

Follow-Up Report to the 2013-2014 San Joaquin County Grand Jury Case No. 1213



Tracy Municipal Airport: *Development vs. Safety Zones*

Preface

This report contains the methods the 2014-2015 Grand Jury used to determine if the Tracy City Council responded to the 2013-2014 Grand Jury Report, “*Tracy Municipal Airport: Development vs. Safety Zones.*” The 2013-2014 Grand Jury recommendations were meant to strengthen the City of Tracy’s internal policies and procedures.

The 2013-2014 Grand Jury Findings and Recommendations, as well as the City’s September 2, 2014 responses, are presented verbatim in this report. The 2014-2015 Grand Jury follow-up results are presented after the City’s response to each recommendation.

A complete copy of the original report and the City’s response may be found on the San Joaquin County Grand Jury website at:

http://www.sjcourts.org/grandjury/2013-2014_roster%20and%20reports.html

Glossary

AAM	Airport Agreement Memorandum, written by a local developer dated April 26, 2013, requesting the City take certain action related to the Tracy Airport
City Council	The four elected City Council members and the separately elected mayor of the City of Tracy
ESP	Ellis Specific Plan, identifies the specific permitted uses, density and location of the development north-west of the Tracy Airport
FAA	Federal Aviation Administration

General Plan	City of Tracy’s land use document describing the proposed overall long term development for the City
Safety Zones	The area surrounding the runway prepared or suitable for reducing risk of damage to airplanes in the event of an undershoot, overshoot or excursion from the runway
Third Party Payment	A payment made by one party on behalf of another party’s contractual obligation
Tracy Airport	City of Tracy Municipal Airport

Follow-Up Investigation

The 2014-2015 Grand Jury reviewed the 2013-2014 Grand Jury Final Report, City responses, additional documentation, and interviewed City staff to determine that the City implemented the 2013-2014 Grand Jury recommendations.

Findings, Recommendations, Agency Responses and Follow-Up Results

1.0 Staff Reports Provided to the City Council

2013-2014 Finding 1: “City staff provided inaccurate and incomplete information to the City Council which could jeopardize the eligibility for the City receiving future grants.”

Agency Response: “The City agrees with this finding. ...”

2013-2014 Recommendation 1: “ City Council direct staff to conduct a comprehensive review for the Council by September 30, 2014, of the FAA and Caltrans safety zone requirements related to development and mandated requirements on runway lengths at the Tracy Airport to insure the City is in compliance for future grant funds.”

Agency Response: “This recommendation will be implemented by December 31, 2014. By that time, City staff will conduct a comprehensive review for the City Council of the FAA and Caltrans safety zone requirements related to development and mandated requirements on runway lengths at the Tracy Airport to insure the City is in compliance for future grant funds.”

The 2014-2015 Grand Jury determined that a memorandum dated December 29, 2014 was provided to the Mayor and City Council describing the “Review of FAA and Caltrans Airport Safety Zone Requirements”. No further action is required.

2.0 Business Proposal to the City

2013-2014 Finding 2.1: “The Tracy City Council did not enter into any written contractual agreement related to any of the contingencies contained in the Airport Agreement Memorandum. However, language in the AAM gave a clear perception that there was an agreement between City staff and the local developer to undertake the contingencies in the memorandum.”

Agency Response: “The City agrees that the Tracy City Council did not enter into any written contractual agreement related to any of the contingencies contained in the Airport Agreement Memorandum. ...”

2013-2014 Finding 2.2: “City Leaders did not approve any amendment to the ESP as requested by the local developer.”

Agency Response: “The City agrees with this finding.”

2013-2014 Recommendation 2: “The Tracy City Council adopt a policy by September 30, 2014, requiring full disclosure of any actions taken by the City on proposed substantial changes to major development projects within the City of Tracy.”

Agency Response: “This recommendation will not be implemented as it is neither warranted nor reasonable. Provisions of the state Planning and Zoning Law ensure that City actions on land use and development projects are adequately noticed and fully disclosed to the public. For example, any proposed changes to the General Plan, a specific plan, a zoning ordinance, or a development agreement require public notice and hearings before both the Planning Commission and the City Council. (Government Code, §§65353 and 65355 (general plan), 65453 (specific plan), 65854 and 65856 (zoning ordinance), and 65867 (development agreement).) In addition, the Brown Act requires that the City post notice of all items appearing on a City Council agenda in a location that is freely accessible to members of the public and on the City's Internet Web site. (Government Code, §§ 54954.2 (notice for regular meetings), and 54965 (notice for special meetings).) For development projects, City staff usually only presents the City Council with formal requests that are processed through the application, notice, and hearing process described above. City staff does not regularly present the City Council with informal requests that have not gone through this process. This is not only to use the City Council's valuable time more productively but also to avoid confusion over what action is actually before the City Council. City staff receives numerous informal requests and inquiries relating to development projects, many of which do not result in a formal application ever being filed.”

The 2014-2015 Grand Jury received and reviewed the response. No further action is required.

3.0 City Acceptance of Third Party Payments

2013-2014 Finding 3: “There are no adopted policies or procedures for the City to accept a third party check for a debt owed to the City under a contractual agreement with a private firm.”

Agency Response: *“The City disagrees with this finding. The City is subject to state law requirements relating to acceptance of checks. Government Code section 6157 provides that a city must accept certain personal checks and all corporate checks, cashier's checks, money orders, or other draft methods, drawn in its favor or in favor of a designated city official, in payment for any license, permit, or fee, or in payment of any obligation owing to the public agency. For personal checks, a city can require the person issuing the check to furnish proof of residence in this state and that the check be drawn on a banking institution located in this state. Other than this limited instance, a city may not refuse to accept a check, money order, or other draft based on the person or corporation issuing the check or the banking institution involved.”*

2013-2014 Recommendation 3: “The Tracy City Council adopt a policy by September 30, 2014, relating to the acceptance of third party payments for contractual obligations to the City of Tracy.”

Agency Response: *“This recommendation will be implemented as soon as practicable. The City will include a reference to Government Code section 6157 in its Financial Policies the next time such policies are reviewed and updated.”*

The 2014-2015 Grand Jury determined that a Third Party Checks and Mediums of Payment Administrative Policy and Procedure has been executed by the City Manager and is in full force and effect. This Policy and Procedure does reference Government Code 6157 and is consistent with that section. No further action is required.

4.0 Airport Classification and Future Development

2013-2014 Finding 4: “The change in the Tracy Airport runway length, requested in the Airport Agreement Memorandum, could have resulted in significant changes in the Ellis Specific Plan uses and densities allowed to be developed within the safety zone.”

Agency Response: *“The City agrees with this finding. ...”*

5.0 City Review of Business Licenses

2013-2014 Finding 5: “The City processed an amendment to the airport fuel operator’s contract without checking the current status of the operator’s State license.”

Agency Response: *“To the extent the Grand Jury is referring to the operator's corporate status with the California Secretary of State's Office, the City agrees with this finding. ...”*

2013-2014 Recommendation 5: “The Tracy City Council adopt a policy by September 30, 2014, requiring the review of the current status of a business’ State license when any applicable City contract is proposed to be amended or renewed.”

Agency Response: *“This recommendation will not be implemented because it is not warranted and is not reasonable. However, the City will include the following language in all of its standard form contracts: Contractor shall provide City proof that it has filed all required documents and/or forms with the California Secretary of State and has met all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that is not a suspended corporation. If Contractor is a suspended corporation at the time it enters into this Contract, City may take steps to have this Agreement declared voidable.”*

The 2014-2015 Grand Jury received and reviewed the response. No further action is required.

Conclusion

The 2014-2015 Grand Jury determined that the Tracy City Council responded pursuant to statute and in a timely manner to the findings and recommendations made by the 2013-2014 Grand Jury. The Grand Jury appreciates the City’s cooperation in addressing the issues raised in last year’s report.

Disclaimer

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 Sections 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).