

June 3, 2025

Agenda Item 3.C

RECOMMENDATION

Appointing L. David Nefouse as the new City Attorney, effective July 14, 2025, and approving an at-will employment agreement between L. David Nefouse and the City of Tracy for a bi-weekly salary of \$11,138.46

EXECUTIVE SUMMARY

This item is for the City Council to appoint L. David Nefouse as the new City Attorney for the City of Tracy and also approve an at-will employment agreement between Mr. Nefouse and the City of Tracy.

The recruiting firm of Peckham and McKenney was retained to conduct a recruitment and selection process for the City Attorney position. After an extensive search and recruitment effort, David Nefouse was selected as the preferred candidate from a pool of candidates to be Tracy's new City Attorney.

BACKGROUND AND LEGISLATIVE HISTORY

Currently Mr. Nefouse is serving as City Attorney for the City of Manteca. He has previously served as Deputy County Counsel for Alameda County, Assistant County Counsel for Santa Cruz County, and as Senior Litigation Associate for Wilson, Sonsini, Goodrich & Rosati PC in Palo Alto. Mr. Nefouse has nearly twenty years of experience providing legal counsel to government agencies in addition to experience in the private sector. He received his Juris Doctor from Duke University School of Law and holds a Bachelor of Arts in History and Political Science from Duke University.

ANALYSIS

The at-will employment agreement includes the terms and conditions proposed in the form of an agreement shown as Attachment A. The agreement specifies a bi-weekly salary of \$11,138.46 along with certain employment benefits. Below are the key terms of the proposed agreement:

- Effective July 14, 2025, Mr. Nefouse shall serve as the City Attorney. However, either party may terminate the agreement earlier upon giving written notice to the other party.
- Mr. Nefouse shall receive a bi-weekly salary of \$11,138.46 during the term of the Agreement and five percent (5%) of base salary paid into a deferred compensation account;
- Mr. Nefouse shall receive the same health, dental, vision, disability and life insurance benefits provided in the Department Head Compensation and Benefit Plan during the term of the Agreement.
- The City shall contribute to Mr. Nefouse's retirement in accordance with the appropriate California Public Employees' Retirement System (CalPERS) formula as required to CalPERS during the term of the Agreement.
- Accrue 96 hours of sick leave per year, prorated per pay period.
- Accrue Management Leave in accordance with the Department Heads Compensation and Benefit Plan.

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- Accrue all leave and compensate for unused accrued vacation at the base rate of pay on the date of separation. Entitled to “buy back” vacation and Management Leave as permitted under the Department Heads Compensation and Benefits Plan.
- Receive the same monthly car allowance as provided in the Department Heads Compensation and Benefit Plan.
- Receive six (6) month severance unless he voluntarily resigns or retires or is terminated for cause as defined.

STRATEGIC PLAN

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

FISCAL IMPACT

There are sufficient budgeted funds to pay the salary and benefits for the City Attorney position.

RECOMMENDATION

Appointing L. David Nefouse as the new City Attorney, effective July 14, 2025, and approving an at-will employment agreement between L. David Nefouse and the City of Tracy for a bi-weekly salary of \$11,138.46.

Prepared by: Kimberly Murdaugh, Director of Human Resources

Reviewed by: Sara Castro, Director of Finance
Arturo Sanchez, Assistant City Manager
Andrew Shen, Interim City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Employment Agreement for L. David Nefouse

EMPLOYMENT AGREEMENT
BETWEEN
L. DAVID NEFOUSE AND THE CITY OF TRACY

This Agreement (hereinafter "Agreement") is made and entered into between the City of Tracy, a municipal corporation ("CITY"), and **L. DAVID NEFOUSE**, an individual ("EMPLOYEE"), both of whom agree as follows:

RECITALS:

- A. The CITY Council has conducted an extensive recruitment process for the City Attorney position and has carefully evaluated EMPLOYEE's knowledge, experience, administrative skills and abilities and has decided to appoint EMPLOYEE to the position of City Attorney.
- B. The City desires to secure and retain the services of EMPLOYEE and to provide inducement for EMPLOYEE to remain in employment, encourage productivity by assuring EMPLOYEE's morale and peace of mind with respect to future security, and act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, while also providing a just means for terminating EMPLOYEE's services as needed.
- C. The parties have entered into this Agreement in recognition of the benefits accruing to each party. This Agreement will ensure the retention of EMPLOYEE's services as City Attorney and the performance of those duties in a manner which serves the best interests of the CITY, subject to the direction of the City Council.
- D. EMPLOYEE desires employment as the City Attorney of the City of Tracy.

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth below, the parties agree as follows:

Section 1: Duties.

CITY agrees to employ **L. DAVID NEFOUSE** as City Attorney of CITY as of **July 14, 2025** as set forth in this Agreement, to perform the functions and duties of City Attorney, as set forth in Government Code Section 41801, et seq., and the Tracy Municipal Code.

Section 2: Term.

Except as otherwise expressly stated in this Agreement, the term of this Agreement shall be for an indefinite period of time. However, the EMPLOYEE serves at the will of City Council subject to the terms of Section 6 and 8 of this agreement and Chapter 2.10 of the Tracy Municipal Code, as amended. As provided in Section 6(A), EMPLOYEE may resign at any time from the EMPLOYEE's position with the CITY if EMPLOYEE provides the CITY with 30 days written notice in advance and, in which

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event, EMPLOYEE forgoes any right to severance pay under Section 8.

Section 3: Compensation and Benefits.

- A. Base Salary. The CITY agrees to pay EMPLOYEE an annual base salary of \$289,600, payable in accordance with a pre-determined schedule applicable to all CITY employees.
- B. Cost of Living Adjustments. CITY agrees to increase the base salary automatically with any Cost of Living Adjustments provided to other employees covered by the most currently adopted Department Heads Compensation and Benefit Plan. Such increases shall automatically be reflected in the CITY's salary schedule.
- C. Merit Increases in Compensation. CITY may increase the base salary and/or other benefits of EMPLOYEE in the amount and to the extent as the City Council may determine that it is desirable to do so on the basis of an annual performance evaluation and salary review.
- D. Health, Disability and Life Insurance Benefits. Upon commencement of employment, EMPLOYEE is entitled to receive the same health, dental, vision, disability and life insurance benefits provided to other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.
- E. Car Allowance. EMPLOYEE is entitled to receive a car allowance of \$500 per month, prorated per pay period.
- F. Cell Phone Allowance. EMPLOYEE shall be entitled, at EMPLOYEE's option, to either a Cell Phone allowance of \$660 per year, prorated and allocated per pay period, or use, for CITY business, of a CITY-owned Cellular Phone and to be paid for by the CITY.
- G. Management Benefit Plan. EMPLOYEE is entitled to receive an annual Management Benefit allowance in the amount of \$2,960 per calendar year to be used at EMPLOYEE's discretion for job related expenses or for professional development. The monies will be prorated and allocated per pay period and may be used for job-related expenses including computer hardware and software, professional development opportunities, and other miscellaneous job-related expenses.
- H. Accrual and Use of Leave.
 1. Vacation Credit and Accrual. EMPLOYEE shall accrue vacation leave in the same amount as provided to other employees covered by the most currently adopted Department Heads Compensation and

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Benefits Plan.

2. Sick Leave Credit and Accrual. EMPLOYEE shall accrue sick leave at the rate of 96 hours per year, prorated per pay period.
3. Management Leave. It is recognized that EMPLOYEE must devote a great deal of time outside the normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to accrue and use Management Leave as contained in the most currently adopted Department Heads Compensation and Benefits Plan.

Upon commencing employment, EMPLOYEE shall be credited with a prorated amount of 59.23 hours of management leave for the remainder of the 2025 calendar year.

4. Use of Leave. If EMPLOYEE's employment is terminated, either voluntarily or involuntarily, he shall be compensated for all unused accrued vacation leave at the rate of pay on the date of separation. During employment, EMPLOYEE shall be entitled to "buy back" vacation and Management Leave in the same manner as permitted for other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.
- I. Deferred Compensation. CITY shall contribute 5% of EMPLOYEE's base salary to EMPLOYEE's 401a deferred compensation plan.
- J. CalPERS (California Public Employees' Retirement System). EMPLOYEE shall pay the full employee contribution share under the applicable CalPERS formula, as provided in the most currently adopted Department Heads Compensation and Benefits Plan.

Section 4: Performance Evaluation.

It is mutually agreed that the adopted operating budget for each fiscal year generally contains the goals and objectives developed by the CITY. Within 90 days of the date of this Agreement, or at some other mutually agreeable time, EMPLOYEE and the City Council (or an ad hoc committee of the City Council) will meet to discuss and establish performance goals for EMPLOYEE. A facilitator selected by EMPLOYEE and agreeable to the City Council may facilitate the discussion. The fees for the facilitator shall be paid by the CITY. Thereafter, the City Council and EMPLOYEE shall meet on at least an annual basis to evaluate EMPLOYEE's performance. The City Council shall provide EMPLOYEE with a written performance evaluation in such format as the City Council may determine. If the City Council concludes EMPLOYEE'S job performance warrants a salary increase for merit, the City Council may grant a merit adjustment in

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an amount determined by the City Council, to be effective on a date determined by the City Council. Such merit adjustments may be granted on one or more occasions during the term of this Agreement.

Section 5: General Business Expenses. CITY agrees to budget for and to pay for professional dues and subscriptions of EMPLOYEE for continuing and full participation in national, regional, state and local associations, conferences, and organizations necessary and desirable for EMPLOYEE's continued professional participation, growth, and advancement, and for the good of the CITY. City Council shall review EMPLOYEE's requests for membership, professional development, and attendant travel thereto during the normal budget review process, and the CITY shall not unreasonably deny such requests. CITY agrees to pay all bar fees, continuing legal education fees and costs associated with maintaining the California law license of EMPLOYEE in good standing.

Section 6: Separation of Employment.

A. EMPLOYEE may voluntarily separate from CITY service by delivering a letter of resignation to the City Council not less than 30 days prior to the effective date of the resignation. This agreement to provide a 30-day notice of resignation is an additional consideration for various benefits provided herein to EMPLOYEE.

B. EMPLOYEE serves at the pleasure of City Council, and may be terminated at any time without cause, with or without prior notice, subject to the severance pay provision set forth in Section 8. EMPLOYEE acknowledges and agrees that as City Attorney, EMPLOYEE serves in an at-will capacity, with no expectation of continued employment, and CITY has made no implied or express oral or written assurances regarding length of employment as City Attorney. EMPLOYEE understands and agrees that he is exempt from any pre- or post-separation due process rights (such as Skelly rights, etc.), and/or appeal, dispute resolution or grievance rights which exist under EMPLOYER'S personnel rules.

C. The City Council may terminate this Agreement upon the occurrence of any of the following events or circumstances:

- (i) the death of EMPLOYEE;
- (ii) the loss by EMPLOYEE of legal capacity;
- (iii) conviction of a felony;
- (iv) the breach of a material duty by the EMPLOYEE;
- (v) repeated unexcused absences from the City Attorney's office and duties;
- (vi) conviction of an illegal act involving personal gain to EMPLOYEE;

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- (vii) EMPLOYEE's disbarment or suspension by the State Bar of California or
- (viii) EMPLOYEE no longer has an active license to practice law from the State Bar of California.

D. In the event of the termination of this Agreement for one of the causes enumerated in Section 6(C), EMPLOYEE is entitled to the compensation earned by EMPLOYEE before the date of termination as provided for in this Agreement computed pro rata up to and including that date; EMPLOYEE shall be entitled to no further compensation after the date of termination.

Section 7: Reimbursement to CITY; Compliance with AB 1344.

In accordance with Government Code sections 53243, 53243.1 and 53243.2:

A. If EMPLOYEE is placed on paid administrative leave pending an investigation, EMPLOYEE shall reimburse the pay to CITY if EMPLOYEE is subsequently convicted of a crime involving the abuse of his office or position; and

B. If this Agreement is terminated, any cash settlement related to the termination that EMPLOYEE may receive from CITY must be fully reimbursed to CITY if EMPLOYEE is subsequently convicted of a crime involving an abuse of EMPLOYEE'S office or position.

In addition, pursuant to Government Code Section 3511.2, and notwithstanding any other provisions of this Agreement, CITY is prohibited through this Agreement or any amendment thereto or in any other way to provide an automatic renewal of this Agreement that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits established by Section 3511.2. Government Code Section 3511.2 is hereby incorporated into this Agreement.

Section 8: Severance.

If EMPLOYEE is terminated by the City Council for reasons other than those enumerated in Section 6(C) above, EMPLOYEE is entitled to six (6) months of severance pay.

For the purpose of this Agreement, "severance pay" shall include base salary, CITY'S contribution toward health benefit premiums, CITY-paid life insurance premium, and CITY's CALPERS retirement contributions subject to the limitations in Government Code Sections 53260 and 53261. The severance pay shall be paid in a lump sum payment to EMPLOYEE by the CITY within fifteen

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working days after the effective date of EMPLOYEE's termination or as agreed to by CITY and EMPLOYEE. As a prerequisite for CITY paying severance pay under this Section 8, EMPLOYEE shall sign and deliver to CITY a general release agreement in the form attached hereto as Exhibit A and approved by CITY.

Section 9: General Provisions.

A. Indemnification. CITY shall defend, hold harmless, and indemnify EMPLOYEE against any tort, professional liability claim, or demand or other legal or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Attorney; provided that such indemnity shall not extend to EMPLOYEE's willful wrongdoing or willful misconduct. The CITY in its sole discretion may compromise and settle any such claim or suit. It is expressly understood that the CITY is not responsible for any award of punitive damages.

Notwithstanding the foregoing, the CITY may, but shall not be required to, indemnify and/or defend EMPLOYEE under the circumstances described and conditions set forth in Government Code Sections 995.2, 995.4, 995.6, 995.8, and 995.9. Additionally, notwithstanding the foregoing, this Agreement shall not be deemed or construed to constitute a waiver of the rights the City possesses under Government Code Sections 818 and 825.

B. Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under Title 2 of the Tracy Municipal Code.

C. Notices. Notices under this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY OF TRACY - EMPLOYER:

City Council of the City of Tracy
Attention: Mayor
333 Civic Center Plaza
Tracy, CA 95376

L. David Nefouse - EMPLOYEE:

L. David Nefouse
(address on file with City Clerk)

With a copy to: City Manager
333 Civic Center Plaza
Tracy, CA 95376

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Alternatively, notices required under this Agreement, may be personally served in the same manner as is applicable to civil litigation.

D. Entire Agreement. This Agreement sets forth and establishes the entire understanding between the CITY and EMPLOYEE relating to the employment of EMPLOYEE by the CITY. Any prior discussions or representations by or between the parties are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid and binding.

E. Controlling Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in San Joaquin County.

F. Amendments. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. The amendments shall be incorporated and made a part of this Agreement.

G. Heirs. This Agreement is binding upon and inures to the benefit of the heirs at law and executors of EMPLOYEE. If the EMPLOYEE dies prior to the expiration of the term of employment, any monies that may be due EMPLOYEE from CITY under this Agreement as of the date of EMPLOYEE'S death shall be paid to his executors, administrators, heirs, personal representatives, successors, and assigns.

H. Severability. If any provision or portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected but shall remain in effect.

I. Written Materials. All written, printed, and electronic materials used by EMPLOYEE in performing duties for CITY are and shall remain the property of CITY. Upon termination of employment, EMPLOYEE shall return such material to CITY.

J. Waiver. The parties shall not be deemed to have waived any of their respective rights under this Agreement unless the waiver is in writing and signed by such waiving party.

K. Effective Date. This Agreement shall become effective upon execution by both parties, provided however, that EMPLOYEE's first day of employment shall be July 14, 2025.

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CITY OF TRACY (EMPLOYER)

Signed by:

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Dan Arriola, Mayor

7/23/2025 | 9:47 AM PDT

Dated: _____

L. DAVID NEFOUSE (EMPLOYEE)

DocuSigned by:

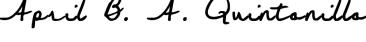
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L. David Nefouse

5/29/2025 | 2:29 PM PDT

Dated: _____

ATTEST:

Signed by:

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April Quintanilla, City Clerk

7/23/2025 | 9:59 AM PDT

Dated: _____

APPROVED AS TO FORM:

Signed by:

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Andrew Shen, Interim City Attorney

7/23/2025 | 9:48 AM PDT

Dated: _____