

Tuesday, February 19, 2019, 7:00 PM

Council Chambers, 333 Civic Center Plaza, Tracy

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

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. SWEARING IN OF POLICE OFFICERS

1. CONSENT CALENDAR

- 1.A. ADOPTION OF FEBRUARY 5, 2019 CLOSED SESSION AND REGULAR MEETING MINUTES, AND FEBRUARY 8, 2019 CLOSED SESSION MINUTES
- 1.B. ACCEPT THE CONSTRUCTION OF THE OVERLAY PROJECT, CIP 73140A, FEDERAL PROJECT NUMBER STPL-5192(041), AND TRAFFIC LOOP INSTALLATION, CIP 72099, COMPLETED BY KNIFE RIVER CONSTRUCTION, OF STOCKTON, CALIFORNIA, AUTHORIZE AN APPROPRIATION OF \$52,540 FROM GAS TAX FUND 245 TO CIP 73140A, AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AUTHORIZE THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND AUTHORIZE THE FINANCE DEPARTMENT TO CLOSE THE PROJECTS
- 1.C. APPROVE PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE FOLLOWING SPECIAL EVENTS: CITY OF TRACY GIRLS' NIGHT OUT ON MARCH 15, 2019; TRACY CITY CENTER ASSOCIATION TAPS ON TENTH ON APRIL 6, 2019; CITY OF TRACY DOWNTOWN BLOCK PARTIES ON MAY 3, MAY 31, JUNE 14, JULY 12, AND AUGUST 9, 2019; TRACY CHAMBER OF COMMERCE 4TH OF JULY DAY IN THE PARK ON JULY 4, 2019; CITY OF TRACY BLUES, BREWS & BBQ ON SEPTEMBER 7, 2019; TRACY CITY CENTER ASSOCIATION DOWNTOWN TRACY WINE STROLL ON SEPTEMBER 21, 2019; AND CITY OF TRACY GIRLS' NIGHT OUT – WITCHES AND BROOMSTICKS ON OCTOBER 18, 2019
- 1.D. ACCEPT CORRAL HOLLOW ROAD OVERLAY IMPROVEMENTS FOR THE TRACY HILLS PHASE IA PROJECT, CONSTRUCTED BY TRACY PHASE I, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ASSUME RESPONSIBILITY FOR THEIR FUTURE MAINTENANCE AND REPAIR, AND AUTHORIZE THE CITY ENGINEER TO RELEASE BONDS
- 1.E. DECLARE CERTAIN VEHICLES AND EQUIPMENT AS SURPLUS AND APPROVE THEIR SALE
- 1.F. APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACY HILLS VILLAGE 2, TRACT 3888, AND AUTHORIZE THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

- 1.G. APPROVE THE PARK IMPROVEMENT AND REIMBURSEMENT AGREEMENT FOR TRACY HILLS NEIGHBORHOOD PARK 2, AND AUTHORIZE THE CITY CLERK TO FILE THE AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER
- 1.H. APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACY HILLS VILLAGE 7A, TRACT 3955, AND AUTHORIZE THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER
- 1.I. AUTHORIZE STAFF TO SUBMIT AN APPLICATION FOR THE FEDERAL GRANT, "INFRASTRUCTURE FOR REBUILDING AMERICA" COMPETITIVE GRANT PROGRAM FOR THE CENTRAL VALLEY GATEWAY PROJECT AND FURTHER AUTHORIZE THE CITY MANAGER TO EXECUTE ALL GRANT-RELATED DOCUMENTS AND AGREEMENTS
- 1.J. APPROVE A LEAVE OF ABSENCE FOR TRACY PLANNING COMMISSIONER RAJWINDER KAUR
2. ITEMS FROM THE AUDIENCE
3. REGULAR AGENDA
 - 3.A. CONTINUED PUBLIC HEARING TO CONSIDER INTRODUCING AN ORDINANCE APPROVING AN AMENDMENT TO THE ELLIS SPECIFIC PLAN FENCE REGULATIONS AND MINIMUM LOT WIDTH REQUIREMENTS
 - 3.B. PUBLIC HEARING TO CONSIDER EXTENDING AN URGENCY ORDINANCE TEMPORARILY PROHIBITING OUTDOOR CULTIVATION, COMMERCIAL CULTIVATION AND MANUFACTURING, AND SALES AND DELIVERY OF CANNABIS USES IN THE CITY AND TO ISSUE A REPORT REGARDING MEASURES TAKEN TO ALLEVIATE CONDITIONS LEADING TO ADOPTION OF URGENCY ORDINANCE
 - 3.C. RECEIVE AND FILE THE CITY OF TRACY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR THE FISCAL YEAR ENDING JUNE 30, 2018
 - 3.D. REVIEW AND DISCUSS THE PROPOSED CODE OF ETHICS AND CONDUCT AND CHANGES TO THE CURRENT COUNCIL POLICY C-1 AS RECOMMENDED BY THE CITY COUNCIL SUBCOMMITTEE AND APPROVE THE ENABLING RESOLUTION.
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS

6. COUNCIL ITEMS

- 6.A. DISCUSS AND APPROVE UPCOMING CITY COUNCIL OUT-OF-STATE TRAVEL, INCLUDING TRAVEL TO WASHINGTON, D.C. FOR LOBBYING EFFORTS FOR THE SAN JOAQUIN COUNCIL OF GOVERNMENTS (SJCOC) ONE VOICE® TRIP; AND TRAVEL TO WASHINGTON, D.C. FOR LOBBYING EFFORTS FOR THE CITY OF TRACY (PRE-ONE VOICE)
- 6.B. APPROVE REQUEST FOR OUT-OF-STATE TRAVEL BY COUNCIL MEMBER VARGAS
- 6.C. APPOINT APPLICANTS TO THE BOARD OF APPEALS
- 6.D. APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL THE VACATED SEAT OF THE CITY OF TRACY REPRESENTATIVE SERVING ON THE SAN JOAQUIN COUNTY COMMISSION ON AGING
- 6.E. APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL A VACANCY ON THE TRACY ARTS COMMISSION

7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

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

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Rickman called the meeting to order at 6:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman present. Council Member Arriola absent. Council Member Arriola arrived at 6:00 p.m. (directly after roll call).
3. ITEMS FROM THE AUDIENCE – None.
4. CLOSED SESSION

- Real Property Negotiations (Gov. Code, § 54956.8)

Property Location: APN: 242-050-01, 240-140-11, and 240-100-01

Properties along Corral Hollow Road

Negotiating Parties: Property owners for each parcel

Under Negotiation: Terms of Agreement

- CONFERENCE WITH REAL PROPERTY NEGOTIATORS (GOV. CODE § 54956.8)

Subject Properties: APN #235-171-18, 19, 20, 21 and

Agency Negotiators: Midori Lichtwardt, Assistant City Manager
Shelley Burcham, Economic Development Manager
Barbara Harb, Economic Development Mgt. Analyst
Leticia Ramirez, Assistant City Attorney
Thomas Watson, City Attorney

Negotiating Parties: Reza Kazemi

Under Negotiation: Price and Terms of Payment

- Personnel Matter (Gov. Code, § 54957)

Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal

Position Title: City Manager

5. RECESS TO CLOSED SESSION - Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to recess the meeting to closed session at 6:01 p.m. Roll call vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – The meeting reconvened to open session at 7:02 p.m.
7. REPORT OF FINAL ACTION – Instructions were provided to the real property negotiator.
8. ADJOURNMENT – Motion was made by Council Member Vargas and seconded by Council Member Arriola adjourn. Roll call found all in favor; passed and so ordered. Time: 7:02 P.M

The agenda was posted at City Hall on January 31, 2019. The above are action minutes.

Mayor

ATTEST:

City Clerk

February 5, 2019, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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Mayor Rickman called the meeting to order at 7:10 p.m.

Mayor Rickman led the Pledge of Allegiance.

Pastor Scott McFarland, Journey Christian Church offered the invocation.

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

Andrew Malik, Assistant City Manager presented Employee of the Month award for February to Sharon Davis, City Manager's Office

Lisa Melo, Plant Controller for Leprino Foods presented a \$43,000 check to Mayor Rickman and Dino Margaros, Tracy Friends for Parks Recreation and Community Services Foundation, in support of the Legacy Fields project.

1. CONSENT CALENDAR – Following the removal of items 1.A, 1.E and 1.L by Council Member Vargas, motion was made by Council Member Ransom and seconded by Council Member Vargas to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - 1.B RECEIVE THE ANNUAL REPORT OF THE YOUTH ADVISORY COMMISSION – **Council reconsidered item after adoption of Consent Calendar**
 - 1.C RECEIVE THE ANNUAL REPORT OF THE PARKS AND COMMUNITY SERVICES COMMISSION – **Council reconsidered item after adoption of Consent Calendar**
 - 1.D RECEIVE THE ANNUAL REPORT ON SENIOR SERVICES – **Council reconsidered item after adoption of Consent Calendar**
 - 1.F APPROVE A LEASE AGREEMENT WITH COMBINED SOLAR TECHNOLOGIES, INC. AND APPROVE A LEASE AGREEMENT WITH ARNAUDO BROS., LLC FOR DRYING BEDS – **Resolution 2019-007** approved the lease agreement with Combined Solar Technologies. **Resolution 2019-008** approved the lease agreement with Arnaudo Bros., LLC.
 - 1.G AUTHORIZE THE ESTABLISHMENT OF A FOUR-WAY STOP AT THE INTERSECTION OF W. 12th STREET AND BESSIE AVENUE – **Resolution 2019-009** authorized the establishment of a four-way stop.

1.H AWARD A CONSTRUCTION CONTRACT TO PACIFIC EXCAVATION, INC., OF ELK GROVE, CALIFORNIA, FOR THE STREET LIGHT INSTALLATION AND CONDUIT REPAIR PROJECT, CIP 72112 AND CIP 73169, IN THE AMOUNT OF \$181,960, APPROVE A CONTINGENCY AMOUNT OF \$18,190, APPROPRIATE \$88,150 FROM GAS TAX AND UN-FUND GAS TAX FUNDS PREVIOUSLY COMMITTED TO CIP 72086, WITH A TOTAL PROJECT COST OF \$214,150 – **Resolution 2019-010** awarded the Construction Contract to Pacific Excavation, Inc.

1.I AUTHORIZE THE PURCHASE OF SPORTS FIELD LIGHTING EQUIPMENT AND SHADE STRUCTURES IN THE AMOUNT OF \$2,923,394 FOR PHASE 1D OF THE LEGACY FIELDS SPORTS COMPLEX CIP 78164 AND ADOPT A RESOLUTION DECLARING INTENTION TO REIMBURSE EXPENDITURES FOR THE LEGACY FIELDS PROJECT FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY THE CITY AND DIRECTING CERTAIN ACTIONS – **Resolution 2019-011** approved the purchase of the sports field lighting equipment and shade structures. **Resolution 2019-012** declared the intention to reimburse expenditures from the proceeds of obligations to be issued by the City.

1.J APPROVE A NEW CAPITAL IMPROVEMENT PROJECT (CIP) FOR A FIRE DEPARTMENT TRAINING TOWER SITE WITH A NOT TO EXCEED AMOUNT BUDGET OF \$450,000; ACCEPT FUNDING FROM TRACY RURAL FIRE PROTECTION DISTRICT FOR \$200,000 AND APPROPRIATE \$250,000 FROM RESERVES IN THE INTERNAL SERVICE-EQUIPMENT (605) FOR SITE IMPROVEMENTS AT NEI RESERVOIR – **Resolution 2019-013** approved the CIP for the Fire Department Training Tower

1.K RECEIVE AND APPROVE A REQUEST FROM THE GRAND FOUNDATION TO INCREASE DISCOUNTS FROM TEN PERCENT TO FIFTEEN PERCENT FOR GRAND FOUNDATION MEMBERSHIP LEVELS OF \$1,000 AND GREATER – **Resolution 2019-014** approved the request from the Grand Foundation to increase discounts to fifteen percent for Grand Foundation membership levels of \$1,000 or greater.

1.M APPROVE A MAINTENANCE AGREEMENT WITH THE COUNTY OF SAN JOAQUIN AND THE CITY OF TRACY REGARDING THE MAINTENANCE OF A PROPOSED FUTURE RETENTION POND NEAR THE LAMMERS ROAD AND SCHULTE ROAD INTERSECTION, CIP 72068 – **Resolution 2019-015** approved a Maintenance Agreement with the San Joaquin County

1.N APPROVE THE REPORT “GOVERNANCE REVIEW: A REVIEW OF GOVERNANCE TRANSITION AND EVALUATED OPTIONS OF THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY” AND REAFFIRM THE RECOMMENDATION AND ACTION TAKEN ON FEBRUARY 20, 2018 TO APPROVE THE FORMATION OF THE SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY – **Report Accepted the report.**

1.A ADOPTION OF JANUARY 15, 2019, CLOSED SESSION AND REGULAR MEETING MINUTES

Council Member Vargas pulled the item to request an amendment to the January 15, 2019, regular meeting minutes to include her response to Michael Maciel's allegations.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Rickman to adopt the January 15, 2019, closed session minutes and the regular meeting minutes to include the amendment. Roll call found all in favor; passed and so ordered.

1.E APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WRT, LLC OF SAN FRANCISCO, CALIFORNIA FOR AN UPDATE TO THE CITYWIDE PARKS, RECREATION AND TRAILS MASTER PLAN (CIP 78179) AND PREPARATION OF NATURE PARK CONCEPTUAL PLAN (CIP 78180), AND APPROVE AN APPROPRIATION OF \$11,000 FROM LMD FUND (F271), \$39,000 FROM GENERAL FUND (F301), AND \$76,000 FROM PROGRAM MANAGEMENT FUND (F391) FOR CIP 78179 IN FY 2018-1

Council Member Vargas pulled the item to praise staff for their efforts and progress.

City Council comments followed.

Lisa Roth thanked staff and Council for addressing the amenities to bring to the community.

Tim Silva expressed his disappointment regarding a disk golf course not being in the plan.

City Council questions and comments followed.

Brian MacDonald, Parks and Recreation Director responded to Council questions.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to adopt a **Resolution 2019-016** approving a Professional Services Agreement with WRT, LLC of San Francisco, California for an update to the Citywide Parks, Recreation and Trails Master Plan update and preparation of Conceptual Plan for the proposed Nature Park (CIP 78179 & CIP 78180) in an amount not to exceed \$425,827, and approving an appropriation of \$11,000 from LMD Fund (F271), \$39,000 from General Fund (F301), and \$76,000 from Program Management Fund (F391) for CIP 78179 in FY 2018-19. Roll call found all in favor; passed and so ordered.

1.L ESTABLISH A CAPITAL IMPROVEMENT PROJECT FOR THE CONSTRUCTION OF NEW SIDEWALK ALONG TRACY BOULEVARD WITH A NOT TO EXCEED BUDGET OF \$724,581, AUTHORIZE AN APPROPRIATION OF \$66,000 FROM GENERAL FUND CAPITAL FUND (F301) FOR THE CITY'S MATCH OF THE NEW PROJECT, AND APPROVE THE COOPERATIVE AGREEMENT WITH THE SAN JOAQUIN COUNCIL OF GOVERNMENTS FOR

**THE CITY OF TRACY TO RECEIVE A REIMBURSEMENT OF \$658,581 FOR
PROJECT DESIGN, CONSTRUCTION AND CONSTRUCTION MANAGEMENT**

Council Member Vargas pulled the item to thank staff for working on connectivity.

City Council comments followed.

No one from the audience wished to speak.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to adopt **Resolution 2019-017** authorizing the establishment of a Capital Improvement Project for the construction of new sidewalk along Tracy Boulevard with a not to exceed budget of \$724,581, authorizing an appropriation of \$66,000 from General Fund Capital Fund (F301) for the City's match of the new project, and approving a Cooperative Agreement with San Joaquin Council of Governments for the City to receive reimbursement of \$658,581 for project design, and construction management. Roll call vote found all in favor; passed and so ordered.

Mayor Pro Tem Young requested Council reconsideration of Consent Items 1.B, 1.C AND 1.D

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to reconsider Consent Items 1.B, 1.C and 1.D. Roll call found all in favor; passed and so ordered.

Council deviated to Items from the Audience while staff prepared to provide staff reports for Items 1.B, 1.C and .D.

2. ITEMS FROM THE AUDIENCE – Erica Ransom spoke about a growing drug and homeless problem, lack of resources in Tracy, and shared experiences.

Catherine Rush asked if Lost and Found Policy will be added to the list of concerns in the Animal Shelter report.

Philip Anderson expressed his concerns regarding a Ziggy's Smoke Shop trying to open at 1655 Parker Avenue, and submitted combined petitions to the City Clerk.

Martin Evans shared his concerns about zoning by the hospital on Carlton and Bessie and wants the maps put back in purple all in medical zone.

City Council reconsidered Agenda Items 1.B, 1.C and 1.D

1.B **RECEIVE THE ANNUAL REPORT OF THE YOUTH ADVISORY COMMISSION**

Amanda Jensen, Recreation Coordinator introduced Jasjot Kaur, Youth Advisory Commissioner who provided a powerpoint presentation.

City Council comments followed.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Arriola to approve the annual report for the Youth Advisory Commission. Roll call found all in favor; passed and so ordered.

1.C RECEIVE THE ANNUAL REPORT OF THE PARKS AND COMMUNITY SERVICES COMMISSION

Thien Nguyen, Recreation Services Supervisor provided the staff report.

City Council comments followed.

No one from the public wished to speak.

Council Member Vargas stated a member of the public requested looking into a community garden.

Conrad Levoitt spoke about consideration of a community garden.

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Vargas to approve the annual report for the Parks and Community Services Commission. Roll call found all in favor; passed and so ordered

1.D RECEIVE THE ANNUAL REPORT ON SENIOR SERVICES

Amanda Jensen, Recreation Coordinator provided the staff report.

Clara Stiles thanked staff for their continuous support and efforts.

City Council comments followed.

ACTION: Motion was made by Council Member Ransom and seconded by Mayor Pro Tem Young to approve the annual report for the Senior Services. Roll call found all in favor; passed and so ordered

3. REGULAR AGENDA

3.A PUBLIC HEARING TO CONSIDER INTRODUCING AN ORDINANCE APPROVING AN AMENDMENT TO THE ELLIS SPECIFIC PLAN FENCE REGULATIONS AND MINIMUM LOT WIDTH REQUIREMENTS

Scott Claar, Senior Planner provided the staff report

Mayor Rickman opened the public hearing.

Jenny Rutherford expressed concerns regarding a violation notice issued for a fence that was there before they moved to the Ellis development.

City Council questions and comments followed.

William Dean, Assistant Development Services Director responded to Council questions.

Ms. Booker stated as one of the first buyers and one of the five homes impacted, the process is dragging out and she would like it to end.

Chris Long, representing the developer shed light on zoning approved many years ago, explained the fence standards, and responded to City Council questions.

Sergio Perez, Lennar Homes Project Manager responded to Council questions regarding replacing/relocating fence and working with the homeowners to find a resolution for the fencing issue.

City Council comments and questions continued.

Council directed staff to return on February 19, 2019, with a specific plan amendment that articulates clearly the carve-out for the five residents and bring back language that would perpetuate the fence standards into the future for the balance of the neighborhood in addition to the lot width requirement Mr. Long mentioned. Staff to also bring back illustrations.

Council also requested the applicant find a solution that would address the homeowner's concerns. Mr. Perez responded Lennar Homes is committed to finding a resolution, and will correct any impact to existing landscaping.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Ransom to continue the Public Hearing to February 19, 2019. Roll call vote found all in favor; passed and so ordered.

3.B APPROVE AN EMPLOYMENT AGREEMENT BETWEEN MIDORI LICHTWARDT AND THE CITY OF TRACY TO SERVE AS INTERIM CITY MANAGER

Kimberly Murdaugh, Human Resources Director provided the staff report.

No one from the audience wished to speak.

ACTION: Motion was made by Mayor Pro Tem Young and seconded by Council Member Ransom to adopt a **Resolution 2019-018** approving an At-Will Employment Agreement between Midori Lichtwardt and the City of Tracy to serve as Interim City Manager. Roll call vote found all in favor; passed and so ordered.

3.C RECEIVE AND FILE THE CITY OF TRACY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR THE FISCAL YEAR ENDING JUNE 30, 2018 – Item was moved to February 19, 2019

3.D DISCUSS POTENTIAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY AND PROVIDE DIRECTION TO STAFF

Karin Schnaider, Finance Director provided the staff report.

Ms. Schnaider and Leticia Ramirez, Assistant City Attorney responded to City Council questions.

Steve Nicolaou expressed concerns regarding handling of cash deposits generated by cannabis sales, and suggested waiting to see what happens with the State.

Roger Birdsall asked if staff is implying that a dispensary would generate approximately \$35,000, hiring 4.75 staff is recommended to cover the difference, and putting it on the November 2020 ballot to raise the general tax to pay for it.

City Council comments and questions followed.

Alex Neicu, Interim Police Chief responded to Council's questions.

It was Council's consensus for staff to include the following to develop cannabis regulatory requirements for Council's consideration:

Staff to bring back an item on February 19 to extend the urgency ordinance.
Look at both store front and walk-ins.

Highest level of regulations.

Limitation to permitted dispensaries based on population size of 1 per 40,000 (both).

Locations of dispensaries - Industrial zoning.

Commercial cannabis activities should be allowed: Distribution, Testing Labs, Microbusinesses, Manufacturing.

Revenue and service level options for all.

3.E REVIEW AND DISCUSS THE PROPOSED CODE OF ETHICS AND CONDUCT AND CHANGES TO THE CURRENT COUNCIL POLICY C-1 AS RECOMMENDED BY THE CITY COUNCIL SUBCOMMITTEE AND APPROVE THE ENABLING RESOLUTION. – Item was moved to next Council meeting

City Attorney will gather more input from Council and present suggestions at next Council meeting.

4. ITEMS FROM THE AUDIENCE – Robert Tanner stated in regards to the cannabis item, an increase of the number of stores per population size of 1 per 55,000 residents would be more accurate by 2020.

Roger Birdsall announced the Notre Dame de Namur speaker series on Wednesday, February 13, 2019 from 11:30 am to 1:00 p.m. at the Grand Theatre.

Tim Silva referred to an earlier speakers concerns regarding a smoke shop business coming to Parker Ave stating it is a legal business.

Alice English read out an Ethic policies from the Grand Jury.

5. STAFF ITEMS – Alex Neicu, Interim Police Chief Neicu stated staff will bring back the report on the Animal Shelter on March 19, 2019. Chief Neicu provided a brief update on progress on final report.

6. COUNCIL ITEMS

6.A APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO VACANCIES ON THE MEASURE V RESIDENTS' OVERSIGHT COMMITTEE

Adrienne Richardson, City Clerk provided the staff report.

No one from the audience wished to speak.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Ransom to appoint Mayor Pro Tem Young and Council Member Arriola to interview applicants to fill vacancies on the Measure V Residents' Oversight Committee. Roll call found all in favor; passed and so ordered.

6.B DISCUSS AND PROVIDE DIRECTION ON THE CITY OF TRACY AND THE TRACY CHAMBER OF COMMERCE AS IT RELATES TO THE ANNUAL STATE OF THE CITY EVENT

Mayor Rickman explained his request for an item to be placed on the agenda to discuss whether there should be a charge for the State of the City event.

City Council questions and comments followed.

Andrew Malik, Assistant City Manager responded to City Council's questions and comments.

Staff to circulate a copy of the Memorandum of Understandings (MOU) between the City of Tracy and the Chamber of Commerce to Council.

Cliff Hudson, representing the Tracy Chamber of Commerce stated the State of the City is a Chamber event in partnership with City, and a fundraiser for the Chamber. The Chamber would also be supportive of making the State of the City event in the future. Sponsorships have helped cover costs, but if the City would like to cover costs for linen, foods or speakers that would be the city's decision

Mr. Malik confirmed that staff will look into the budget for funds to cover actual costs.

Juana Dement asked if the City partners with any other non-profits, and if the Tracy Chamber of Commerce is a 501(c)(6), is the City correctly partnering with this entity.

Lisa Aguilera, stated the Chamber counts on fundraisers and suggested changing it next year as there is already something in place.

Lisa Roth provided suggestions of ways to bring the State of the City to residents free of charge.

Alice English stated the State of the City should be a free event and it is not too late, as they have great sponsors.

City Council comments and questions continued.

In future staff to make sure existing contracts are attached to agenda item.

Staff to look into streaming the State of the City live.

ACTION: Motion made by Mayor Rickman and seconded by Council Member Vargas to cover actual costs for a free event State of the City event with partnership with the Tracy Chamber of Commerce and update the Memorandum of Understanding between the City of Tracy and the Tracy Chamber of Commerce going forward. Roll call found all in favor; passed and so ordered.

Council Member Vargas announced Valley Link meeting dates.

Council Member Arriola announced a local upcoming event, and also noted Banfield Pet Hospital has seven stainless steel kennels to donate to the shelter.

Council Member Ransom asked if Council can provide suggestions regarding the Animal Shelter report scheduled on March 19. Council Member Ransom requested details of all Memorandum of Understandings between non-employee related organizations (not developer) and the City, to include financial commitment, staff time, and what the City is giving to various organizations. Council Member Vargas seconded the request.

Mayor Pro Tem Young also inquired about the Animal Shelter report. Mayor Pro Tem Young requested committee/commission reports be placed on the regular agenda, and a Council Comments section be added to the agenda template. Mayor Pro Tem Young announced her swearing in to represent Tracy on the San Joaquin Regional Rail Commission and provided information regarding the ACE train.

Mayor Rickman announced an upcoming community event. Mayor Rickman also stated he would also like to review 501(C)(3) non-profits to see who the City is subsidizing.

7. ADJOURNMENT – Wednesday, February 6, 2019 at 12:28 a.m.

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

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

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

February 8, 2019, 8:30 a.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Rickman called the meeting to order at 8:32 a.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Member Ransom, Vargas and Mayor Rickman present. Council Member Arriola and Mayor Pro Tem Young absent. Council Member Arriola arrived at 8:50 a.m.
3. ITEMS FROM THE AUDIENCE – None.
4. Request to Conduct Closed Session
 - Personnel Matter (Gov. Code, § 54957)
Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal
Position Title: City Manager
5. RECESS TO CLOSED SESSION – Motion was made by Council Member Ransom and seconded by Council Member Vargas to recess to closed session. Roll call vote found Council Members Ransom, Vargas and Mayor Rickman in favor; passed and so ordered. Council Member Arriola and Mayor Pro Tem Young absent.

Council Member Arriola arrived at 8:50 a.m.
6. RECONVENE TO OPEN SESSION - Motion was made by Council Member Vargas and seconded by Council Member Arriola to reconvene the meeting to open session. Roll call found Council Member Arriola, Ransom, Vargas and Mayor Rickman in favor; passed and so ordered. Time: 3:40 p.m.
7. REPORT OF FINAL ACTION – There was no report of final action.
8. ADJOURNMENT – Motion was made by Council Member Vargas and seconded by Council Member Arriola to adjourn. Roll call found Council Members Arriola, Ransom, Vargas and Mayor Rickman in favor; passed and so ordered. Time: 3:40 p.m.

The agenda was posted at City Hall on February 6, 2019. The above are action minutes.

Mayor

ATTEST:

City Clerk

February 19, 2019

AGENDA ITEM 1.B

REQUEST

ACCEPT THE CONSTRUCTION OF THE OVERLAY PROJECT, CIP 73140A, FEDERAL PROJECT NUMBER STPL-5192(041), AND TRAFFIC LOOP INSTALLATION, CIP 72099, COMPLETED BY KNIFE RIVER CONSTRUCTION, OF STOCKTON, CALIFORNIA, AUTHORIZE AN APPROPRIATION OF \$52,540 FROM GAS TAX FUND 245 TO CIP 73140A, AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AUTHORIZE THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND AUTHORIZE THE FINANCE DEPARTMENT TO CLOSE THE PROJECTS

EXECUTIVE SUMMARY

The contractor has completed the construction of the Overlay Project CIP 73140A Federal Project Number STPL-5192(041) and Traffic Loop Installation, CIP 72099, in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the projects to enable the City to release the contractor's bonds and retention and close out the projects.

DISCUSSION

On December 6, 2016, City Council awarded a construction contract to Knife River Construction, of Stockton, California, for the Overlay Project CIP 73140A Federal Project Number STPL-5192(041) and Traffic Loop Installation, CIP 72099 for \$960,450.

The projects consisted of rubberized asphalt concrete overlay on Grant Line Road (Toste Road to Corral Hollow Road), Eleventh Street (Corral Hollow Road to Alden Glen Drive), and MacArthur Drive (Sixth Street to Mt. Diablo Avenue), including pavement repair, signing, striping, traffic signal loop replacement, wedge grinding and installation of traffic loops at the intersection of Alden Glen Drive and Eleventh Street.

The City's Engineering Division staff prepared the project design, improvement plans, specifications, and contract documents.

Three change orders amounting to \$117,211 were issued for the project, which included additional traffic control for the night work, additional pavement repairs on Grant Line Road between Toste Road and Corral Hollow Road, additional pavement repairs on Eleventh Street (Corral Hollow Road to Alden Glen Drive), and additional pavement repairs on MacArthur Drive (Sixth Street to Mt. Diablo Avenue). Change orders also included labeling conductors and loop testing, not a line item on original scope of work, and changing rubberized asphalt overlay at Prime Shine Driveway on Alden Glenn/Eleventh Street to asphalt concrete overlay.

The project construction contract unit prices are based on estimated quantities. Actual payment is based on field measured quantities installed by the Contractor. According to

the City's inspection records, actual field measured quantities were higher than the contract quantities in the amount \$7,132.

Project costs are as follows:

A. Construction Contract Amount	\$ 967,582
B. Approved Change Orders	\$ 117,211
C. Design, construction management, inspection, Testing & miscellaneous project management Expenses	\$ 173,776
 Total Project Costs	 \$1,258,569
Available Budget Amount	\$1,206,029
Additional Appropriation	<u>\$ 52,540</u>
 Total Available Budget after appropriation	 \$1,258,569

The additional appropriation is requested due to some unforeseen conditions encountered during construction at the Prime Shine Car wash entrance at Alden Glen, which required concrete in lieu of asphalt driveway.

The project has been completed within the available budget (which includes the additional appropriation), within the original contract period. The projects were finished in accordance with the plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

The Overlay Project CIP 73140A and Traffic Loop Installation CIP 72099 are approved Capital Improvement Projects with total funding in the amount of \$1,206,029. With \$1,122,029 from CIP 73140A, which included \$860,000 of Federal Surface Transportation Program Local Grant (STPL) funds, and \$84,000 from CIP 72099. An additional appropriation in the amount of \$52,540 is needed from the Gas Tax Fund 245 to close the project.

RECOMMENDATION

That City Council accept, by resolution, construction of the Overlay Project CIP 73140A Federal Project Number STPL-5192(041) and Traffic Loop Installation, CIP 72099, completed by Knife River Construction, of Stockton, California, authorize an appropriation in the amount of \$52,540 from the Gas Tax Fund 245 to CIP 73140A, authorize the City Clerk to record the Notice of Completion with the San Joaquin County

Recorder, authorize the City Engineer to release the bonds and retention payment, and authorize the Finance Department to close the projects.

Prepared by: Leisser P. Mazariegos, Associate Civil Engineer

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

Approved by: Midori Lichtwardt, Interim City Manager

RESOLUTION 2019-_____

ACCEPTING THE CONSTRUCTION OF THE OVERLAY PROJECT, CIP 73140A, FEDERAL PROJECT NUMBER STPL-5192(041), AND TRAFFIC LOOP INSTALLATION, CIP 72099, COMPLETED BY KNIFE RIVER CONSTRUCTION, OF STOCKTON, CALIFORNIA, AUTHORIZING AN APPROPRIATION OF \$52,540 FROM THE GAS TAX FUND 245 TO CIP 73140A, AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AUTHORIZING THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND AUTHORIZING THE FINANCE DEPARTMENT TO CLOSE THE PROJECTS

WHEREAS, On December 6, 2016, City Council awarded a construction contract to Knife River Construction, of Stockton, California, for the Overlay Project CIP 73140A, Federal Project Number STPL-5192(041) and Traffic Loop Installation, CIP 72099 ("Project"), for \$960,450, and

WHEREAS, The Project consisted of rubberized asphalt concrete overlay on Grant Line Road (Toste Road to Corral Hollow Road), Eleventh Street (Corral Hollow Road to Alden Glen Drive), and MacArthur Drive (Sixth Street to Mt. Diablo Avenue), including pavement repair, signing, striping, traffic signal loop replacement, wedge grinding and installation of traffic loops at Alden Glen Drive and Eleventh Street, and

WHEREAS, Three change orders amounting in \$117,211 were issued for the projects for unforeseen circumstances, and

WHEREAS, Actual field measured quantities were higher than the estimated contract quantities in the amount of \$7,132, and

WHEREAS, The status of budget costs is as follows, and

Project costs are as follows:

A.	Construction Contract Amount	\$ 967,582
B.	Approved Change orders	\$ 117,211
C.	Design, construction management, inspection, Testing & miscellaneous project management Expenses	\$ 173,776
	Total Project Costs	\$1,258,569
	Available Budget Amount	\$1,206,029
	Additional Appropriation	<u>\$ 52,540</u>
	Total Available Budget after appropriation	\$1,258,569

WHEREAS, The projects has been completed within the available budget including the additional appropriation, original contract period and in accordance with the plans, specifications, and City of Tracy standards, and

WHEREAS, The Overlay Project CIP 73140A and Traffic Loop Installation CIP 72099 are approved Capital Improvement Projects with total funding in the amount of \$1,206,029, with

\$1,122,029 from CIP 73140A, which included \$860,000 of Federal Surface Transportation Program Local Grant (STPL) funds, and \$84,000 from CIP 72099. An additional appropriation in the amount of \$52,540 is needed from the Gas Tax Fund 245 to close the projects;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby accepts the construction of the Overlay Project CIP 73140A, Federal Project Number STPL-5192(041), and Traffic Loop Installation, CIP 72099, completed by Knife River Construction, of Stockton, California, authorizes appropriation in the amount of \$52,540 from Gas Tax Fund 245 to CIP 73140A, authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder, authorizes the City Engineer to release the bonds and retention payment, and authorizes the Finance Department to close the projects.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.C

REQUEST

APPROVE PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE FOLLOWING SPECIAL EVENTS: CITY OF TRACY GIRLS' NIGHT OUT ON MARCH 15, 2019; TRACY CITY CENTER ASSOCIATION TAPS ON TENTH ON APRIL 6, 2019; CITY OF TRACY DOWNTOWN BLOCK PARTIES ON MAY 3, MAY 31, JUNE 14, JULY 12, AND AUGUST 9, 2019; TRACY CHAMBER OF COMMERCE 4TH OF JULY DAY IN THE PARK ON JULY 4, 2019; CITY OF TRACY BLUES, BREWS & BBQ ON SEPTEMBER 7, 2019; TRACY CITY CENTER ASSOCIATION DOWNTOWN TRACY WINE STROLL ON SEPTEMBER 21, 2019; AND CITY OF TRACY GIRLS' NIGHT OUT – WITCHES AND BROOMSTICKS ON OCTOBER 18, 2019

EXECUTIVE SUMMARY

The Tracy Municipal Code allows the City Council, by resolution, to issue a permit allowing the consumption of alcohol on public streets and the like at an organized event of community-wide interest. The Parks & Recreation Department is coordinating several requests for alcohol permits in conjunction with community events and is seeking Council approval.

DISCUSSION

Tracy Municipal Code Section 4.12.1190(d) states: "The Council, by resolution, may issue a permit under Chapter 4.40 allowing the consumption of intoxicating beverages on public property at an organized event of community-wide interest. The consumption of intoxicating beverages shall be restricted to the perimeters of the event as described in the permit."

Additionally, Tracy Municipal Code Chapter 4.40 governs special event permits occurring on or within the public right-of-way.

For many years, the City of Tracy has successfully coordinated special community events that have community-wide interest with various local non-profit organizations, including the Tracy Chamber of Commerce (Chamber) and Tracy City Center Association (TCCA). Many of these events have received City approval for the consumption of alcoholic beverages within the boundary of the events, with most of the approved events taking place within the Downtown Tracy Business District.

At the present time, the Parks & Recreation Department is coordinating several requests for alcohol permits to allow alcoholic beverages to be served as a component of the following community events: 4th of July Day in the Park hosted by the Chamber; Taps on Tenth and Downtown Tracy Wine Stroll hosted by TCCA; and two Girls' Night Out events, one Blues, Brews & BBQ event, and a series of five Downtown Block Parties hosted by the City of Tracy.

Girls' Night Out: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's event on Friday, March 15, 2019, from 6:00 p.m. to 10:00 p.m. on 7th Street between Central Avenue and the Old City Jail.

Taps on Tenth: TCCA has requested a permit to serve alcoholic beverages at its event on Saturday, April 6, 2019, from 4:00 p.m. to 8:00 p.m. on 10th Street between Central Avenue and A Street and on B Street between Grunauer and Gillett Alleys.

Downtown Block Parties: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's five (5) block party events on Fridays, May 3, May 31, June 14, July 12, and August 9, 2019, from 6:00 p.m. to 9:00 p.m. on east- and west-bound 6th Street and the Downtown Plaza.

4th of July Day in the Park: The Chamber has requested a permit to serve alcoholic beverages at its event on Wednesday, July 4, 2019, from 10:00 a.m. to 6:00 p.m., at Lincoln Park located on Eaton Avenue between Holly Drive and East Street.

Blues, Brews and BBQ Event: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's event on Saturday, September 7, 2019, from 12:00 p.m. to 6:00 p.m. on east- and west-bound 6th Street and the Downtown Plaza.

Downtown Tracy Wine Stroll: TCCA has requested a permit to serve alcoholic beverages at its event on Saturday, September 21, 2019, from 6:00 p.m. to 9:00 p.m., on Central Avenue from 11th Street to 6th Street, on 10th Street from A Street to Central Avenue, and on B Street from Gillett Alley to Grunauer Alley.

Girls' Night Out – Witches and Broomsticks: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's event on Friday, October 18, 2019, from 6:00 p.m. to 10:00 p.m. on east- and west-bound 6th Street and in the Downtown Plaza.

STRATEGIC PLAN

This agenda item supports the Council's Quality of Life Strategic Priority to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community, and specifically implements the following goal:

Goal 2: Improve current recreational, cultural arts and entertainment programming and services to reflect community interests and demands.

FISCAL IMPACT

ABC license fees shall be paid by the event hosts. Costs for City of Tracy events are included in each City event budget.

RECOMMENDATION

That the City Council, by resolution, approve permits for the consumption of alcoholic beverages on City streets for the following special events: City of Tracy Girls' Night Out on March 15, 2019; Tracy City Center Association Taps on Tenth on April 6, 2019; City of Tracy Downtown Block Parties on May 3, May 31, June 14, July 12, and August 9, 2019; Tracy Chamber of Commerce 4th of July Day in the Park on July 4, 2019; City of Tracy Blues, Brews & BBQ on September 7, 2019; Tracy City Center Association Downtown Tracy Wine Stroll on September 21, 2019; and City of Tracy Girls' Night Out-Witches and Broomsticks on October 18, 2019.

Prepared by: Christine Mabry, Management Analyst I

Reviewed by: Thien Nguyen, Recreation Services Supervisor
Jolene Jauregui-Correll, Recreation Services Supervisor
Karin Schnaider, Finance Director
Brian MacDonald, Parks & Recreation Director
Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

RESOLUTION _____

APPROVING PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE FOLLOWING SPECIAL EVENTS: CITY OF TRACY GIRLS' NIGHT OUT ON MARCH 15, 2019; TRACY CITY CENTER ASSOCIATION TAPS ON TENTH ON APRIL 6, 2019; CITY OF TRACY DOWNTOWN BLOCK PARTIES ON MAY 3, MAY 31, JUNE 14, JULY 12, AND AUGUST 9, 2019; TRACY CHAMBER OF COMMERCE 4TH OF JULY DAY IN THE PARK ON JULY 4, 2019; CITY OF TRACY BLUES, BREWS & BBQ ON SEPTEMBER 7, 2019; TRACY CITY CENTER ASSOCIATION DOWNTOWN TRACY WINE STROLL ON SEPTEMBER 21, 2019; AND CITY OF TRACY GIRLS' NIGHT OUT – WITCHES AND BROOMSTICKS ON OCTOBER 18, 2019

WHEREAS, The Tracy City Center Association (TCCA) has requested permits to conduct special events in the City of Tracy on April 6 and September 21, 2019, that require approval of City Council to permit the consumption of alcoholic beverages in public places, and

WHEREAS, The City of Tracy has requested permits to conduct special events in the City of Tracy on March 15, May 3, May 31, June 14, July 12, August 9, September 7, and October 18, 2019, that require approval of City Council to permit the consumption of alcoholic beverages in public places, and

WHEREAS, The Tracy Chamber of Commerce has requested a permit to conduct a special event in the City of Tracy on July 4, 2019, that requires approval of City Council to permit the consumption of alcoholic beverages in public places, and

WHEREAS, Subject to City Council approval, the Tracy Municipal Code allows such activities and permits under Section 4.12.1190(d) and Chapter 4.40;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the issuance of a permit to the Tracy City Center Association, City of Tracy, and the Tracy Chamber of Commerce, for the possession and consumption of alcoholic beverages within the boundary and time frames of the above-described special events, to be conducted in Lincoln Park and the Downtown Area of Tracy.

* * * * *

The foregoing Resolution _____ was adopted by Tracy City Council on the 19th day of February, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.D

REQUEST

ACCEPT CORRAL HOLLOW ROAD OVERLAY IMPROVEMENTS FOR THE TRACY HILLS PHASE 1A PROJECT, CONSTRUCTED BY TRACY PHASE I, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND REPAIR, AND AUTHORIZE THE CITY ENGINEER TO RELEASE BONDS

EXECUTIVE SUMMARY

Tracy Phase I, LLC, a Delaware limited liability company (Developer), has completed construction of pavement overlay improvements on Corral Hollow Road associated with the Tracy Hills Phase 1A Project in accordance with the Offsite Improvement Agreement approved by Council, including project plans and specifications. Staff recommends City Council accept the improvements as complete, and enable the City to release the Developer's bonds.

DISCUSSION

On June 5, 2018, City Council approved the Offsite Improvement Agreement (Agreement) for construction of pavement overlay improvements on Corral Hollow Road associated with the Tracy Hills Phase 1A Project. The scope of the project included pavement repairs and overlay of an approximately half-mile of existing Corral Hollow Road between Linne Road and Tracy Hills frontage.

RJA Engineers of Rocklin, California prepared the improvement plans titled "Improvement Plans – Corral Hollow Overlay Project."

Developer has completed all the work required to be done in accordance with the Agreement, and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreement and City specifications and plans. The estimated cost of the infrastructure improvements are as follows:

Roadway Improvements	\$ 712,000
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All improvements were contained within the existing street right-of-way and no additional dedications were required.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

FISCAL IMPACT

Developer, in accordance with the Offsite Improvement Agreement, completed all improvements.

RECOMMENDATION

That City Council, by resolution, accept the improvements as complete in accordance with the Offsite Improvement Agreement for Corral Hollow Road Overlay associated with the Tracy Hills Phase 1A Project including the project plans and specifications, assume responsibility for their future maintenance and repair, and authorize the City Engineer to release all bonds in accordance with the terms of the Agreement.

Prepared by: Paul Verma, Senior Civil Engineer

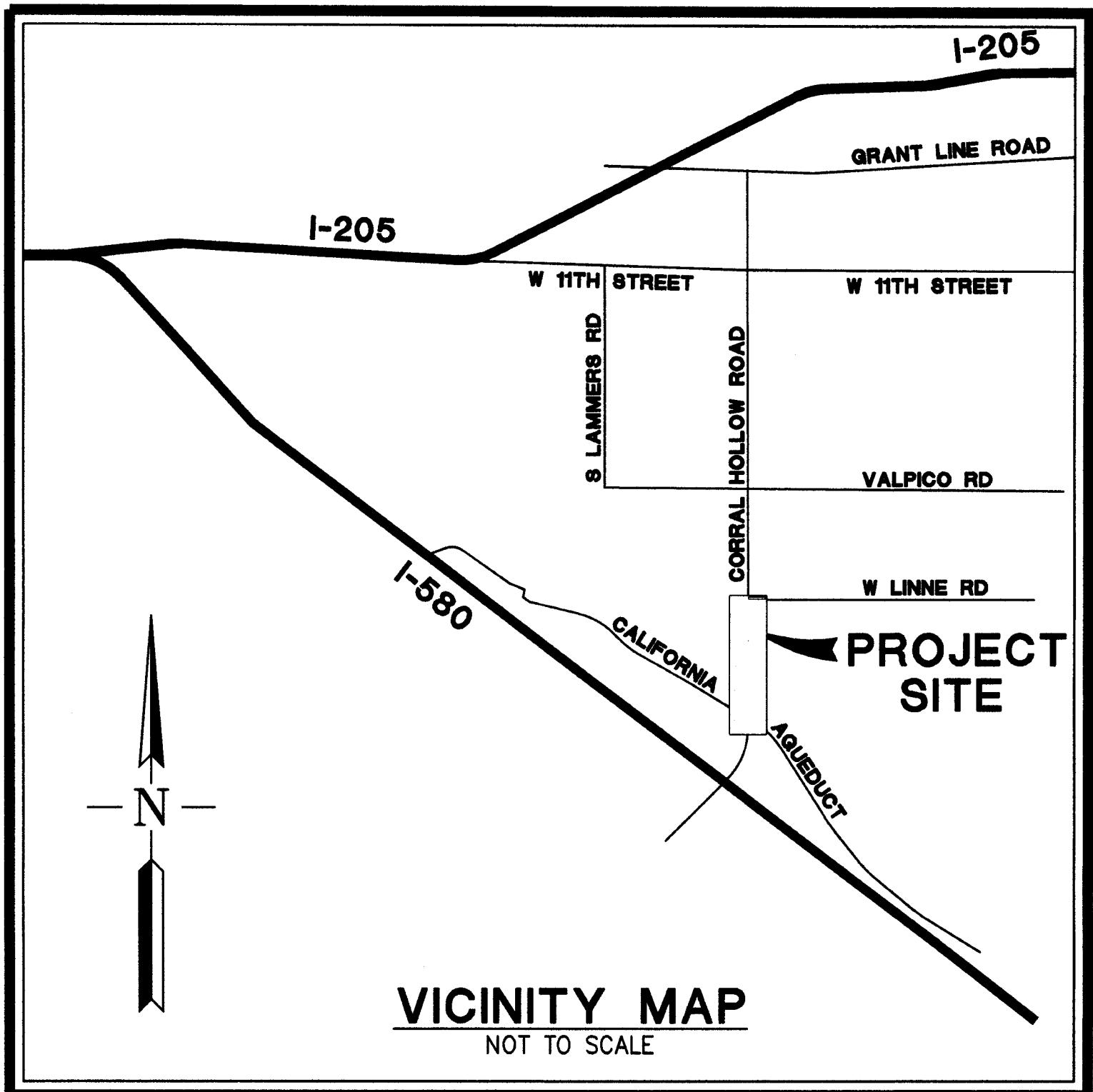
Reviewed by: Robert Armijo, PE, City Engineer / Assistant Director of Development Services
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Vicinity Map

ATTACHMENT "A"



RESOLUTION 2019-_____

ACCEPTING CORRAL HOLLOW ROAD OVERLAY IMPROVEMENTS FOR THE TRACY HILLS PHASE 1A PROJECT, CONSTRUCTED BY TRACY PHASE I, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ASSUMING RESPONSIBILITY FOR THEIR FUTURE MAINTENANCE AND REPAIR, AND AUTHORIZING THE CITY ENGINEER TO RELEASE BONDS

WHEREAS, On June 5, 2018, City Council approved the Offsite Improvement Agreement (Agreement) with Tracy Phase I LLC (Developer) for construction of pavement overlay improvements on Corral Hollow Road associated with the Tracy Hills Phase 1A Project, and

WHEREAS, Developer has completed all the work required to be done in accordance with the Agreement, and has requested acceptance of the public improvements, and

WHEREAS, The City Engineer has inspected the completed work and recommends acceptance, and

WHEREAS, The estimated cost of infrastructure improvements is as follows:

Roadway Improvements	\$ 712,000
----------------------	------------

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby accepts the improvements as complete in accordance with the Offsite Improvement Agreement for Corral Hollow Road Overlay associated with the Tracy Hills Phase 1A Project, including the project plans and specifications, and assumes responsibility for their future maintenance and repair;

BE IT FURTHER RESOLVED, That the City Engineer is authorized to release all bonds in accordance with the terms of the Offsite Improvement Agreement.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.E

REQUEST

**DECLARE CERTAIN VEHICLES AND EQUIPMENT AS SURPLUS AND APPROVE
THEIR SALE**

EXECUTIVE SUMMARY

The City periodically declares equipment and commodities that have been used beyond their economical and/or useful life as surplus for sale at public auction.

DISCUSSION

The equipment and commodities on the attached list have been removed from service and are no longer needed by the City. These items have been used beyond their economical and/or useful life and may be declared as surplus property.

The disposal of surplus equipment and commodities or other property no longer needed by any department of the City is governed by Section 2.20.310 of the Tracy Municipal Code which identifies the method of disposition of surplus property.

These surplus items will be sold at public auction to the highest bidder. Items which are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value.

STRATEGIC PLAN

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

FISCAL IMPACT

The proceeds from the sale of surplus property will be deposited in the appropriate City fund from which the property was originally purchased. The estimated value of this surplus property is \$45,000

RECOMMENDATION

That the City Council, by resolution, declare and approve the list of surplus equipment and commodities, and authorize the sale of said items at public auction to the highest bidder.

Prepared by: Frank Desousa, Fleet Supervisor

Reviewed by: Don Scholl, Public Works Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

Attachment A: Surplus Vehicles and Equipment List

ATTACHMENT "A"

SURPLUS VEHICLES AND EQUIPMENT 02/19/19

<u>ASSET ID</u>	<u>EQ DESCRIPTION</u>	<u>VIN/SERIAL NUMBER</u>
2084	2003 FORD CROWN VICTORIA	2FAFP71W73X136476
2125	2001 FORD RANGER	1FTYR14EX1PB00622
2156	2005 FORD F250 SUPER DUTY	1FDSX20535EB96825
2166	2005 CHEVROLET COLORADO	1GCCS136158261675
2173	2006 CHEVROLET COLORADO	1GCCS136668210867
2174	2006 FORD F250 SUPER DUTY	1FDNF20536EA86164
2190	2006 FORD CROWN VICTORIA	2FAFP71W16X132590
2195	2006 FORD F250 SUPER DUTY	1FTNF20Y56ED10730
2233	2007 FORD CROWN VICTORIA	2FAFP71W37X125397
2257	2008 FORD F-150	1FTRF12W68KC36052
2258	2008 FORD F-150	1FTRF12W88KC36053
2264	2008 FORD EXPLORER	1FMEU63E88UA73010
2268	2008 FORD CROWN VICTORIA	2FAFP71VX8X150502
2269	2008 FORD CROWN VICTORIA	2FAFP71V88X151793
2281	2008 KUBOTA RTV900	KRTV900A81091558
2302	2009 CHEVROLET MALIBU HYBRID	1G1ZF57519F146902
2307	2009 FORD RANGER	1FTYR14D19PA26316
2332	2011 FORD CROWN VICTORIA	2FABP7BV0BX103130
2346	2006 FORD F-350	1FDWF34P16EA03921
2348	2011 FORD CROWN VICTORIA	2FABP7BV5BX173156
2350	2011 FORD CROWN VICTORIA	2FABP7BV4BX173150
2364	2011 FORD CROWN VICTORIA	2FABP7BV7BX152311
2368	2011 FORD CROWN VICTORIA	2FABP7BV9BX152326
2369	2011 FORD CROWN VICTORIA	2FABP7BV2BX152331
2370	2011 FORD CROWN VICTORIA	2FABP7BV8BX152334
2371	2011 FORD CROWN VICTORIA	2FABP7BV8BX180280
2373	2011 FORD CROWN VICTORIA	2FABP7BV4BX180356
2406	2014 CHEVROLET CAPRICE	6G3NS5U29EL944851
7005	1997 RAYCO RG 1625JR SUPER	1R9100912TW210371
9704	1997 RAYCO TRAILER	1R9050915TW210068
9804	1998 FORD F-150	1FTZF1728WKB16577

RESOLUTION _____

DECLARING CERTAIN VEHICLES AND EQUIPMENT AS SURPLUS AND APPROVING
THEIR SALE

WHEREAS, The City periodically declares equipment and commodities that have been used beyond their economical and/or useful life as surplus property, and

WHEREAS, The disposal of surplus equipment and commodities or other property no longer needed by a department in the City is governed by Section 2.20.310 of the Tracy Municipal Code which identifies the method of disposition of surplus property, and

WHEREAS, The listed surplus items will be sold at public auction to the highest bidder. Items which are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value, and

WHEREAS, The proceeds from the sale of the surplus property will be deposited in the appropriate City fund from which the property was originally purchased;

NOW, THEREFORE, BE IT RESOLVED, That the City Council declares and approves the list of vehicles and equipment attached to the staff report accompanying this resolution as surplus, and authorizes the sale of said items at public auction to the highest bidder and the remaining items to be sold for scrap value, if appropriate.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 19th day of February 2019, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.F

REQUEST

APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACY HILLS VILLAGE 2, TRACT 3888, AND AUTHORIZE THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER.

EXECUTIVE SUMMARY

Tracy Phase 1, LLC, a Delaware limited liability company (“Subdivider”) is responsible for the construction of Village 2, Tract 3888 improvements and backbone utilities appurtenant to the development of the Tracy Hills Phase 2 project. The Subdivision Improvement Agreement which authorized the Subdivider to proceed with the construction of the Village 2, Tract 3888 site improvements and backbone utilities (“SIA”) was approved by the City Council on August 21, 2018 pursuant to Resolution No. 2018-164.

Certain landscaping and irrigation improvements within the Village 2, Tract 3888 were excluded from the SIA in order to give the Subdivider additional time to resolve several landscape and irrigation design issues and continue to work with City staff to finalize the associated plans. City staff is continuing to review the landscape plans and expects to complete the review in few weeks.

The Subdivider is requesting approval of First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 2, Tract 3888. The additional work proposed by the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 2, Tract 3888 (“First Amendment”) is shown on the appurtenant sheets within the approximately thirty-one (31) sheets of landscape construction drawings entitled “Tracy Hills Landscape Improvement Plans - Neighborhood 2, Tract 3888, Phase 1A,” prepared by FORMA of Costa Mesa, California.

Approval of the First Amendment will allow the Subdivider to proceed with the construction of those certain landscaping and irrigation improvements within Tracy Hills Village 2.

DISCUSSION

The Subdivision Improvement Agreement which authorized the Subdivider to proceed with the construction of the Village 2, Tract 3888 site improvements and backbone utilities was approved by the City Council on August 21, 2018. At the time of approval of the SIA, the Subdivider requested that median, parkway and right-of-way landscaping and irrigation improvements within the Village 2, Tract 3888 be excluded from the SIA to allow the Subdivider additional time to resolve several landscape and irrigation design issues and continue to work with City staff to finalize the associated plans.

Pending approval of the Landscape Plans, Tracy Phase1, LLC requested the City to allow them to proceed with installation of the landscape improvements at their own risk and responsibility. The Subdivider has executed the First Amendment in order add the landscaping and irrigation improvements within the Village 2, Tract 3888 to the work described in the SIA and will submit the required additional improvement security as set forth in the First Amendment.

The landscaping and irrigation improvements that are the subject of the First Amendment are part of the HOA Public Landscaping as defined in the Public Landscaping Maintenance Agreement Between the City of Tracy and the Tracy Hills Community Association, and therefore the maintenance of said improvements will be funded and performed by the HOA pursuant to that Agreement.

FISCAL IMPACT

The Subdivider has paid the applicable engineering review fees which include the cost of the review of the landscape and irrigation plans and the processing of the First Amendment. The maintenance of said improvements will be funded and performed by the HOA pursuant to the Public Landscaping Maintenance Agreement between the City of Tracy and the Tracy Hills Community Association,

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

RECOMMENDATION

That the Tracy City Council, by resolution, approve the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 2, Tract 3888, and authorize the City Clerk to file the First Amendment with the Office of the San Joaquin County Recorder.

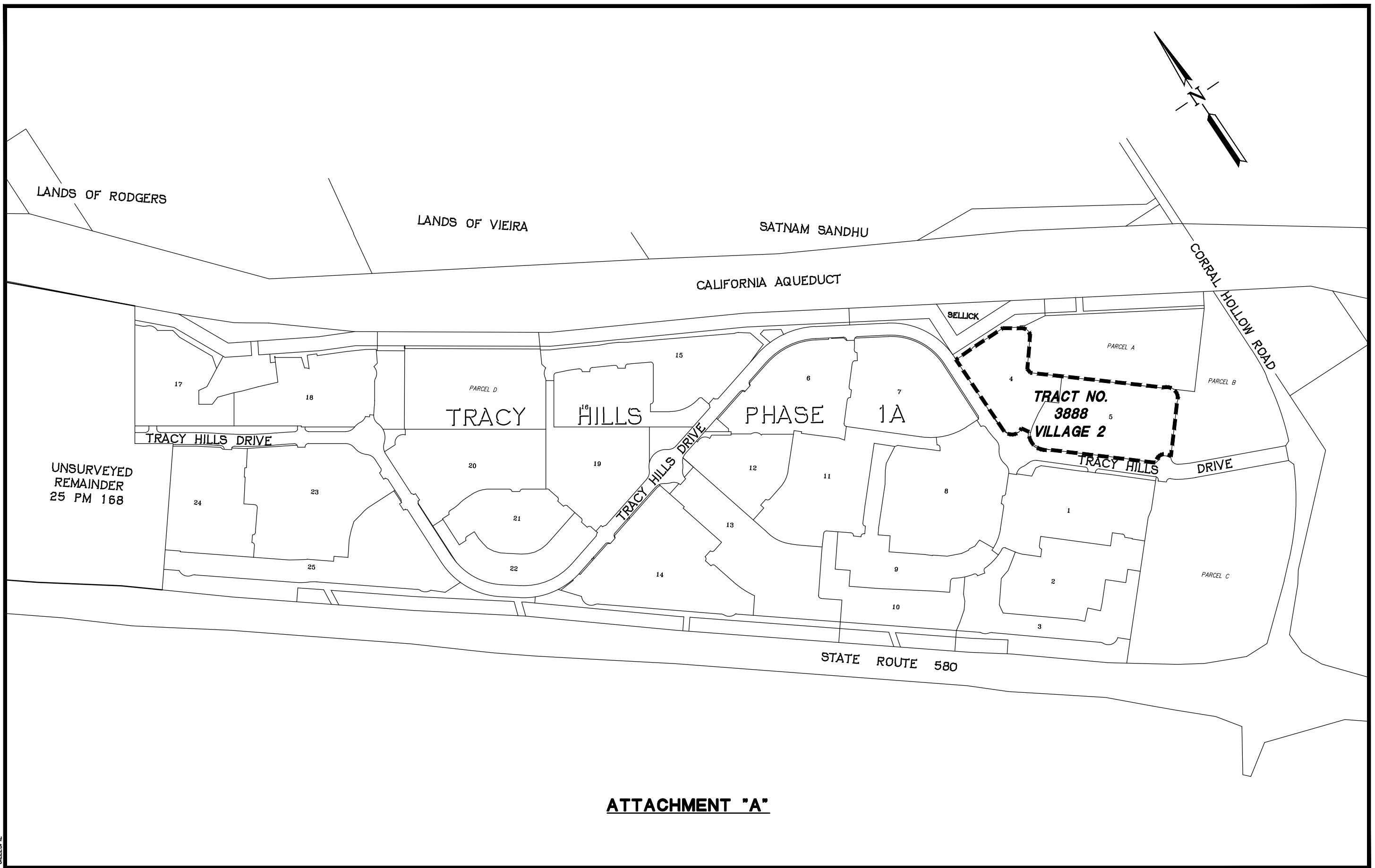
Prepared by: Nanda Gottiparthy, PE, SNG & Associates, Inc.

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

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Vicinity Map
Attachment B – First Amendment to SIA



Recording Requested By:

ORIGINAL

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

CITY OF TRACY
FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT
FOR TRACT 3888, TRACY HILLS VILLAGE 2

This **FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3888, TRACY HILLS VILLAGE 2**, (hereinafter "First Amendment") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **TRACY PHASE I, LLC**, a Delaware limited liability company, (hereinafter, "Subdivider").

RECITALS

- A. On August 21, 2018, pursuant to Resolution No. 2018-164, the City Council approved a Subdivision Improvement Agreement to authorize the Subdivider to proceed with the construction of street improvements and utilities appurtenant to the development of Tract 3888, Tracy Hills Village 2 (the "SIA"). The SIA was subsequently executed by the City and Subdivider and was recorded on August 29, 2018 as Document #2018-096096, San Joaquin County Records, and is on file with the City Clerk.
- B. The City and Subdivider now wish to amend the SIA to add the landscape and irrigation improvements within the parkway strips on the public streets throughout Tract 3888, Tracy Hills Village 2, to the Work described in the SIA.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This First Amendment hereby incorporates by reference all terms and conditions set forth in the SIA unless specifically modified by this First Amendment. All terms and conditions set forth in the SIA not specifically modified by this First Amendment shall remain in full force and effect.

2. AMENDMENTS TO THE SUBDIVISION IMPROVEMENT AGREEMENT.

2.1. Amendment to Recital E of the SIA. Recital E of the SIA is hereby amended to add the following to the Plans and Specification listed therein:

“Landscaping and irrigation improvements within the parkway strips on the public streets as shown on the thirty (30) sheets of landscape construction plans, entitled “Tracy Hills Landscape Improvement Plans-Neighborhood 2-Tract 3888 Phase 1A”, prepared by FORMA, the two (2) sheets of structural details prepared by Harris and Sloan, and the two (2) sheets of electrical plans prepared by Candela Engineering, as approved by the City Engineer (the “**Additional Work**”).”

2.2. Amendment to Recital F of the SIA: Recital F of the SIA is deleted in its entirety and replaced by the following:

“The Plans and Specifications for the Additional Work are currently under review and have not been approved by the City Engineer. The Subdivider may commence and continue with the Additional Work at the Subdivider’s sole and exclusive risk pursuant to the Improvement and Inspection Agreement for Tracy Hills Village 2 previously executed by the Subdivider and the City until the final Plans and Specifications for the Additional Work are approved by the City Engineer.”

2.3. Amendment to Section 5 of the SIA: In addition to the improvement security required by Section 5 of the SIA, Subdivider shall furnish additional contract security for the Additional Work as follows:

5.4 Faithful Performance security in the amount of \$229,258.00 in accordance with the cost estimates approved by City to secure faithful performance of this First Amendment (until the date on which the City Council accepts the Additional Work as complete).

5.5 Labor and Material security in the amount of \$229,258.00 in accordance with the cost estimates approved by City to secure payment by the Subdivider to laborers and materialmen (until the date on which claims in connection with the Additional Work are required to be made by laborers and materialmen).

5.6 Warranty security in the amount of \$22,926.00 in accordance with the cost estimates approved by City to secure faithful performance of this First Amendment (from the date on which the City Council accepts the Additional Work as complete until one year thereafter.”

3. SIGNATURES. The individuals executing this First Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this First Amendment on behalf of the respective legal entities of the

CITY OF TRACY – FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 3888, TRACY HILLS VILLAGE 2
Page 3 of 3

Subdivider and the City. This First Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

By: Robert Rickman
Title: MAYOR
Date: _____

Attest:

By: Adrienne Richardson
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Thomas Watson
Title: CITY ATTORNEY
Date: _____

SUBDIVIDER:
Tracy Phase I, LLC,
a Delaware limited liability company

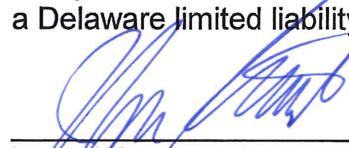

By: John Stanek
Title: AUTHORIZED REPRESENTATIVE
Date: February 5, 2019

EXHIBIT "A"

All that real property situate in the City of Tracy, County of San Joaquin, State of California, described as follows:

Lots 4 and 5 as shown on the map of Tract No. 3878, filed January 26, 2018, in Book 43 of Maps and Plats, at Page 17, Official Records of San Joaquin County.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)On February 5, 2019 before me, Anne Nguyen, Notary Public,

Date

Here Insert Name and Title of the Officer

personally appeared John Stanek

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

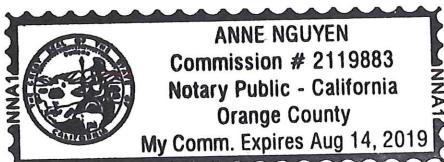
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: First Amendment to Subdivision Improvement Agreement Document Date: _____Number of Pages: 4 Signer(s) Other Than Named Above: _____**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____

Signer's Name: _____

 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____ Partner — Limited General Partner — Limited General Individual Attorney in Fact Individual Attorney in Fact Trustee Guardian or Conservator Trustee Guardian or Conservator Other: _____ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

RESOLUTION 2019-_____

APPROVING THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACY HILLS VILLAGE 2, TRACT 3888, AND AUTHORIZING THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, On April 5, 2016, the City Council adopted the Tracy Hills Specific Plan and approved various related land use entitlements including a Large-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1A, Tract 3878, processed under Application No. TSM16-001 and approved by Resolution No. 2016-065, and a Small-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1A, Tract 3888, processed under Application No TSM13-0005 and approved by Resolution No. 2016-066, and

WHEREAS, The Conditions of Approval for the Tentative Subdivision Maps require the Subdivider to construct, among other things, certain site improvements and backbone utilities appurtenant to the development of the Tracy Hills Phase 1A project, and

WHEREAS, The Subdivision Improvement Agreement for Tracy Hills Village 2, Tract 3888 (SIA), which authorized the Subdivider to proceed with the construction of the Village 2 site improvements and backbone utilities, was approved by the City Council on August 21, 2018, pursuant to Resolution No. 2018-164, and was recorded on August 29, 2018 as Document No. 2018-096096 in San Joaquin County Records, and

WHEREAS, Certain landscaping and irrigation improvements within the Village 2 were excluded from the SIA in order to give the Subdivider additional time to resolve several landscape and irrigation design issues and continue to work with City staff to finalize the associated plans, and

WHEREAS, Pursuant to Section 1.1 of the SIA, the City and Subdivider now wish to amend the SIA to add the landscaping and irrigation improvements within the Village 2 Tract 3888 to the Work described in the SIA, and

WHEREAS, The Subdivider has submitted improvement plans for the Landscape Improvements for approval and has requested to proceed with construction of the improvements pending approval of the Landscape Improvement Plans, and

WHEREAS, Under the provisions of the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 2, Tract 3888, the Subdivider will construct the landscape improvements at its own risk and responsibility, prior to approval of the Improvement Plans, and

WHEREAS, The City will periodically inspect Subdivider's work in constructing and installing the public improvements shown on the submitted Landscape Improvement Plans, and periodically advise Subdivider regarding whether the work appears to be proceeding in conformance with the submitted plans, and will further inspect construction of the public improvements after completion of the construction of the improvements, and

WHEREAS, To guarantee the performance of the Subdivider's obligations regarding completion of the landscaping and irrigation improvements within the Village 2 Tract 3888, the Subdivider has executed the First Amendment to the SIA and will submit the required additional improvement security as set forth in the First Amendment, and

WHEREAS, The landscaping and irrigation improvements that are the subject of the First Amendment are part of the HOA Public Landscaping as defined in the Public Landscaping Maintenance Agreement Between the City of Tracy and the Community Association, and therefore the maintenance of said improvements will be funded and performed by the HOA pursuant to that Agreement, and

WHEREAS, The Subdivider has paid the cost of engineering, plan review and processing the First Amendment, and will pay all construction and inspection costs associated with the subject landscaping and irrigation improvements;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 2, Tract 3888, and authorizes the City Clerk to file the First Amendment with the Office of the San Joaquin County Recorder.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.G

REQUEST

APPROVE THE PARK IMPROVEMENT AND REIMBURSEMENT AGREEMENT FOR TRACY HILLS NEIGHBORHOOD PARK 2, AND AUTHORIZE THE CITY CLERK TO FILE THE AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

EXECUTIVE SUMMARY

Approval of the Park Improvement and Reimbursement Agreement (Agreement) will allow Tracy Phase I, LLC (Developer) to proceed with construction of park improvements associated with the development of Tracy Hills Neighborhood Park 2, and will also allow the City, upon satisfactory completion of the park improvements, to accept the offer of dedication of the Park Site and take ownership of the park.

DISCUSSION

Tracy Phase I, LLC is required to construct Tracy Hills Neighborhood Park 2 on an approximately 3.61 acre parcel identified as Lot A within the subdivision known as Tract 3955, Tracy Hills Village 7A (Park Site).

In accordance with the Conditions of Approval (Conditions) of the Small-Lot Vesting Tentative Subdivision Map for the 1,139 lot Tracy Hills Phase 1A project, processed under Application No. TSM13-0005 and approved by the Tracy City Council on April 5, 2016, pursuant to Resolution No. 2016-066, the Developer was required to dedicate the Park Site to the City and complete the construction of the neighborhood park improvements.

At its August 16, 2016 meeting, the City Council approved a Deferred Improvement Agreement (DIA) for the Tracy Hills Phase 1A project, to allow deferment of completion of certain improvements required to serve future phases of Tracy Hills Phase 1A, including neighborhood parks. The DIA was recorded on February 12, 2018 as Document #2018-016153 in San Joaquin County Records and is on file with the Office of the City Clerk.

The Final Subdivision Map for Tract 3955, Tracy Hills Village 7A that was recorded on September 6, 2018, in Book 43 of Maps and Plats, at Page 50 in San Joaquin County Records, offered the Park Site for dedication to the City subject to the condition that park improvements be installed thereon. Upon satisfactory completion of the Tracy Hills Neighborhood Park 2 improvements by the Developer, the City will accept the offer of dedication of the Park Site, and will take ownership of the park Improvements.

Attachment A shows the overall Tracy Hills Phase 1A project area, the boundary of the Final Subdivision Map for Tract 3955, Tracy Hills Village 7A, and the location of the Park Site within said Village 7A.

The Developer has submitted the Improvement Plans for the required park improvements. Staff is currently reviewing the plans and expects the plans to be complete within the next few weeks. Pending approval of the Improvement Plans, the Developer has requested that the City to allow them to proceed with installation of the park improvements at their own risk and responsibility.

The Developer has executed the Agreement and submitted the required security to guarantee completion of the park improvements. The Agreement and Improvement Plans are on file with the City Engineer and are available for review upon request.

Upon satisfactory completion of the construction of the park improvements, the Developer will be entitled to receive Neighborhood Park Development Fee Credits for the program portion of the Tracy Hills Neighborhood Park 2 improvements in accordance with the Agreement, the Conditions, and Title 13 of the Tracy Municipal Code.

FISCAL IMPACT

The Subdivider has paid the applicable engineering review fees which include the cost of review of the Improvement Plans and processing the Agreement.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

RECOMMENDATION

That the City Council, by resolution, approve the Park Improvement and Reimbursement Agreement for Tracy Hills Neighborhood Park 2, and authorize the City Clerk to file the Agreement with the Office of the San Joaquin County Recorder.

Prepared by: Nanda Gottiparthi, PE, SNG & Associates

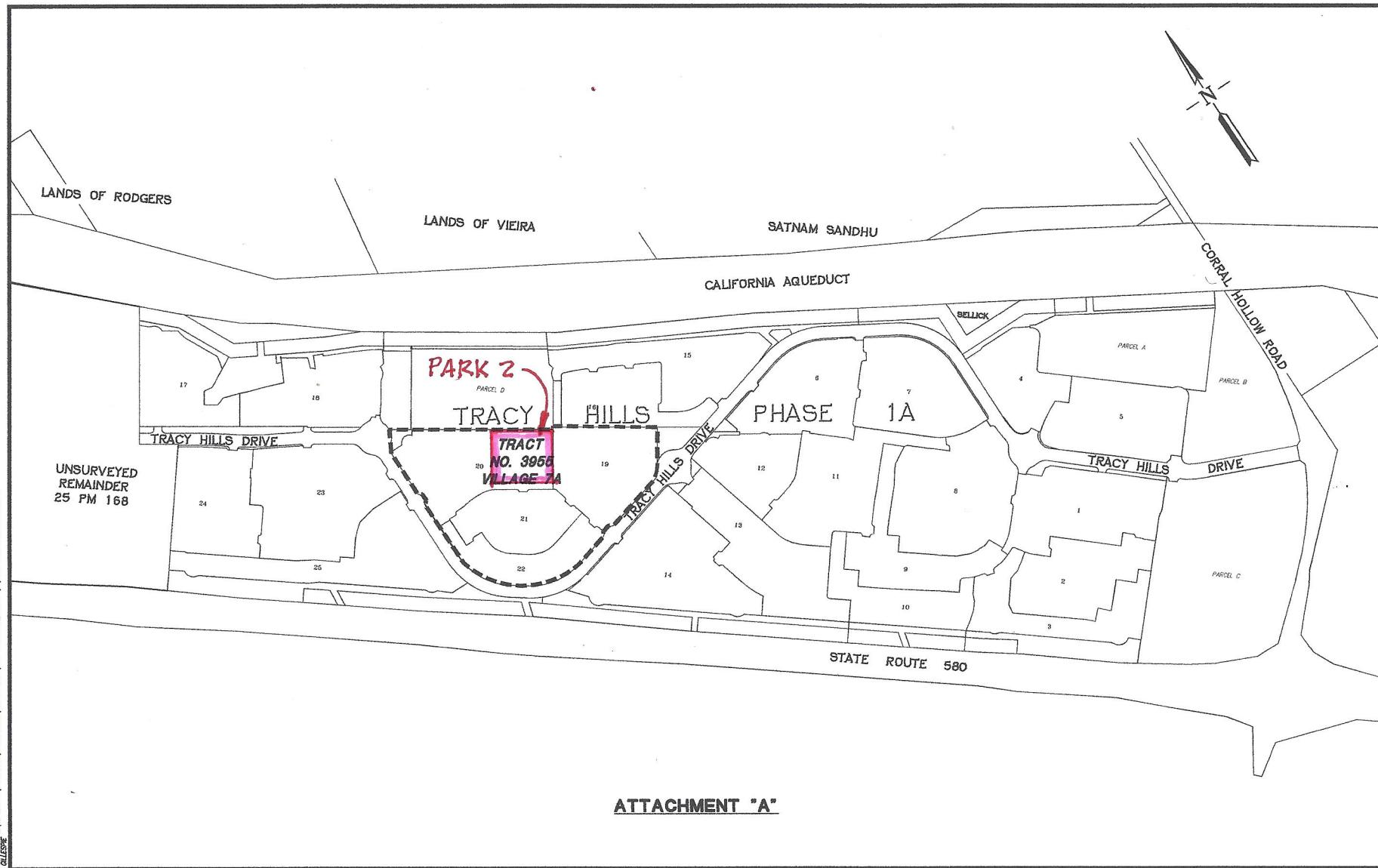
Reviewed by: Robert Armijo, PE, City Engineer / Assistant Director of Development Services
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Location Map

Attachment B – Park Improvement and Reimbursement Agreement



Recording Requested By
 City of Tracy
 Development Services Department
 333 Civic Center Plaza
 Tracy, CA 95376

ORIGINAL

And When Recorded Mail To:
 City of Tracy
 Office of the City Clerk
 333 Civic Center Plaza
 Tracy, CA 95376
 Attention: Adrienne Richardson

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

**CITY OF TRACY
 PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
 TRACY HILLS NEIGHBORHOOD PARK 2**

This **PARK IMPROVEMENT AND REIMBURSEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City") and **TRACY PHASE I, LLC**, a Delaware limited liability company (hereinafter "Developer").

RECITALS

- A. Developer is required to construct a neighborhood park on an approximately 3.61 acre parcel identified as Lot A within the subdivision known as **TRACT 3955, TRACY HILLS VILLAGE 7A**, (hereinafter referred to as the "Park Site"), and more specifically described in the legal description attached hereto as Exhibit "A" and incorporated herein by reference.
- B. The conditions of approval of the Small-Lot Vesting Tentative Subdivision Map for the 1,139 lot **TRACY HILLS PHASE 1A** project (hereinafter "Tentative Map"), processed under Application No. TSM13-0005 and approved by the Tracy City Council on April 5, 2016, pursuant to Resolution No. 2016-066 state that the Developer is required to dedicate the Park Site to the City and complete the construction of the neighborhood park improvements upon approval of the Final Map. .
- C. However, at its August 16, 2016 meeting, the City Council approved a Deferred Improvement Agreement ("DIA") for the **TRACY HILLS PHASE 1A** project, to allow deferment of completion of certain improvements required to serve future phases of **TRACY HILLS PHASE 1A**, including neighborhood parks. The DIA was recorded on February 12, 2018 as Document #2018-016153 in San Joaquin County Records and is on file with the Office of the City Clerk.
- D. Pursuant to Condition of Approval C.2.8.1 of the Tentative Map, if the Developer completes the construction of the neighborhood park improvements, the Developer will be entitled to receive Neighborhood Park Development Fee Credits for the program portion of the Tracy Hills Neighborhood Park 2 improvements in accordance with Title 13 of the Tracy Municipal Code. In accordance with the calculation shown on Exhibit "B" of this Agreement, attached hereto and incorporated by reference, the amount of the Neighborhood Park Development Fee Credits is **\$2,225,279.96**.

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

- E. Park Development Fees were determined by the Parks AB 1600 Development Impact Fee Technical Memo approved by the City Council on January 7, 2014, pursuant to Resolution No. 2014-10 and subject to update annually. All property within the Tentative Map is subject to the Park Development Fees.
- F. The Final Map of **TRACT 3955, TRACY HILLS VILLAGE 7A** that was recorded on September 6, 2018, in Book 43 of Maps and Plats, at Page 50 in San Joaquin County Records, includes an offer of dedication from Meritage Homes of California Inc. (Meritage) to the City of the Park Site that is described in Exhibit "A". Upon completion of the Tracy Hills Neighborhood Park 2 improvements, the City will accept the offer of dedication of the Park Site and assume ownership of the park improvements.
- G. The Parties now desire to set forth in this Agreement the terms by which the Developer will construct the neighborhood park improvements on the Park Site as shown on the Plans and specifications (the "Plans and Specifications") which include eight (8) sheets of improvement plans entitled "Improvement Plans, Park #2, Village 7A, Tract 3955, Starcross Park, Tracy Hills Phase 1A" prepared by Ruggeri-Jensen-Azar of Rocklin, California, and twenty-five (25) sheets of landscape plans entitled "Landscape Construction Drawing for Tracy Hills Public Park 2, Starcross Park, Tract 3955, Phase 1A" prepared by FORMA of Costa Mesa, California, (collectively hereinafter referred to as the "Work"), and incorporated herein by reference, in exchange for Neighborhood Park Development Fee Credits to be granted to Developer against a portion of the Neighborhood Park Development Fees otherwise due on the specified lots in the Project as more specifically described in Paragraph 5 of this Agreement.
- H. The Plans and Specifications for the Work are currently under review and have not been approved by the City Engineer. Developer, may commence constructing the improvements before the City completes its review and approval of the Plans and Specifications. Developer understands and acknowledges that it will be proceeding with such improvements at their sole and exclusive risk, and that if the improvements completed by Developer do not conform, in the City Engineer's reasonable determination, to the Plans and Specifications ultimately approved by the City, the Developer will be required to remove or correct any non-conformities to the reasonable satisfaction of the City Engineer, at the Developer's sole cost.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **INCORPORATION OF RECITALS.** The recitals set forth above are incorporated into this Agreement as though set forth in full herein.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of the requirements of this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Each party shall commence performance, and shall complete all required performance no later than the dates set forth in this Agreement.
 - 2.1 **Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, the Developer shall provide written notice to the City Engineer of the date on which the Developer shall commence Work. The Developer shall not commence Work until after the notice required by this section is properly provided, and the Developer shall not commence Work prior to the date specified in the written notice.

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, the Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Developer's prosecution of the Work.
- 2.3 **Completion of Work.** As specified in Item C.1.b in Exhibit "C" of the DIA, the second neighborhood park (Tracy Hills Neighborhood Park 2) shall be completed and accepted by the City before final inspection or occupancy of the 750th dwelling within Tracy Hills Phase 1A.
- 2.4 **Extension of Time.** No party may request an extension of time, unless a written request is made to the other party no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
3. **CONVEYANCE OF THE PARK SITE.** Meritage has offered the Park Site for dedication as specified in Recital F of this Agreement. The City's acceptance of dedication is subject to satisfactory completion of the Work by the Developer.
4. **SCOPE OF WORK.** The Developer shall perform, or cause to be performed, the Work described in the Plans and Specifications, to the reasonable satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at the Developer's expense, in the manner described in the Plans and Specifications. No change shall be made to the Work unless authorized in writing by the City Engineer. The Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code section 12.36.060(f).
 - 4.1 Developer understands and agrees that because the Plans and Specifications have not been approved by the City Engineer, if any of the completed improvements do not conform to the final approved Plans and Specifications, the Developer will have to remove and reconstruct such improvements to the reasonable satisfaction of the City Engineer at Developer's sole cost.
5. **PARK FEE CREDITS.** The Developer is entitled to receive Neighborhood Park Development Fee Credits, in accordance with the Tracy Hills Specific Plan (Developer Phases) Finance and Implementation Plan, until the entire fee credit of \$2,225,279.96 (per Recital D and Exhibit "B" of this Agreement) is used.
6. **DEVELOPER'S AUTHORIZED REPRESENTATIVE.** Developer shall have a competent foreman or superintendent (hereinafter "Authorized Representative") on site with authority to act on behalf of the Developer. The Developer shall, at all times, keep the City Engineer reasonably informed in writing of the name and telephone number of the Authorized Representative. The Authorized Representative shall be on site approximately sixty-percent (60%) of the time work is occurring. The Developer may designate an employee of its general contractor or development manager as the Authorized Representative. The Developer shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work.
7. **LOCATION OF PERFORMANCE.** The Developer shall perform all Work at the locations and grades shown on the Plans and Specifications or as otherwise approved by the City Engineer. Any easement or right-of-way necessary for the performance of the Work shall be acquired by the Developer at the Developer's sole cost and expense.

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

8. **IMPROVEMENT SECURITY.** Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work, the Developer shall furnish improvement security, in a form authorized and required by the Subdivision Map Act (including Government Code sections 66499 et seq.) and Tracy Municipal Code (including Chapter 12.36), in the following amounts:
 - 8.1. **Faithful Performance** security in the amount of **\$1,651,629.00** to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete).
 - 8.2. **Labor and Material** security in the amount of **\$1,651,629.00** to secure payment by the Developer to laborers and materialmen (until the date of which claims are required to be made by laborers and materialmen).
 - 8.3. **Warranty** security in the amount of **\$165,163.00** to secure faithful performance of this Agreement (from the date on which the City Council accepts the Work as complete until one year thereafter).
9. **INSURANCE.** Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work, the Developer shall furnish evidence to the City that all of the following insurance requirements have been satisfied.
 - 9.1. **General.** The Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 9.2. **Commercial General Liability** with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the general aggregate for general liability, bodily injury, personal injury, and property damage, including completed operation coverage.
 - 9.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto" including "hired autos and "non-owned autos") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage. If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 9.4. **Workers' Compensation** coverage for employees shall be maintained as required by the State of California.
 - 9.5. **Endorsements.** Developer shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
 - 9.5.1. The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - 9.5.2. For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Developer's insurance and shall not contribute with it.

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

- 9.6. **Notice of Cancellation.** Developer shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 9.7. **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 9.8. **Insurance Certificate.** Developer shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney.
- 9.9. **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 9.10. **Developer's Obligation.** Maintenance of insurance by the Developer as specified in this Agreement shall in no way be interpreted as relieving the Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Developer may carry, at its own expense, such additional insurance as it deems necessary.
10. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, the Developer shall obtain a City of Tracy Business License. The Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
11. **INSPECTION BY THE CITY.** In order to permit the City to inspect the Work, the Developer shall, at all times, provide to the City proper and safe access to the Project Site and all portions of the Work, and to all shops wherein portions of the Work are in preparation.
12. **INSPECTION FEES.** Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work, the Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3-1/2%) of the estimated Project costs (as approved by the City Engineer). In the event that the City requires an independent inspection, the Developer shall pay all such costs and provide a report to the City.
13. **DEFAULT.**
 - 13.1 In the event that the Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to the Developer and the Developer's surety (if any) in which the default is described.
 - 13.2 The Developer shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:
 - 13.2.1 The Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

13.2.2 The Developer abandons the Project Site.

13.2.3 The Developer fails to perform one or more requirements of this Agreement.

13.2.4 The Developer fails to timely (as determined by the City) replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

13.2.5 The Developer violates any legal requirement related to the Work.

13.3 In the event that the Developer fails to cure the default within five (5) days, or provide adequate written assurance to the satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:

13.3.1 Cure the default and charge the Developer for the costs therefor, including administrative costs and interest in an amount equal to seven percent (7%) per annum from the date of default.

13.3.2 Demand the Developer to complete performance of the Work.

13.3.3 Demand the Developer's surety (if any) to complete performance of the Work.

14. **ACCEPTANCE OF WORK.** Prior to acceptance of the Work by the City Council, the Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Project Site. The Developer's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
15. **WARRANTY PERIOD.** The Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Developer under this Agreement, the Developer shall be in default.
16. **INDEPENDENT CONTRACTOR STATUS.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
17. **OWNERSHIP OF WORK.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City.
18. **INDEMNIFICATION.** Developer shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of this Agreement by

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

Developer or Developer's agents, representatives, contractors, subcontractors, or employees.

19. ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the parties' duties be delegated without the written consent of all parties. Any attempt to assign or delegate this Agreement without the written consent of all parties shall be void and of no force and effect. Consent by all parties to one assignment shall not be deemed to be consent to any subsequent assignments.

20. NOTICES.

20.1. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

City Engineer
City of Tracy
333 Civic Center Plaza
Tracy CA 95376

To Developer:

Tracy Phase I, LLC
888 San Clemente, Suite 100
Newport Beach, CA 92660
Attn: John Stanek, Principal

20.2. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

21. MODIFICATIONS. This Agreement may not be modified except by an agreement in writing signed by both parties.

22. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

23. SEVERABILITY. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

24. JURISDICTION AND VENUE. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

25. ENTIRE AGREEMENT. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed for this Project. This Agreement supersedes all prior negotiations, representations, or agreements.

26. SIGNATURES. The City and Developer represent and warrant that the individuals executing this Agreement have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the

CITY OF TRACY – PARK IMPROVEMENT & REIMBURSEMENT AGREEMENT
TRACY HILLS NEIGHBORHOOD PARK 2

City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

By: Robert Rickman

Title: MAYOR

Date: _____

Attest:

By: Adrianna Richardson

Title: CITY CLERK

Date: _____

Approved As To Form:

By: Thomas Watson

Title: CITY ATTORNEY

Date: _____

DEVELOPER:
Tracy Phase I, LLC,
a Delaware limited liability company

By: John Stanek

Title: AUTHORIZED REPRESENTATIVE

Date: February 6, 2019

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

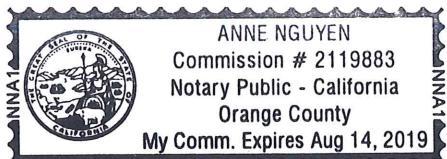
State of California)
County of Orange)
On February 6, 2019 before me, Anne Nguyen, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared John Stanek
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Anne Nguyen
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Park Improvement & Reimbursement Agreement Document Date: _____

Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT "A"

TRACY HILLS NEIGHBORHOOD PARK 1

All that real property situate in the City of Tracy, County of San Joaquin, State of California, described as follows:

Lot A as shown on the map of Tract No. 3955, filed September 6, 2018, in Book 43 of Maps and Plats, at Page 50, Official Records of San Joaquin County.

EXHIBIT "B"

Tracy Hills Neighborhood Park #2 Credit

Park Cost per Acre	\$	580,000.00
Updated By ENR	\$	639,251.45
Park Acres		3.61
Total Cost	\$	2,307,697.74
Construction Cost	\$	1,648,355.53
Reimbursable Cost (removes PM)	\$	2,225,279.96

<u>ENR San Fran CCI Factors:</u>
Base Index (November 2013): 10901.09
Current Index (June 2018): 12014.72
Increase: 10.22%

RESOLUTION 2019-_____

APPROVING THE PARK IMPROVEMENT AND REIMBURSEMENT AGREEMENT FOR TRACY HILLS NEIGHBORHOOD PARK 2, AND AUTHORIZING THE CITY CLERK TO FILE THE AGREEMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, Tracy Phase I, LLC (Developer) is required to construct Tracy Hills Neighborhood Park 2 on an approximately 3.61 acre parcel identified as Lot A within the subdivision known as Tract 3955, Tracy Hills Village 7A (Park Site), and

WHEREAS, The Conditions of Approval for the Small-Lot Vesting Tentative Subdivision Map for the 1,139 lot Tracy Hills Phase 1A project require the Developer to dedicate the Park Site to the City and complete the construction of the neighborhood park improvements, and

WHEREAS, The City Council approved a Deferred Improvement Agreement for the Tracy Hills Phase 1A project, to allow deferment of completion of certain improvements required to serve future phases of Tracy Hills Phase 1A, including neighborhood parks, and

WHEREAS, The recorded Final Subdivision Map for Tract 3955, Tracy Hills Village 7A offered the Park Site for dedication to the City subject to the condition that park improvements are installed thereon, and

WHEREAS, The City will accept the offer of dedication of the Park Site and will take ownership of the park improvements upon satisfactory completion of the park improvements by the Developer, and

WHEREAS, The Developer has submitted Improvement Plans, Specifications, and Cost Estimates for the park improvements for approval and has requested to proceed with construction of the improvements pending approval of the plans, and

WHEREAS, Under the provisions of the Park Improvement and Reimbursement Agreement, the Developer will construct and continue with the construction of the park improvements at its own risk and responsibility prior to the City Engineer's approval of the Improvement Plans, and

WHEREAS, The City will periodically inspect Developer's work in constructing and installing the public improvements shown on the submitted Improvement Plans, and periodically advise Developer regarding whether the work appears to be proceeding in conformance with the submitted plans, and will further inspect construction of the public improvements after completion of the construction of the improvements, and

WHEREAS, The Developer has executed the Park Improvement and Reimbursement Agreement and has posted the required securities to guarantee completion of the improvements, and

WHEREAS, The Developer is entitled to receive Neighborhood Park Development Fee Credits for the program portion of the Tracy Hills Neighborhood Park 2 improvements, and

WHEREAS, The Developer will pay for the cost of engineering, construction, inspection and processing the Agreement;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the Park Improvement and Reimbursement Agreement for Tracy Hills Neighborhood Park 2, and authorizes the City Clerk to file the Agreement with the Office of the San Joaquin County Recorder.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.H

REQUEST

**APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT
AGREEMENT FOR TRACY HILLS VILLAGE 7A, TRACT 3955, AND AUTHORIZE THE
CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN
JOAQUIN COUNTY RECORDER**

EXECUTIVE SUMMARY

Meritage Homes of California, Inc., a California corporation ("Subdivider") is responsible for the construction of Village 7A, Tract 3955 improvements and backbone utilities appurtenant to the development of the Tracy Hills Phase 7A project. The Subdivision Improvement Agreement which authorized the Subdivider to proceed with the construction of the Village 7A, Tract 3955 site improvements and backbone utilities ("SIA") was approved by the City Council on September 4, 2018 pursuant to Resolution No. 2018-176.

Certain landscaping and irrigation improvements within the Village 7A, Tract 3955 were excluded from the SIA in order to give the Subdivider additional time to resolve several landscape and irrigation design issues and continue to work with City staff to finalize the associated plans. City staff is continuing to review the landscape plans and expects to complete the review in few weeks.

The Subdivider is requesting approval of First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 7A, Tract 3955. The additional work proposed by the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 7A, Tract 3955 ("First Amendment") is shown on the appurtenant sheets within the approximately thirty (30) sheets of landscape construction drawings entitled "Tracy Hills Landscape Improvement Plans - Neighborhood 7A, Tract 3955, Phase 1A," prepared by FORMA of Costa Mesa, California.

Approval of the First Amendment will allow the Subdivider to proceed with the construction of those certain landscaping and irrigation improvements within Tracy Hills Village 7A.

DISCUSSION

The Subdivision Improvement Agreement which authorized the Subdivider to proceed with the construction of the Village 7A, Tract 3955 site improvements and backbone utilities was approved by the City Council on September 4, 2018. At the time of approval of the SIA, the Subdivider requested that median, parkway and right-of-way landscaping and irrigation improvements within the Village 7A, Tract 3955 be excluded from the SIA to allow the Subdivider additional time to resolve several landscape and irrigation design issues and continue to work with City staff to finalize the associated plans.

Pending approval of the Landscape Plans, Meritage Homes requested the City to allow them to proceed with installation of the landscape improvements at their own risk and responsibility. The Subdivider has executed the First Amendment in order add the landscaping and irrigation improvements within the Village 7A, Tract 3955 to the work described in the SIA and will submit the required additional improvement security as set forth in the First Amendment.

The landscaping and irrigation improvements that are the subject of the First Amendment are part of the HOA Public Landscaping as defined in the Public Landscaping Maintenance Agreement between the City of Tracy and the Tracy Hills Community Association, and therefore the maintenance of said improvements will be funded and performed by the HOA pursuant to that Agreement.

FISCAL IMPACT

The Subdivider has paid the applicable engineering review fees which include the cost of the review of the landscape and irrigation plans and the processing of the First Amendment. The maintenance of said improvements will be funded and performed by the HOA pursuant to the Public Landscaping Maintenance Agreement between the City of Tracy and the Tracy Hills Community Association.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

RECOMMENDATION

That the Tracy City Council, by resolution, approve the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 7A, Tract 3955, and authorize the City Clerk to file the First Amendment with the Office of the San Joaquin County Recorder.

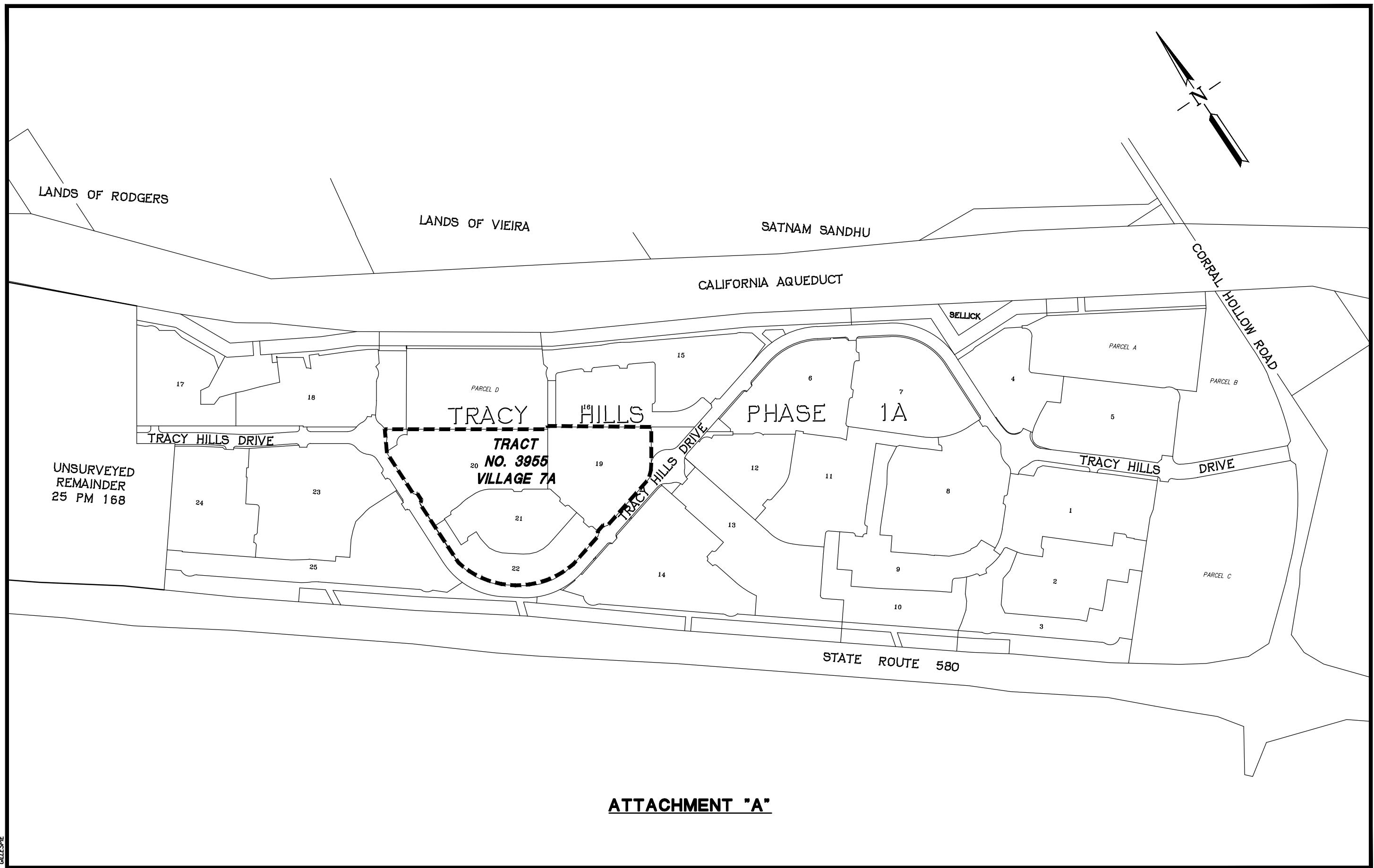
Prepared by: Nanda Gottiparty, PE, SNG & Associates, Inc.

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

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Vicinity Map
Attachment B – First Amendment to SIA



Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

ORIGINAL

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

**CITY OF TRACY
FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT
FOR TRACT 3955, TRACY HILLS VILLAGE 7A**

This **FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3955, TRACY HILLS VILLAGE 7A**, (hereinafter "First Amendment") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "City"), and **MERITAGE HOMES OF CALIFORNIA, INC.**, a California corporation, (hereinafter "Subdivider").

RECITALS

- A. On September 4, 2018, pursuant to Resolution No. 2018-176, the City Council approved a Subdivision Improvement Agreement to authorize the Subdivider to proceed with the construction of street improvements and utilities appurtenant to the development of Tract 3955, Tracy Hills Village 7A (the "SIA"). The SIA was subsequently executed by the City and Subdivider and was recorded on September 27, 2018 as Document #2018-107920, San Joaquin County Records, and is on file with the City Clerk.
- B. The City and Subdivider now wish to amend the SIA to add the landscape and irrigation improvements within the parkway strips on the public streets throughout Tract 3955, Tracy Hills Village 7A, to the Work described in the SIA.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This First Amendment hereby incorporates by reference all terms and conditions set forth in the SIA unless specifically modified by this First Amendment. All terms and conditions set forth in the SIA not specifically modified by this First Amendment shall remain in full force and effect.

2. AMENDMENTS TO THE SUBDIVISION IMPROVEMENT AGREEMENT.

2.1. Amendment to Recital E of the SIA. Recital E of the SIA is hereby amended to add the following to the Plans and Specification listed therein:

“Landscaping and irrigation improvements within the parkway strips on the public streets as shown on the thirty (30) sheets of landscape construction drawings, entitled “Tracy Hills Landscape Improvement Plans-Neighborhood 7A- Tract 3955 Phase 1A”, prepared by FORMA, the two (2) sheets of structural details prepared by Harris and Sloan, and the two (2) sheets of electrical plans prepared by Candela Engineering (hereinafter referred to as the “**Additional Work**”).”

2.2. Amendment to Recital F of the SIA. Recital F of the SIA is deleted in its entirety and replaced by the following:

“The Plans and Specifications for the Additional Work are currently under review and have not been approved by the City Engineer. The Subdivider may commence and continue with the Additional Work at the Subdivider’s sole and exclusive risk pursuant to the Improvement and Inspection Agreement for Tracy Hills Village 7A previously executed by the Subdivider and the City until the final Plans and Specifications for the Additional Work are approved by the City Engineer.

2.3. Amendment to Section 5 of the SIA. In addition to the improvement security required by Section 5 of the SIA, Subdivider shall furnish additional contract security for the Additional Work as follows:

5.4. Faithful Performance security in the amount of **\$561,681.00** in accordance with the cost estimates approved by City to secure faithful performance of this First Amendment (until the date on which the City Council accepts the Additional Work as complete).

5.5. Labor and Material security in the amount of **\$561,681.00** in accordance with the cost estimates approved by City to secure payment by the Subdivider to laborers and materialmen (until the date on which claims in connection with the Additional Work are required to be made by laborers and materialmen).

5.6. Warranty security in the amount of **\$56,168.00** in accordance with the cost estimates approved by City to secure faithful performance of this First Amendment (from the date on which the City Council accepts the Additional Work as complete until one year thereafter.”

CITY OF TRACY – FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 3955, TRACY HILLS VILLAGE 7A
Page 3 of 3

3. **SIGNATURES.** The individuals executing this First Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this First Amendment on behalf of the respective legal entities of the Subdivider and the City. This First Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

By: Robert Rickman
Title: MAYOR
Date: _____

Attest:

By: Adrienne Richardson
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Thomas Watson
Title: CITY ATTORNEY
Date: _____

SUBDIVIDER:
Meritage Homes of California, Inc.,
a California corporation



By: John Bayless
Title: VP OF LAND DEVELOPMENT
Date: 2/5/19

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of YOLO)

On FEBRUARY 5, 2019 before me, VICTORIA ADAMS, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared JOHN D. BAYLESS,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Victoria Adams (Seal)

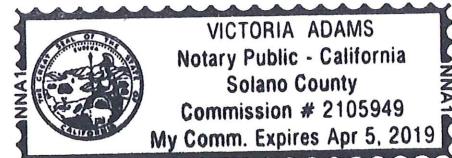


EXHIBIT "A"

All that real property situate in the City of Tracy, County of San Joaquin, State of California, described as follows:

Lots 20, 21, 22 and Parcel XX as shown on the map of Tract No. 3878, filed January 26, 2018, in Book 43 of Maps and Plats, at Page 17, and Lot A as shown on the map of Tract No. 3953, filed _____, 2018, in Book _____ of Map and Plats, at Page _____, Official Records of San Joaquin County.

RESOLUTION 2019-_____

APPROVING THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACY HILLS VILLAGE 7A, TRACT 3955, AND AUTHORIZING THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, On April 5, 2016, the City Council adopted the Tracy Hills Specific Plan and approved various related land use entitlements including a Large-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1A, Tract 3878, processed under Application No. TSM16-001 and approved by Resolution No. 2016-065, and a Small-Lot Vesting Tentative Subdivision Map for Tracy Hills Phase 1A, Tract 3878, processed under Application No. TSM13-0005 and approved by Resolution No. 2016-066, and

WHEREAS, The Conditions of Approval for the Tentative Subdivision Maps require the Subdivider to construct, among other things, certain site improvements and backbone utilities appurtenant to the development of the Tracy Hills Phase 1A project, and

WHEREAS, The Subdivision Improvement Agreement for Tracy Hills Village 7A, Tract 3955 (SIA), which authorized the Subdivider to proceed with the construction of the Village 7A site improvements and backbone utilities, was approved by the City Council on September 4, 2018, pursuant to Resolution No. 2018-176, and was recorded on September 27, 2018 as Document No. 2018-107920 in San Joaquin County Records, and

WHEREAS, Certain landscaping and irrigation improvements within the Village 7A were excluded from the SIA in order to give the Subdivider additional time to resolve several landscape and irrigation design issues and continue to work with City staff to finalize the associated plans, and

WHEREAS, Pursuant to Section 1.1 of the SIA, the City and Subdivider now wish to amend the SIA to add the landscaping and irrigation improvements within the Village 7A Tract 3955 to the Work described in the SIA, and

WHEREAS, The Subdivider has submitted improvement plans for the Landscape Improvements for approval and has requested to proceed with construction of the improvements pending approval of the Landscape Improvement Plans, and

WHEREAS, Under the provisions of the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 7A, Tract 3955, the Subdivider will construct the landscape improvements at its own risk and responsibility, prior to approval of the Improvement Plans, and

WHEREAS, The City will periodically inspect Subdivider's work in constructing and installing the public improvements shown on the submitted Landscape Improvement Plans, and periodically advise Subdivider regarding whether the work appears to be proceeding in conformance with the submitted plans, and will further inspect construction of the public improvements after completion of the construction of the improvements, and

WHEREAS, In order to guarantee the performance of the Subdivider's obligations regarding completion of the landscaping and irrigation improvements within the Village 7A Tract 3955, the Subdivider has executed the First Amendment to the SIA and will submit the required additional improvement security as set forth in the First Amendment, and

WHEREAS, The landscaping and irrigation improvements that are the subject of the First Amendment are part of the HOA Public Landscaping as defined in the Public Landscaping Maintenance Agreement Between the City of Tracy and the Community Association, and therefore the maintenance of said improvements will be funded and performed by the HOA pursuant to that Agreement, and

WHEREAS, The Subdivider has paid the cost of engineering, plan review and processing the First Amendment, and will pay all construction and inspection costs associated with the subject landscaping and irrigation improvements;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the First Amendment to the Subdivision Improvement Agreement for Tracy Hills Village 7A, Tract 3955, and authorizes the City Clerk to file the First Amendment with the Office of the San Joaquin County Recorder.

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.I

REQUEST

**AUTHORIZE STAFF TO SUBMIT AN APPLICATION FOR THE FEDERAL GRANT,
“INFRASTRUCTURE FOR REBUILDING AMERICA” COMPETITIVE GRANT
PROGRAM FOR THE CENTRAL VALLEY GATEWAY PROJECT AND FURTHER
AUTHORIZE THE CITY MANAGER TO EXECUTE ALL GRANT-RELATED
DOCUMENTS AND AGREEMENTS**

EXECUTIVE SUMMARY

Staff requests that City Council authorize staff to apply for the Infrastructure for Rebuilding America (INFRA) competitive grant for the planned improvements on International Parkway which will include the widening of the bridge related to the interchange at I-580 and improvements to International Parkway that are appurtenant to that widening.

DISCUSSION

Recently, the United State Department of Transportation announced the second round of the INFRA grant program with funding in the approximate amount of between \$855M and \$902.5M. These funds are to be made available for projects that are in line with administration’s principles to help rebuild, repair, and revitalize American’s crumbling infrastructure.

The City of Tracy Central Valley Gateway (CVG) project proposes to effect improvements that will facilitate freight truck and passenger vehicles that travel along I-205, I-580, and International Parkway in the City of Tracy in western San Joaquin County and this project is in line with the grant requirements. City staff proposes to apply for the INFRA grant for improvements associated with the I-580 interchange.

The grant offers reimbursements of 60 percent toward the project total cost, and is based on a competitive selection of projects based on the goals of the INFRA grant. The INFRA grant program “provides Federal financial assistance to highway and freight projects of national or regional significance.” The INFRA grant program advances a preexisting program, the Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies (FASTLANE) Grants, using “updated criteria to evaluate projects to align with national and regional economic vitality goals and to leverage more non-federal funding.”

Preliminary costs of the I-580 portion of the project are estimated at \$69.7M and staff proposes to apply for a total of \$21.3M from the grant program. The remaining required funds may be received from non-federal funding sources, comprising of regional and City funds, developer fees, and potential Trade Corridor Initiatives.

The City of Tracy previously applied for but was unsuccessful in being awarded first round of the INFRA grant program funding in 2018 for the CVG project. Since that time, staff has met with a Policy Analyst from the Office of the Secretary of Transportation and

received feedback on the prior grant application, which will be incorporated in the new application.

STRATEGIC PLAN

This agenda item is consistent with the Council adopted Economic Development Strategy to ensure the availability of infrastructure necessary for development in Tracy.

FISCAL IMPACT

Preliminary costs of the I-580 portion of the project are estimated at \$69.7M and staff proposes to apply for a total of \$21.3M from the grant program. The remaining required funds may be received from non-federal funding sources, comprising of regional & City funds, developer fees, and potential Trade Corridor Initiatives.

RECOMMENDATION

That City Council, by resolution, authorize staff to submit an application to secure a federal INFRA grant for the City of Tracy Central Valley Gateway project and further authorizes the City Manager to execute all grant-related documents and agreements.

Prepared by: Alicia Sargiotto, Management Analyst II

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

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Location Map



RESOLUTION 2019-_____

AUTHORIZING STAFF TO SUBMIT AN APPLICATION FOR THE FEDERAL GRANT "INFRASTRUCTURE FOR REBUILDING AMERICA" COMPETITIVE GRANT PROGRAM FOR THE CENTRAL VALLEY GATEWAY PROJECT, AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE ALL GRANT-RELATED DOCUMENTS AND AGREEMENTS

WHEREAS, The United States Department of Transportation announced a competitive Grant Program for the rebuild, repair, and revitalization of America's crumbling infrastructure, and

WHEREAS, The City of Tracy Central Valley Gateway Project (CVG) targets freight truck and passenger vehicles that travel along I-205, I-580, and International Parkway in the City of Tracy in western San Joaquin County, and is in line with the Grant's requirements, and

WHEREAS, The preliminary cost of the project is estimated at \$69.7M, and the subject Grant may reimburse up to 60% of the total cost, it will benefit the City to request approximately \$21.3M (30%);

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby authorizes staff to submit an application for the INFRA Grant for the Central Valley Gateway Project, for an amount of \$21.3M and further authorizes the City Manager to execute all grant-related documents and agreements.

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 1.J

REQUEST

**APPROVE A LEAVE OF ABSENCE FOR TRACY PLANNING COMMISSIONER
RAJWINDER KAUR**

EXECUTIVE SUMMARY

Staff has received a request from Planning Commissioner Rajwinder Kaur for a two-week leave of absence. The Planning Commission Bylaws state that a Planning Commission member may submit a written request to the City Council for a leave of absence of up to six months, which may be approved at the City Council's discretion.

DISCUSSION

Planning Commissioner Rajwinder Kaur has requested a leave of absence for the period from February 27 through March 13, 2019, because she will be out of town during that time. There are two Planning Commission meetings scheduled during her requested leave, on February 27th and March 13th.

The Planning Commission Bylaws stipulate that any Commissioner can request up to a six-month leave of absence from the Commission. This request is to be directed to, and can only be approved by, the City Council.

FISCAL IMPACT

There is no fiscal impact to the General Fund as a result of this action.

RECOMMENDATION

That the City Council, by resolution, approve a leave of absence for Planning Commissioner Rajwinder Kaur for the period from February 27 through March 13, 2019.

Prepared by: Bill Dean, Assistant Director of Development Services

Reviewed by: Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

RESOLUTION 2019-_____

AUTHORIZING LEAVE OF ABSENCE FOR
TRACY PLANNING COMMISSIONER RAJWINDER KAUR

WHEREAS, Planning Commissioner Rajwinder Kaur has requested a leave of absence due to travel, and

WHEREAS, The Planning Commission Bylaws stipulate that any Commissioner can be granted a leave of absence with City Council approval;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby authorize a leave of absence for Planning Commissioner Rajwinder Kaur for the period from February 27 through March 13, 2019.

The foregoing Resolution 2019-_____ was adopted by the City Council of the City of Tracy on the 19th day of February, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

February 19, 2019

AGENDA ITEM 3.A

REQUEST

**CONTINUED PUBLIC HEARING TO CONSIDER INTRODUCING AN ORDINANCE
APPROVING AN AMENDMENT TO THE ELLIS SPECIFIC PLAN FENCE
REGULATIONS AND MINIMUM LOT WIDTH REQUIREMENTS**

EXECUTIVE SUMMARY

This agenda item involves a continued public hearing to consider introducing an ordinance approving an amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements. This agenda item was continued from a City Council public hearing held on February 5, 2019.

DISCUSSION

On February 5, 2019, City Council held a public hearing to consider introducing an ordinance approving an amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements. The Ellis Specific Plan states that a street side yard fence is permitted only in the rear half of a lot. Over the past year or more, five fences were installed in the wrong location. The amendment proposed at the City Council meeting on February 5th was intended to clarify that a three-foot high fence is permitted in a street side yard in the front half of a lot, but that amendment would have still resulted in modifications being needed to the existing five fences that are approximately 6 feet in height. Homeowners expressed opposition during the public hearing to the proposed fence modifications and requested to keep their fences as existing (erroneously installed by the home builder). City Council continued the public hearing to February 19, 2019 and requested that the applicant find a solution that would address the homeowners' concerns.

Following discussion with staff, the applicant has proposed a revised amendment that would remove the limitation of a street side yard fence being permitted only in the rear half of a lot (Attachment A – Proposed Amendment to the Ellis Specific Plan). The revised fence regulations would be uniform across all of Ellis and would allow a fence of up to eight feet in height (six feet maximum if located in a public utility easement) to be located in a street side yard. This would mean that the five lots with current violations would be able to keep their existing fences with no modifications needed. It also means that others in the subdivision could enjoy having a fence in a similar location, if desired. Attachment B shows example photos of existing fences, which would be allowed.

The applicant and staff also considered the potential for "carving out" the five lots from the fence regulations. That approach would result in two sets of standards, which would likely cause further issues. Staff and the applicant prefer to avoid that scenario and therefore proposed the revised amendment, as described above, which promotes consistency throughout the Ellis Specific Plan area and avoids creating confusion.

The proposed amendment would also establish that fences must be setback a minimum distance of two feet from the front property line. Fence setback requirements to remain

include a five-foot minimum setback from a street side property line and a five-foot minimum setback from the front façade of a house.

Additionally, the proposed amendment to the Ellis Specific Plan would modify the minimum lot width for the Residential Mixed Zone (for front loaded lots, detached) from 50 feet to 45 feet. A 45-foot minimum lot width is the same as established for the Tracy Hills Specific Plan.

Planning Commission Discussion

The Planning Commission held a public hearing to consider this matter on January 23, 2019 and recommended that the City Council approve the amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements that was presented to Council on February 5, 2019.

Environmental Document

The proposed amendment to the Ellis Specific Plan is not a project within the meaning of the California Environmental Quality Act because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines, 14 California Code of Regulations, §15061(b)). Therefore, no further environmental assessment is required.

STRATEGIC PLAN

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

FISCAL IMPACT

The City's costs for processing this development application were funded by the applicant's payment of the City's established fees.

RECOMMENDATION

Staff recommends that the City Council introduce and waive the full reading of an ordinance approving an amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements.

Prepared by: Scott Claar, Senior Planner

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

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Proposed Amendment to the Ellis Specific Plan
Attachment B – Example Photos of Existing Fences
Attachment C – Ordinance Approving an Amendment to the Ellis Specific Plan

ELLIS SPECIFIC PLAN / PATTERN BOOK AMENDMENT

Ellis Specific Plan Amendment

Amend the first sentence of Section 3.5.19 on page 21 of Section 3 of the Ellis Specific Plan to read as follows:

“Fences shall meet all requirements of the Tracy Municipal Code, except as otherwise specified in this section or Appendix A: Ellis Pattern Book.”

Delete the following statement from Section 3.5.19 on page 21 of Section 3 of the Ellis Specific Plan:

“The permitted maximum height within any required front yard shall be no greater than three feet measured vertically from the top of the fence to the grade of the sidewalk nearest the property line.”

Ellis Pattern Book Amendment

All fence requirements and fence setbacks shown on Pages 2/8, 2/12, 2/16, 2/20, 2/24, 2/28, 2/32, 2/36, 2/40, 2/44, 2/48, 2/52, 2/56, 2/60, 2/61c, and 2/61g of the Ellis Pattern Book shall be amended to read as follows:

“FENCE REQUIREMENTS

>> Maximum height of a fence in the front yard: 3 feet

Note: For the purposes of this section, “front yard” means the area extending across the full width of a lot between the front façade of a house and the front lot line.

>> Maximum height of a fence in a side yard, street side yard, or rear yard: 8 feet (6 feet if located in a public utility easement)

>> Any fence of 6 feet in height or greater that is facing a public street or public space shall be constructed with a lattice design for a minimum of the top 1 foot of the fence height.

FENCE SETBACKS

>> 2 feet minimum from the front lot line

>> 5 feet minimum from a street side lot line

>> Where any fence abuts a house, the fence must be setback a minimum distance of 5 feet from the front façade of the house (porch excluded)”

Residential Development Standards, Lot Width for Residential Mixed (Front Loaded Lots, Detached), shown on Page 2/74 of the Ellis Pattern Book shall be amended to read as follows:

“45 ft. min.; provided, however, lots on cul-de-sacs or knuckles shall have a minimum width of 35 feet at the front property line.”

Existing fences in Ellis that are located in a street side yard in the front half of a lot
(Example 1 of 5)



Existing fences in Ellis that are located in a street side yard in the front half of a lot
(Example 2 of 5)



Existing fences in Ellis that are located in a street side yard in the front half of a lot
(Example 3 of 5)



Existing fences in Ellis that are located in a street side yard in the front half of a lot
(Example 4 of 5)



Existing fences in Ellis that are located in a street side yard in the front half of a lot
(Example 5 of 5)



ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDMENT TO THE
ELLIS SPECIFIC PLAN FENCE REGULATIONS AND MINIMUM LOT WIDTH
REQUIREMENTS, APPLICATION NUMBER SPA19-0001

WHEREAS, The Ellis Specific Plan was approved by the City Council on January 22, 2013 and amended by the City Council on May 17, 2016 and March 13, 2018, and

WHEREAS, The Ellis Specific Plan serves as the zoning regulations for the approximately 321-acre site known as Ellis, which is located in the vicinity of Ellis Town Drive between Corral Hollow Road and Lammers Road, and

WHEREAS, On January 11, 2019, The Surland Companies submitted an application for an amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements (Application Number SPA19-0001), and

WHEREAS, The current Ellis Specific Plan fence regulations state that a street side yard fence is permitted only in the rear half of a lot, and

WHEREAS, The proposed amendment would remove the limitation of a street side yard fence being permitted only in the rear half of a lot, and

WHEREAS, The proposed amendment would also establish that fences must be setback two feet minimum from the front property line, and

WHEREAS, The proposed amendment would modify the minimum lot width for the Residential Mixed Zone (for front loaded lots, detached) from 50 feet to 45 feet, and

WHEREAS, The proposed amendment is consistent with the City's General Plan, and

WHEREAS, The proposed amendment to the Ellis Specific Plan is not a project within the meaning of the California Environmental Quality Act because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines, 14 California Code of Regulations, §15061(b)). Therefore, no further environmental assessment is required, and

WHEREAS, The Planning Commission considered this matter at a duly noticed public hearing held on January 23, 2019 and recommended that the City Council approve the amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements, and

WHEREAS, The City Council considered this matter at a duly noticed public hearing held on February 5, 2019 and continued the public hearing to February 19, 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 approves the amendment to the Ellis Specific Plan fence regulations and minimum lot width requirements, Application Number SPA19-0001, as shown in Exhibit "1" attached.

SECTION 3. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 4. 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 19th day of February 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

ELLIS SPECIFIC PLAN / PATTERN BOOK AMENDMENT

Ellis Specific Plan Amendment

Amend the first sentence of Section 3.5.19 on page 21 of Section 3 of the Ellis Specific Plan to read as follows:

“Fences shall meet all requirements of the Tracy Municipal Code, except as otherwise specified in this section or Appendix A: Ellis Pattern Book.”

Delete the following statement from Section 3.5.19 on page 21 of Section 3 of the Ellis Specific Plan:

“The permitted maximum height within any required front yard shall be no greater than three feet measured vertically from the top of the fence to the grade of the sidewalk nearest the property line.”

Ellis Pattern Book Amendment

All fence requirements and fence setbacks shown on Pages 2/8, 2/12, 2/16, 2/20, 2/24, 2/28, 2/32, 2/36, 2/40, 2/44, 2/48, 2/52, 2/56, 2/60, 2/61c, and 2/61g of the Ellis Pattern Book shall be amended to read as follows:

“FENCE REQUIREMENTS

>> Maximum height of a fence in the front yard: 3 feet

Note: For the purposes of this section, “front yard” means the area extending across the full width of a lot between the front façade of a house and the front lot line.

>> Maximum height of a fence in a side yard, street side yard, or rear yard: 8 feet (6 feet if located in a public utility easement)

>> Any fence of 6 feet in height or greater that is facing a public street or public space shall be constructed with a lattice design for a minimum of the top 1 foot of the fence height.

FENCE SETBACKS

>> 2 feet minimum from the front lot line

>> 5 feet minimum from a street side lot line

>> Where any fence abuts a house, the fence must be setback a minimum distance of 5 feet from the front façade of the house (porch excluded)”

Residential Development Standards, Lot Width for Residential Mixed (Front Loaded Lots, Detached), shown on Page 2/74 of the Ellis Pattern Book shall be amended to read as follows:

“45 ft. min.; provided, however, lots on cul-de-sacs or knuckles shall have a minimum width of 35 feet at the front property line.”

February 19, 2019

AGENDA ITEM 3.B

REQUEST

PUBLIC HEARING TO CONSIDER EXTENDING AN URGENCY ORDINANCE TEMPORARILY PROHIBITING OUTDOOR CULTIVATION, COMMERCIAL CULTIVATION AND MANUFACTURING, AND SALES AND DELIVERY OF CANNABIS USES IN THE CITY AND TO ISSUE A REPORT REGARDING MEASURES TAKEN TO ALLEVIATE CONDITIONS LEADING TO ADOPTION OF URGENCY ORDINANCE

EXECUTIVE SUMMARY

On January 15, 2019, Council adopted an urgency ordinance (Ordinance No. 1265) pursuant to California Government Code section 65858 to institute a temporary ban (45 days) on commercial cannabis uses in the City in order to allow time for the City Council to consider policy options regarding cannabis. The temporary ban is set to expire on March 1, 2019, unless Council extends the urgency ordinance. In addition, state law requires that a report be issued ten (10) days prior to the expiration or extension of an urgency ordinance that describes the measures taken to alleviate the condition(s) that led to the adoption of the ordinance.

This item seeks Council's approval of an extension of the urgency ordinance up to the maximum amount of time allowed by state law (ten (10) months and fifteen (15) days) and issuance of a report regarding the measures the City is taking to alleviate the conditions that led to the adoption of the temporary ban on cannabis.

DISCUSSION

Government Code section 65858 authorizes the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a legislative body is considering, studying, or intending to study within a reasonable time. An urgency ordinance must contain findings that there is a current and immediate threat to the public health, safety or welfare and that the approval of additional entitlements would result in that threat to the public health, safety or welfare.

A four-fifths vote of the City Council is required to enact or extend an urgency ordinance. An urgency ordinance takes effect immediately upon adoption by Council and is in effect for 45 days following its adoption. The urgency ordinance can only be extended twice. The first extension can be up to ten (10) months and fifteen (15) days and the second extension can be for an additional twelve (12) months. Section 65858(d) requires the legislative body to issue a written report describing the measures taken to alleviate the condition(s) which led to the adoption of the ordinance at least ten (10) days prior to the expiration of the urgency ordinance or any extension.

The urgency ordinance currently prohibits:

1. Cultivation of medicinal cannabis.
 - a. The City has prohibited the cultivation of medicinal cannabis since 2012 when Ordinance No. 1170 was adopted.
2. Outdoor cultivation of cannabis.
 - a. All outdoor cultivation of cannabis is prohibited. However, under Proposition 64, indoor cultivation of up to six plants per residence is permissible.
3. Commercial medicinal and adult-use cannabis businesses.
4. Medicinal and adult-use cannabis dispensaries.

Staff recommends that Council extend the urgency ordinance up to the maximum amount of time allowed under state law, ten (10) months and fifteen (15) days (until January 16, 2020) to allow the City to research and evaluate policy options regarding cannabis, and to enact a permanent and comprehensive ordinance regulating cannabis in Tracy. (Attachment A). As previously stated, staff anticipates that the adoption of ordinances and the appropriate regulations will take approximately six months. However, depending on Council's direction on March 19, 2019 that process may take longer. Staff's recommendation that Council approve the extension for the maximum amount of time allowed is meant to minimize the need to return to Council to approve extensions and to maintain consistent and clear regulations regarding cannabis.

The process for enacting an ordinance generally takes at least 60 days because state law requires that an ordinance be presented to Council for two readings (a first and second reading) and the effective date of the ordinance is 30 days after the second reading. If the Council decides to allow different cannabis activities with different zoning requirements than those previously presented, a public hearing and review before the Planning Commission would be required. This means that the process for enacting a zoning ordinance typically takes at least 75 days. In addition, adopting fees related to regulatory activities, such as application fees that cover the cost of background checks and staff time, requires completing a cost study, conducting a noticed public hearing and a 30-day period before the fees can be effective. Council's approval of the extension of the urgency ordinance means that Council will either have to adopt a permanent ordinance regulating cannabis by January 16, 2020 or extend the urgency ordinance once again.

On February 5, 2019, Council directed staff to develop regulatory requirements to potentially allow cannabis dispensaries (storefront and delivery), cannabis distribution facilities, testing labs, cannabis manufacturing facilities, and cannabis microbusinesses to operate in the City's industrial zones. Council specifically requested that staff research and provide information regarding stringent regulations; costs associated with regulating these businesses (i.e. compliance and monitoring efforts (including applications) and enforcement issues for non-compliance and associated illegal activities); options for generating revenue to off-set the aforementioned costs; staffing options, including the use of

consultants for cannabis regulatory activities; and the impact of allowing these businesses to operate within Tracy on current service levels. Council directed staff to return to Council with this information on March 19, 2019.

Attachment B contains a report that satisfies the requirements of Section 65858(d).

FISCAL IMPACT

There is no immediate fiscal impact associated with the extension of the urgency ordinance prohibiting commercial cannabis uses in Tracy.

RECOMMENDATION

That the City Council extend Ordinance No. 1265 (urgency ordinance) prohibiting outdoor cultivation, commercial cultivation and manufacturing, and sales of marijuana (cannabis) and delivery of cannabis in the City of Tracy for an additional ten months and fifteen days to allow time for the City Council to enact reasonable regulations for such uses; and issue a report regarding the measures taken to alleviate the conditions leading to the adoption of the urgency ordinance as required by Government Code section 65858(d).

Prepared by: Leticia Ramirez, Assistant City Attorney
Karin Schnaider, Finance Director

Reviewed by: Andrew Malik, Assistant City Manager
Thomas Watson, City Attorney

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

A – Ordinance Extending Ordinance No. 1265
B – Government Code section 65858(d) Report, including Exhibit 1

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY EXTENDING URGENCY ORDINANCE (ORD NO. 1265) PROHIBITING OUTDOOR CULTIVATION, COMMERCIAL CULTIVATION AND MANUFACTURING, AND SALES AND DELIVERY OF MARIJUANA (CANNABIS)

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

WHEREAS, Cities have the authority to ban, restrict, or otherwise regulate certain non-medical marijuana activities and uses in their jurisdictions under the AUMA, and

WHEREAS, On September 19, 2017, the City Council adopted Ordinance No. 1240 which prohibited outdoor cultivation, commercial cultivation and manufacturing, and sales and delivery of cannabis in the City of Tracy until December 31, 2018 to allow time for the City to consider and discuss reasonable regulations for such uses before the State started issuing licenses to cannabis businesses on January 2018, and

WHEREAS, On January 15, 2019, Council adopted an urgency ordinance (Ordinance No.1265) to institute a temporary ban (45 days) on all outdoor cannabis cultivation and all cannabis commercial activities and uses in the City of Tracy, and

WHEREAS, If Ordinance No. 1265 is not extended, there will be no local ordinances or regulations addressing the outdoor cultivation of cannabis and commercial cannabis uses in the City. While a state license is required in order to engage in commercial cannabis activity, express City regulations regarding these uses are necessary to provide clear guidelines and mitigate adverse impacts related to these uses, which may include, but are not limited to, criminal activity, odors, degradation of the natural environment, nuisances, excess energy consumption, and indoor fire hazards, and

WHEREAS, Although the City has considered and discussed policy options regarding commercial cannabis activity and uses, additional time is needed to adopt a permanent and comprehensive ordinance that adequately protects against the adverse impacts of outdoor cannabis cultivation and commercial cannabis activities and uses, and thus an extension of Ordinance No. 1265 (urgency ordinance) under Government Code section 65858(a) is necessary to protect the public health, safety, and welfare;

NOW, THEREFORE, The City Council of the City of Tracy does ordain as follows:

SECTION 1. Purpose and Findings. It is the purpose and intent of this Ordinance to extend Ordinance No. 1265 temporarily prohibiting all outdoor cannabis cultivation and commercial cannabis activities and land uses in the City while the City evaluates and adopts appropriate land uses and reasonable regulations in accordance with the Adult Use of Marijuana Act (Proposition 64) and subsequently adopted state laws and regulations including the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"). The City Council is authorized to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code Section 65858 as an urgency measure prohibiting a use that may conflict with

a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

The City Council hereby finds, determines and declares that the recitals and statements of fact set forth in this Ordinance are true and correct, constitute a substantive part of this Ordinance, and are incorporated herein by this reference. Based on those facts, the City Council finds that this Ordinance is necessary pursuant to California Government Code sections 65858 and 36937 (b) and that this urgency ordinance is necessary to protect against the immediate threat to the public health, safety and welfare presented by outdoor cannabis cultivation and commercial cannabis activities and uses.

SECTION 2. Extension of Urgency Ordinance. Ordinance No. 1265, prohibiting all outdoor cannabis cultivation and all commercial cannabis land uses within the City of Tracy, and all terms and provisions of said ordinance, is hereby extended from its original expiration date for a period of ten (10) months and fifteen (15) days until January 16, 2020, unless it is further extended pursuant to Government Code section 65858, or other applicable law, or repealed before its expiration, by City Council.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this 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 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 4. California Environmental Quality Act. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines sections 15060(c)(2) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and 15060(c)(3) because the activity is not a project as defined by Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon its adoption by a four-fifths vote of the City Council and declaration that the ordinance is necessary to preserve the public health, safety and welfare of the residents of Tracy.

SECTION 6. Publication. This Ordinance shall be published in accordance with Government Code section 36933.

* * * * *

The foregoing Ordinance _____ was adopted at a regular meeting of the Tracy City Council on _____, 2019, by the following vote, pursuant to Government Code section 65858:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

ATTACHMENT B

Report Issued Pursuant to Government Code Section 65858(d)

Government Code section 65858(d) requires that the legislative body issue a written report describing the measures taken to alleviate the condition(s) which led to the adoption of an urgency ordinance at least ten (10) days prior to the expiration of the urgency ordinance or any extension.

On January 15, 2019, Council adopted urgency ordinance (Ordinance No.1265) to institute a temporary ban (45 days) on all outdoor cannabis cultivation and all cannabis commercial activities and uses in the City of Tracy in order to allow time for the City to consider policy options regarding cannabis and to enact a permanent and comprehensive ordinance regarding cannabis. Ordinance No. 1265 shall expire on March 1, 2019, unless extended by Council.

On February 5, 2019, staff presented an overview of the education and outreach efforts undertaken since July 2017 (Exhibit 1) and led Council through a detailed algorithm to address key decision points regarding the development of local cannabis policies and regulations. At that meeting, Council directed staff to develop regulatory requirements to potentially allow cannabis dispensaries (storefront and delivery), cannabis distribution facilities, testing labs, cannabis manufacturing facilities, and cannabis microbusinesses to operate in the City's industrial zones. Council specifically requested that staff research and return on March 19, 2019 with information regarding:

- stringent regulations for cannabis businesses;
- formulas to determine the appropriate number of these types of businesses;
- costs associated with regulating these businesses (i.e. compliance and monitoring efforts (including applications) and enforcement issues for non-compliance and associated illegal activities);
- options for generating revenue to off-set the aforementioned costs;
- staffing options, including the use of consultants for cannabis regulatory activities; and
- the impacts of allowing these businesses to operate within Tracy on current service levels.

The following is a list of activities and tasks currently being taken by staff to address the conditions that led to the adoption of Ordinance No. 1265:

- the City's informal Cannabis taskforce that includes the Finance Department, City Attorney's Office, Police Department, Fire Department, Development Services Department and City Manager's Office, along with HDL has convened to discuss and outline staff's next steps in anticipation of the March 19, 2019 Council meeting;
- finance staff have completed informal interviews with representatives from jurisdictions with populations under 200,000 that have adopted ordinances allowing various cannabis uses in their jurisdiction, including Patterson, Desert Hot Springs, and Merced. Other departments will be reaching out to their counterparts to gather more information on the resources needed to regulate cannabis businesses on the local level;

- staff is currently re-evaluating the staff time estimates for cannabis compliance and monitoring activities and researching the potential use of consultants for these types of activities;
- staff is reviewing the previously presented map of industrial areas to determine whether storefront dispensaries, manufacturing, distribution, and testing uses would also be appropriate;
- staff is pursuing training opportunities such as workshops and conferences regarding cannabis regulations; and
- staff has scheduled a site visit to Merced to meet with staff active in the regulation of cannabis businesses.

February 5, 2019

AGENDA ITEM 3.D

REQUEST

**DISCUSS POTENTIAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY
AND PROVIDE DIRECTION TO STAFF**

EXECUTIVE SUMMARY

On January 15, 2019, the City Council passed an urgency ordinance to continue banning commercial cannabis activities in Tracy. The urgency ordinance is effective for 45 days, until March 1, 2019. Staff is seeking direction from the City Council whether to return on February 19th with an ordinance to permanently ban commercial cannabis activity or extend the ban until an ordinance to allow certain commercial cannabis activity is in effect. If the latter is desired by Council, staff requests that Council provide direction on what type of commercial cannabis activity will be allowed within the City.

DISCUSSION

Beginning in July 2017, staff began a series of community education and outreach efforts related to the passage of Proposition 64 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”); which legalized the use of non-medicinal (recreational) marijuana by adults and the cultivation of up to six marijuana plants for personal use; and also created a statewide regulatory framework for the cultivation, production, and sale of non-medical marijuana (or cannabis) for adult use. On December 5, 2017, Council directed staff to prepare an ordinance to allow up to two medical cannabis non-storefront (i.e., delivery only) retailers (i.e., dispensaries) to operate in the City’s industrial locations, subject to a high level of regulation and oversight by the City. In addition, City Council authorized a special tax to be placed on the November 2018 election.

Staff formed an internal working group, guided by the City Attorney’s Office and outside consulting firm HdL to draft ordinance language. In May 2018, staff returned with a proposed use-tax ordinance setting a maximum 15% total tax on all cannabis business activities, with a maximum 6% tax on medical retail sales, subject to Consumer Price Index (CPI) increases. Prior to the November 2018 election, staff returned in September 2018 with two draft ordinances: (1) an amendment to Chapter 6.36 of the Tracy Municipal Code (TMC) and (2) an amendment to Section 10.08.3196 of the TMC. These proposed ordinances and regulations would create a regulatory permitting scheme for cannabis delivery businesses and cannabis delivery employees. The amendment to Section 10.08.3196 would establish zoning and locational requirements for cannabis delivery only establishments that would make them conditional uses in certain industrial areas in the City. The Council placed Measure D, a special tax measure for commercial cannabis activity, on the November 2018 ballot. Measure D failed to obtain the required two-thirds voter approval.

On January 15, 2019, staff returned to the City Council to adopt an urgency ordinance continuing the current ban of all commercial cannabis activities because the City’s prior ban expired on December 31, 2018. The Council requested an agenda item to reconsider the issue of continuing the ban or allowing commercial cannabis activity in

the City. To facilitate the discussion, staff compiled a list of all prior City Council and Planning Commission meeting staff reports, minutes, and where applicable, videos of the meetings' discussions. (Attachment A)

Key points from prior meetings:

- The City conducted an informal public survey to receive input on commercial cannabis:

Survey Results:

- *51-59% of survey respondents do not support the ban on dispensary commercial activities:*
 - *An average of fifty-five percent (55%) of respondents did not support the continued ban on commercial cannabis activities, while 45% supported the ban.*
 - *These results mirror the City's vote on Proposition 64 in November 2016.*
 - *57% wanting the ban removed for medical dispensaries.*
 - *Comments from the public at the workshops expressed a similar support for removing the ban on medical dispensaries.*
 - *59% wanting the ban removed for testing facilities*
 - *This level of support may be due to a general support for the testing of cannabis, thus it may not necessarily translate that this business activity is desired within the City of Tracy.*
 - *Further information may be needed to vet this response.*

- Staff was directed to consider zoning for two medical only non-storefront retailers, preferably in industrial areas of the City. Staff recommended four zones. On July 25, 2018, the Planning Commission held a public hearing to consider the proposed zoning amendment to Section 10.08.3196. The Planning Commission recommended the proposed amendments. See Attachment B for the draft ordinances: (1) an amendment to Chapter 6.36 of the Tracy Municipal Code (TMC) and (2) an amendment to Section 10.08.3196 of the TMC.
- City Council asked staff to estimate the potential impact of allowing commercial cannabis activity on current service levels across City departments.
 - Included in this report are Attachments C and D, which speak to the current service levels impacts related to policing, code enforcement, and fire protection.
 - Although Proposition 64 went into effect in January 2018, the growth of the commercial cannabis industry has been slow in many parts of the Central Valley. As a result, there has been little evidence to show either a positive or a negative impact on service levels related to the passage of Proposition 64.
 - It is unknown if, and how, the current service level impacts would change if the City allowed commercial cannabis activity. It is also unknown how the new State regulation allowing cannabis deliveries within the City of Tracy will impact service levels. (See regulation updates below).

- Comparable to existing permitting and business regulation processes in Tracy and estimates seen in other agencies. Staff estimates the impact of 6.25 full time equivalents (FTE). The majority of the staffing, 4.75 FTE, would be new staff for Police and Fire for initial applicant screening and on-going site inspection and compliance. While these times estimates were first considered in December 2017, staff believes they accurately represent known impacts today.

In addition, these time estimates were calculated assuming two non-store front retailers. The estimated costs are approximately \$500,000 per retailer annually. The costs related to processing applications and regulating commercial cannabis would likely be recovered through fees collected from these businesses. It should be noted, that regulatory consulting services are now available to handle these administrative tasks and ongoing inspections, which would lessen the burden and impact on City staff and may reduce the cost to applicants. The costs associated with these consulting services may be recovered through fees.

Estimated Service Level Impacts for Regulating Cannabis
(*For two non-storefront retailers*)

DEPARTMENT	FULL TIME EQUIVALENT
Fire	1.75
Police	3.00
Planning	0.25
Building, Code Enforcement, Other DS	0.75
City Attorney's Office	0.25
Finance	0.25

Updates on the State and Local Level:

As the City has continued to evaluate the regulation of commercial cannabis activity, the State has continued to adopt new regulations regarding commercial cannabis activity. The State's regulations are drawing less of a distinction between medical and adult use cannabis activity, with the primary difference being the taxing of the product in that sales/use tax cannot be imposed on medicinal cannabis purchases if the consumer produces a physician's recommendation at the time of purchase. In addition, the Bureau of Cannabis Control recently adopted regulations that clarified that local jurisdictions cannot ban deliveries occurring within their boundaries. (Attachment E from HDL)

Locally, various surrounding jurisdictions have taken action to either ban all commercial cannabis activity or allow certain uses. The table below summarizes those actions and Attachment F provides more detail.

LOCAL JURISDICTIONS AND COMMERCIAL CANNABIS ACTIVITY	
Manteca, Lodi, Ripon, Lathrop	Banned. City of Lodi and City of Ripon, per resolution, also opposed the San Joaquin County Cannabis Tax Measure (Measure B).
Livermore	Banned. Ordinance prohibiting all commercial cannabis activities, with a limited exception for the delivery of medicinal cannabis from a properly licensed dispensary outside Livermore to qualified patients and primary caregiver in Livermore.
Modesto	Retail dispensary commercial cannabis businesses are limited to a maximum of 10 within Modesto City limits. Measure T passed in November 2017 with 82.5% voting in favor. Per resolution, cannabis business tax rates range from 2.5% to 8%, depending on the business type.
Stockton	Ordinance allowing medical cannabis dispensaries to sell adult-use cannabis and for medical cultivation business to grow adult-use cannabis. Allowable dispensaries within City limits is five and allowable cultivation operator permits is four.
San Joaquin County	Currently banned but Board voted in January 2019 to allow all types of medical and adult-use commercial cannabis businesses except outdoor cultivation and cannabis events in the unincorporated County with specific license, operating, and land use requirements. The County placed a Commercial Cannabis Business Tax (Measure B) on the November 2018 ballot. Measure B failed to obtain the required 2/3 majority vote.
Alameda County	In 2017 County allowed commercial medical cannabis cultivation, retail and delivery operations. May 2018, County adopted ordinance amendments to allow permitted cannabis cultivation operations to grow both medical and adult use cannabis and retail operations to sell medical and adult use cannabis.

Next steps

The City currently has a temporary ban in place for all commercial cannabis activities which was established via an urgency ordinance adopted on January 15, 2019. Staff is seeking direction from the City Council on whether to return with a permanent ban; or to return with a temporary ban and an ordinance that allows commercial cannabis activity, as directed by Council. To assist in the discussion, staff has returned with the same decision tree provided at the December 5, 2017 meeting.

Option1: Return with a permanent ban of all commercial cannabis activity.

Option 2: Return with an ordinance creating a temporary ban until an ordinance to allow two non-storefront (delivery only) medical cannabis retail stores takes effect. Staff had previously drafted the regulatory ordinance including a zoning map recommended for approval by the Planning Commission; Attachment B. The regulatory process is expected to take an additional 60-90 days, from the second reading of the applicable regulatory ordinance, to finalize the application process.

- The City could continue to limit only medical cannabis, however, as the State is making less of a distinction between medical and adult use cannabis activity, the City Council may want to do the same and modify this option to be “non-storefront, commercial cannabis retailers”, which would allow for both medicinal and recreational retail delivery sales. Staff anticipates some minor regulatory considerations for this modification.

Option 3: Return with an ordinance creating a temporary ban until an ordinance to allow additional commercial cannabis activities takes effect. Staff would need to evaluate other jurisdiction model ordinances to compile an ordinance for the City of Tracy. In addition, staff would need to return to the Planning Commission, based on City Council direction for zoning recommendations, if different locational and zoning requirements than those previously considered by the Planning Commission are desired by the Council. This process would take 3-6 months before a draft ordinance would return to the City Council for consideration and 60-90 days for an application process to be established.

FISCAL IMPACT

Staff will return to the City Council with potential fiscal impacts based upon City Council policy direction. The City Council may consider placing a new general tax measure on the November 2020 ballot.

RECOMMENDATION

Staff recommends the Council evaluate all provided information and provide staff with further direction based on the following algorithm. Council's feedback will be used to further develop cannabis regulatory requirements for the Council's consideration.

1. Keep the current ban in place indefinitely? If yes, no further direction required. If no, continue to next question.
2. Ban all commercial cannabis activity and continue to evaluate the impact of current State cannabis regulations on other communities that allow and regulate cannabis activities? If yes, no further direction required. If no, go to next question.
3. Allow the delivery of cannabis within the city limits from only regulated dispensaries from outside of the city limits, create a permitting process to monitor, but do not allow any commercial cannabis businesses within the city limits. If yes, no further direction required and staff will return with an ordinance that establishes certain permit requirements on state licensed delivery retailers conducting business in Tracy. If no, go to next question.
4. Limit the type of cannabis business in the City of Tracy to dispensaries (retailers) only? If yes, go to question number 4a-d for other considerations. If no, please provide further direction, see Question 5.
 - a. Restrict dispensaries to delivery only (non-storefront), walk-in (storefront), or both?

- b. Direct staff to draft ordinance with highest level of regulations. If yes, go to next question. If no, further discussion required concerning the direction of the Council.
 - c. Limit the number of permitted dispensaries based on population size of 1 per 40,000 residents. If yes, go to number next question. If no, further discussion required concerning the direction of the Council.
 - d. Limit the location of dispensaries to industrial zoned areas. If yes, go to next question. If no, further discussion required concerning the direction of the Council.
5. What other commercial cannabis activity should be allowed? Select a commercial activity to discuss and provide direction. Repeat questions 4:a-d to direct staff.
 - a. distribution,
 - b. testing labs,
 - c. microbusinesses: These involve vertical integration of multiple commercial activities, consisting of a minimum of three out of the following four activities under a single license or permit:
 - i. cultivation
 - ii. manufacturing
 - iii. distribution
 - iv. retail
 - d. temporary cannabis events requiring a local permit on a case-by-case basis
 - e. storefront retail
 - f. cultivation
 - g. manufacturing

Prepared by: Karin Schnaider, Finance Director

Reviewed by: Leticia Ramirez, Assistant City Attorney
William Dean, Assistant Development Services Director
Alex Neicu, Interim Police Chief
Amy Ray, Fire Marshall
Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Assistant City Manager

ATTACHMENTS: A: Table of Summarizing City Council direction
B: Draft ordinances: (1) an amendment to Chapter 6.36 of the Tracy Municipal Code (TMC) and (2) an amendment to Section 10.08.3196 of the TMC with map
C: Memo of Service impacts – Alex Neicu, Interim Police Chief
D: Memo of Service impacts – Amy Ray, Fire Marshall
E: Summary of Revised State Cannabis Regulations from HDL
F: Other Jurisdictions' Actions Regarding Commercial Cannabis Activity

Cannabis Time Line

Below is the summary of prior meetings, community outreach, and the direction given to staff at the December 5, 2017 City Council meeting. Also, in the table is an update on staff's progress and anticipated meetings for both the regulatory ordinance and the tax ordinance.

Date	Meeting/ Outreach	Purpose or Outcome	Staff Report and/or Presentations	Link to City Council Minutes	Link to City Council meeting video and Minutes
June 13, 2017	City Council	Informational item regarding cannabis and Proposition 64; City Council asked staff to return with more information on impacts including service level impacts and fiscal impacts, if known.	https://www.cityoftracy.org/documents/20170613_CC_Spec_AP.pdf	https://www.cityoftracy.org/documents/20170613_Spec_Min_s.pdf	N/A
Sept 5	City Council	Temporary ordinance prohibiting outdoor cultivation, commercial cultivation and manufacturing, and sales of marijuana (cannabis) and delivery of adult use marijuana (cannabis) until December 31, 2018, to allow time for the City Council to consider reasonable regulations for such uses.	https://www.cityoftracy.org/documents/20170905_CC_AP.pdf	https://www.cityoftracy.org/documents/20170905_Reg_Mins.pdf	http://tracy-ca.granicus.com/player/clip/504?view_id=2 approximate start time 1:14
Oct 3	City Council	Education about Proposition 64 and State law regarding cannabis. Public input about cannabis uses, such as retail, testing, personal cultivation, and potential land use and public safety impacts.	https://www.cityoftracy.org/documents/20171003_Spec_AP.pdf	https://www.cityoftracy.org/documents/20170905_Spec_Min_s.pdf	N/A
Dec 5	City Council	Directed staff to develop an ordinance to allow two dispensaries to sell only medical cannabis which will be highly regulated, for delivery only, in an industrial area only, with land use restrictions and or Police restrictions to be brought back to Council at a later date. Directed staff to place a general tax on the November 2018 ballot with a rate between 2% and 15% to be determined at a later date.	https://www.cityoftracy.org/documents/20171205_CC_AP.pdf	https://www.cityoftracy.org/documents/20171205_CC_Mins.pdf	http://tracy-ca.granicus.com/player/clip/536?view_id=2 approx. start 56 mins
March 20	City Council	Consideration of maximum tax rates for cannabis business activities Consideration of Special Tax measure for November 2018 Consideration of special purpose for cannabis tax revenues. Overview of regulatory ordinance timeline	https://www.cityoftracy.org/documents/20180320_CC_AP.pdf	https://www.cityoftracy.org/documents/20180320_CC_Mins.pdf	http://tracy-ca.granicus.com/player/clip/564?view_id=2 approx. start 38 mins

Date	Meeting/ Outreach	Purpose or Outcome	Staff Report and/or Presentations	Link to City Council Minutes	Link to City Council meeting video and Minutes
May 1, 2018	City Council	Present draft Tax Ordinance for consideration and adoption.	https://www.cityoftracy.org/documents/20180501_CC_AP.pdf	https://www.cityoftracy.org/documents/20180501_Reg_Mins.pdf	http://tracy-ca.granicus.com/player/clip/570?view_id=2 approx. start 2:14
July 25, 2018	Planning Commission	Present draft Regulatory Ordinance and Zoning Amendment to Planning Commission for discussion.	https://www.cityoftracy.org/documents/07_25_18_Planning_Commission.pdf	https://www.cityoftracy.org/documents/07_25_18_Planning_Commission_Minutes.pdf	N/A
September 18, 2018	City Council	Present draft Regulatory Ordinance for discussion. Discuss permitting and application process, including fees.	https://www.cityoftracy.org/documents/20180918_CC_AP.pdf	https://www.cityoftracy.org/documents/20180918_Reg_Mins.pdf	http://tracy-ca.granicus.com/player/clip/595?view_id=2 approx. start 1:14

Proposed Ordinance Amending Chapter 6.36**Chapter 6.36 COMMERCIAL CANNABIS ACTIVITY.**

- Section 6.36.010 Purpose and Intent.**
- Section 6.36.020 Legal Authority.**
- Section 6.36.030 Definitions.**
- Section 6.36.040 Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.**
- Section 6.36.050 Compliance with State and Local Laws.**
- Section 6.36.060 Cannabis Business Permit Required to Engage in a Commercial Cannabis Activity.**
- Section 6.36.070 Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.**
- Section 6.36.080 Application Procedure for a Cannabis Business Permit.**
- Section 6.36.090 Selection of Cannabis Business Permittee(s).**
- Section 6.36.100 Expiration of Cannabis Business Permits.**
- Section 6.36.110 Revocation of Permits.**
- Section 6.36.120 Renewal Applications.**
- Section 6.36.130 Effect of State License Suspension, Revocation, or Termination.**
- Section 6.36.140 Change in Location; Updated Registration Form.**
- Section 6.36.150 Transfer of Cannabis Business Permit.**
- Section 6.36.160 Cannabis Employee Permit Required.**
- Section 6.36.170 Permittee Selection Process.**
- Section 6.36.180 City Business License.**
- Section 6.36.190 Limitations on City's Liability.**
- Section 6.36.200 Records and Recordkeeping.**
- Section 6.36.210 Security Measures.**
- Section 6.36.220 Restriction on Alcohol & Tobacco Sales.**
- Section 6.36.230 Fees and Charges.**
- Section 6.36.240 Miscellaneous Operating Requirements.**
- Section 6.36.250 Other Operational Requirements.**
- Section 6.36.260 Non-Storefront Retailer Vehicle Requirements.**
- Section 6.36.270 Permissible Delivery Locations and Customers.**
- Section 6.36.280 Packaging and Labeling.**
- Section 6.36.290 Promulgation of Regulations, Standards and Other Legal Duties.**
- Section 6.36.300 Fees Deemed Debt to City of Tracy.**
- Section 6.36.310 Permit Holder Responsible for Violations.**
- Section 6.36.320 Inspection and Enforcement.**
- Section 6.36.330 Compliance with State Regulation.**
- Section 6.36.340 Violations Declared a Public Nuisance.**
- Section 6.36.350 Each Violation a Separate Offense.**
- Section 6.36.360 Criminal Penalties.**
- Section 6.36.370 Remedies Cumulative and not Exclusive.**

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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 6.36.020. 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 6.36.030. 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) “A-license” means a state license issued under this Chapter for cannabis or cannabis products that are intended for adults who are 21 years of age and older (adult-use) and who do not possess a physician’s recommendation.

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- (b) "A-licensee" means any person holding a license under Business and Professions Code Section 26000 et seq. for cannabis or cannabis products that are intended for adults who are 21 years of age and older (adult-use) and who do not possess a physician's recommendation.
- (c) "Applicant" means an owner applying for a cannabis business permit or cannabis employee permit pursuant to this Chapter.
- (d) "Batch" means a specific quantity of homogeneous cannabis or cannabis product that is one of the following types:
 - (1) "Harvest batch" means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals and harvested at the same time.
 - (2) "Manufactured cannabis batch" means either of the following:
 - (A) An amount of cannabis concentrates or extract that is produced in one production cycle using the same extraction methods and standard operating procedures.
 - (B) An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.
- (e) "Bureau" means the 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.
- (f) "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 Health and Safety Code.
- (g) "Cannabis accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.
- (h) "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 Health and Safety Code, or drug, as defined by Section 109925 of the Health and Safety Code.

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- (i) “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.
- (j) “Cannabis product” means a product containing cannabis or cannabis, including, but not limited to, manufactured cannabis, and shall have the same meaning as in Section 11018.1 of the 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.
- (k) “Caregiver” or “primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.
- (l) “City” or “City of Tracy” means the City of Tracy, a California general law City.
- (m) “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.
- (n) “Commercial cannabis business” or “Cannabis business” means any business or operation which engages in medicinal or adult-use commercial cannabis activity.
- (o) “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.
- (p) “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.
- (q) “Day care center” has the same meaning as in Section 1596.76 of the Health and Safety Code.
- (r) “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.
- (s) “Dispensing” means any activity involving the retail sale of cannabis or cannabis products from a retailer.
- (t) “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between licensees.
- (u) “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.
- (v) “Dried flower” means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.
- (w) “Edible cannabis product” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited

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to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(x) “Greenhouse” means a fully enclosed fixed, permanent structure that is clad in transparent or translucent material with its own irrigation and climate control, such as heating and ventilation capabilities and supplemental and artificial lighting, and that uses a combination of natural and supplemental lighting for cultivation. A greenhouse used for purposes of cannabis cultivation is subject to the MAUCRSA and related state and local regulations, rather than the California Food and Agricultural Code, and its related state and local regulations.

(y) “Kind” means applicable type or designation regarding a particular cannabis variant or cannabis product type, including, but not limited to, strain name or other grower trademark, or growing area designation.

(z) “Labeling” means any label or other written, printed, or graphic matter upon a cannabis product, upon its container.

(aa) “Labor peace agreement” means an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant’s employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(ab) “License” means a state license issued under this Chapter, and includes both an A-license and an M-license, as well as a testing laboratory license.

(ac) “Licensee” means any person holding a 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.

(ad) “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.

(ae) “Live plants” means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(af) “Local jurisdiction” means a city or county.

(ag) “Lot” means a batch or a specifically identified portion of a batch.

(ah) “M-license” means a state license issued under this Chapter for commercial cannabis activity involving medicinal cannabis.

(ai) “M-licensee” means any person holding a license under this Chapter for commercial cannabis activity involving medicinal cannabis.

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- (aj) “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- (ak) “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.
- (al) “Manufacturer” means a licensee that conducts 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.
- (am) “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.
- (an) “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 Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.
- (ao) “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.
- (ap) “Non-Storefront retailer” 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.”
- (aq) “Operation” means any act for which licensure is required under the provisions of this Chapter, or any commercial transfer of cannabis or cannabis products.
- (ar) “Owner” means any of the following:
 - (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
 - (2) The chief executive officer of a nonprofit or other entity.
 - (3) A member of the board of directors of a nonprofit.
 - (4) An individual who will be participating in the direction, control, or management of the person applying for a license.
- (as) “Package” means any container or receptacle used for holding cannabis or cannabis products.
- (at) “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 & Safety Code Section 11362.5.

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- (au) “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.
- (av) “Person with an identification card” shall have the meaning given that term by California Health and Safety Code Section 11362.7.
- (aw) “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 Health and Safety Code.
- (ax) “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.
- (ay) “Retailer” means a cannabis business issued a state license for the retail sale and delivery of cannabis or cannabis products to customers. “Retailer” shall have the same meaning as Business and Professions Code section 26070 and as may be amended from time to time.
- (az) “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.
- (ba) “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.
- (bb) “Testing laboratory” means a laboratory, facility, or entity in the state 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 bureau.
- (bc) “Topical cannabis” means a product intended for external application and/or absorption through the skin. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.
- (bd) “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.

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- (be) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises and any cannabis or cannabis product derived or manufactured from that plant.
- (bf) "Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

Section 6.36.040. Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.

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

Section 6.36.050. 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 City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire 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"), 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.

Section 6.36.060. Cannabis Business Permit Required to Engage in a Commercial Cannabis Activity.

- (a) 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

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and land use and zoning requirements, including obtaining a valid conditional use permit.

Section 6.36.070. Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.

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:

Medicinal (M-License) Non-Storefront Retailer; maximum of two (2).

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.

- (a) 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 that the number of commercial cannabis permits should stay the same, or be increased.

Section 6.36.080. 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), which resolution shall authorize City staff 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, adopt any necessary rules to the application, regulations and processes, solicit applications, and conduct evaluate the applicants.
- (b) At the time of filing, each applicant shall pay an application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.
- (c) After the initial review of applications, ranking, and scoring under the Review Criteria by the Development Services Director or designee, Finance Director or designee, and Fire Chief or designee ("Review Committee"), the

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Review Committee shall make a recommendation to the Police Chief or designee, who shall make a final selection in accordance with Section 6.36.0970.

(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 state 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. In addition to any other justification provided, , an application RISKS BEING REJECTED for any of the following reasons:

- (1) Application was received after designated time and date.
- (2) Application did not contain the required elements, exhibits, nor organized in the required format.
- (3) Application was considered not fully responsive to this request for permit application.

Section 6.36.090. Selection of Cannabis Business Permittee(s).

- (a) The top four applicants identified by the Review Committee may be invited to attend a public hearing with the Police Chief or designee, where they may be expected to make a public presentation regarding their application. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as determined to be necessary.
- (b) The Police Chief or designee shall determine which top applicants will be granted a cannabis business permit. 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.
- (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 candidate(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

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or entitlements for the permittee's premises. Land use approvals shall include compliance with all applicable provisions of CEQA.

- (f) 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.
- (g) 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 actually 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.
- (h) 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.
- (i) 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 6.36.100. 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 6.36.120.

Section 6.36.110. Revocation of Permits.

Cannabis business permits may be revoked for any violation of state law and/or any local law, rule, regulation or operational procedure, including but not limited to Section 6.36.040 Compliance with State and Local Laws, and/or any other regulations adopted pursuant to this Chapter.

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Section 6.36.120. 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 rejected if any of the following exists:
 - (1) The application is filed less than sixty (60) days before its expiration.
 - (2) The cannabis business permit is suspended or revoked at the time of the application.
 - (3) The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application.
 - (4) The cannabis business has failed to conform to the requirements of this Chapter, or of any regulations adopted pursuant to this Chapter.
 - (5) The permittee fails to or is unable to renew its state license.
 - (6) If the City or state has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of this Chapter, of the City's Municipal Code, the conditions of approval associated with the conditional use permit or of the state rules and regulations, and the City or state has determined that the violation is grounds for termination or revocation of the cannabis business permit.
- (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.

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- (f) If a renewal application is rejected, 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 6.36.080 and 6.36.090.

Section 6.36.130. Effect of State License Suspension, Revocation, or Termination.

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.

Section 6.36.140. Change in contact information; updated registration form.

- (a) Any time the contact information listed on 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 section 6.36.120.
- (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 6.36.120.

Section 6.36.150. 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 issued by the Bureau of Cannabis Control, 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)

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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 permit 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:
 - (1) 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
 - (2) 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 6.36.060, subdivision (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 City Manager 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.

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Section 6.36.160. 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:
 - (1) Name, address, and phone number of the applicant;
 - (2) Age and verification of applicant. 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;
 - (3) 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;
 - (4) A list of any crimes enumerated in California Business and Professions Code Section 26507(b)(4) for which the applicant has been convicted;
 - (5) 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;
 - (6) 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).
 - (7) 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:

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- (1) Has 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
- (2) Has committed a felony or misdemeanor involving fraud, deceit, embezzlement; or
- (3) Was convicted of a violent felony, a crime of moral turpitude; or
- (4) 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.

Discovery of these facts showing that the applicant is dishonest or has been convicted of those types of crimes 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 work permit. Furthermore, an applicant shall not be denied a permit if the denial is based solely on any of the following (i) a conviction for any crime listed in subsection (d) (4) above for which the applicant has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the California Penal Code or (ii) a conviction that was subsequently dismissed pursuant to Sections 1203.4, 1203.4a, or 1203.41 of the California Penal Code or any other provision of state law allowing for dismissal of a conviction.

- (e) The Police Chief or designee(s) shall issue the cannabis employee permit or a written denial to the applicant within thirty (30) calendar days of the date the application was deemed complete. In the event the cannabis employee permit cannot be issued within this time period then the Police Chief or designee(s) may issue a temporary employee permit for an employee upon completing a preliminary background check and if the business can demonstrate to the Police Chief or designee(s) that the employee is necessary for the operation of the business. The temporary permit may be immediately revoked by the Police Chief or designee(s) upon determination that the applicant has failed the background check or upon the issuance of the permanent employee permit.
- (f) A cannabis employee permit shall be valid for a twelve (12) month period and must be renewed on an annual basis. Renewal applications shall contain all the information required in subsection 6.36.070 (b) above

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including the payment of a renewal application fee in an amount to be set by resolution of the City Council.

- (g) In the event an employee permit holder voluntarily or involuntarily separates from employment from the cannabis business, the permit holder shall notify the Police Chief or designee(s) in writing of the change within ten (10) calendar days, or the employee permit shall be suspended or revoked. The failure to notify the City of the change in employment status may result in the permit holder being ineligible for an employee permit in the future.
- (h) The City may immediately revoke the cannabis employee permit should the permit holder be convicted of a crime listed in subsections (d) and (i) above or if facts become known to the Police Chief or designee(s) that the permit holder has engaged in activities showing that he or she is dishonest. 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 for drivers, delivery persons, or any person delivering cannabis on behalf of a cannabis non-storefront retailer to customers shall be revoked if the employee permit holder:
 - (1) Sells or provides cannabis or cannabis products to a minor;
 - (2) Attempts to give away cannabis or cannabis products;
 - (3) 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
 - (4) Is cited for driving under the influence of alcohol, cannabis or another illicit drug while on- or off-duty.
- (j) The Police Chief or designee(s) is hereby authorized to promulgate all regulations necessary to implement the work permit process and requirements.
- (k) 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.

Section 6.36.180. City Business License.

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

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Section 6.36.190. 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 6.36.200. 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

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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 (HIPPA) 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 6.36.210. Security Measures.

- (a) A permitted cannabis business shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent the 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:
 - (1) 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.

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- (2) Establishing limited access areas accessible only to authorized commercial cannabis business personnel.
- (3) All cannabis and cannabis products shall be stored in a secured and locked room, safe, or vault. 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.
- (4) Installing 24-hour security surveillance cameras of at least HD-quality 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 and real-time, live 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. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial cannabis business.

Section 6.36.220. Restriction on Alcohol & 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 6.36.230. Fees and Charges.

- (a) 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.
- (b) All cannabis businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license,

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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 6.36.240. Miscellaneous Operating Requirements.

- (a) Cannabis businesses may operate only during the hours specified in the cannabis business permit issued by the City.
- (b) **Restriction on Customer Consumption.** Cannabis shall not be consumed by any retail customer on the premises of any cannabis businesses.
- (c) No cannabis or cannabis products or 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.
- (d) **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 of METRC. 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.
- (e) There shall not be a physician located in or around any cannabis business at any time for the purpose of evaluating patients for the issuance of a cannabis recommendation or card where applicable.
- (f) **Emergency Contact.** Each cannabis business shall provide the Police Chief or designee(s) with the name, telephone number (both land line and mobile, if available) of an on-site employee or owner to whom emergency notice can be provided at any hour of the day.

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- (g) Minors.
 - (1) Persons under the age of twenty-one (21) years shall not be allowed on the premises of a cannabis business. 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.
- (h) 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.
- (i) Display of Permit and City Business License. The original copy of the 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 the City officials inspecting the premises.
- (j) Permits and other Approvals. Prior to commencing operations of any cannabis business, the person seeking to establish a cannabis business must first obtain all applicable land use, zoning, building, and other applicable permits from the City which are applicable to property in which such cannabis business intends to establish and to operate.

Section 6.36. 250. Other Operational Requirements.

The City Manager or designee may develop other cannabis business operational requirements or regulations as are determined to be necessary to protect the public health, safety and welfare. Such operational requirements or regulations shall take effect as determined by the City Manager or designee, and existing cannabis business permit holders shall comply as amended.

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Section 6.36.260. Non-Storefront Retailer 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:

- (a) Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver medicinal cannabis or cannabis products.
- (b) Proof of insurance as required in section 6.36.190 (b) for any and all vehicles being used to deliver medicinal cannabis goods.
- (c) The make, model, and license number of all vehicles owned or leased by the commercial cannabis retailer and used to deliver medicinal cannabis or cannabis products.

Section 6.36.270. Permissible Delivery Locations and Customers.

Non-storefront cannabis retailers are subject to the following requirements:

- (a) Cannabis and cannabis products shall only be delivered to customers located at a residential address including a nursing or assisted living facility and/or to customers located in other jurisdictions in which it is not prohibited to conduct deliveries of cannabis goods;
- (b) The delivery of cannabis and cannabis products 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. 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; and
- (c) Deliveries shall only be completed to patients and primary caregivers that have a physician's recommendation on file with the retailer.

Section 6.36.280. Packaging and Labeling.

- (a) 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.

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Section 6.36.290. Promulgation of Regulations, 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 rules, regulations and standards governing the issuance, denial or renewal of cannabis business permits, the ongoing operation of cannabis businesses and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.
- (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 6.36.300. 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 6.36.310. 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 6.36.320. 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 at any time, without notice, and inspect the location of any cannabis business, obtain samples of the cannabis to test for public safety purposes, and review any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.

Proposed Ordinance Amending Chapter 6.36

(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 6.36.330. 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 6.36.340. Violations declared a public nuisance.

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

Section 6.36.350. 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. 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 6.36.360. Criminal Penalties.

Each and every violation of the provisions of this Chapter may in the discretion of the City Attorney be prosecuted as a misdemeanor 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

Proposed Ordinance Amending Chapter 6.36

not more than twelve (12) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 6.36.370. 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.

DRAFT

RESOLUTION 2018-016

PLANNING COMMISSION RECOMMENDATION THAT THE CITY COUNCIL
INTRODUCE AND ADOPT AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTION
10.08.3196 REGARDING ESTABLISHING ZONING AND LOCATIONAL REQUIREMENTS FOR
CANNABIS (MARIJUANA) NON-STOREFRONT RETAILERS,
APPLICATION NUMBER ZA18-0002

WHEREAS, On September 19, 2017, Tracy City Council adopted Ordinance 1240, prohibiting all commercial medicinal and adult-use cannabis activity in the city; thus, until Council takes action via new or revised ordinances, all such activity (including the manufacturing, cultivation, distribution, testing, and any other cannabis activity licensed by the State of California) is prohibited in Tracy, and

WHEREAS, On December 5, 2017, Tracy City Council directed staff to prepare an ordinance to allow up to two medical cannabis non-storefront (i.e., delivery only) retailers (i.e., dispensaries) to operate in the City's industrial locations, subject to a high level of regulation and oversight by the City, and

WHEREAS, The proposed amendments establish specific locational requirements and permit requirements for commercial medicinal and adult use cannabis activities, and

WHEREAS, The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Business and Professions Code Section 26055(h), which provides that CEQA does not apply to the adoption of an ordinance, rule, or regulation that requires discretionary review and approval of permits or other authorizations to engage in commercial cannabis activity, and

WHEREAS, This project is further exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As this is only a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment, and

WHEREAS, On July 25, 2018, the Planning Commission conducted a public hearing to consider the ordinance;

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission hereby recommends the City Council introduce and adopt an ordinance to amend Tracy Municipal Code Section 10.08.3196 regarding establishing zoning and locational requirements for cannabis non-storefront retailers as indicated in Exhibit 1, attached.

The foregoing Resolution 2018- 016 was adopted by the Planning Commission on the 25th day of July, 2018, by the following vote:

AYES: COMMISSION MEMBERS: GABLE, HUDSON, KAUR
NOES: COMMISSION MEMBERS: NONE
ABSENT: COMMISSION MEMBERS: ORCUTT
ABSTAIN: COMMISSION MEMBERS: WOOD


Alastair Gable

VICE-CHAIR

ATTEST:


Bill Bear

STAFF LIAISON

Proposed Amendments to TMC Section 10.08.3196

Chapter 10.08 - Zoning Regulations

10.08.3196 – Cannabis Uses.

(a) **Purpose and Intent.** The purpose of this section is to impose zoning and locational restrictions on commercial cannabis activities or uses and on the personal cultivation of cannabis. This section is not intended to give any person or entity authority to conduct commercial cannabis activities in the City of Tracy.

(b) **Definitions.** Unless otherwise provided in this section, the definitions set forth in Chapter 10.08 (Zoning Regulations), Chapter 6.36 (Commercial Cannabis Activity) and Chapter 6.40 (Cannabis Business Tax) apply. The following words shall have the meanings set forth below when used in this section:

- (1) “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.
- (2) “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.

(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.
- (2) All commercial cannabis uses permitted by this section must, prior to establishing and commencing operations, obtain and maintain a City cannabis business permit and any other state or local license or permit, as may be applicable.
- (3) Cannabis Medicinal (M-License) Non-Storefront Retailers are permitted to establish as a conditional use on property meeting the following criteria, subject to the granting of and compliance with terms of a City cannabis business permit and a conditional use permit issued pursuant to Section 10.08.4250:
 - (i) Property shall be located in an area designated as industrial in the City’s General Plan;
 - (ii) Property shall be located at least 600 feet from any parcel zoned as residential and any parcel containing any of the following sensitive uses as of the date the conditional use permit is issued: school, day care facilities, youth center, places of assembly, public parks, and youth congregating land uses;
 - (iii) Property shall not be within half (1/2) a mile of Gandy Dancer Drive; and
 - (iv) The distance between the cannabis business and the sensitive use property shall be measured from the outer boundaries of the sensitive use

Proposed Amendments to TMC Section 10.08.3196

parcel to the first structure on the parcel seeking to operate a cannabis business.

(d) Personal Cultivation of Cannabis.

(1) All outdoor cultivation of medicinal and adult use marijuana within the City is prohibited, and shall be unlawful, as a principal use, conditional use, special use, or accessory use in any zone. The indoor cultivation of adult use marijuana shall comply with state law.

(e) 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.

1000 CIVIC CENTER DRIVE – TRACY, CA 95376
VOICE: 209-831-6550 – FAX: 209-831-4017

MEMORANDUM



TRACY POLICE DEPARTMENT

Date: January 21, 2019
To: Karin Schnaider, Finance Director
From: Alex Neicu, Interim Chief of Police
RE: Impact of Marijuana Legalization – UPDATE

In preparation for the upcoming presentation to the City Council on possible action related to the legalization of marijuana, please refer to the information below as an addition to the previously-presented reports and oral presentations:

As it was explained to the City Council during prior marijuana-related presentations, our estimation of the impact on services is based on data from other departments in California and, for a more historical perspective, other law enforcement entities from other states (e.g. Colorado and Washington), who have a longer track record of transition to a legalized marijuana environment. In those terms, one of the most significant developments since the last presentation to Council has been the release of the legislatively-mandated 5-year impact report by the Colorado Division of Criminal Justice (attached).

The 266-page report (http://cdpsdocs.state.co.us/ors/docs/reports/2018-SB-13-283_report.pdf) presents data collected over five years in several impact areas such as arrests, prosecutions, traffic, youth use and hospitalizations. The executive summary discusses some of the most significant trends, with the repeated caveat that the data is occasionally difficult to interpret due to multiple variables (<https://www.colorado.gov/pacific/publicsafety/news/colorado-division-criminal-justice-publishes-report-impacts-marijuana-legalization-colorado>). Some of the most significant observations include a lack of increase of marijuana use among youth, but significant increases in drug-related organized crime cases, marijuana-related DUI incidents, traffic fatalities and marijuana-related hospitalizations. Statewide, Colorado also experienced an increase of unauthorized marijuana cultivation on public lands.

When we extrapolate lessons from other agencies to project probable impact on Tracy resources, it becomes clear that the data supports the original requests for additional personnel in several departments. The need for increased staffing is meant to provide the necessary level of oversight that would ensure the community's expectation of public safety is met. It is also imperative to clarify that the required staffing is independent of any other additional positions justified by growth in population and city size. By the same token, failure to properly provide the

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MEMORANDUM



TRACY POLICE DEPARTMENT

necessary resources would result in either compromised oversight or a reduction in the current level of service, if personnel is transferred from other duties to oversight responsibilities.

Attachment: Impacts of Marijuana Legalization in Colorado



SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY

Community Risk Reduction Division

835 Central Ave
Tracy, CA 95376

Telephone: (209) 831-6700
FAX (209) 831-6703

1/28/2019

Karin Schnaider
Finance Director
City of Tracy

Karin,

The service impacts of the addition of two non-storefront dispensaries to fire include permitting, plan review, inspection, response to complaints, and the possible response by operational staff for medical emergencies and/or traffic incidents.

We anticipate staff impacts to include the time of .75 personnel for two non-storefront businesses.

Please let me know if you need additional information.

Respectfully,

Amy Ray
Fire Marshal
South San Joaquin County Fire Authority

HdL[®] Companies

**ISSUE
UPDATE**
JANUARY
2019



Revised State Cannabis Regulations: Impact on Cities Effective Wednesday, January 16, 2019

I. Cannabis Deliveries

Under Title 16, Section 5416(d) of the Bureau of Cannabis Control's regulations (governing deliveries to a physical address), local governments no longer have the authority to ban cannabis deliveries within their borders.

The wording of the updated regulation is silent on *local regulations*, and merely states "a delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division."

This silence on local regulations creates ambiguity, and until that role is clarified by the state or related litigation on this issue, local regulations that are limited to public safety considerations represent reasonable delivery rules for local governments to adopt. Local governments are advised to consult with their legal counsel before undertaking any action in this area. Local regulation of deliveries would focus on protecting public safety in three areas:

1. Permit Requirement: Requiring a local delivery permit with a nominal permit fee, enabling locals to track and to tax delivery activity;
2. Verification of State License: Requiring evidence that the delivery service is linked to a state-licensed commercial cannabis business (ensuring compliance with state law);
3. Verification of Criminal Background Checks: Requiring from delivery employers (or the local government that authorized the retail business to which the delivery operations are linked) evidence of background checks on employee/drivers to ensure they do not have:
 - DUIs
 - Convictions for violent felonies
 - Convictions for specified sex offenses

3. Verification of Criminal Background Checks: Requiring from delivery employers (or the local government that authorized the retail business to which the delivery operations are linked) evidence of background checks on employee/drivers to ensure they do not have:
 - DUIs
 - Convictions for violent felonies
 - Convictions for specified sex offenses

II. Deadline for Local Governments to Confirm Local Authorization of Applicants Applying to the State for an Annual License

Title 16, Section 5002 (c)(28) of the Bureau of Cannabis Control's regulations currently require the state, when it receives an application for an annual state license, to notify local governments and confirm the validity of the applicant's local authorization. The revised regulations shorten the deadline for local governments to confirm that they have issued the applicant a local permit or other authorization, from 60 to 10 days.

Other Jurisdictions' Actions Regarding Commercial Cannabis Activity

Stockton

Measure Q – Medical Cannabis Business License Tax

On June 28, 2016, the Stockton City Council approved placing two ballot Measures on the November 8, 2016, General Election ballot that would overturn the current ban on medical cannabis (marijuana) dispensaries, allow medical cannabis cultivation businesses within the City, and would allow for the increase of business license tax on medical cannabis and marijuana-related businesses. Council approved placing both Measures on the ballot by a vote of 7 – 0, adopting Resolutions 2016-06-28-1503-01 and 2016-06-28-1503-02. Measure Q was approved by 63.79 percent of voters.

Measure Q - Approved by Voters

Measure Q increases the rate of the medical cannabis business license tax by proposing amendments to Chapters 5.98 and 5.99 of the Stockton Municipal Code (SMC):

- Increases and establishes a range of rates for the City's medical cannabis business license tax;
- Allows the City Council to raise or lower the business license tax within a range of between \$35 - \$50, per \$1,000 in gross receipts of medical cannabis, and
- Authorizes a business license tax for non-medical/recreational marijuana of \$100 per \$1,000 in gross receipts, should State or Federal law be changed to allow the use of marijuana for any non-medical purpose.

As part of the first phase of the policy project, on September 18, 2018, City Council adopted ordinance 2018-18-1502 that allowed for medical cannabis dispensaries to sell adult-use cannabis and for medical cultivation businesses to grow adult-use cannabis.

- Number of allowable dispensaries within City limits was increased to 5 from 4 dispensaries.
- Number of allowable cultivation operator's permits remains at 4 citywide.

The project is in its final phase with community meetings held in October 2018.

- Findings from community meetings presented to Planning Commission on November 15, 2018.
 - [Cannabis Ordinance Meeting Findings](#)
- Final recommendations will be presented to the Planning Commission in January 2019 and to City Council in February 2019.

Stockton Municipal Code Medical Cannabis Business License Tax:

5.98.030 Payment of tax.

Notwithstanding any provision to the contrary, every business, including non-profit organizations, operating as a “medical cannabis business,” shall pay an annual business license tax to the City in the following amounts:

- A. On, or after January 1, 2011, a maximum of \$25.00 for each \$1,000.00 of gross receipts per year.
- B. On, or after January 1, 2017, a minimum of \$35.00 up to a maximum of \$50.00 for each \$1,000.00 of gross receipts per year, to be set by ordinance or resolution of the City Council.
- C. Notwithstanding the tax rates imposed by this section, the City Council may, in its discretion, at any time by ordinance or resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate authorized by this section.
- D. Notwithstanding any provision to the contrary, every business, operating as an “adult-use cannabis business,” shall pay an annual business license tax to the City in the following amount:
 1. On, or after October 18, 2018, a maximum of \$100.00 for each \$1000.00 of gross receipts per year.
 2. Notwithstanding the tax rates imposed by this section, the City Council may, in its direction, at any time by ordinance or resolution implement any lower tax rate it deems appropriate, and may increase such tax rate from time to time not to exceed the maximum tax rate authorized by this section. (Ord. 2018-09-18-1502 § 3; Ord. 2016-06-28-1503 § 2; Ord. 018-10 § 3, eff. 12-02-10)

Stockton Municipal Code Marijuana Business License Tax:

5.99.030 Payment of tax.

- A. In addition to any requirements imposed by this Code, a marijuana business shall pay an annual business license tax in the amount of \$100.00 per \$1,000.00 of gross receipts.
- B. The City Council may, in its discretion, at any time by ordinance or resolution impose the tax authorized by this section at a lower rate. No action by the City Council under this subsection shall prevent it from subsequently increasing the tax rate for marijuana business to the maximum specified in this section. (Ord. 2016-06-28-1503 § 3; Ord. 018-10 § 4, eff. 12-02-10)

Modesto

Retail Dispensary Commercial Cannabis Businesses are limited to a maximum of 10 within Modesto city limits. The Permit Application period for Retail Dispensary Commercial Cannabis Businesses for Phase One and Phase Two is now closed.

Resolution No. 2018-537 adopted the previously approved cannabis business tax rates ranging from two and a half to eight percent (2.5% to 8%), depending on the business type, gross receipts of all engaged in cannabis businesses in the city

In November 2017 the Modesto City Council placed before the voters a ballot measure, "Measure T," to enact an ordinance allowing the City Council to implement an excise tax on cannabis businesses within the City. Modesto voters approved Measure T, with 82.5% voting in favor.

City Council Ordinance 3672-C.S. established Article 11, "Cannabis Business Tax," of Chapter 2, "Taxation," of Title 8, "Finance, Revenue, and Taxation," of the Modesto Municipal Code, which allows the City Council to impose, by Resolution, an excise tax of up to ten percent (10%) on the gross receipts of cannabis businesses within the City

City Council Ordinance 3684-C.S. amended the Zoning Code to allow for certain cannabis businesses to operate in certain areas of the City under regulations

Revenues from a cannabis business tax would go into the City's General Fund to be used for any legitimate government purpose, including those identified in the ballot measure such as neighborhood safety, maintaining parks and job creation

City Council implemented the Cannabis Business Tax, pursuant to Section 8-2.1108 of the Modesto Municipal Code, at rates ranging from two-and-a-half percent (2.5%) to eight percent (8%), depending on business type, of gross receipts of all cannabis business within the City.

Pursuant to Section 8-2.1108 of the Modesto Municipal Code, the Cannabis Business Tax is hereby imposed at rates ranging from 2.5% to 8% of all gross receipts of those engaged in cannabis business within the City of Modesto, as follows:

Cannabis Business Type Tax Rate/Percentage of Gross Receipts

Retail (Storefront and Delivery) 8%

Distribution 6%

Microbusiness 4%

Manufacturing 4%

Cultivation 2.5%

Testing Labs 2.5%

Alameda County

In 2017, the Alameda County Ordinance Code was updated to allow permits for commercial medical cannabis cultivation, retail and delivery operations in the unincorporated area of Alameda County. This update included revisions to the County's existing ordinance regulating retail operations (Chapter 6.108), the addition of a new cultivation ordinance (Chapter 6.106), and revisions to the Zoning Ordinance (Title 17).

On 8 May, 2018, the County adopted ordinance amendments to allow permitted cannabis cultivation operations in the unincorporated area to grow both medical and adult use cannabis and permitted retail operations to sell both medical and adult use cannabis. These ordinance amendments will come into effect on 7 June, 2018 and the Alameda County Code of Ordinances, which is available [here](#) via the Municode Library, will be updated to reflect the changes. In the meantime, a copy of the final ordinances are available here:

- [Chapter 6.106: Cultivation \(PDF\) *](#)
- [Title 17 \(Zoning\): Cultivation \(PDF\) *](#)
- [Chapter 6.108: Retail Sale \(PDF\) *](#)
- [Title 17 \(Zoning\): Retail Sale \(PDF\) *](#)

Additional information regarding commercial cannabis regulation in unincorporated Alameda County is available in relation to the following topics:

- [Cannabis Cultivation, Retail, and Delivery](#)
- [Requests for Proposals \(RFP's\) - Cultivation and Retail Permits](#)
- [Additional Business Types](#)
- [Commercial Cannabis Taxation](#)

San Joaquin County

On August 7, 2018, San Joaquin County adopted an ordinance allowing all types of medical and adult-use commercial cannabis businesses except outdoor cultivation and cannabis events in the unincorporated County with specific license, operating, and land use requirements. The ordinance is designed to protect public health and safety and keep cannabis out of the hands of youth, while also realizing the potential benefits of cannabis legalization including quality job development, criminal justice reform, and reduction of the black market. The ordinance will only become operative if the Commercial Cannabis Business Tax (Measure B) passes by a 2/3 majority on November 6, 2018. Measure B Failed to Pass by the Required 2/3 Majority.

On November 6, 2018, the voters of San Joaquin County failed to pass Measure B, the special tax on all commercial cannabis activity in the unincorporated County. Accordingly, the Title 4, Division 10, Chapter 1 Commercial Cannabis Business ordinance will not become operative and the corresponding Title 9 amendments will not move forward. The ban on commercial cannabis businesses in the unincorporated areas of San Joaquin County will remain in place.

Livermore

At the October 9, 2017, City Council meeting, City staff presented the medical cannabis outreach results to the Council. After receiving public comments and discussion, the City Council directed staff to prepare an ordinance prohibiting all commercial cannabis activities in Livermore, with a limited exception for the delivery of medicinal cannabis from a properly licensed dispensary outside Livermore to qualified patients and primary caregivers in Livermore. Council also directed staff to perform additional public outreach for an alternative location for a potential medical cannabis storefront dispensary. An alternative location for a potential medical cannabis storefront dispensary was not addressed at this meeting.

At the October 23, 2017 meeting, City Council approved the ordinance and a second reading of the ordinance was presented at the November 13, 2017 meeting. The ordinance will take effect December 13, 2017.

Lodi

Banned. On October 17, 2018, Lodi City Council approved Resolution 2018-198 opposing San Joaquin County's cannabis business tax, Measure B.

Ripon

Banned. On October 9, 2018, Ripon City Council approved Resolution 18-80 opposing San Joaquin County's cannabis business tax, Measure B.

Lathrop

Banned

Manteca

Banned

February 19, 2019

AGENDA ITEM 3.C

REQUEST

RECEIVE AND FILE THE CITY OF TRACY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR THE FISCAL YEAR ENDING JUNE 30, 2018

EXECUTIVE SUMMARY

The City's auditor, Maze & Associates, has completed the review of the annual financial statements for the fiscal year ending June 30, 2018. The audited financial statements are incorporated into a Comprehensive Annual Financial Report (CAFR). The auditors have issued an unmodified ("clean") audit opinion. An unmodified opinion indicates that the financial data of the City is fairly presented in accordance with accounting principles generally accepted in the United States of America and the standards applicable to financial audits contained in Government Audit Standards, issued by the Comptroller General of the United States. These standards require that the auditors plan and perform the audits to obtain reasonable assurance as to whether the financial statements are free of material misstatement.

DISCUSSION

The City Council, on July 21, 2015, authorized the appointment of Maze & Associates as the City's Auditor for fiscal years 2014-15 through 2016-17. On September 5, 2017, the City Council authorized the extension of the contract for the fiscal year 2017-18. The City is required to have an independent audit of its financial records conducted on an annual basis. The auditors have completed their review of the June 30, 2017 financial statements and have issued an unmodified opinion stating that the "financial statements present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Tracy..."

The audited financial statements are incorporated into a Comprehensive Annual Financial Report, which provides additional analytical and statistical information to fully describe the City's financial condition. The CAFR is submitted to the Government Financial Officers Association of the United States and Canada (GFOA) for consideration of Award of the Certificate of Achievement for Excellence in Financial Reporting. The City has received this award for 30 consecutive years.

At June 30, 2018, the City's governmental funds reported combined fund balances of \$189.6 million, which is an increase of \$20 million or 11.8%, from \$169.6 million at June 30, 2017. Governmental fund revenues, increased \$31.4 million or 25%, from \$124.9 million at June 30, 2017 to \$156.4 million at June 30, 2018. The General Fund accounted for \$74.8 million of this total. The increase in revenues came from Measure V general sales tax, special assessment property taxes, developer fees and intergovernmental revenue or grants. Expenditures increased by \$22 million or 20.4%, from \$107.7 million at June 30, 2017 to \$129.7 million at June 30, 2018. Of this total, \$62.5 million was in the General Fund. Expenditures increased in relation to capital outlay for capital improvement projects and the addition of City staff.

At June 30, 2018, the General Fund balance of \$38.3 million; a decrease of \$2.5 million from the prior year. The fund balance reserves are comprised of \$1.5 million in Non-spendable funds, \$15 million Committed funds for contingency/emergency reserve, and \$21 million in Assigned funds. The remaining \$.8 million is Unassigned. Fund balances have been classified in accordance with generally accepted accounting principles. (See table on the next page taken from CAFR Note 9.)

Fiscal Year 2017-18 was the second year of "Measure V" collection; a voter approved additional half-cent sales tax approved in the November 2016 elections. The amount of Measure V tax proceeds received and recorded during fiscal year 2017-18 was \$9,022,126. Annual proceeds will pay for Council approved City operations and capital projects. The City Council has committed the use of Measure V resources to amenitizing the community with a tournament quality sports complex, Legacy Fields, a new aquatic center, and a new Multi-Generational Community and Gymnasium Center. These funds have been earmarked in the Assigned Fund Balance.

In May 2018, during the discussion of the Fiscal Year Ending June 30, 2017 CAFR, the City Council asked staff to return with a table detailing the remaining balances of Measure E. Measure E funds were committed to funding position during the FY 2016-2017 budgets and beyond. Below is a table showing the use of these funds over a two-year budget process. As of June 30, 2018, the remaining Measure E funds were exhausted.

Measure E

	FY17	FY18
Beginning Fund Balance	\$ 7,000,000	\$ 1,043,567
Expenses:		
Use of Measure E to Balance FY17 GF Budget	\$ (3,874,172)	
Reso 2017-035 GF Supplemental Appropriations: PW staff; PD dispatchers & community services officers; Code Enforcement; Fire overtime	\$ (2,082,261)	\$ (897,067)
Reso 2017-159 Addition of Fire Captain	\$ (146,500)	
Ending Fund Balance	\$ 1,043,567	\$ -

The table below shows the detailed classifications of the City's Fund Balances as of June 30, 2018:

Fund Balance Classifications	General Fund	Special Revenue	Debt Services	Capital Projects	Other Governmental	Total
Nonspendable:						
Advances	1,042,000					1,042,000
Loans Receivable	482,841					482,841
Total Nonspendable	1,524,841	-	-	-	-	1,524,841
Restricted for:						
Housing		4,201,643				4,201,643
Special Area Projects				40,576,918	93,585,733	134,162,651
Public Safety					416,727	416,727
Debt Service			651,884		348,558	1,000,442
Community Development					201,993	201,993
Asset Forfeiture					1,124,285	1,124,285
Streets and Roads		156,047			5,106,715	5,262,762
Landscaping District					5,662,113	5,662,113
Fire Authority		62,972				62,972
Cable TV					499,509	499,509
Tracy Grow					1,000,000	1,000,000
Total Restricted	-	4,420,662	651,884	40,576,918	107,945,633	153,595,097
Committed to:						
Contingency/Emergency	14,960,997					14,960,997
Total Committed	14,960,997	-	-	-	-	14,960,997
Assigned to:						
Animal Control Trust	22,193					22,193
Measure V	7,550,250					7,550,250
Economic/Budget Stability	7,480,499					7,480,499
Prior Year Reappropriation	1,594,000					1,594,000
2019 Budget Appropriation	4,350,000					4,350,000
Capital Projects				5,908,810		5,908,810
Total Assigned	20,996,942	-	-	5,908,810	-	26,905,752
Unassigned:						
Unassigned	842,109	(8,173,679)			(18,732)	(7,350,302)
Total Unassigned	842,109	(8,173,679)	-	-	(18,732)	(7,350,302)
Total Fund Balances	38,324,889	(3,753,017)	651,884	46,485,728	107,926,901	189,636,385

STRATEGIC PLAN

This agenda item addresses Goal 2 of the Governance Strategy to ensure continued fiscal sustainability through financial and budgetary stewardship.

FISCAL IMPACT

There is no fiscal impact associated with this action.

RECOMMENDATION

To receive and file the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2018.

Prepared by: Martha Garcia, Finance Manager

Reviewed by: Karin Schnaider, Finance Director

Approved by: Midoria Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018 (Oversized: Available at the City Clerk's Office in City Hall and on the City of Tracy Website at:

https://www.cityoftracy.org/documents/?d=Comprehensive_Annual_Financial_Report_Year_Ended_June_30_2018.pdf

February 19 2019

AGENDA ITEM 3.D

REQUEST

REVIEW AND DISCUSS THE PROPOSED CODE OF ETHICS AND CONDUCT AND CHANGES TO THE CURRENT COUNCIL POLICY C-1 AS RECOMMENDED BY THE CITY COUNCIL SUBCOMMITTEE AND APPROVE THE ENABLING RESOLUTION.

EXECUTIVE SUMMARY

The City Council appointed City Council members Vargas and Young as an ad hoc subcommittee to work with the City Attorney to prepare, for Council's consideration, a comprehensive Code of Ethics and Conduct. The subcommittee recommends approval of the proposed Code and modification of the current Council Policy C-1.

DISCUSSION

The proposed Code of Ethics and Conduct ("The Code") is intended to provide a "bright line" of conduct that is expressly prohibited, together with sanctions in the event of transgression. The Code is proposed to encompass Council members, Board Commissioners, Elected Officials (Treasurer) and Appointed Employees (City Manager and City Attorney).

The Code has outlined Core Principles for all the above referenced officeholders. Further, it defines roles and responsibilities of the Mayor and City Council members. It proposes to establish a standing Council subcommittee on "Governance" to provide for continual updates to the Code and to review all City Boards and Commissions.

The Code proposes changes to the amount of time and position on the agenda for "items from the audience," moving it from the current two periods to one period at the end of the meeting. It also mandates that speaker cards be used by members of the audience to request the opportunity to speak to Council during the items from the audience time period.

The subcommittee was split on the amount of time to provide to audience members and for any Council member rebuttal. Staff had recommended three (3) minutes for members of the public, forty five (45) minutes total and two (2) minutes for a "brief rebuttal" by a Council member to respond to all items that were raised during items from the audience. One subcommittee member thought both should be longer. Council should review and provide direction on this item found in Section V.

The Code reiterates the City Manager form of government. It provides limits on the use of staff to perform investigations and seek advisory opinions from the Fair Political Practices Commission and/or Attorney General.

The Code provides sanctions in the event of an individual violating the Code. City Council members may be sanctioned by the Council, including: reprimand, censure, loss of committee appointments and/or assignments. Board members can be removed from the Board or Commission upon which they sit. Sanctions against Appointed Employees are governed by their respective employment contract. Elected Officials may be sanctioned by reprimand or censure.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Governance Strategy in creating and maintaining a highly ethical work environment.

FISCAL IMPACT

There is no fiscal impact in enacting the Code of Ethics and Conduct and updated Council Policies and Procedures.

RECOMMENDATION

That the City Council discuss, and if they choose, enact the Code of Ethics and Conduct and updated Council Policies and Procedures by Resolution.

Prepared by: Thomas Watson, City Attorney

Reviewed by: Karin Schnaider, Finance Director

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENTS

Attachment A – Proposed Code of Ethics and Conduct

Attachment B – Proposed Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings (Council Policy C-1 – Redlined)

CODE OF ETHICS AND CONDUCT CITY OF TRACY

The City Council of the City of Tracy adopts the following Ethical and Conduct principles, which shall apply to all Council Members, Commissioners, Elected Officials and Appointed Employees:

DEFINITIONS. For purposes of this Code of Ethics and Conduct, the following definitions shall apply:

(1) Commissioner. Commissioner means an appointed board or commission member for any board or commission created by the City and specifically includes advisory boards or commissions.

(2) Elected Official means City Treasurer.

(3) Appointed Employees means City Manager and City Attorney.

(4) Office holder means any Mayor, Council Member, Commissioner, Elected Official or Appointed Employee during the term of their office.

I. CORE VALUES AND PRINCIPLES.

The City Council agrees that the following are Core Values and Principles of the City of Tracy:

A. LAW AND ORDER

1. The office holder shall obey the laws and guidelines set forward by the Fair Political Practices Commission and the City Council.
2. The office holder should be courteous and respectful to Council Members, staff and members of the public.

B. PUBLIC TRUST AND CONFIDENCE IN GOVERNMENT

1. The office holder shall not make false allegations that may promote erosion of confidence.
2. The office holder shall conduct themselves in a courteous and respectful manner at all times during the performance of their official City duties.
3. The office holder should not encourage distrust or discord against the City, City Council or staff.

4. The office holder should refrain from criticizing fellow Council Members from the dais.
5. The office holder should refrain from publically criticizing City administration and staff.

C. INTEGRITY/ HONESTY

1. The office holder shall be honest with fellow elected officials, the public and others.
2. The office holder should vote their conscience.
3. The office holder should be willing to credit others' contributions to moving our community's interests forward.
4. The office holder should not knowingly use false or inaccurate information to promote a position.
5. The office holder should safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

D. RESPONSIBILITY/PROTECTING THE PUBLIC'S INTERESTS

1. The office holder shall not accept gifts, services or other special considerations because of his or her public position.
2. The office holder shall not give special treatment or consideration to any individual or group beyond that available to any other individual.
3. The office holder shall refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance his/her financial or other personal interests.

E. FAIRNESS/ACCOUNTABILITY

1. The office holder shall treat all persons, claims and transactions in a fair and equitable manner.
2. If the office holder receives substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, the office holder shall publicly share it with the Council or Commission and staff.
3. The office holder should work to contribute to a strong organization that exemplifies transparency and open communication.
4. The office holder should promote meaningful and constructive public involvement in the agency's decision-making processes.

F. RESPECT FOR FELLOW ELECTED OR APPOINTED OFFICIALS, STAFF, AND THE PUBLIC

1. The office holder shall respect the distinction between the role of office holder and staff.
2. The office holder shall encourage full participation of all persons and groups; the office holder is aware of and observes important celebrations and events which reflect the values of our diverse population.
3. The office holder should treat fellow officials, staff and the public with patience, courtesy and civility, even when there is disagreement on what is best for the community.
4. The office holder should work towards consensus building and gain value from diverse opinions.

G. PROPER AND EFFICIENT USE OF PUBLIC RESOURCES

1. The office holder shall not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
2. The office holder shall make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
3. The office holder shall demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
4. The office holder shall be a prudent steward of public resources and should actively consider the impact of decisions on the financial and social stability of the City and its residents.

II. ROLES AND RESPONSIBILITIES.

The power and duties of the entire City Council include:

1. Holding regular meetings at least twice per month.
2. Being educated and informed regarding City business and upcoming agenda items.
3. Administering oaths and affirmations in any investigation or proceeding, to compel attendance of witnesses, to examine them under oath.
4. Adopting ordinances and resolutions.
5. Deciding appeals from various departments, such as zoning or citations.
6. Approving City contracts or authorizing the City Manager to bind the City.

7. Providing for the sale or exchange of real or personal property not needed in City service by ordinance or resolution.
8. Appointing the City Manager and City Attorney and setting their compensation.
9. Removing the City Manager or City Attorney as set forth in the Tracy Municipal Code and the employment agreement with that individual.
10. Refraining from interference with the administrative service, except for the purpose of inquiry. The City Council must deal with the administration of City services through the City Manager.
11. Providing by ordinance or resolution for the organization, conduct and operation of the various offices and departments of the City.
12. Controlling all legal business of the City.
13. Designating depositories for City funds.
14. Fixing by ordinance or resolution amounts and terms of official bonds of all officials or employees.
15. Refraining from having any conflict of interest in any transaction of the City.
16. Appointing to and creating the various boards and commissions of the City.
17. Establishing by ordinance, resolution or policies a comprehensive personnel system.
18. After public hearings, adopting the annual budget of the City. At subsequent meetings, the City Council may amend or supplement the budget.
19. Establishing the procedure for assessing, levying and collecting taxes upon property within the City.
20. Incurring bonded indebtedness for the City.
21. Providing for an independent audit of the City each fiscal year.
22. By ordinance, regulating the granting of franchises.
23. Annually delegate the investment authority to the City Treasurer.

III. ROLE OF THE COUNCIL MEMBER.

As individuals, Council Members have no administrative authority. They cannot give orders or otherwise supervise City employees. The Council, acting collectively, has complete authority over the City Manager in the City. This authority is generally restricted to establishing policies to be performed by the City Manager.

The major areas of Council authority and responsibility are:

1. Setting and interpreting rules governing its own proceedings.

2. Exercising all the powers of cities that the law does not delegate to others.
3. Legislating for the City.
4. Directing the enforcement of City ordinances.
5. Appointing City Manager and City Attorney.
6. Transacting City business.
7. Managing the City's financial operations.
8. Appointing members of the boards.
9. Conducting the City's intergovernmental affairs.

IV. ROLE OF THE MAYOR.

The Mayor is the presiding officer and a regular member of the City Council. The Mayor has all the powers and duties for the office of Council Member in addition to the following:

1. Official head of the City
2. The Mayor serves as the City's representative before the Legislature, federal agencies, and other local governments.
3. Executing official documents.
4. Power to make some appointments.
5. Presiding officer at Council meetings.
6. Declaring local emergencies.
7. Calling Special Meetings.

V. CONDUCT OF COUNCIL AND PUBLIC DURING PUBLIC MEETINGS.

The Council and all Commissions shall adopt Roberts Rules of Order and shall follow them at all meetings. The Council shall limit the time of discussion and debate to five minutes per Council Member. Clarifying questions shall also be limited to five minutes per Council Member, unless the chair allows additional time.

The Council shall have only one public comment period, which shall be placed after all business items. No person shall be allowed to speak unless a speaker card is filled out. Speaker cards are to be given to the City Clerk and will be accepted until the Council item immediately prior to the public comment period is opened. Public comment is limited to three (3) minutes per speaker and forty-five (45) minutes for the total public comment period. Speakers will be called up in the order the speaker cards were received by the City Clerk. At the end of the public comment period, no further speakers will be

recognized. The chair shall have the discretion to extend the speaking period of any individual speaker, which shall also extend the total public comment period by the same amount of time. A Council Member may briefly respond to provide factual corrections to the record. Such a brief response shall not exceed two minutes.

A time for public announcements may be placed on the agenda, if the request for a public announcement is received prior to the posting of the agenda.

VI. CONFLICT OF INTERESTS.

Appointed Employees, Commissioners, Elected Officials and Council Members shall comply with all state laws and regulations as promulgated by the Fair Political Practices Commission.

Appointed Employees, Commissioners, Elected Officials and Council Members should refrain from applying for and entering into contracts with the City, except as allowed by the Tracy Municipal Code.

VII. CITY MANAGER FORM OF GOVERNMENT.

The Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager.

VIII. GOVERNANCE SUBCOMMITTEE.

A permanent subcommittee of the Council shall be established, known as the Governance subcommittee. This subcommittee shall consist of two Council Members, selected by the Council, and will be responsible for review of Boards and Commissions, to report back to Council on the continuing viability and necessity of such Boards and Commissions, as well as recommendations to either create or dissolve any City Board or Commission. Additionally, the subcommittee will be responsible for recommending ongoing updates to the Code of Ethics and Conduct and procedures of Council.

IX. COMPLIANCE AND ENFORCEMENT.

This Code of Ethics and Conduct outlines standards of ethical conduct expected for members of the City Council, Elected Officials, Appointed Employees, and Commissioners. The chairs of Boards and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention. These

sanctions are alternatives to any other remedy that might otherwise be available to remedy conduct that violates this code or state or federal law.

A. COUNCIL MEMBERS:

Council Members who intentionally and repeatedly fail to follow conduct of this Code may be reprimanded or formally censured by the Council, lose committee assignments (both within the City and with intergovernmental agencies) or other privileges afforded by the Council. Serious infractions of the Code of Ethics and Conduct could lead to other sanctions as deemed appropriate by the Council.

Individual Council Members should privately point out to the offending Council Member perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Mayor Pro Tem. It is the responsibility of the Mayor (or Mayor Pro Tem) to initiate action if a Council Member's behavior may warrant sanction. If no action is taken by the Mayor (or Mayor Pro Tem), then the alleged violation(s) can be brought up with the full Council at the request of two (2) Council Members. The Mayor or Council shall request the City Manager or the City Attorney to hire an outside investigator to investigate the allegation and report the findings to the Council.

Only the affected Council Member or Mayor is authorized to request from the City Attorney an opinion from the Fair Political Practices Commission ("FPPC") or Attorney General ("AG"). Council Members shall not request FPPC or AG opinions on other Council Members, Commissioners or Elected Officials through City staff or the City Attorney.

B. COMMISSIONERS AND ELECTED OFFICIALS:

Counseling, verbal reprimands and written warnings may be administered by the Mayor to Commissioners or Elected Officials failing to comply with City policy. These lower levels of sanctions should be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective Board or Commission, the City Clerk, the City Attorney, the City Manager, and the City Council.

The City Council may impose sanctions on Commissioners whose conduct does not comply with the City's policies, up to and including removal from office. Any form of discipline imposed by Council shall be determined by a majority vote of the

Council at a noticed public meeting and such action shall be preceded by a memo to Council with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of the Commissioner's or Elected Official's conduct. Also, should the City Manager or City Attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall request the City Manager or the City Attorney to hire an outside investigator to investigate the allegation and report the findings to the Council.

C. APPOINTED EMPLOYEES:

Appointed Employees agree that the following are Core Values and Principles of the City of Tracy specifically applying to their positions:

1. LAW AND ORDER

- a. Appointed Employees shall obey the laws and guidelines set forward by the Fair Political Practices Commission and the City Council.
- b. Appointed Employees should be courteous and respectful to Council Members.

2. PUBLIC TRUST AND CONFIDENCE IN GOVERNMENT

- a. Appointed Employees shall not make false allegations or provide false information that may promote erosion of confidence.
- b. Appointed Employees shall conduct themselves in a courteous and respectful manner at all times during the performance of their official City duties.
- c. Appointed Employees shall not encourage distrust or discord against the City, City Council or staff.
- d. Appointed Employees should refrain from criticizing Council Members from the dais.
- e. Appointed Employees should refrain from publicly criticizing City Council, administration and staff.

3. PROPER AND EFFICIENT USE OF PUBLIC RESOURCES

- a. Appointed Employees shall not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.

- b. Appointed Employees shall make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- c. Appointed Employees shall demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- d. Appointed Employees shall be prudent stewards of public resources and should actively consider the impact of decisions on the financial and social stability of the City and its residents.

Any violation of this code by the City Manager or City Attorney (Appointed Employees) shall be resolved as set forth in the individual's employment contract.

**PROCEDURES FOR PREPARATION, POSTING
AND DISTRIBUTION OF AGENDA
AND THE CONDUCT OF PUBLIC MEETINGS**

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.

Procedures for Preparation, Posting and Distribution of Agenda

and the Conduct of Public Meetings

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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 [Tracy](#) 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 [upon written request](#).

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 [unless otherwise cancelled or rescheduled](#), 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.

Procedures for Preparation, Posting and Distribution of Agenda

and the Conduct of Public Meetings

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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, with the consent of the Council.

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 on an agendized item. 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 one opportunityies for "Items from the Audience." The first opportunity will be limited to a 15-minute maximum period. The second "Items from the Audience" opportunity will not have a maximum forty five (45) minute time limit. Each person requesting to speak must fill out and deliver to the City Clerk a "speaker card." Persons will be called up to speak in the order the speaker cards were received by the City Clerk. The fiveA three minute maximum time limit per speaker will shall apply to all "Items from the Audience." The City Clerk shall be the timekeeper.

Procedures for Preparation, Posting and Distribution of Agenda

and the Conduct of Public Meetings

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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. Brief responses to correct factual inaccuracies by Council Members shall be limited to two (2) minutes.

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.

Procedures for Preparation, Posting and Distribution of Agenda

and the Conduct of Public Meetings

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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 24-48 hours prior to the Council meeting.

Powerpoints or other video presentations will not be shown during "items from the audience" and will only be shown for agendized items if provided as set forth above. The City reserves the right not to show any powerpoint or video during a 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.

Procedures for Preparation, Posting and Distribution of Agenda

and the Conduct of Public Meetings

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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.

Procedures for Preparation, Posting and Distribution of Agenda

and the Conduct of Public Meetings

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Rev. 1/14/19

RESOLUTION 2019-_____

RESCINDING RESOLUTION 2015-052 AND ESTABLISHING UPDATED COUNCIL POLICIES
AND PROCEDURES AND CODE OF ETHICS AND CONDUCT

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 by Resolution 2015-052, and

WHEREAS, The 2018 San Joaquin Grand Jury recommended that the City Council adopt a Code of Conduct, and

WHEREAS, The City Council delegated the drafting of this Code of Ethics and Conduct to a special subcommittee, who prepared the Code of Ethics and Conduct and amendments to the City Council Policies and Procedures.

NOW, THEREFORE, BE IT RESOLVED, that the City Council rescinds Resolution 2015-52 and adopts the Revised Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meetings, attached as Exhibit "A" and Code of Ethics and Conduct, attached as Exhibit "B."

* * * * *

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 19th day of February, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

**PROCEDURES FOR PREPARATION, POSTING
AND DISTRIBUTION OF AGENDA
AND THE CONDUCT OF PUBLIC MEETINGS**

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 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.*).

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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

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5. Consent Calendar
6. Continued Public Hearings
7. New Public Hearings
8. Regular Items including Introduction of Ordinances
9. Items from the Audience
10. Staff Items
11. Council Items
12. Adjournment

The regular order of business may be changed or suspended for any purpose at any particular meeting by the Mayor, with the consent of the Council.

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 on an agendized item. 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 one opportunity for "Items from the Audience." The "Items from the Audience" opportunity will have a maximum forty five (45) minute time limit. Each person requesting to speak must fill out and deliver to the City Clerk a "speaker card." Persons will be called up to speak in the order the speaker cards were received by the City Clerk. A three minute maximum time limit per speaker shall 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. Brief responses to correct factual inaccuracies by Council Members shall be limited to two (2) minutes.

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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 48 hours prior to the Council meeting.

Powerpoints or other video presentations will not be shown during "items from the audience" and will only be shown for agendized items if provided as set forth above. The City reserves the right not to show any powerpoint or video during a Council meeting.

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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.

CODE OF ETHICS AND CONDUCT CITY OF TRACY

The City Council of the City of Tracy adopts the following Ethical and Conduct principles, which shall apply to all Council Members, Commissioners, Elected Officials and Appointed Employees:

DEFINITIONS. For purposes of this Code of Ethics and Conduct, the following definitions shall apply:

(1) Commissioner. Commissioner means an appointed board or commission member for any board or commission created by the City and specifically includes advisory boards or commissions.

(2) Elected Official means City Treasurer.

(3) Appointed Employees means City Manager and City Attorney.

(4) Office holder means any Mayor, Council Member, Commissioner, Elected Official or Appointed Employee during the term of their office.

I. CORE VALUES AND PRINCIPLES.

The City Council agrees that the following are Core Values and Principles of the City of Tracy:

A. LAW AND ORDER

1. The office holder shall obey the laws and guidelines set forward by the Fair Political Practices Commission and the City Council.
2. The office holder should be courteous and respectful to Council Members, staff and members of the public.

B. PUBLIC TRUST AND CONFIDENCE IN GOVERNMENT

1. The office holder shall not make false allegations that may promote erosion of confidence.
2. The office holder shall conduct themselves in a courteous and respectful manner at all times during the performance of their official City duties.
3. The office holder should not encourage distrust or discord against the City, City Council or staff.

4. The office holder should refrain from criticizing fellow Council Members from the dais.
5. The office holder should refrain from publically criticizing City administration and staff.

C. INTEGRITY/ HONESTY

1. The office holder shall be honest with fellow elected officials, the public and others.
2. The office holder should vote their conscience.
3. The office holder should be willing to credit others' contributions to moving our community's interests forward.
4. The office holder should not knowingly use false or inaccurate information to promote a position.
5. The office holder should safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

D. RESPONSIBILITY/PROTECTING THE PUBLIC'S INTERESTS

1. The office holder shall not accept gifts, services or other special considerations because of his or her public position.
2. The office holder shall not give special treatment or consideration to any individual or group beyond that available to any other individual.
3. The office holder shall refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance his/her financial or other personal interests.

E. FAIRNESS/ACCOUNTABILITY

1. The office holder shall treat all persons, claims and transactions in a fair and equitable manner.
2. If the office holder receives substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, the office holder shall publicly share it with the Council or Commission and staff.
3. The office holder should work to contribute to a strong organization that exemplifies transparency and open communication.
4. The office holder should promote meaningful and constructive public involvement in the agency's decision-making processes.

F. RESPECT FOR FELLOW ELECTED OR APPOINTED OFFICIALS, STAFF, AND THE PUBLIC

1. The office holder shall respect the distinction between the role of office holder and staff.
2. The office holder shall encourage full participation of all persons and groups; the office holder is aware of and observes important celebrations and events which reflect the values of our diverse population.
3. The office holder should treat fellow officials, staff and the public with patience, courtesy and civility, even when there is disagreement on what is best for the community.
4. The office holder should work towards consensus building and gain value from diverse opinions.

G. PROPER AND EFFICIENT USE OF PUBLIC RESOURCES

1. The office holder shall not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
2. The office holder shall make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
3. The office holder shall demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
4. The office holder shall be a prudent steward of public resources and should actively consider the impact of decisions on the financial and social stability of the City and its residents.

II. ROLES AND RESPONSIBILITIES.

The power and duties of the entire City Council include:

1. Holding regular meetings at least twice per month.
2. Being educated and informed regarding City business and upcoming agenda items.
3. Administering oaths and affirmations in any investigation or proceeding, to compel attendance of witnesses, to examine them under oath.
4. Adopting ordinances and resolutions.
5. Deciding appeals from various departments, such as zoning or citations.
6. Approving City contracts or authorizing the City Manager to bind the City.

7. Providing for the sale or exchange of real or personal property not needed in City service by ordinance or resolution.
8. Appointing the City Manager and City Attorney and setting their compensation.
9. Removing the City Manager or City Attorney as set forth in the Tracy Municipal Code and the employment agreement with that individual.
10. Refraining from interference with the administrative service, except for the purpose of inquiry. The City Council must deal with the administration of City services through the City Manager.
11. Providing by ordinance or resolution for the organization, conduct and operation of the various offices and departments of the City.
12. Controlling all legal business of the City.
13. Designating depositories for City funds.
14. Fixing by ordinance or resolution amounts and terms of official bonds of all officials or employees.
15. Refraining from having any conflict of interest in any transaction of the City.
16. Appointing to and creating the various boards and commissions of the City.
17. Establishing by ordinance, resolution or policies a comprehensive personnel system.
18. After public hearings, adopting the annual budget of the City. At subsequent meetings, the City Council may amend or supplement the budget.
19. Establishing the procedure for assessing, levying and collecting taxes upon property within the City.
20. Incurring bonded indebtedness for the City.
21. Providing for an independent audit of the City each fiscal year.
22. By ordinance, regulating the granting of franchises.
23. Annually delegate the investment authority to the City Treasurer.

III. ROLE OF THE COUNCIL MEMBER.

As individuals, Council Members have no administrative authority. They cannot give orders or otherwise supervise City employees. The Council, acting collectively, has complete authority over the City Manager in the City. This authority is generally restricted to establishing policies to be performed by the City Manager.

The major areas of Council authority and responsibility are:

1. Setting and interpreting rules governing its own proceedings.

2. Exercising all the powers of cities that the law does not delegate to others.
3. Legislating for the City.
4. Directing the enforcement of City ordinances.
5. Appointing City Manager and City Attorney.
6. Transacting City business.
7. Managing the City's financial operations.
8. Appointing members of the boards.
9. Conducting the City's intergovernmental affairs.

IV. ROLE OF THE MAYOR.

The Mayor is the presiding officer and a regular member of the City Council. The Mayor has all the powers and duties for the office of Council Member in addition to the following:

1. Official head of the City
2. The Mayor serves as the City's representative before the Legislature, federal agencies, and other local governments.
3. Executing official documents.
4. Power to make some appointments.
5. Presiding officer at Council meetings.
6. Declaring local emergencies.
7. Calling Special Meetings.

V. CONDUCT OF COUNCIL AND PUBLIC DURING PUBLIC MEETINGS.

The Council and all Commissions shall adopt Roberts Rules of Order and shall follow them at all meetings. The Council shall limit the time of discussion and debate to five minutes per Council Member. Clarifying questions shall also be limited to five minutes per Council Member, unless the chair allows additional time.

The Council shall have only one public comment period, which shall be placed after all business items. No person shall be allowed to speak unless a speaker card is filled out. Speaker cards are to be given to the City Clerk and will be accepted until the Council item immediately prior to the public comment period is opened. Public comment is limited to three (3) minutes per speaker and forty-five (45) minutes for the total public comment period. Speakers will be called up in the order the speaker cards were received by the City Clerk. At the end of the public comment period, no further speakers will be

recognized. The chair shall have the discretion to extend the speaking period of any individual speaker, which shall also extend the total public comment period by the same amount of time. A Council Member may briefly respond to provide factual corrections to the record. Such a brief response shall not exceed two minutes.

A time for public announcements may be placed on the agenda, if the request for a public announcement is received prior to the posting of the agenda.

VI. CONFLICT OF INTERESTS.

Appointed Employees, Commissioners, Elected Officials and Council Members shall comply with all state laws and regulations as promulgated by the Fair Political Practices Commission.

Appointed Employees, Commissioners, Elected Officials and Council Members should refrain from applying for and entering into contracts with the City, except as allowed by the Tracy Municipal Code.

VII. CITY MANAGER FORM OF GOVERNMENT.

The Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager.

VIII. GOVERNANCE SUBCOMMITTEE.

A permanent subcommittee of the Council shall be established, known as the Governance subcommittee. This subcommittee shall consist of two Council Members, selected by the Council, and will be responsible for review of Boards and Commissions, to report back to Council on the continuing viability and necessity of such Boards and Commissions, as well as recommendations to either create or dissolve any City Board or Commission. Additionally, the subcommittee will be responsible for recommending ongoing updates to the Code of Ethics and Conduct and procedures of Council.

IX. COMPLIANCE AND ENFORCEMENT.

This Code of Ethics and Conduct outlines standards of ethical conduct expected for members of the City Council, Elected Officials, Appointed Employees, and Commissioners. The chairs of Boards and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention. These

sanctions are alternatives to any other remedy that might otherwise be available to remedy conduct that violates this code or state or federal law.

A. COUNCIL MEMBERS:

Council Members who intentionally and repeatedly fail to follow conduct of this Code may be reprimanded or formally censured by the Council, lose committee assignments (both within the City and with intergovernmental agencies) or other privileges afforded by the Council. Serious infractions of the Code of Ethics and Conduct could lead to other sanctions as deemed appropriate by the Council.

Individual Council Members should privately point out to the offending Council Member perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Mayor Pro Tem. It is the responsibility of the Mayor (or Mayor Pro Tem) to initiate action if a Council Member's behavior may warrant sanction. If no action is taken by the Mayor (or Mayor Pro Tem), then the alleged violation(s) can be brought up with the full Council at the request of two (2) Council Members. The Mayor or Council shall request the City Manager or the City Attorney to hire an outside investigator to investigate the allegation and report the findings to the Council.

Only the affected Council Member or Mayor is authorized to request from the City Attorney an opinion from the Fair Political Practices Commission ("FPPC") or Attorney General ("AG"). Council Members shall not request FPPC or AG opinions on other Council Members, Commissioners or Elected Officials through City staff or the City Attorney.

B. COMMISSIONERS AND ELECTED OFFICIALS:

Counseling, verbal reprimands and written warnings may be administered by the Mayor to Commissioners or Elected Officials failing to comply with City policy. These lower levels of sanctions should be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective Board or Commission, the City Clerk, the City Attorney, the City Manager, and the City Council.

The City Council may impose sanctions on Commissioners whose conduct does not comply with the City's policies, up to and including removal from office. Any form of discipline imposed by Council shall be determined by a majority vote of the

Council at a noticed public meeting and such action shall be preceded by a memo to Council with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of the Commissioner's or Elected Official's conduct. Also, should the City Manager or City Attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall request the City Manager or the City Attorney to hire an outside investigator to investigate the allegation and report the findings to the Council.

C. APPOINTED EMPLOYEES:

Appointed Employees agree that the following are Core Values and Principles of the City of Tracy specifically applying to their positions:

1. LAW AND ORDER

- a. Appointed Employees shall obey the laws and guidelines set forward by the Fair Political Practices Commission and the City Council.
- b. Appointed Employees should be courteous and respectful to Council Members.

2. PUBLIC TRUST AND CONFIDENCE IN GOVERNMENT

- a. Appointed Employees shall not make false allegations or provide false information that may promote erosion of confidence.
- b. Appointed Employees shall conduct themselves in a courteous and respectful manner at all times during the performance of their official City duties.
- c. Appointed Employees shall not encourage distrust or discord against the City, City Council or staff.
- d. Appointed Employees should refrain from criticizing Council Members from the dais.
- e. Appointed Employees should refrain from publicly criticizing City Council, administration and staff.

3. PROPER AND EFFICIENT USE OF PUBLIC RESOURCES

- a. Appointed Employees shall not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.

- b. Appointed Employees shall make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- c. Appointed Employees shall demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- d. Appointed Employees shall be prudent stewards of public resources and should actively consider the impact of decisions on the financial and social stability of the City and its residents.

Any violation of this code by the City Manager or City Attorney (Appointed Employees) shall be resolved as set forth in the individual's employment contract.

February 19, 2019

AGENDA ITEM 6.A

REQUEST

DISCUSS AND APPROVE UPCOMING CITY COUNCIL OUT-OF-STATE TRAVEL, INCLUDING TRAVEL TO WASHINGTON, D.C. FOR LOBBYING EFFORTS FOR THE SAN JOAQUIN COUNCIL OF GOVERNMENTS (SJCOG) ONE VOICE® TRIP; AND TRAVEL TO WASHINGTON, D.C. FOR LOBBYING EFFORTS FOR THE CITY OF TRACY (PRE-ONE VOICE)

EXECUTIVE SUMMARY

The One Voice® trip, in which representatives from San Joaquin County address topics of regional concern to Federal elected officials and staff in Washington D.C., will be held from May 5 through May 9, 2019. This trip typically includes the SJCOG Board Member and the alternate from the City of Tracy. Additionally, members of Council have conducted a separate lobbying shortly before the SJCOG trip to Washington D.C. to address the needs of the City of Tracy, specifically. The purpose of this discussion is to address Council travel to these lobbying events.

DISCUSSION

In the past, Tracy's representatives on the SJCOG Board have attended the One Voice® trip to Washington, D.C., normally held in the spring each year, to join other elected officials from San Joaquin County to discuss issues of regional concern with their Federal representatives. The 2019 dates are May 5-9. The SJCOG encourages their City Board Members and their alternates to attend the lobbying event. The SJCOG waives the registration fee for the Board member and pays 50% of their lodging and airfare. In the past, the City's expense has averaged approximately \$6,500 for the OneVoice® trip for two members, which took into account the credit for one registration and other reimbursements.

In addition to and in advance of the One Voice® trip, the City Council has previously chosen to travel to Washington D.C separately. This has allowed the Council to hold lobbying meetings with Federal officials and staff members to discuss concerns more specific to the City of Tracy. The trips to and from Washington D.C. average three to four days and the expense is approximately \$3,500 per person.

Staff has contacted the City's federal lobbyist for potential travel dates. Suggested travel weeks are 1) April 9-12 or 2) April 29-May 3. Neither week interferes with a City Council meeting. The City's federal lobbyist suggested April 29-May 3 as the preferred dates, because of both its proximity to the SJCOG visit and potential conflicts with spring recess. The purpose of this report is to allow Council to discuss Council travel,

specifically, attendance of the OneVoice® trip and the earlier lobbying trip, along with any other potential out of state travel that might be of interest to the City Council during the remaining months of the fiscal year.

STRATEGIC PLAN

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

FISCAL IMPACT

The annual appropriation for Council travel and meals is \$37,500. The current balance available for FY 18-19 travel and meals is approximately \$27,500. The estimated costs for the SJCOG One Voice trip is \$6500. The estimated cost of the Pre-One Voice trip is \$3500 per person (\$14,000 for four). Staff's expenses for attending the trips to support City Council will be funded in the City Manager's budget. There are sufficient funds available for these trips.

RECOMMENDATION

Discuss City Council travel out of state, approve the City's Board Member and alternates' attendance for the SJCOG One Voice® trip to Washington D.C. May 5 through May 9, 2019; approve Council Members' attendance for the City's lobbying trip to Washington D.C. during the week of April 29 through May 3, 2019.

Prepared by: Karin Schnaider, Finance Director
Adrienne Richardson, City Clerk

Reviewed by: Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

February 19, 2019

AGENDA ITEM 6.B

REQUEST

APPROVE REQUEST FOR OUT-OF-STATE TRAVEL BY COUNCIL MEMBER VARGAS

EXECUTIVE SUMMARY

Pursuant to Council Policy on Travel and Expense Reimbursement for Elected and Appointed Officials (Policy A-1), adopted by Resolution No. 2007-075, expenses for international and out-of-state travel, other than the annual “One Voice” trip to Washington D.C. coordinated through the San Joaquin County Council of Governments, require prior City Council approval.

DISCUSSION

Council Member Vargas has expressed an interest in attending the following out-of-state event:

- National League of Cities (NLC) Congressional City Conference in Washington, D.C. on March 10-13, 2019.

Approving this request requires Council action, pursuant to Policy A-1. The approximate expense for the NLC Congressional City Conference in March is \$4,000.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council’s strategic plans.

FISCAL IMPACT

There are sufficient funds budgeted in the City Council operating budget to authorize this out-of-state travel request for FY 2018/19.

RECOMMENDATION

That the City Council, by motion, approve the out-of-state travel request.

Prepared by: Adrianne Richardson, City Clerk

Reviewed by: Karin Schnaider, Finance Director

Approved by: Midori Lichtwardt, Interim City Manager

ATTACHMENT A - Tracy City Council Policy Resolution No. 2007-075

Resolution No. 2007-075

REVISING THE POLICY AND PROCEDURES
FOR TRAVEL AND EXPENSES REIMBURSEMENT
FOR ELECTED AND APPOINTED OFFICIALS

WHEREAS, the City Council finds that it is in the best interests of the City that elected and appointed officials remain informed and trained in activities, developments and professional trends affecting the affairs of the City and that attendance at institutes, hearings, meetings, conferences, or other gatherings is of value to the City and its citizens; and

WHEREAS, appointed officials include Planning Commission, Parks and Recreation Commission members, and other non-employee members of boards, commissions, and committees; and

WHEREAS, the City of Tracy takes its stewardship over the use of its limited public resources seriously; and

WHEREAS, public resources should only be used when there is a substantial benefit to the City; and

WHEREAS, such benefits include:

- a. The opportunity to discuss the community's concerns with state and federal officials;
- b. Participating in regional, state and national organizations whose activities affect the City;
- c. Attending educational seminars designed to improve officials' skill and information levels; and
- d. Promoting public service and morale by recognizing such service; and

WHEREAS, a) legislative and other regional, state and federal agency business is frequently conducted over meals; b) sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the City's policy concerns; and c) each meal expenditure must comply with the limits and reporting requirements of local, state and federal law; and

WHEREAS, this Policy provides guidance to elected and appointed officials on the use and expenditure of City resources, as well as the standards against which those expenditures will be measured; and

WHEREAS, Government Code section 36514.5 allows council members to be reimbursed for actual and necessary expenses incurred in the performance of their official duties; and

WHEREAS, On April 17, 2007, Council revised the policy to include a remedy for non-compliance by Board and Commission members; and

WHEREAS, this Policy satisfies the requirements of Government Code sections 53232.2 and 53233.3.

NOW, THEREFORE, the Tracy City Council does resolve, declare, determine and order as follows:

SECTION 1: Resolution No. 2007-023 is hereby repealed. The Travel and Expenses Reimbursement Policy and Procedures for Elected and Appointed Officials in the City of Tracy, attached hereto as Exhibit "A", is hereby adopted.

SECTION 2: This resolution shall take effect immediately upon adoption.

The foregoing Resolution 2007-075 was passed and adopted by the Tracy City Council on the 17th day of April, 2007, by the following vote:

AYES: COUNCIL MEMBERS: SUNDBERG, TOLBERT, TUCKER, IVES
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: ABERCROMBIE
ABSTAIN: COUNCIL MEMBERS: NONE

Beth Shuey
Mayor

ATTEST:

Sandra Edwards
City Clerk

EXHIBIT "A" TO RESOLUTION NO. 2007-075

**POLICY FOR REIMBURSEMENT
FOR TRAVEL AND EXPENSES
FOR ELECTED AND APPOINTED OFFICIALS**

The City Council of the City of Tracy believes that it is important that elected and appointed officials (including Planning Commissioners, Parks and Recreation Commissioners, and other volunteer members of boards, commissions, and committees) remain informed and trained in issues affecting the affairs of the City and that attendance at institutes, hearings, meetings, conferences, or other gatherings is of value to the City and its citizens. The benefits include:

- a. The opportunity to discuss the community's concerns with state and federal officials;
- b. Participation in regional, state and national organizations whose activities affect the City;
- c. Attending educational seminars improve officials' skill and information levels; and
- d. Promoting public service and morale by recognizing such service.

In order to promote these endeavors, to protect public resources and foster public trust in the use of those resources, as well as comply with state law requirements regarding reimbursement of expenses, the City Council hereby sets forth the travel and expense reimbursement policies for the City of Tracy.

All anticipated conferences, conventions and professional meetings shall be budgeted for in the current operating budget. As the trip is being paid for with public funds, it shall be the responsibility of the official undertaking the trip to make every effort to attend the entire conference and/or as many sessions as possible.

All elected officials and appointed officials (including the City Manager and City Attorney) who receive compensation for their service or reimbursement for their expenses shall comply with this Policy. This shall include Planning Commissioners, Parks and Community Services Commissioners, and Cultural Arts Commissioners.

A. AUTHORIZED EXPENSES

City funds, equipment, supplies (including letterhead), titles, and staff time must only be used for authorized City business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this Policy are met:

1. Communicating with representatives of regional, state and national government on City adopted policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels;
3. Participating in regional, state and national organizations whose activities affect the city's interests;

4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events;
6. Implementing a City-approved strategy for attracting or retaining businesses to the City, which will typically involve at least one staff member;
7. Meetings such as those listed above for which a meeting stipend is expressly authorized under this Policy, and
8. City council members may be reimbursed for Internet and/or Cable TV expenses related to, and used in connection with, their official duties.

All other expenditures require prior approval by the City Council.

Expenses for international and out-of-state travel, other than the annual “One-Voice” trip to Washington D.C. coordinated through the San Joaquin County Council of Governments, require prior City Council approval.

For the purposes of this Policy, if the City pays directly for the expenses it is not considered a reimbursement (e.g. conference fees).

B. EXPENSES NOT ELIGIBLE FOR REIMBURSEMENT

Examples of personal expenses that the City will not reimburse include, but are not limited to:

1. The personal portion of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner’s expenses, when accompanying official on agency-related business¹, as well as children- or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;
5. Alcohol/personal bar expenses;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.
8. Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

¹ If trip arrangements are made, as a convenience, for spouse or family members, reimbursement to the City for any advanced expenses must be received by the City prior to the trip.

C. COMPENSATION FOR ATTENDANCE AT MEETINGS

Compensation for meeting attendance, for elected and appointed members of city boards and commissions, shall be as follows:

1. City Council members' salaries shall be set and enacted as mandated by the California Government Code.
2. Compensation for meeting attendance for members of the Planning Commission, Parks and Community Services Commission, and the Community Cultural Arts Commission, shall be established by resolution of the City Council.

D. TRANSPORTATION

When attending conferences or meetings that are of such distance that it is more economical to take commercial transportation, if an official proposes to drive his/her car in those cases, commercial air fare will be paid and not automobile mileage. Government and group rates must be used when available.

1. **Airfare.** Airfares that are reasonable and economical shall be eligible for reimbursement.
2. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service ("IRS") rates in effect at the time of travel. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable.
3. **Car Rental.** Rental rates that are reasonable and economical shall be eligible for reimbursement.
4. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a fifteen (15%) percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

E. LODGING

Lodging expenses will be reimbursed, or paid for, when travel on official city business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. Travelers must request government rates, when available. If the group rate is not available, reimbursement at the IRS rate in effect at the time of travel shall apply (IRS Publication 463).

F. MEALS

A local expense reimbursement policy identifying a "per diem" of reasonable rates for meals is not adopted. Receipts for expenses for meals shall be required. Actual expenses shall be reimbursed subject to the maximum per diem for the meal as set by the IRS rate in effect at the time of travel. (See Cal. Gov't Code §53232.2(c) and Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem.) The City will not pay for alcohol/personal bar expenses.

G. MISCELLANEOUS EXPENSES

Officials will be reimbursed for actual telephone, fax, and parking expenses incurred on City business. Telephone bills should identify which calls were made on City business.

H. CASH ADVANCE POLICY

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Manager ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. The benefits of such expenditure to the residents of City;
3. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
4. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used. In the event the City Manager is uncertain as to whether a request complies with this Policy, such individual must seek resolution from the City Council.

I. CREDIT CARD USE POLICY

City does not issue credit cards to individual office holders but does have an agency credit card for selected City expenses. City office holders may use the city's credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the City credit card and compliance with this Policy must be submitted within five (5) working days of use. Except as allowed under Section B(3), city credit cards may not be used for personal expenses, even if the official subsequently reimburses the City.

J. EXPENSE REPORT CONTENT AND SUBMISSION DEADLINES

All cash advance expenditures, credit card expenses and expense reimbursement requests must be submitted on an expense report form provided by the city. This form shall include the following advisory:

"All expenses reported on this form must comply with the city's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the city's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability."

Expense reports must document that the expense in question met the requirements of this Policy. Officials must submit their expense reports within thirty (30) calendar days of an

expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

In the event the official does not attend the trip and non-refundable expenses have been incurred for registration, lodging and/or travel, the non-attending official shall submit a written explanation of the reasons for non-attendance to the City Manager. The City Manager shall determine if the public funds advanced must be reimbursed to the City. Any decision of the City Manager may be appealed to the City Council.

All expenses are subject to verification that they comply with this Policy.

K. REPORTS TO CITY COUNCIL, BOARD OR COMMISSION

At the next regular City Council (or Board or Commission) meeting, each official shall make a brief report (written or oral) on meetings attended at City expense. If multiple officials attended, a joint report may be made.

L. COMPLIANCE WITH LAWS; VIOLATION

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act and other applicable laws. Use of public resources or falsifying expense reports in violation of this Policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the City, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to \$1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.

Failure of an appointed Board or Commission member, after forty-five (45) days written notice, to complete the training required by AB1234 and this Policy shall result in the automatic removal of the member from their Board or Commission position.

February 19, 2019

AGENDA ITEM 6.C

REQUEST

APPOINT APPLICANTS TO THE BOARD OF APPEALS

EXECUTIVE SUMMARY

There is currently five vacancies on the Board of Appeals. A recruitment was conducted and appointments need to be made.

DISCUSSION

On July 17, 2018, City Council adopted Ordinance No. 1257 amending Sections 9.44.030 and 9.44.040 of the Tracy Municipal Code to re-establish that five members of the Board of Appeals will be appointed to serve four-years, with staggered terms. To fill the vacancies, the City Clerk's office conducted a recruitment from November 13, 2018, through January 28, 2019, during which time seven applications were received, two of which were withdrawn.

On February 12, 2019, a Council subcommittee consisting of Council Member Ransom and Council Member Arriola interviewed five applicants. In accordance with Resolution No. 2004-152, the Council subcommittee will recommend applicants for appointment to serve four years, with staggered terms which will begin on March 1, 2019.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That the City Council approve, by motion, the subcommittee's recommendation and appoint Scott Schendel, Dennis Alegre and James Caling to the Board of Appeals for terms commencing on March 1, 2019 and ending on March 1, 2023, and appoint Jerry Yerian and Hossein Ebrahimi for terms commencing on March 1, 2019 and ending March 1, 2022.

Prepared by: Adrienne Richardson, City Clerk

Reviewed by: Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

February 19, 2019

AGENDA ITEM 6.D

REQUEST

**APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS
TO FILL THE VACATED SEAT OF THE CITY OF TRACY REPRESENTATIVE
SERVING ON THE SAN JOAQUIN COUNTY COMMISSION ON AGING**

EXECUTIVE SUMMARY

This item requests that Council appoint members to a subcommittee to interview applicants to fill the vacated seat of the City of Tracy representative on the San Joaquin County Commission on Aging.

DISCUSSION

On December 31, 2018, the City Clerk's office received Leroy Johnson's resignation as the City of Tracy's representative serving on the San Joaquin County Commission on Aging. To fill the vacancy, the City Clerk's office conducted a recruitment beginning on January 8, 2019, and ending on February 4, 2019, during which time one application was received. As stated in Resolution No. 2004-152, in the event there are not two or more applicants than vacancies, the filing deadline will be extended. The recruitment was extended beginning on February 5, 2019, and will end on February 26, 2019.

In accordance with Resolution No. 2004-152, a two-member Council subcommittee needs to be appointed to interview applicants and make a recommendation to the full Council.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council's strategic plans.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

That Council, by motion, appoint a two-member subcommittee to interview applicants to fill the City of Tracy's representative seat on the San Joaquin County Commission on Aging.

Prepared by: Adrianne Richardson, City Clerk

Reviewed by: Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

February 19, 2019

AGENDA ITEM 6.E

REQUEST

**APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS
TO FILL A VACANCY ON THE TRACY ARTS COMMISSION**

EXECUTIVE SUMMARY

This item requests that Council appoint members to a subcommittee to interview applicants to fill a vacancy on the Tracy Arts Commission.

DISCUSSION

There is a currently one vacancy on the Tracy Arts Commission. The vacancy was advertised on January 14, 2019, and the recruitment was extended and will close on February 26, 2019. Two applications have been received by the City Clerk's office.

In accordance with Resolution No. 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council.

STRATEGIC PLAN

This item is a routine operational item and does not relate to any of the Council's strategic plans.

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoint a two-member subcommittee to interview applicants to fill a vacancy on the Tracy Arts Commission.

Prepared by: Adrienne Richardson, City Clerk

Reviewed by: Andrew Malik, Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager