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2023- 2024 San Joaquin County Civil Grand Jury



City of Tracy: Public Trust Still Not Restored

Case #0323

Summary

The City of Tracy has been plagued with a city council that cannot form a civil, cohesive governing body willing to set aside differences and personal agendas for the benefit of City residents. The 2018-2019 Civil Grand Jury issued a report entitled “Restore the Public Trust”. That investigation highlighted the inability of the Tracy City Council to work together cohesively, manifested by unprofessional behavior towards each other during public meetings. In addition, a consistent 3/2 voting block existed leading to the termination or forced resignation of a City Manager, Assistant City Manager, and Police Chief. The unexplained departures of the City’s administrative leaders created an unstable working environment at City Hall.

The most significant recommendation in that report was for the Council to establish a Code of Conduct to guide them on how to work together more effectively and respectfully. To reduce the impact of a 3/2 voting bloc, a recommendation was made to require a supermajority council vote to approve the removal of the City Manager or the City Attorney. The supermajority vote requirement was approved as well as the adoption of a Code of Conduct. Although it has had numerous

21 revisions, the Code of Conduct has not led to improved relationships between Council members, nor
22 has it had a positive impact on the effective leadership of the Council.

23 Unfortunately, the same problems noted in the 2018-2019 Grand Jury Report continue to exist today.
24 The 2022-2023 Civil Grand Jury received a complaint regarding the continued personal animus
25 between council members displayed openly and unprofessionally at council meetings. The source of
26 many disagreements revolved around philosophical differences in Tracy's growth, leading to a lack
27 of consistent vision of Tracy's future and distrust between council members and developers. History
28 repeated itself as evidenced by the Council's actions that led to the May 2023 resignation of the City
29 Manager. This resulted in a void in City management and leadership. As a consequence, there was a
30 disruption in the efficient delivery of City services. The continuing vacant and temporary senior
31 administrative positions have also led to inefficiency in serving and responding to the public.

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33 Adding to this disruption was an effort by the City Attorney to revamp City agreements and the
34 format of staff reports. The City Attorney's inability to retain staff has resulted in significant delays
35 in the work product from that office. These delays have increased public frustration in working with
36 the City, resulting in project delays, increased costs, and a negative impact on the City of Tracy's
37 reputation in the business community. This has resulted in a loss of business opportunities.

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39 Through its investigation, the 2023-2024 San Joaquin County Civil Grand Jury has identified
40 opportunities for implementing changes that hopefully, this time, can ensure a more harmonious and
41 productive City Council and improve the morale and efficiency of city staff.

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43 **Background**

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45 The City of Tracy has experienced significant growth of 8.38% since the 2020 census and is the
46 second-largest city in San Joaquin County. Its proximity to the densely populated Bay Area has
47 created opportunities to provide more affordable housing options. The availability of land has
48 enabled the development of housing as well as growth in warehouse distribution centers.

49 The City of Tracy operates under the Council-Manager form of government, as outlined in the Tracy
50 Municipal Code section 2.08.060. It designates the five-member City Council as the governing body
51 of the City, vested with the authority to establish policy, adopt new laws, levy taxes, award
52 contracts, and appoint the City Manager and City Attorney. Council members are limited to serving
53 two four-year terms; the office of Mayor is limited to two two-year terms. The Mayor is the fifth
54 member of the Council and presides over meetings and acts as a figurehead at various city functions.
55 Council members are responsible to the people for the actions of local government. In the Council-
56 Manager form of municipal government, the Council appoints the City Manager who is responsible
57 for the day-to-day operations of City business. The City Attorney is also appointed by the Council
58 and serves as the primary legal advisor to the City.

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Reason for Investigation

61 The 2023-2024 Civil Grand Jury received complaints claiming unprofessional conduct and
62 animosity by Council members, unprofessional conduct by the City Attorney, and a return of “power
63 politics” resulting in public discord, resignations of senior staff, and low morale of City employees.

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Method of Investigation

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Materials Reviewed

67 San Joaquin County 2018-2019 Civil Grand Jury Report, Tracy City Council: Restore the Public
68 Trust, Case 0418

69 2019-2020 Civil Grand Jury Report, Follow-Up Report, Tracy City Council: Restore the Public
70 Trust

71 City of Tracy Code of Conduct, October 15, 2019, revisions: July 21, 2020, February 10, 2021,
72 October 19, 2021, and June 6, 2023

73 City of Tracy: Council Meeting Protocols and Rules of Procedure

74 City Council meeting videos and minutes

75 City of Tracy Municipal Code

76 Rosenberg’s Rules of Order

78 Executive staff performance reviews
79 Executive staff employment contracts
80 Online Archives: Tracy Press, The Stockton Record
81 California League of Cities: Counsel and Council
82 California League of Cities: Western City Magazine
83 Institute for Local Government: Ethics and Transparency (AB1234)

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85 **Interviews Conducted**

86 Former and current City of Tracy elected and appointed officials, commissioners, and employees
87 Tracy Citizens
88 Residential/Commercial Developers
89 San Joaquin County employee

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91 **Discussions, Findings, and Recommendations**

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93 **1.0 Discussion: City Council**

94 Through their unprofessional behavior and inability to work cohesively, members of the Tracy City
95 Council have been unable to govern effectively and have failed the citizens of the city they have
96 pledged to serve.

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98 The City Council violated the Brown Act by posting and discussing personnel performance issues on
99 an open Council agenda. The 2018 San Joaquin County Civil Grand Jury recommended: “City
100 Manager and City Attorney should be shielded from power politics and shifting alliances by
101 requiring a supermajority (4/1) vote for their termination”. This recommendation was accepted and
102 implemented. In 2023, three members of the City Council attempted to change the ordinance
103 requiring a supermajority vote to a simple majority vote to remove only the City Manager but were
104 not successful. This resulted in another costly resignation.

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Findings

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- 108 **F1.1:** Through their unprofessional behavior and inability to work cohesively, members of the
109 Tracy City Council have been unable to govern effectively.
- 110 **F1.2:** Tracy City Council has violated the Brown Act in multiple ways: discussing personnel issues
111 in an open meeting and posting personnel issues on an open Council agenda.
- 112 **F1.3:** Some Tracy City Council members have created a toxic work environment within City Hall
113 by spreading accusations of corruption and alleged illegal activities by upper management
114 staff and other Council members.
- 115 **F1.4:** Tracy City Council's behavior has resulted in poor morale within City Hall.
- 116 **F1.5:** The City Council created a void in city administration and leadership through the resignation
117 of another City Manager. It should be noted that there have been six city managers and four
118 city attorneys in the past five years.
- 119 **F1.6:** The unprofessional Council behavior during Council meetings has negatively impacted the
120 City's reputation, affecting new business development and recruitment of potential city
121 employees.
- 122 **F1.7:** Members of the City Council attempted to undermine the ordinance requiring a supermajority
123 vote to remove the City Manager to a simple majority vote.
- 124 **F1.8:** There are no established measurable performance goals and objectives for the City Manager
125 and City Attorney; therefore the City Council cannot conduct effective annual evaluations.
- 126 **F1.9:** Serving as Parliamentarian for Council meetings puts the City Attorney in a conflicting
127 situation. Each decision by the Parliamentarian can be seen as partial to one side or the other.
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Recommendations

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- 130 **R1.1:** By October 1, 2024, members of the City Council need in-depth and continuous training on
131 the understanding and the effective utilization of the City of Tracy Code of Conduct, City of
132 Tracy Council Meeting Protocols and Rules of Procedures, and Rosenberg's Rules. Members
133 of the City Council and the City Attorney should refer to the League of California Cities:
134 Counsel and Council: A Guide to Building a Productive City <http://www.calcities.org/>

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R1.2-R1.6: By October 1, 2024, members of the City Council need in-depth and continuous training in understanding the requirements of the Brown Act.

R1.7: By October 1, 2024, City Council should approve an ordinance requiring a supermajority vote to modify any ordinance requiring a 4/1 vote. Additionally, a 90-day public notice to change this vote requirement ordinance should be mandatory.

R1.8: By October 1, 2024, the employment contracts for the City Manager and the City Attorney should require individual performance goals and objectives established within 90 days of hire. These goals and objectives should be evaluated annually.

R1.9: By October 1, 2024, if a Parliamentarian is deemed necessary at City Council meetings, the position should be held by an independent third party.

2.0 Discussion: City Attorney

The City Attorney determined it was necessary to correct past practices that did not, in her opinion, adequately provide legal protection to the city. These corrections would require a great deal of time. Compounding this problem are reports by city employees that the City Attorney mistrusts their ability to do their job. As a result, the City Attorney spends a significant amount of time reviewing and modifying work from various departments. It has been reported that the City Attorney has difficulty in delegating and prioritizing their department’s workload. This has caused delays in the timely processing of city work product.

City employees reported that they were publicly berated, belittled, and humiliated by the City Attorney. The City Attorney’s apparent lack of confidence in employees, and unsubstantiated accusations of illegal activities by employees have created an atmosphere of fear and low morale. This has resulted in the loss of numerous staff members which has impeded the provision of services for the citizens of Tracy.

163 **Findings**

- 164 **F 2.1:** Employees reported the work backlog created by updating past practices has negatively
165 impacted the public because of delays in residential and/or commercial agreements with the
166 City.
- 167 **F2.2:** The City Attorney’s difficulty in delegating and prioritizing the workload has caused a delay
168 in the timely processing of City work products.
- 169 **F2.3:** Interviews with former employees indicated that the Tracy City Attorney’s office is
170 understaffed compared to cities of similar population.
- 171 **F2.4:** The current Code of Conduct limits the hiring of outside legal counsel to only the City
172 Attorney. This ties the hands of the City of Tracy when the City Attorney is not available to
173 meet the duties of her office.
- 174 **F2.5:** Reported unprofessional behavior by the City Attorney in dealing with city staff has led to
175 low morale and staff resignations.

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177 **Recommendations**

- 178 **R2.1:** By October 1, 2024, an outside legal firm should be engaged to help expedite the current
179 work backlog in the City Attorney’s office.
- 180 **R2.2:** By October 1, 2024, the office of the City Attorney should develop and utilize standardized
181 agreements to streamline the review and approval processes.
- 182 **R2.3:** By October 1, 2024, the City of Tracy should budget for and hire additional City Attorney
183 staff.
- 184 **R2.4:** By October 1, 2024, the Code of Conduct regarding the hiring of outside counsel should be
185 amended to allow other city officials to hire outside counsel if the City Attorney is unable to
186 perform their duties, or if the legal issue being addressed gives the appearance of a potential
187 conflict of interest.
- 188 **R2.5:** By October 1, 2024, the City Attorney should be given training in personnel management.
189 The City Attorney’s actions should be consistent with the League of California Cities:

190 Counsel and Council Guide: <https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel->
191 [council-2022-ver4.pdf](https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel-council-2022-ver4.pdf)

192 In particular Principal 5:

193 *“The city attorney should conduct himself/herself at all times in a professional and dignified*
194 *manner, interacting with all elected officials, city staff, members of the public, and the media*
195 *with courtesy and respect.”*

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197 **3.0 Discussion: Council Hired Staff**

198 The City of Tracy's Human Resources Department (HR) has a grievance process for employees to
199 file complaints. There is a potential conflict of interest in the process for employees who work for
200 the City Attorney or the City Manager. If a grievance is filed against the City Attorney or the City
201 Manager, HR does not have the authority to assist the employee because these positions are overseen
202 by the City Council, not the HR department. If a complaint is filed against the City Attorney, the
203 City Attorney has the sole authority to hire outside counsel for an investigation, if warranted. If this
204 is not a conflict of interest, there is an appearance of one.

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206 **Findings**

207 **F3.1:** The City of Tracy does not have a clear process for filing complaints against council-hired
208 staff.

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210 **Recommendations**

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212 **R3.1:** By December 31, 2024, the City of Tracy shall establish a confidential process for employee
213 complaints against council-hired staff. The process should include a third-party vendor to
214 assure complete confidentiality.

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Glossary

- **City Council, Council, Council members:** For this report, these terms are interchangeable and generally refer to the entire five-member Tracy City Council, including the Mayor.
- **Council-Manager form of Government:** A form of municipal government in which the city manager functions as the chief executive of the city, overseeing the day-to-day operations of the city, and serving as the chief advisor to the city council.
- **Ethics Policy, Code of Conduct, Code of Ethics and Conduct:** A set of principles used to guide conduct and decision making. For this report these terms are interchangeable.
- **League of California Cities:** An association of cities within the state of California that provides education, research, support, and advocacy to member cities.
- **Power politics:** Political action by a person or group which makes use or is intended to increase their power or influence.
- **Supermajority:** In the case of the Tracy City Council, at least four out of five members
- **Voting Bloc:** In the case of the Tracy City Council, a group of votes, three to two, for a common agenda which dominates their voting pattern.

Conclusion

The citizens of Tracy cannot fully enjoy the benefits of a well-run city government if basic standards of civil behavior are not adhered to. With the continued dysfunction amongst elected officials, the public is the ultimate victim. The City Council must abide by the Tracy City Council Code of Conduct if public trust can ever be restored.

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Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911. 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929). This report was issued by the Grand Jury except for two members of the jury. These jurors were excluded from all parts of the investigation including interviews, presentations, deliberations, and the development and acceptance of the report.

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

Note: If the responder is an elected official, the response must be sent within 60 days of receipt. The Tracy City Council shall respond to all findings and recommendations. Mail or hand deliver a hard copy of the response to:

Honorable Gus C. Barrera II, Presiding Judge
San Joaquin County Superior Court
180 E Weber Ave, Suite 1306J
Stockton, California 95202

Also, please email a copy of the response to Irving Jimenez, Staff Secretary to the Grand Jury, at civilgrandjury@sjcourts.org