

November 15, 2011, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was provided by Deacon Jack Ryan.

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.

Mayor Ives presented a Certificate of Recognition to Bill Fields, founder of Surtec Adopt-A-Family Program, Inc. for their generosity and support of the Tracy community for the past 20 years.

Mayor Ives recognized D.A.R.E graduates from Bohn, Central, McKinley, North and Villalovoz Elementary Schools.

1. CONSENT CALENDAR - Following the removal of item 1-B by Mayor Pro Tem Maciel, it was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Special meeting minutes of October 4, 2011, and closed session minutes of November 1, 2011, were approved
 - C. Authorize Amendment of the City's Classification and Compensation Plan and Position Control Roster by Approving the Establishment of Class Specification and Salary Range for Senior Accountant in the Finance and Administrative Services Department; Authorize Amendment of the City's Classification Plan by Approving a Revised Class Specification for Equipment Mechanic II in the Public Works Department – Resolution 2011-214 authorized the amendment.
 - D. Adoption of Resolution Supporting the Extension of the San Joaquin County Abandoned Vehicle Abatement Program until April 2022 – Resolution 2011-215 supported the extension.
 - B. Award a Construction Contract for the Traffic Signal Coordination – Grant Line Road (CCTV Installation) Project – CIP 72076 (Federal Project No. CML 5192-031), to W. Bradley Electric, Inc., of Novato, California, and Authorize the Mayor to Execute the Contract – Kuldeep Sharma, City Engineer, presented the staff report. The project provides for the installation of six closed circuit television (CCTV) cameras at six signalized intersections including the Wal-Mart entrance, Joe Pombo Parkway, Corral Hollow Road, Tracy Boulevard, Holly Drive and MacArthur Drive on Grant Line Road from the western city limits to MacArthur Drive. The cameras will enable staff to monitor traffic conditions at these intersections from the City's traffic control center located in the Support Services

Building and adjust timing to enhance traffic circulation in the area. Other cities installing such cameras include Pleasanton, Livermore, Fremont and Modesto.

Project design, improvement plans, specifications, and contract documents were prepared by TJKM Transportation Consultants of Pleasanton. The project was advertised for competitive bids on September 5 and September 12, 2011. The City received five bids on October 5, 2011.

W. Bradley Electric, Inc., is the lowest monetary bidder. The bid analysis indicates that the bid is responsive and the bidder is responsible. The contractor has good references and has completed similar projects for the City and other agencies.

A total of \$164,000 is budgeted for this project. The City has received a grant of \$120,000 from the state. The remaining funding will come from the Gas Tax Fund. Construction is anticipated to begin by December 1, 2011. Completion is expected by the end of February 2012.

Staff recommended that the Council award a construction contract to W. Bradley Electric., of Novato, California in the amount of \$116,500, for the Traffic Signal Coordination – Grant Line Road (CCTV Installation) Project – CIP 72076 (Federal Project No. CML 5192-031), and authorize the Mayor to execute the contract.

Mayor Pro Tem Maciel asked if the cameras have the ability to record and, therefore, the ability to aid in a collision investigation. Mr. Sharma stated there was no intent to record or video the intersections at this time.

In response to a question from Mayor Pro Tem Maciel regarding the cost of the software, Mr. Sharma responded it would be less than \$1,000. Mayor Pro Tem Maciel suggested it would be smart to take advantage of that possibility. Mr. Sharma stated staff could look into that possibility.

Council Member Abercrombie asked if Council wanted to pursue that option, should the item be pulled and brought back. Mr. Sharma stated the request was to award the construction contract. Mr. Churchill suggested that item could be done separately.

It was Council consensus to bring back information regarding the ability to record traffic.

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

Council Member Elliott asked if this system was intended as a prelude for adaptation later on for enforcement of traffic violations. Mr. Sharma stated the cameras used to document stop light violations were different and installed at different angles.

Council Member Elliott asked if this system was strictly for traffic flow. Mr. Sharma stated yes.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to adopt Resolution 2011-216 awarding a construction contract for the Traffic Signal Coordination – Grant Line Road (CCTV Installation) Project – CIP 72076 (Federal Project No. CML 5192-031), to W. Bradley Electric, Inc., of Novato, California, and authorizing the Mayor to execute the contract. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Josh Burwick and Courtney Scott, residents from outside of Tracy, addressed Council regarding an incident that took place on October 2, 2011, at the Great Plate. Mr. Burwick and Ms. Scott indicated they were victimized by police, and assaulted by multiple people including security. Mr. Burwick and Ms. Scott further indicated they had to call the Tracy Police to file a report (11-6966), and have not been called to identify the attackers. Mr. Burwick and Ms. Scott added the police report has been closed leaving them with an unresolved issue. Mr. Burwick and Ms. Scott suggested there was a cover up and that they wanted Council to be aware of the situation. Mr. Burwick asked for Council's assistance and indicated he would e-mail a copy of the report.

Marsha McCray, 550 W. Schulte, addressed Council regarding the recent ruling on the Aquatic Center. Ms. McCray stated TRAQC was ignoring the wishes of the community and the community was being held captive by TRAQC. Ms. McCray thanked staff and Council for their support.

Sue Rainey, 1328 Hamlet Court, addressed Council regarding the Ellis project. Ms. Rainey asked Council to continue working toward completion of the Ellis project.

Dave Helm, 1000 Central Avenue, addressed Council regarding the closing of his business due to a structural deficit in the building. Mr. Helm thanked friends and patrons for their support, and added the Code Enforcement Division did the right thing in closing the business.

3. DISCUSS AND PROVIDE DIRECTION ON THE REGULATION OF MEDICAL MARIJUANA - Dan Sodergren, City Attorney, presented the staff report. At the City Council meeting held on November 1, 2011, Council Member Rickman requested staff to present options to the Council relating to the regulation of medical marijuana cultivation.

The regulation of medical marijuana is subject to differing legal standards on the federal, state, and local level. Under both state and federal law, it is illegal to possess or cultivate marijuana. However, state law provides that such state law criminal provisions do not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the approval of a physician.

Notwithstanding federal and state law, the City may restrict the location, operation, or establishment of medical marijuana uses based on its land use and police power authority. However, while the City may restrict such uses, it may not specifically permit them because they are illegal under federal law.

Currently, medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowed under the City's Zoning Ordinance because they are not specifically permitted in any of the City's zoning districts. Therefore, under the Tracy Municipal Code ("TMC"), such uses are considered public nuisances.

The Council could direct staff to present it with an ordinance clarifying the existing ban on such uses under the TMC by specifically referencing medical marijuana uses as not being allowed in any of the City's zoning districts.

Alternatively, the City Council could direct staff to present it with an ordinance that contains certain restrictions on medical marijuana uses (e.g., restricting or banning outdoor or all cultivation) and establishes immunity from civil and criminal enforcement of the TMC for those who operate in strict compliance with its terms.

Under both state and federal law, it is illegal to possess, distribute, or cultivate marijuana. However, state law provides that such state law criminal provisions do not apply to a patient, or to a patient's primary caregiver, who possesses, distributes, or cultivates marijuana for the personal medical purposes of the patient upon the approval of a physician.

The federal Controlled Substances Act ("CSA") was enacted in 1970 as part of President Nixon's "war on drugs." (21 U.S.C. §§801 – 904.) The CSA criminalizes the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules. The CSA includes marijuana on schedule I, the schedule of controlled substances that are subject to the most restrictions. (21 U.S.C. §812.) Drugs on other schedules may be dispensed and prescribed for medical use; drugs on schedule I may not.

Therefore, the CSA makes it illegal to manufacture, distribute, or possess marijuana. (21 U.S.C. §§ 841, 844.) It is also illegal under the CSA to maintain any place for the purpose of manufacturing, distributing, or using any controlled substance. (21 U.S.C. §856(a)(1).)

B. The Compassionate Use Act ("CUA")

The state Compassion Use Act ("CUA") was approved by voters as a ballot initiative in 1996. The CUA provides that certain state law criminal provisions relating to the possession and cultivation of marijuana "shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Health & Saf. Code, §11362.5(d).) Apart from possession and cultivation, the CUA did not alter the other state statutory criminal prohibitions related to marijuana, including those that bar transportation, possession for sale, and sale. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747.)

C. The Medical Marijuana Program Act ("MMPA")

In 2003, the state Legislature enacted the Medical Marijuana Program Act ("MMPA"). (Health & Saf. Code, §§ 11362.7 – 11362.83.) The intent of the MMPA was to: (1) clarify the scope of the CUA and facilitate the prompt identification of qualified patients and

their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; (2) to promote uniform and consistent application of the CUA; and (3) to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. (Stats. 2003, ch. 875, §1.)

The MMPA created a voluntary program for the issuance of identification cards to qualified patients and primary caregivers. (Health & Saf. Code, §11362.71.)

The MMPA expressly immunizes from criminal liability qualified patients, persons with identification cards, and primary caregivers who transport or process marijuana for the personal medical use of a qualified patient or person with an identification card. (Health & Saf. Code, §11362.765(b)(1)-(2).) The MMPA also created an affirmative defense to criminal liability for qualified patients, persons with identification cards and primary caregivers who collectively or cooperatively cultivate marijuana. (Health & Saf. Code, §11362.775.)

III. The City's Ability to Restrict Medical Marijuana Uses

Notwithstanding the CUA and the MMPA, the City may restrict the location, operation, or establishment of medical marijuana uses based on its land use police power authority. However, while it may restrict such uses, it may not specifically permit such uses because they are illegal under federal law.

A. The City May Restrict Medical Marijuana Uses Based on its Police Power and Land Use Authority

Case law has made clear that neither the CUA nor the MMPA preempts cities from enforcing zoning requirements related to medical marijuana uses.

This has also been statutorily clarified. For example, the CUA expressly states that: "Nothing in this [Act] shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others . . ." (Health & Saf. Code, §11362.5(b)(2).) Similarly, the MMPA provides that "Nothing in this [Act] shall prohibit a city . . . from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (Health & Saf. Code, § 11362.768(f).)

Finally, as part of the 2011-2012 Regular Session, the Legislature adopted Assembly Bill ("AB") 1300. AB 1300 amended Health and Safety Code section 11362.83 to read as follows:

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

(a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.

(b) The civil and criminal enforcement of local ordinances described in subdivision (a).

(c) Enacting other laws consistent with this article.

B. Although the City May Restrict Medical Marijuana Uses, it May Not Permit Such Uses Because They are Illegal Under Federal Law

Although the City may restrict medical marijuana uses, it may not permit such uses because it would conflict with federal law. This was made clear in the recent case of *Pack v. Superior Court (City of Long Beach)* (2011) 199 Cal.App.4th 1070.

At issue in *Pack* was a comprehensive regulatory scheme enacted by the City of Long Beach by which medical marijuana collectives with the City are governed. The City charges an application fee, holds a lottery, and issues a limited number of permits. Permitted collectives, which must then pay an annual fee, are highly regulated, and subject to numerous restrictions on their operations.

The court in *Pack* found that, because the City's regulatory scheme *permitted* medical marijuana collectives rather than merely decriminalized specific acts, it was preempted by federal law. The court pointed out that: "The City's permit system . . . provides that collectives with permits may collectively cultivate marijuana with the City *and those without permits may not*. The City's permit is nothing less than an *authorization to collectively cultivate*."

Nevertheless, the court in *Pack* found that some of the regulations that were adopted by the City were in not in conflict with federal law because they did not permit or authorize activity prohibited under federal law. For example, the City's ordinance included provisions: (1) prohibiting a medical marijuana collective from providing medical marijuana to its members between the hours of 8:00 p.m. and 10:00 a.m.; (2) prohibiting a person under the age of 18 from being on the premises of a medical marijuana collective unless that person is a qualified patient accompanied by his or her physician, parent or guardian; and (3) prohibiting the collective from permitting the consumption of alcohol on the property or in its parking area. The court found that these provisions were not preempted by federal law.

IV. The City of Tracy's Zoning Ordinance

Under the City's Zoning Ordinance, any use that is not specifically authorized in a particular zone is prohibited. (Tracy Municipal Code ("TMC"), §10.08.1070.) Therefore, unauthorized uses are considered public nuisances. (TMC, §1.04.050.)

Medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowable uses in any of the City's zoning districts.¹ Therefore, such uses are not allowed and are considered public nuisances.

In 2006, the City issued an Order to Abate Public Nuisance or Show Cause on the owners and operators of a medical marijuana dispensary, known as the Valley Wellness Center Collective, Inc., that was located at 130 West 11th Street. After a hearing on the Order, the Hearing Officer determined that the dispensary did not fall within any permitted uses with the City's Central Business District ("CBD") Zone in which it was located, and as such, was an unauthorized use in violation of the TMC. The Hearing Officer deemed the use a public nuisance and ordered that it be abated. The medical marijuana dispensary shut down as a result of the ruling.

V. Options

A. Clarify That Medical Marijuana Uses are Not Allowed Under the City's Zoning Ordinance

The City Council could direct staff to present it with an ordinance clarifying the existing ban on such uses under the TMC.

Such an ordinance would: (1) add a new section to Chapter 1.01 of the TMC (Adoption of Code) to clarify that "No use authorized under this code shall violate state or federal law"; and (2) add a new section to Article 23 of the Zoning Ordinance (General Provisions, Conditions, and Exceptions) expressly prohibiting medical marijuana uses in all zoning districts.

The purpose of adopting such a clarifying ordinance would be twofold: (1) to provide clear notice to the public that medical marijuana uses are prohibited under the TMC; and (2) to assist staff and the courts in interpreting and implementing the provisions of the TMC related to the use of medical marijuana.

Under this option, code enforcement would continue to enforce the Zoning Ordinance's prohibitions on such uses.

B. Restrict Medical Marijuana Uses and Provide Immunity from Prosecution Under the Tracy Municipal Code

Alternatively, the City Council could direct staff to present it with an ordinance that contains restrictions on medical marijuana uses and establishes immunity from prosecution under the TMC for those who operate in strict compliance with its terms.

As an example, the City of San Jose recently adopted an ordinance that: (1) requires medical marijuana collectives to register with the City; (2) restricts the number and location of collectives; (3) and provides operating regulations and conditions including those relating to cultivation (i.e., conditions relating to safety and operating hours). San Jose's ordinance makes clear that is intended only to establish an affirmative defense to criminal and civil enforcement of the San Jose Municipal Code (as such uses continue to be deemed "nuisances" under the San Jose Municipal Code because they conflict with federal law).

Although such an ordinance would establish immunity from prosecution under the TMC, it would not immunize medical marijuana uses from prosecution under federal law. This is important to keep in mind. On October 7, 2011, California's four U.S. attorneys held a

joint press conference announcing increased enforcement of federal laws criminalizing the cultivation and sale of medical marijuana and authorizing the seizure of real property used for such activities.

Under this option, code enforcement would not enforce the Zoning Ordinance's prohibitions on such uses as long as they complied with the restrictions contained in the ordinance.

Staff suggested Council consider:

- An ordinance clarifying that medical marijuana uses are not allowed under the City's zoning ordinance
- An ordinance restricting medical marijuana uses and providing immunity from prosecution under the TMC for those who strictly comply with the ordinance.

Mayor Pro Tem Maciel asked what enforcement options would be available under Option 1. Mr. Sodergren stated a citation for violating the TMC. Mayor Pro Tem Maciel asked if the plants could be seized. Mr. Sodergren responded staff would have to look into that.

Mayor Pro Tem Maciel asked if a resident possessed a medical marijuana card would they be immune from arrest under state law. Mr. Sodergren stated that was correct.

Mayor Pro Tem Maciel asked for clarification under Option 2. Mr. Sodergren stated under Option 2, the City would adopt restrictions regarding cultivation and the operation of collectives. If the individuals followed the Code no citations would be issued.

Council Member Elliott asked if Option 1 clarified the City's position. Mr. Sodergren stated there has been more clarity in the cases, but that it is more involved when a city has permissive zoning. Mr. Sodergren stated if there is something clearly in the Code that you can point to, it makes it much easier.

Council Member Elliott asked what would be the likelihood that the City would be sued to not uphold the federal law under Option 2. Mr. Sodergren stated he believed the important thing would be if an ordinance was adopted not authorizing them or permitting them, and would still be illegal in the City; that the City decided not to enforce those prohibitions.

Council Member Elliott asked if the City we were to pursue Option 2, what kind of dilemma would be added to police officers' duties. Gary Hampton, Police Chief, stated officers were not cross designated as federal officers, and therefore not required to enforce federal law. In some cases they are not allowed to arrest for federal violations. Chief Hampton stated the impact would be to the quality of life and attractive nuisances, especially in residential neighborhoods. Chief Hampton stated his greater concerns are the health and safety issues of cultivation in residential neighborhoods. Chief Hampton outlined some of the nuisances including burglaries and robberies, obnoxious odors, numerous complaints, and heavy traffic suggesting sales are occurring. Chief Hampton indicated Option 1 would more succinctly state what the zoning regulations are. Chief Hampton added he could not support Option 2.

Council Member Rickman asked Chief Hampton to elaborate on who can cultivate marijuana. Chief Hampton stated the law was vague on who may cultivate and provided an example of a residence that has six individuals cultivating in one yard.

Council Member Rickman stated his concern was public safety and the way the cultivators protect their homes. Council Member Rickman asked what would happen if the Police Department received a call and found 20-30 plants. Chief Hampton stated the officer would confirm that he has the appropriate paperwork. If not, the issue would be referred to the Code Enforcement division to pursue action through zoning violations.

Council Member Rickman asked what Council could do to remedy the situation. Chief Hampton stated Option 1 was the answer.

Council Member Rickman indicated the City of Ripon's ordinance seemed to be thorough and that other cities were ratcheting up their enforcement capabilities. Mr. Sodergren stated all those remedies would be available under Option 1.

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

Joseph Smith, Tracy resident, provided a handout regarding the struggles his family has endured because of a neighbor who cultivates medicinal marijuana. Mr. Smith urged the Council to act to protect his family, neighbors and community.

Dave Tillman, 610 Forest Hills, addressed Council regarding the intrusions on his property. Mr. Tillman urged Council to act on the item.

Dave Helm urged Council to consider what the County was doing with this problem. Mr. Helm stated he agreed that the hazards to the public need to be dealt with. Mr. Helm suggested Council consider action similar to what the County enforces and what the courts are willing to do.

A member of the audience stated he has been dealing with the problem on Cumberland for many years. The resident cited various crimes committed in the neighborhood due to the marijuana problem, and asked Council to do what they could to put a stop to the problem.

Danielle, Tracy resident, addressed Council regarding the current medical marijuana legislation. Danielle asked that an ordinance be passed to get the problem under control.

Scott Mitchell, 570 Forest Hills, voiced his concerns regarding the problem including the obnoxious odors and dangers for small children. Mr. Mitchell stated it has become a major problem and a public nuisance.

Ricky Hipp asked how this would affect those who grow marijuana plants indoors. Chief Hampton stated the indoor grows were equally problematic and represented an entire list of other health concerns and issues.

Mayor Pro Tem Maciel asked if neighbors can petition the court due to the nuisance issue. Chief Hampton stated there were certain civil processes neighbors could pursue to seek cease and desist orders.

Chief Hampton asked that anyone who was aware of any criminal activity should contact the Police Department; don't assume that no action has been taken. Chief Hampton reminded everyone that the Police Department was the investigative department and not the prosecuting arm.

Council Member Elliott asked if the City prohibited marijuana cultivation in the City limits, would the City be able to win a case or be able to remove marijuana found to be grown in the City limits. Mr. Sodergren stated he believed the plants could be removed as long as the process was followed and the City succeeded in any court action.

Council Member Abercrombie encouraged Chief Hampton and Mr. Sodergren to come up with an ordinance that provides the Police Department with the teeth to enforce it. Council Member Abercrombie indicated it appeared Option 1 was the best alternative.

Mayor Ives asked for clarification regarding Option 1. Mr. Sodergren stated if an ordinance was adopted, it would be fairly comprehensive and include dispensaries, cultivation, etc.

Mayor Pro Tem Maciel clarified that this is not a criminal matter and would be dealt with by code enforcement and the stricter, the better. Mayor Pro Tem Maciel suggested if there was a way to accelerate the process, it should be looked at. Mayor Pro Tem Maciel indicated he supported Option 1.

Council suggested staff work on an ordinance (option 1) and bring it back for consideration.

Council Member Elliott stated this is part of the Council's efforts to ensure City streets are safe for residents. Council Member Elliott stated he believed Option 1 was taking a step in that direction.

Council Member Rickman asked how quickly an item could be returned to Council for consideration. Mr. Sodergren stated that because it involves a zoning ordinance, it would have to go to the Planning Commission first.

Council Member Rickman asked if it could be expedited. Mr. Sodergren stated staff would do their best.

Council Member Rickman thanked everyone who spoke and voiced their concerns.

Chief Hampton asked anyone who believed a marijuana grow was occurring to please contact the Police Department who will investigate.

Mayor Ives called for a recess at 8:59 p.m. The meeting was reconvened at 9:08 p.m.

4. CONSIDERATION OF A PROPOSED INCREASE TO SOLID WASTE RATES AND AUTHORIZE STAFF TO HOLD A PUBLIC HEARING FOR THE ADOPTION OF PROPOSED SOLID WASTE RATES - Kevin Tobeck, Public Works Director, presented the staff report. The City maintains a Franchise Agreement with Tracy Delta Disposal Service Inc. (Tracy Disposal) for the collection of solid waste within Tracy. The City also maintains a Service Agreement with Tracy Material Recovery and Solid Waste Transfer Inc. (Tracy MRF) for the recycling, composting, processing, and disposal of solid waste. The City bills for all of Tracy Disposal and Tracy MRF services within Tracy and maintains a Solid Waste Fund that receives all revenues from collection rates. The funds received from rate collection must be sufficient to cover:

- Tracy Disposal's Service Fees;
- Tracy MRF Service Fees
- Disposal expense (tipping fees), which is paid directly by the City;
- Franchise fees;
- Bond covenant requirements; and
- Other expenses and reserves as are determined to be necessary by the City

In order to strategize a solution to the forecasted depletion of the Solid Waste Fund, R3 Consulting Group (R3) was retained by the City to perform a Fiscal Analysis and to provide a Rate Review Report of the City's Solid Waste Fund. The PSA scope of services required R3 to review the City's Solid Waste Fund operating budgets and provide a financial model used to adjust solid waste rates. An additional goal of the rate setting process is to establish fair and equitable distribution of costs among ratepayers.

The following factors were analyzed by R3 and City staff to determine that a rate increase was necessary:

Bond Requirements: Pursuant to the covenants of the bond requirements, a rate increase is warranted. The bond Consent and Agreement states that the City shall cause the Waste System Debt Service Coverage Ratio to be equal to at least 1.3 to 1 for each calendar quarter. In the event that the Waste System Debt Service Coverage Ratio falls below 1.3 to 1 for any calendar quarter, the City shall increase the Waste System Revenues until the Waste System Debt Service Coverage Ratio is equal to at least 1.3 to 1 by the next calendar quarter end. The City's Finance Department indicates that the current Waste System Debt Service Coverage Ratio is less than 1.3 to 1, thus justifying an increase in rates to raise revenues.

Increased Operational Costs: Tracy Disposal continues to be the City's exclusive garbage collection and disposal franchise hauler. Tracy Material Recovery continues to receive and process all municipal waste from the City of Tracy and plays an integral role in meeting the diversion requirements as mandated by AB939. Since the City's last rate increase in 2007, Tracy Disposal and Tracy Material Recovery have implemented reductions in operating costs, such as reduced labor and utilization of new technology. However, they continue to experience rising costs due to such factors as increased regulatory compliance to meet California Air Resources Board emission requirements for solid waste collection vehicles and processing equipment, fuel, and health insurance. Fuel costs year to date for 2011 are running \$3.90 per gallon as compared to \$2.70 in January, 2010. Health benefits continue to climb from 15% to 18% annually. Landfill

disposal rates from 2007 to January 2012 will have increased 22.5%, which is a \$6.30 per ton increase totaling an estimated \$341,000 additional cost for 2012. Significant drops in the recyclable markets, although staging a recent recovery, have also reduced revenues. Tracy Disposal and Tracy MRF are requesting a 9.5% and 23% increase respectively for their portion of the fees pertaining to collection, recycling, composting, processing, disposal costs, and regulatory compliance.

City Franchise Fee: The existing franchise agreement provides for a franchise fee in the amount of 10%. Such fee is a pass through cost directly supported by solid waste rates. The fee amount should be included in rates in addition to all other fees and expenses of the contract provider. During the review of City budget matters by Management Partners, it was noted that the City had only been collecting a 3% franchise fee. As such, the City began collecting the 10% franchise fee and the solid waste fund balance was sufficient for a period of time to cover this amount until the next rate setting process which would need to take the correct franchise fee of 10% into account when establishing new rates. This resulted in an additional cost to the Solid Waste Fund in Fiscal Year 2010/2011 of \$782,600 and a forecasted cost of approximately \$785,000 for Fiscal Year 2011/2012.

Additional Factors: The Solid Waste Fund has also been significantly affected by the housing market (foreclosures). Homes that are vacant do not pay for solid waste and recycling collection. This is lost revenue to the Solid Waste Fund, which, unlike water and sewer services, are still collected on foreclosed homes. Total Solid Waste Revenue for FY 2007/2008 was \$17,600,000 compared to FY 2010/2011 at \$16,000,000. The Solid Waste Fund is also being required per AB32 to implement a Mandatory Commercial Recycling Program enforceable by July 1, 2012.

Using the Solid Waste Fund Rate Model, provided by R3 Consulting Group, there are three rate adjustment scenarios for review that will provide a sufficient operating reserve fund balance. Scenario one proposes a one-time increase of 24% in FY 2011/2012.

The second scenario of a 17.7% increase in the first year with a 6% increase in FY 2012/2013 and a 5% increase in FY 2013/2014 will have a proposed rate adjustment of 28.7%, but due to compounding will be 31% over the next three years. Scenario three has a 12% increase for the first year, 10% increase for FY 2012/2013 and a 9.5% increase for 2013/2014 which will have a proposed rate adjustment of 31.5%, but again after compounding will result in a 35% rate change over the next three years. After the review of each scenario, staff recommends scenario one.

A proposed rate increase of 24% effective January 1, 2012 will alleviate the revenue shortfall to the Solid Waste Enterprise Fund and will provide a positive fund balance through Fiscal Year 2014/2015 and meet debt service coverage ratios. Other factors considered were the contracted service costs and comparable rates for similar services in neighboring jurisdictions.

The rate increase is proposed for Fiscal Year 2011/2012 beginning on January 1, 2012. The City will continue to review operational balances to determine when additional increases will be needed in the future.

The standard residential garbage and recycling fee will increase from \$29.45 a month to \$36.50 a month effective January 1, 2012. The rate adjustment will increase revenue to the Solid Waste Enterprise Fund by approximately \$2,000,000 for Fiscal Year 2011/2012. The General Fund will be supplemented by approximately \$785,000 annually for the increased Franchise Fee.

Staff recommended that the Council consider a proposed increase to solid waste rates and authorize staff to move forward with a public hearing for the adoption of the proposed solid waste rates.

Mayor Ives asked for clarification regarding what staff was requesting. Mr. Tobeck indicated staff would like guidance on what option Council preferred.

Council Member Abercrombie asked if Council chose the 24% increase, would that mean no increase until FY 14/15. Mr. Tobeck stated yes, based on current forecasting.

Mayor Pro Tem Maciel asked how many years it has been since the last increase. Mr. Tobeck stated the last increase took place in 2007. Mr. Sodergren suggested identifying which alternative Council was in favor of before the public notice is issued.

Council Member Elliott asked what other action could be taken if Council chose not to increase the fees. Mr. Tobeck stated it would be difficult to make further service reductions; however, one option would be to adjust the franchise fee.

Zane Johnston, Director of Finance and Administrative Services, stated the franchise fee was intended to compensate the City for the rent of the infrastructure. Mr. Sodergren stated the franchise fee is capped at 10%.

Council Member Elliott asked if the 24% increase was an increase of the user fee to keep the Enterprise Fund solvent. Mr. Johnston stated almost all cities ensure that all utilities are self-sustaining.

Mayor Ives asked staff to explain compounding. Mr. Tobeck explained the process.

Mayor Ives opened the public hearing.

Jay Morrey Gonzales asked what was done with the revenue generated from recycling. Mr. Tobeck stated the agreement the City has with the Material Recovery Facility states that part of the profit generated from recycling is used to cover the cost of the operation and any remaining profit is shared with the City. Mr. Johnston added it does offset rates.

Christine Frankel, 175 Victoria Street, stated managing waste was a key to sustainability and the existing plan does not address Council's sustainability program. Ms. Frankel indicated the City has not provided any choices in reducing waste and suggested Council not approve the request.

Robert Tanner, 1371 Rusher Street, asked why commercial customers have several options while residents only have two options. Mr. Tobeck stated a considerable amount of effort that went into analyzing commercial and residential plans. Mr. Tobeck introduced Scott Stortroen, Tracy Material Recovery. Mr. Stortroen provided a history of

how the totter sizes were decided upon. Mr. Stortroen stated a retrofit of the trucks would have to occur if smaller totters were considered, at a considerable expense.

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

Council Member Elliott stated the fiscally responsible thing would be to increase the rate so it can sustain itself.

Mayor Pro Tem Maciel stated an enterprise zone has to pay for itself and suggested that in the future the City could consider smaller increases vs. a one-time larger increase.

Council Member Rickman asked if the increase was due to the rate of foreclosures. Mr. Tobeck stated it could get better if the number of foreclosures decreased. Mr. Johnston added currently there were approximately 800 vacant homes in the City which represents between \$400,000 and \$500,000 per year in lost revenue.

Council Member Abercrombie asked if there were educational programs available. Mr. Tobeck stated there were a number of programs available. Jennifer Cariglio, Solid Waste Coordinator, visits schools and looks for events to promote recycling in the City.

Mayor Ives stated it was a hard pill to swallow and an unfortunate result of today's economy.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to direct staff to advertise a 24% rate increase. Voice vote found all in favor; passed and so ordered.

5. ACCEPT THE POLICE DEPARTMENT'S REORGANIZATION EFFORTS: AUTHORIZE AMENDMENT TO THE CITY'S CLASSIFICATION AND COMPENSATION PLANS AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR POLICE SUPPORT OPERATIONS MANAGER AND PROFESSIONAL STANDARDS OFFICER AND APPROVING THE ADDITION OF ONE POLICE CAPTAIN POSITION, ONE POLICE SUPPORT OPERATIONS MANAGER AND ONE PART-TIME PROFESSIONAL STANDARDS OFFICER - Maria Olvera, Human Resources Director, presented the staff report. On October 4, 2011, the City Council approved Resolutions 2011-185, 2011-186, and 2011-187, granting designated periods for two years additional service credit with the California Public Employees' Retirement System and the City's future organizational structure.

Recent change of leadership at the Police Department has provided an opportunity to reassess efficiencies and the effectiveness of the Department. The Police Chief, assisted by Police Department Command and Supervisory staff, completed an evaluation of the current organizational structure, seeking to ensure the greatest focus of organizational resources are directed toward serving the community at first line service levels. Utilizing the incentivized retirement program, the following positions are planned to be eliminated: two Police Sergeants, two Community Service Officers (non-sworn), one Crime Prevention Specialist (non-sworn), and one Administrative Assistant.

The planned structural reorganization of the Police Department effectively adds back the following positions to personnel staffing: one Police Captain, one non-sworn Police Support Operations Manager, one non-sworn Records Unit Supervisor, and one non-sworn Professional Standards Officer (part-time).

Through this plan, sworn staffing remains at 85 sworn personnel - one Chief of Police, two Captains, four Lieutenants, 10 Sergeants, and 68 Police Officers. Non-sworn staffing is reduced from 42 to 40 - one Police Support Operations Manager, one Records Unit Supervisor, one Communications Unit Supervisor, two Executive Assistants, two Administrative Assistants, one Crime Prevention Specialist, one Animal Services Supervisor, four Animal Services Officers, one Crime Analyst, 12 Communications Operators, one Crime Scene Unit Supervisor, four Crime Scene Technicians, two Community Service Officers, and seven Records Assistants.

The planned redeployment of existing staff, in concert with elimination and reallocation of specific staff positions, is designed to achieve the following goals:

- Enhanced Command structure achieving greater accountability and enhanced risk management;
- Increased staff deployment at first line service levels;
- Dedicated focus on suppression and eradication of gang and street crimes;
- Gained efficiencies through an organizational structure recommended by POST;
- Offset the cost of reorganization and achieve ongoing operational cost reduction;
- Preparation for future organizational growth;
- Succession planning; and
- Sustainment of current sworn staffing levels.

Based on the results of the classification study, the Human Resources Department recommends that the City's Classification and Compensation Plans and the Position Control Roster be amended to incorporate the following adjustments:

Establish Classification Specification and Salary Range: Police Support Operations Manager:

Staff recommends a salary range for Police Support Operations Manager of approximately \$109,076 to \$132,584 per year. This recommendation is based in part on internal equity among other Division Managers who serve as Assistant/Deputy Directors within their respective departments as well as an examination of similar at-will / confidential / Senior Management-level positions in other Police Departments where extensive law enforcement experience and/or management of the intricacies unique to Police Departments is required. This position will be responsible for general oversight of several departmental units including Records and Communications, budget and policy administration.

Establish Classification Specification and Salary Range: Professional Standards Officer (Part-Time, Limited Service):

Staff recommends that the hourly pay rate range for this part-time, limited service position be from \$40 to \$50 per hour. This classification will be responsible for conducting performance audits and various inquiries and investigations of Police Department employees as well as for reviewing departmental policies and procedures to ensure continual compliance with current laws and best practices.

Revise Classification Specification: Supervisor of Records Unit: Revision of the classification specification for the non-sworn position of supervisor over the Police Department's Records Unit will be brought before Council in the near future. It is anticipated that staff will recommend updating the title to bring the position in line with other non-sworn unit supervisors in the Police Department as well as update the specification to include advances in modern technology and any changes in responsibilities since the classification was last updated in 1998. Staff also anticipates proposing that the classification be placed in the Tracy Mid-Manager's Bargaining Unit in order to provide representation that is similar to the Council-approved representation for other non-sworn Police supervisors and City middle management classifications. As the classification is currently represented by the Tracy Police Officers Association, the City is required to Meet and Confer prior to implementing any bargaining unit modification. Any revision recommended will seek to ensure consistency with Council action to date, as well as ensure placement in an employee group that is organizationally appropriate.

Staff recommended that the Council adopt the Police Department's reorganization plan and authorize the Human Resources Director to amend the City's Classification and Compensation Plans and the Budget Officer to amend the Position Control Roster by approving the establishment of classification specification and salary range for Police Support Operations Manager and Professional Standard Officer, and approving the addition of one Police Captain position, one Police Support Operations Manager, and one Part-Time Professional Standards Officer.

Council Member Elliott stated he assumed that this was the organization Chief Hampton needed. Chief Hampton stated, yes, in order to prepare for current and future challenges of the Police Department.

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

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-217 accepting the Police Department's reorganization efforts: authorizing Amendment to the City's classification and compensation plans and position control roster by approving the establishment of classification specification and salary range for Police Support Operations Manager and Professional Standards Officer and approving the addition of one Police Captain Position, one Police Support Operations Manager and one Part-Time Professional Standards Officer. Voice vote found all in favor; passed and so ordered.

6. SECOND READING AND ADOPTION OF ORDINANCE 1164, AN ORDINANCE OF THE CITY OF TRACY PREZONING THE FILIOS/DOBLER ANNEXATION PROJECT SITE PLANNED UNIT DEVELOPMENT (PUD) APPLICATION NUMBER A/P09-0002

The Clerk read the title of Proposed Ordinance 1164.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Ordinance 1164. Roll call vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.

8. COUNCIL ITEMS

A. Appointment of City Council Subcommittee to Interview Applicants for Four Vacancies on the Tracy Arts Commission – On December 31, 2011, there will be four vacancies on the Tracy Arts Commission due to term expirations. The vacancies are being advertised and the three week recruitment period will close on November 15, 2011. In accordance with Resolution 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council. Mayor Pro Tem Maciel and Council Member Elliott volunteered.

Council Member Abercrombie asked that Council consider endorsing the California Cancer Research Act and asked that it be brought back to Council for consideration.

Council Member Abercrombie stated Brighter Christmas needed help accepting applications on November 28 and 29, and would need help on December 3 to screen applicants.

Council Member Abercrombie wished his son good luck as he leaves for boot camp.

9. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adjourn. Voice vote found all in favor; passed and so ordered. Time 9:48 p.m.

The above agenda was posted at the Tracy City Hall on November 10, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk