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September 8, 2010

The Honorable William J. Murray, Jr.,  
Presiding Judge  
San Joaquin County Superior Court  
222 East Weber Avenue  
Stockton, CA 95202

Re: Response to Grand Jury Final Report – Case No. 1009

Dear Judge Murray:

This letter contains the responses and comments to the above-referenced Grand Jury Report issued in June 2010 in accordance with California Penal Code section 933(c).

1. **Recommendation:** Develop or update policies and procedures for appointment of BCC members.

**Response:** Resolution 2004-152 (attached) adopted May 18, 2004, establishes the selection process for all City boards and commissions and defines the City's residency requirements. Every applicant who fills out an application form is invited to interview with a City Council subcommittee. The subcommittee is provided with a list of approximately 20 questions to assist in determining the most suitable candidate. The list of questions was updated in April of 2010. Questions are loosely divided into three groups. Initial questions relate to an applicant's interest, experience and training, followed by questions specific to each board or commission's purview. Final questions relate to conflict of interests, ethics and residency requirements. While not all questions are posed to all applicants, the final questions are mandatory and are designed to ensure that successful applicants are aware of the requirements relating to AB 1234, the annual filing of the Form 700, and the City's residency requirements. The Council subcommittee submits their recommendation to the full Council at a regular City Council meeting for final appointment. The Council also has the option to create an eligibility list. The list is kept on file for one year and is used to fill vacancies for specific boards or commissions which occur during that time. There is no limit to the number of terms members may serve; however, at the end of each term members who wish to reapply are required to fill out updated application forms and take part in the selection and interview process.



2. **Recommendation:** Provide and document Brown Act and fiduciary responsibility training to all appointees.

**Response:** Brown Act training is provided for all of the City's boards and commissions, with the exception of the Youth Advisory Commission. Following is a list of the City's boards and commissions together with the date of the Brown Act training:

COMMISSION/ BOARD	TRAINING DATE
Planning Commission	individual training is provided to each commissioner by the City Attorney's office following appointment
Building Board of Appeals	April 27, 2010
Parks Commission	April 3, 2008
Tracy Arts Commission	March 9, 2010
Transportation Advisory Commission	February 11, 2010

In addition, all members of the City's boards and commissions, with the exception of the Building Board of Appeals, are required to complete AB 1234 training within one year of appointment and once every two years thereafter.

Board and commission members do not exercise control over City monies and, for the most part, act as advisory bodies to the City Council only. As such, fiduciary responsibility training is not necessary.

3. **Recommendation:** Utilize alternative sources to advertise vacant positions; i.e. Twitter, movie theaters, television, radio, announcements at public events.

**Response:** Interest cards are available from the website and are kept for one year. Notices of vacancies are posted on the City's website, on Channel 26, and at the Tracy library. Vacancy notices are sent to the Tracy Press, The Record, and the Tri-Valley Herald for local interest stories. Subscribers to Face Book and Twitter are automatically notified when notices are posted to the website. Vacancy notices are also automatically mailed to retiring members and to all parties who have submitted interest cards

4. **Recommendation:** Annually review appointee performance and take appropriate action.

**Response:** Currently, board and commission members are evaluated at the end of their term only if they choose to reapply and complete the application process. Members are evaluated on an annual basis based on attendance, compliance with required training which includes AB 1234 and submittal of Form 700, Statement of Economic Interests.

5. **Recommendation:** Develop policy and procedures defining the process for appointee removal.

**Response:** Resolution 2009-191 (attached) adopted October 20, 2009, provides standard bylaw language for all City boards and commissions regarding attendance, and outlines the process for removing an appointee who fails to attend four regular meetings in any calendar year.

Resolution 2010-022 (attached) adopted March 2, 2010, outlines the process for terminating an appointee who fails to comply with AB1234 training or file a Form 700, Statement of Economic Interests, in a timely manner .

Ordinance 1146 (attached) adopted on March 16, 2010, clarifies the status of Planning Commissioners and outlines a process for termination.

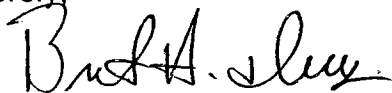
- 6A. **Recommendation:** Develop criminal and credit check standards for appointees.

**Response:** Disagree. Board and commission members do not exercise control over City monies and, for the most part, act as advisory bodies to the City Council only. As such, criminal or background checks are not necessary.

- 6B. **Recommendation:** Perform criminal and credit background checks on all appointees prior to appointment.

**Response:** Disagree. Board and commission members do not exercise control over City monies and, for the most part act as advisory bodies to the City Council only. As such, criminal or background checks are not necessary.

Sincerely,



Mayor Brent H. Ives  
on behalf of the Tracy City Council

cc: Members of the City Council  
City Manager  
Director of Finance and Administrative Services  
City Attorney

RESOLUTION 2004-152

REVISING RESOLUTION NO. 2004-089 ESTABLISHING THE COUNCIL SELECTION PROCESS, AND DEFINING RESIDENCY REQUIREMENTS, FOR APPOINTEE BODIES (GOVERNMENT CODE §54970 ET SEQ. LOCAL APPOINTEE OFFICERS)

WHEREAS, Council Policy D-5 was adopted by Resolution 2002-434 on October 15, 2002, which established a selection process for appointee bodies, and

WHEREAS, A variety of terms are used to define residency for the purposes of eligibility for appointment to various Appointee bodies and a method to verify residency has not been established, and

WHEREAS, Council wishes to define the terms and identify methods by which to verify residency and to incorporate those definitions into the selection process, and

WHEREAS, The definitions established herein shall apply to all boards and commissions to which the City Council appoints members unless the Bylaws of the board or commission specifically define otherwise, and

WHEREAS, Revisions to Resolution No. 2004-089 were considered and approved by the City Council on May 18, 2004 as set forth below.

NOW, THEREFORE, the Tracy City Council hereby resolves as follows:

A. SELECTION PROCESS FOR APPOINTEE BODIES:

1. On or before December 31<sup>st</sup> of each year, the clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
  - a. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
  - b. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
  - c. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
3. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final

appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.

4. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
  - a. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
  - b. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 3.
5. The council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:
  - a. Mayor (or designee) and a selected Council member will review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
  - b. If the interview subcommittee determines there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that occur in the following twelve (12) months.
  - c. At the interview subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
6. In the event there are not two or more applicants than vacancies on any board, commission or committee, the filing deadline may be extended by staff.
7. An individual already serving on a City of Tracy board, committee or commission may not be appointed to serve on an additional City of Tracy board, committee, or commission concurrently.

**B. DEFINITION OF RESIDENCY REQUIREMENTS:**

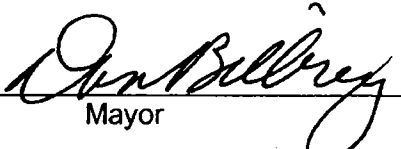
1. The following definitions shall be used to determine whether residency requirements are met for boards and commissions to which the Tracy City Council appoints members:
  - a. Tracy Planning Area means the geographical area defined in the City of Tracy General Plan and any amendments thereto.
  - b. City of Tracy means within the city limits of the City of Tracy.

- c. Citizen means a resident of the City of Tracy.
  - d. Tracy School District means the geographical area served by the Tracy Unified School District.
  - e. Sphere of Influence shall be the geographical area approved by the Local Agency Formation Commission (LAFCo) of San Joaquin County and any amendments thereto.
2. Residency, as defined above and as set forth in the applicable bylaws for each board or commission, shall be verified annually by the City Clerk. The residency must be verifiable by any of the following means:
- a. Voter registration,
  - b. Current California Driver's License or Identification,
  - c. Utility bill information (phone, water, cable, etc.),
  - d. Federal or State tax returns.
3. Members of boards or commissions shall notify the City Clerk in writing within thirty (30) days of any change in residency. If the change in residency results in the board member or commissioner no longer meeting the residency requirements, the member shall tender their resignation to the City Clerk who shall forward it to the City Council.

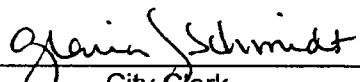
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The foregoing Resolution 2004-152 was passed and adopted by the Tracy City Council on the 18th day of May, 2004, by the following vote:

AYES: COUNCIL MEMBERS: HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

RESOLUTION 2009-191

PROVIDING STANDARD BYLAW LANGUAGE FOR ALL CITY OF TRACY COMMISSIONS REGARDING ATTENDANCE

WHEREAS, On October 7, 2003, the City Council adopted a standard set of bylaws for all City commissions and committees; and

WHEREAS, Pursuant to Council direction, commissions have the opportunity to request modifications to these standard bylaws; and

WHEREAS, Currently, the City of Tracy has five commissions with bylaws, which provide language regarding attendance with inconsistencies relative to attendance requirements.

NOW, THEREFORE, BE IT RESOLVED, That the City Council amends the bylaws of all City of Tracy Commissions and Committees to provide the following standard language for all regarding attendance:

*"If a member of \_\_\_\_\_ Commission fails to attend four regular meetings in any calendar year, his or her position on the \_\_\_\_\_ Commission shall automatically become vacant and the staff liaison shall so inform the City Clerk. Absences may not be excused; however, a commissioner may request a leave of absence as outlined in these bylaws.*

*For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting."*

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The foregoing Resolution 2009-191 was passed and adopted by the City Council of the City of Tracy on the 20th day of October, 2009, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, TOLBERT, TUCKER, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: MACIEL

ABSTAIN: COUNCIL MEMBERS: NONE

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

RESOLUTION 2010-022

ESTABLISHING REQUIREMENTS RELATING TO STATE MANDATED ETHICS TRAINING (AB 1234) AND FILING OF STATEMENTS OF ECONOMIC INTEREST (FORM 700) FOR CITY BOARDS, COMMISSIONS, AND COMMITTEES AND AMENDING RESOLUTIONS 2004-016, 2004-034, 2007-120, AND 2009-198

WHEREAS, The City Council finds that it is important for members of City boards, commissions, and committees to timely complete state mandated ethics training (AB 1234) and timely file Statements of Economic Interest (Form 700); and

WHEREAS, The City Council wishes to establish policies that ensure timely compliance with these requirements.

NOW THEREFORE, BE IT RESOLVED, that:

1. Members of all City boards, commissions, and committees are subject to the following requirements:

A. State Mandated Ethics Training (AB 1234)

- The City Clerk's Office will monitor compliance with AB 1234.
- If a member of a City board, commission, or committee, who is required to complete AB 1234 training, does not do so in a timely manner the City Clerk's Office will send two written notices at least 10 days apart to the member.
- If the member does not complete the required training, and provide proof of compliance to the City Clerk's Office, within 30 days of receiving the second written notice, his or her appointment will automatically terminate.

B. Statements of Economic Interest (Form 700)

- The City Clerk's Office will monitor compliance with state and City Form 700 filing requirements.
- If a member of a City board, commission, or committee, who is required to file a Form 700, does not do so in a timely manner, the City Clerk's Office will send two written notices at least 10 days apart to the member.
- If the member does not file a Form 700 with the City Clerk's Office within 30 days of receiving the second written notice, his or her appointment will automatically terminate.

2. The following resolutions shall be amended to reference the requirements contained in section 1: 2004-016 (Planning Commission Bylaws), 2004-034 (Parks and Community Services Commission Bylaws), 2007-120 (Transportation Advisory Commission Bylaws), and 2009-198 (Tracy Arts Commission Bylaws).

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The foregoing Resolution 2010-022 was passed and adopted by the Tracy City Council on the 2nd day of March 2010, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

ORDINANCE 1146

AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING TITLE 10, CHAPTER 10.04, ENTITLED "PLANNING COMMISSION" TO DELETE SUBSECTION (e) OF SECTION 10.04.030 ENTITLED "MEETINGS" AND AMENDING SECTION 10.04.020 ENTITLED "CREATION OF PLANNING COMMISSION"

WHEREAS, Tracy Municipal Code Section 10.04.030, contains language that is inconsistent with City Council Resolution No. 09-191;

WHEREAS, Resolution 09-191 was intended to provide standard bylaw language regarding Commissioner attendance for all City Commissions,

WHEREAS, Deleting subsection (e) from Tracy Municipal Code Section 10.04.030 will result in the Planning Commission bylaws regarding attendance mirroring the language contained in Resolution 09-191, and

WHEREAS, Council may, from time to time, wish to further amend the standard bylaw language for all City Commissions to address automatic removal of Commissioners based on certain criteria.

NOW, THEREFORE, The City Council of the City of Tracy hereby ordains as follows:

SECTION 1: Subsection (e) of Tracy Municipal Code Section 10.04.030, entitled "Meetings." is hereby deleted in its entirety.

SECTION 2: Section 10.04.020 of the Tracy Municipal Code, entitled "Creation of Planning Commission." is hereby amended to read as follows:

"The Planning Commission of the City is hereby established and shall consist of five (5) members appointed by the Mayor with the approval of the Council. The members shall be citizens, not City officials or employees, of the City. The members shall serve at the pleasure of the Council. Members may be automatically terminated as may be set forth by City Council resolution. Otherwise, members may be terminated at any time by a majority vote of the entire Council. Unless subject to automatic termination, members shall first be notified in writing of the Council's intended consideration of their termination. Such members, upon a request to the Council within fifteen (15) days following their receipt of such notice, shall be entitled to a hearing before the entire Council prior to the Council's vote on their termination.

The members heretofore appointed shall complete the terms for which they were appointed, and their successors to such terms shall be appointed for terms of four (4) years, except in the case of unexpired portions of terms. If a vacancy shall occur otherwise than by an expiration of a term, it shall be filled by an appointment for the unexpired portion of such term."

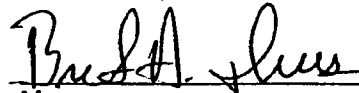
SECTION 3: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

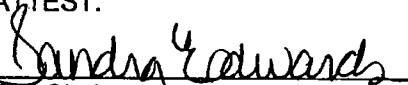
SECTION 4: This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

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The foregoing Ordinance 1146 was introduced at a regular meeting of the Tracy City Council on the 2nd day of March, 2010, and finally adopted on the 16th day of March, 2010, by the following vote:

AYES:	COUNCIL MEMBERS:	ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE
ABSTAIN:	COUNCIL MEMBERS:	NONE

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
City Clerk