is otherwise consistent with Chapter 2.7 (commencing with Section 1954.50).

(3) Nothing in this section authorizes a local government to establish limitations on any rental rate increases not otherwise permissible under Chapter 2.7 (commencing with Section 1954.50), or affects the existing authority of a local government to adopt or maintain rent controls or price controls consistent with that chapter.

SEC. 4. Section 1947.13 is added to the Civil Code, to read:

1947.13. (a) Notwithstanding Section 1947.12, upon the expiration of rental restrictions, the following shall apply:

(1) The owner of an assisted housing development who demonstrates, under penalty of perjury, compliance with all applicable provisions of Sections 65863.10, 65863.11, and 65863.13 of the Government Code and any other applicable law or regulation intended to promote the preservation of assisted housing, may establish the initial unassisted rental rate for units in the applicable housing development. Any subsequent rent increase in the development shall be subject to Section 1947.12.

(2) The owner of a deed-restricted affordable housing unit or an affordable housing unit subject to a regulatory restriction contained in an agreement with a government agency limiting rental rates that is not within an assisted housing development may establish the initial rental rate for the unit upon the expiration of the restriction. Any subsequent rent increase for the unit shall be subject to Section 1947.12.

(b) For purposes of this section:

(1) “Assisted housing development” has the same meaning as defined in paragraph (3) of subdivision (a) of Section 65863.10 of the Government Code.

(2) “Expiration of rental restrictions” has the same meaning as defined in paragraph (5) of subdivision (a) of Section 65863.10 of the Government Code.

(c) This section shall remain in effect until January 1, 2030, and as of that date is repealed.

(d) Any waiver of the rights under this section shall be void as contrary to public policy.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

From: Hannah Kemp [REDACTED]
Sent: Thursday, October 31, 2019 9:22 AM
To: Tracy City Council
Subject: Mass No fault evictions

Hello,

My name is Hannah Kemp.

I have lived in Tracy for 19 years and I am writing To ask that you approve an emergency ban on no fault evictions until the new rent cap law goes into effect.

As I'm sure you are aware, there is a temporary loophole that landlords across the state have been taking advantage of in order to get around the new rent cap law.

The apartment building In which I live is a six unit building and four of the tenants, including myself, Received a 60 day notice to move out as the landlord intends on raising the rent by more than 50% of the current rent.

There are elderly people as well as a severely handicapped woman who has lived there for more than 15 years without issue yet we are being evicted right before the holidays.

This is a statewide issue and Los Angeles has already banned no fault evictions and many towns ; Redwood City, Milpitas, Gilroy, Sacramento, Pasadena etc are now catching on. We need the city's help! Please approve the moratorium banning all no fault evictions in the city of Tracy as it will invalidate all no fault 60 day evictions that have not expired.

Thank you.

Hannah L Kemp.
[REDACTED]

Sent from my iPhone

A renter's dilemma



GIVEN NOTICE: Hannah Kemp (right) talks to downstairs neighbors Connie and Michael Hays about the recent 60-day notices that most likely mean they will have to find new homes by Christmas.

Bob Brownne/Tracy Press

Delay in law to protect tenants translates to sudden rent hike

By Bob Brownne
Tracy Press

Hannah Kemp hadn't pictured herself as a tenant activist, but with less than two months to either find a new apartment or pay a steep increase in rent, she

feels there's no choice but to fight back.

A new statewide rent control law was designed to help people like Kemp, but on Oct. 27, the landlord of her downtown Seventh Street apartment build-

ing gave her and her neighbors a 60-day notice to move out, a legal maneuver that allows the landlord to clear out his property before the new law takes effect.

RENTERS, CONTINUED ON PAGE 4

RENTERS CONTINUED FROM COVER

Starting Jan. 1, 2020, her landlord will be forbidden to evict a tenant without just cause, nor could he raise rents by more than 10% in any given year, or 5% plus the cost-of-living percentage, whichever is lower.

The law is AB 1482, known as the Tenant Protection Act of 2019. Gov. Gavin Newsom signed the bill into law Oct. 8 after it passed the state Assembly and Senate on partisan votes.

Nearly all the Democrats in the state senate, with the exception of those who didn't participate in the vote, were in favor of the bill, and most of the Democrats in the Assembly endorsed the bill. The bill did not gain any Republican support in either the Assembly or the Senate.

Because the governor signed the law nearly three months before it was to take effect, landlords had time to legally issue the 60-day notices and clear out their units and then rent them out at higher rates.

That delay in implementing the new law is the reason Kemp and her 10-year-old daughter have until Christmas Eve to move out. For the single mother who commutes to her job as a corporate warehouse administrator in Livermore and lives paycheck to paycheck, the 60-day notice came as a shock.

"From that moment, I haven't stopped stressing over it and worrying," Kemp said. "My first reaction was, What am I going to do? The options that were given to me, in my specific situation, neither of them were options."

She said the building owner, Eric Biland of Redwood City, told her she could stay if she would agree to a monthly rent of \$1,400, closer to the market rate for a one-bedroom apartment in Tracy. Kemp said she paid \$700 a month when she moved in three years ago and now pays \$900. Another similar rent increase would be manageable, but an increase of \$500 a month is not.

"Leaving is also not an option, because having to pay rent for the two months that I'm trying to look for somewhere else to go is not going to allow me to save money for a down payment or a

"I can't leave because I can't afford it and I can't stay because I can't afford it. I will have nowhere else to go. That's a very hard situation to be in."

— Hannah Kemp
Seventh Street tenant who received a 60-day notice to leave her apartment. Her landlord plans to raise the rent by 55%.

security deposit on somewhere else," she said. "I can't leave because I can't afford it and I can't stay because I can't afford it. I will have nowhere else to go. That's a very hard situation to be in."

Her downstairs neighbor, Michael Hays, pays \$925 for the one-bedroom apartment that he and his wife, Connie, have lived in for seven years. Both are on disability, and Hays relies on Veterans Affairs benefits from his four years in the Air Force to pay his medical expenses that arise because of Parkinson's disease and heart problems.

Once he got over the shock of the 60-day notice, he drafted letters to send to the governor, Assemblywoman Susan Eggman and state Sen. Cathleen Galgiani.

"For about three days, I couldn't eat. I couldn't sleep right," he said, adding that even with his own health issues, he's more concerned about his wife, who is recovering from a fall that broke her legs.

"We'll die on the streets," he said. "There's no way with our health."

Biland did not respond to requests for an interview, but the letter he sent Kemp and other tenants said that the timing of the new law essentially forced landlords to issue the 60-day notices before the end of the year to anyone who was paying less than the market rate. Had he not issued those notices, the rents tenants pay now would be locked in as of Jan. 1 and future increases would be limited by the new law.

"Landlords are forced into raising rents to market rate for all of their units — otherwise, their properties will fall further and further behind in value," he wrote to his tenants in a memo that accompanied the 60-day notice.

Landlords using the 60-day notice provision to clear their properties so they can bring in new tenants at higher rents is nothing new, according to Robert Brooke-Munoz, director of San Joaquin Fair Housing.

"Tracy started years ago with rents going higher because of Bay Area people," Brook-Munoz said. "Now it has affected the whole San Joaquin Valley, especially Stockton, and in the past two years we've seen a lot of dramatic changes as far as rents going up and families given notice because of no rent control."

Brook-Munoz said that landlords had already been limited in how much they could raise rents on existing tenants, but before AB 1482, they could issue a 30-day notice to vacate for anyone renting for less than a year or a 60-day notice for someone who had been in an apartment for more than a year.

"There doesn't have to be a reason, which we know basically is just to raise the rent," he said. "It's not considered an eviction. It's just a legal way of an owner getting their property back."

"That's been happening for the past couple of years. With the influx of Bay Area people coming to the valley because it's more affordable, owners knew they could make their rents higher, but more affordable to Bay Area people."

"The last two years have been very hard for families in San Joaquin County."

Kemp said that she had found plenty of other people in the same situation she is in. She has also learned that some cities — including San Francisco, Oakland, San Jose and Sacramento — have their own rent control laws that protect renters from what is happening to her.

She's now searching for an advocate in government who can help pass an emergency ordinance for Tracy or San Joaquin County to give her and her neighbors a reprieve. She reached out to Councilwoman Rhodessa Ransom after both attended last week's meeting of the Tracy Community Homelessness Taskforce meeting at the Tracy Branch Library.

Kemp is also meeting with tenant advocacy groups that are helping her determine wheth-

er her landlord followed the letter of the law in his 60-day notices. If he didn't, she might get to stay in

her place a bit longer.

■ Contact Bob Browne at browne@tracypress.com or 830-4227.

YOUR VOICE

I hope and expect that the council will make protecting residents a high priority this holiday season, so that families can rest assured that they will have a home to live in come 2020.

Abram Diaz, Tracy

Protect Tracy tenants

EDITOR,

It is unacceptable that the Tracy City Council has not already passed an emergency ordinance to protect longtime Tracy residents from no-cause evictions. The state Legislature passed AB 1482, the Tenant Protection Act to prevent rent-gouging, in September and Gov. Gavin Newsom signed it in early October. The council has had more than a month to stop landlords from evicting hardworking people simply so they can raise rents and increase profits.

By failing to take a proactive approach, the council has left Tracy renters at the mercy of their landlords (at least until state protections go into effect in the new year). We all know Tracy has felt increased rent pressures as people from the Bay Area leave for more affordable towns. This has led to average rent increases for a two-bedroom apartment of about \$300 in the last five years and \$700 in the last eight years. These are no small increases for families living paycheck to paycheck.

AB 1482 is meant to provide stability for renters as the state and locals work to address the housing crisis. However, the fact that the protections don't kick in until Jan. 1, 2020, has allowed malevolent landlords to issue surprise evictions on Tracy families. Forward-thinking cities across the state were prepared and passed emergency ordinances to protect renters in their communities. How many more stories of evictions like Miss Kemp's (from your Nov. 15 article) will we have to hear before our local leadership finally decides to act?

ORDINANCE _____

AN URGENCY ORDINANCE OF THE CITY OF TRACY PROVIDING TENANTS WITH JUST CAUSE EVICTION PROTECTION AND INTERIM RENT STABILIZATION UNTIL ASSEMBLY BILL 1482 TAKES EFFECT ON JANUARY 1, 2020

WHEREAS, The City of Tracy ("City") is experiencing skyrocketing housing costs, a limited rental housing inventory, and a lack of affordable rental housing, and

WHEREAS, The California Legislature passed the Tenant Protection Act of 2019, Assembly Bill 1482 ("AB 1482" or "the Act"), an act adding Sections 1946.2, 1947.12, and 1947.13 of the California Civil Code, effective on January 1, 2020, which prohibits the eviction of tenants without "just cause" and prohibits owners of residential rental property from increasing rents each year more than five percent (5%) plus the percentage change in the cost of living or ten percent (10%), whichever is lower, and

WHEREAS, Since the passage of AB 1482, residents have reported increased no-fault eviction notices from landlords seeking to increase rents in excess of the rent increase limitations that will take effect pursuant to the Act on January 1, 2020, and

WHEREAS, The City desires to protect renters from no-fault evictions through December 31, 2019, in advance of the effective date of AB 1482, by only allowing just cause evictions in the City in order to prevent the further displacement of renters, and

WHEREAS, The City further desires to prohibit exorbitant rent increases prior to AB 1482 taking effect to assist tenants with fixed incomes and limited financial means and decrease housing instability in Tracy for vulnerable populations, and

WHEREAS, Pursuant to its police powers, the City Council has broad authority to maintain the public peace, health, and safety of its community and take action to preserve the quality of life of its residents, and

WHEREAS, The displacement of renters leads to increased housing instability which threatens the public peace, health and safety of the Tracy community because eviction may lead to homelessness; loss of community and familial relationships; financial hardship due to additional expenses associated with establishing a rental residence such as security deposits and applications fees; stress and anxiety for those affected, job insecurity due to increased commutes; the potential need for work absences to address housing needs; and interruptions in the education of children in the affected homes, and

WHEREAS, The early implementation of the protections established by AB 1482 will lead to increased certainty and fairness within the residential rental housing market in the City and thereby preserve the public peace, health or safety, and

WHEREAS, Government Code section 36937(b) authorizes the adoption of an urgency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by a four-fifths (4/5) affirmative vote of the Council, and

WHEREAS, This Urgency Ordinance seeks to immediately establish the rental protections that will go into effect on January 1, 2020 pursuant to AB 1482 within the City of

Tracy to (1) prohibit an owner of residential property (with specific exceptions) from terminating a tenancy without just cause, and (2) prohibit an owner of residential property from annually increasing rent more than 5% plus the percentage change in cost of living or ten percent (10%), whichever is lower, and

WHEREAS, an urgency ordinance that is effective immediately is necessary to counter the immediate threat to public peace, health, and safety created during the time period between the adoption of AB 1482 and the effective date of AB 1482 as failure to adopt this Urgency Ordinance could result in the displacement of the City's residents and community members;

NOW THEREFORE, The City Council of the City of Tracy does ordain as follows:

SECTION 1. Incorporation of Recitals and Findings.

- A. The City Council hereby finds that the recitals and statements of fact set forth in this Urgency Ordinance and accompanying staff report and attachments are true and correct, constitute a substantive part of this Urgency Ordinance, and are incorporated herein by this reference.
- B. The City Council hereby finds, determines, and declares that this Urgency Ordinance is necessary because:
 - 1. The City of Tracy is experiencing a lack of affordable housing and limited housing stock and increased housing insecurity as seen in the 72% increase in the homeless population in Tracy from 2017 to 2019. No-fault evictions and rent increases occurring in advance of the effective date of AB 1482 create more housing insecurity in Tracy and result in the loss of affordable housing.
 - 2. For the immediate preservation of the public peace, health and safety, the City Council finds that it is necessary to adopt an urgency ordinance regulating rental rate increases and just cause evictions, for all of the reasons set forth in the recitals above, which are hereby incorporated by reference.
 - 3. Without the imposition of this Urgency Ordinance, rental rate increases and evictions without just cause may result in the displacement of tenants who would be forced to find new housing in an already tight and expensive housing market before a non-urgency ordinance or AB 1482 would become effective, and would significantly increase the risk of residential tenants becoming homeless.
 - 4. There is a current and immediate threat to the public peace, health, safety and general welfare of the City and its residents due to the delayed effective date of AB 1482 which increases the risk of tenant displacement prior to January 1, 2020 thereby necessitating the immediate enactment of this Urgency Ordinance in order to protect tenants from no-fault evictions and rent gouging.

SECTION 2. Adoption of Just Cause Protections. The City Council of the City of Tracy hereby adopts the following Just Cause Eviction Protections that shall take effect immediately:

- (a) Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24

months, then this section shall only apply if either of the following are satisfied:

- (1) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.
- (2) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

(b) For purposes of this section, “just cause” includes either of the following:

- (1) At-fault just cause, which is any of the following:
 - (A) Default in the payment of rent.
 - (B) A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.
 - (C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.
 - (D) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.
 - (E) The tenant had a written lease that terminated on or after December 3, 2019, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.
 - (F) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat, as defined in subsection (a) of Section 422 of the Penal Code, on or off the residential real property that is directed at any owner or agent of the owner of the residential real property.
 - (G) Assigning or subletting the premises in violation of the tenant’s lease, as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.
 - (H) The tenant’s refusal to allow the owner to enter the residential real property as authorized by Sections 1101.5 and 1954 of the Civil Code, and Sections 13113.7 and 17926.1 of the Health and Safety Code.
 - (I) Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.
 - (J) The employee, agent, or licensee’s failure to vacate after their termination as an employee, agent, or a licensee as described in paragraph (1) of Section 1161 of the Code of Civil Procedure.
 - (K) When the tenant fails to deliver possession of the residential real property after providing the owner written notice as provided in Section 1946 of the Civil Code of the tenant’s intention to terminate the hiring of the real property, or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the Code of Civil Procedure.
- (2) No-fault just cause, which includes any of the following:
 - (A) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.
 - (B) Withdrawal of the residential real property from the rental market.
 - (C) (i) The owner is complying with any of the following:

- (I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.
- (II) An order issued by a government agency or court to vacate the residential real property.
- (III) A local ordinance that necessitates vacating the residential real property.
- (ii) If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering the order or need to vacate under clause (C), the tenant shall not be entitled to relocation assistance as outlined in paragraph (3) of subsection (d).
- (D) Intent to demolish or to substantially remodel the residential real property.
 - (i) For purposes of this subparagraph, "substantially remodel" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, State, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.
- (c) Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.
- (d) (1) For a tenancy for which just cause is required to terminate the tenancy under subsection (a), if an owner of residential real property issues a termination notice based on a no-fault just cause described in paragraph (2) of subsection (b), the owner shall, regardless of the tenant's income, at the owner's option, do one of the following:
 - (A) Assist the tenant to relocate by providing a direct payment to the tenant as described in paragraph (3), below.
 - (B) Waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due.
- (2) If an owner issues a notice to terminate a tenancy for no-fault just cause, the owner shall notify the tenant of the tenant's right to relocation assistance or rent waiver pursuant to this section. If the owner elects to waive the rent for the final month of the tenancy as provided in subparagraph (B) of paragraph (d)(1), the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.
- (3) (a) The amount of relocation assistance or rent waiver shall be equal to one month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy. Any relocation assistance shall be provided within 15 calendar days of service of the notice.

- (b) If a tenant fails to vacate after the expiration of the notice to terminate the tenancy, the actual amount of any relocation assistance or rent waiver provided pursuant to this subsection shall be recoverable as damages in an action to recover possession.
- (c) The relocation assistance or rent waiver required by this section shall be credited against any other relocation assistance required by any other law.
- (4) An owner's failure to strictly comply with this subsection shall render the notice of termination void.
- (d) This Section shall not apply to any of the following residential real properties or residential circumstances:
 - (1) Transient and tourist hotel occupancy as defined in subsection (b) of Section 1940 of the Civil Code.
 - (2) Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.
 - (3) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.
 - (4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.
 - (5) Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.
 - (6) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.
 - (7) Housing that has been issued a certificate of occupancy within the previous 15 years.
 - (8) Residential real property that is alienable separate from the title to any other dwelling unit, provided that the following applies:
 - (a) The owner is not any of the following:
 - (i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.
 - (ii) A corporation.
 - (iii) A limited liability company in which at least one member is a corporation.
- (e) Any waiver of the rights under this Section shall be void as contrary to public policy.
- (f) For the purposes of this Section, the following definitions shall apply:
 - (1) "Owner" and "residential real property" have the same meaning as those terms are defined in Civil Code Section 1954.51.
 - (2) "Tenancy" means the lawful occupation of residential real property and includes a lease or sublease.

SECTION 3. Adoption of Rental Rate Limits. The City Council of the City of Tracy hereby adopts the following Rental Rate Limits which shall take effect immediately:

- (a) Subject to subsection (b), an owner of residential real property shall not increase the gross rental rate for a dwelling or a unit more than 5 percent plus the percentage change

in the cost of living, or 10 percent, whichever is lower, of the lowest gross rental rate charged for that dwelling or unit at any time during the 12 months prior to the effective date of the increase. In determining the gross rental amount pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner of such unit of residential real property and accepted by the tenant shall be excluded. The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.

- (b) For a new tenancy in which no tenant from the prior tenancy remains in lawful possession of the residential real property, the owner may establish the initial rental rate not subject to subsection (a). Subsection (a) is only applicable to subsequent increases after that initial rental rate has been established.
- (c) A tenant of residential real property subject to this section shall not enter into a sublease that results in a total rent for the premises that exceeds the allowable rental rate authorized by subsection (a). Nothing in this subsection authorizes tenant to sublet or assign the tenant's interest where otherwise prohibited.
- (d) This section shall not apply to the following residential real properties:
 - (1) Residential properties in which the owner's total documented monthly financial obligations, defined as mortgage, utilities, and insurance, for said property, exceed the monthly rent charged to existing tenants.
 - (2) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.
 - (3) Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.
 - (4) Housing that has been issued a certificate of occupancy within the previous 15 years.
 - (5) Residential real property that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subsection as specified in subsection (b), (d), or (f) of Section 11004.5 of the Business and Professions Code, provided that the following applies:
 - (A) The owner is not any of the following:
 - (i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.
 - (ii) A corporation.
 - (iii) A limited liability company in which at least one member is a corporation.
 - (6) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.
- (e) An owner shall provide notice of any increase in the rental rate, pursuant to subsection (a), to each tenant in accordance with Civil Code 827.
- (f) For the purposes of this Section, the following definitions shall apply:
 - (1) "Owner" and "residential real property" shall have the same meaning as those terms are defined in Civil Code Section 1954.51.

(2) "Tenancy" means the lawful occupation of residential real property and includes a lease or sublease.

(3) "Percentage change in the cost of living" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.

(g) (1) This Section shall apply to all rent increases subject to subsection (a) effective on or after December 3, 2019.

(2) In the event that an owner has sent any rent increase notice on or after October 8, 2019 to increase the rent effective on or after December 3, 2019, the increased rent may not be by more than the amount permissible under subsection (a) and the rental rate increase will be deemed to be the rental rate increase permitted by subsection (a).

(h) Any waiver of the rights under this Section shall be void as contrary to public policy.

SECTION 4. Enforcement. An owner's failure to comply with any requirement of this Urgency Ordinance, is a complete affirmative defense in an unlawful detainer or other action brought by the owner to recover possession of the rental unit. A tenant may bring a civil suit in the courts of the state alleging that an owner has violated any of the provisions of this Urgency Ordinance including that the owner has demanded, accepted, received, or retained a payment or payments in excess of Rental Rate Limit Provisions.

SECTION 5. Effectiveness of Urgency Ordinance. This Urgency Ordinance shall take effect immediately upon its passage by an affirmative four-fifths vote of Council and remain in effect until December 31, 2019. On January 1, 2020, this Urgency Ordinance shall be repealed and shall be of no further force and effect.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Urgency Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this Urgency Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7. California Environmental Quality Act. The City Council finds that this Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines section 15061(c)(3) because Council finds that there is no possibility that the implementation of this Urgency Ordinance will may have a significant effect on the environment.

SECTION 8. Publication. This Ordinance shall be published in accordance with Government Code section 36933.

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The foregoing Urgency Ordinance _____ was adopted on the 3rd day of December, 2019, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK
