



City of Tracy
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CITY COUNCIL

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September 19, 2018

Honorable Linda Lofthus, Presiding Judge
San Joaquin County Superior Court
180 West Weber Avenue, Suite 1306J
Stockton, CA 95202

Re: Response to San Joaquin County Civil Grand Jury Report "San Joaquin
County Municipality Ethics Policies" 2017-2018 Case Number 0917

Honorable Judge Lofthus:

The City of Tracy (City) responds to the above-referenced Grand Jury Report and this letter is submitted in accordance with California Penal Code Sections 933 and 933.05.

The Grand Jury Report requested the Tracy City Council respond to Finding F1.1 and Recommendation R1.1. The following is the City's response to these specific items contained in the report.

Finding F1.1 – The City of Tracy does not have an ethics policy for its elected officials, appointed officials and senior staff (city manager, city attorney, city clerk and their subordinate employees not represented by a bargaining unit). The lack of a policy has resulted in conflict, mistrust, and allegations of misconduct.

The City agrees with this finding. The City does not have a comprehensive ethics policy encompassing all of the categories of officials and staff. The City recognizes that state law provides ethical requirements and boundaries, but the City has not enacted its own comprehensive code of conduct or ethics policy.

Recommendation R1.1 – By October 31, 2018, the Tracy City Council develop and adopt an ethics policy that governs the behavior of its elected officials, appointed officials and senior staff.

The City is in the process of implementing this recommendation. On August 21, 2018, the City Council appointed a subcommittee of two Council Members to work

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with the City Attorney to prepare a comprehensive code of conduct and ethics and/or policy. Work is ongoing and the subcommittee intends to have a draft code for the Council to review as soon as possible. While endeavoring to be completed by October 31, 2018, the City Council will undoubtedly have some modifications and/or changes that may result in a reasonable delay. However, the City is committed to enacting a code of ethics that would apply to Council Members, appointed officials and appointed staff in 2018. The City will provide the Grand Jury the policy when completed and enacted.

As an initial action, the City has enacted an ordinance that prohibits Council Members, members of City Boards and Commissions, and appointed employees from contracting with the City. A copy of the adopted ordinance is attached for your review.

Thank you for providing the City of Tracy opportunity to comment on this important report. Please let us know if additional information is required.

Sincerely,



Robert Rickman, Mayor

On Behalf of the Tracy City Council

ORDINANCE 1261

AN ORDINANCE OF THE CITY OF TRACY ADDING SECTION 2.04.050

TO THE TRACY MUNICIPAL CODE

WHEREAS, The City of Tracy ("City") has some established policies and procedures to govern the conduct of City Council Members, Commissioners, City Treasurer and Appointed Employees, and

WHEREAS, Council Members have raised concerns regarding contracts and/or grants being provided to organizations affiliated with City Council Members and/or Commissioners, and

WHEREAS, Council Members have expressed a concern that contracts between the City and City Council Members and/or Commissioners which are lawful under state law, have the appearance of impropriety and should not be authorized, and

WHEREAS, The City may provide by ordinance prohibitions that are more stringent than state law in the area of ethics relating to conduct of City Council Members, City Treasurer, Appointed Employees and Commissioners;

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

SECTION 1: Section 2.04.050 of the Tracy Municipal Code is hereby added to read as follows:

2.04.050 - PROHIBITING MEMBERS OF THE CITY COUNCIL, BOARDS AND COMMISSIONS, CITY TREASURER AND APPOINTED EMPLOYEES FROM CONTRACTING WITH THE CITY.

(a) Definitions. For purposes of this Section, the following definitions shall apply:

(1) Board or Commission. The term "board or commission" means an appointed board or commission created by the City and specifically does include advisory boards or commissions.

(2) Business. The term "business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization or any other legal entity, whether for profit or non-profit.

(3) City. The term "City" includes any commission, board, department, agency, committee, or other organizational unit of the City of Tracy.

(4) Contract. The term "contract" means any agreement to which the City is a party, including grants or other funds provided by the City to any Business. Contracts shall not include exercise by the City of police or taxing powers, specifically the granting of business licenses and/or approvals of land use or building permits. For purposes of this Ordinance, "contracts" shall explicitly exclude utilities accounts and purchase and sale agreements for real property

(5) Subcontract. The term "subcontract" means a contract to perform any work that a primary contractor has an agreement with the City to perform.

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

(7) Financial Benefit means salary, wages, per diem, honorariums, incentive payments, commissions, payments or reimbursement for expenses, including travel payments provided by your employer. Financial Benefit means all of the above referenced categories received from any person, entity, corporation or non-profit.

(8) Immediate family member means any and/or all spouses, partners or adult children, whether they live in a single household or not.

(b) Prohibition. No member of the Council, Appointed Employees, City Treasurer or a member of any board or commission of the City shall, during his or her term of office, contract or subcontract with the City.

(c) Exceptions. This Section shall not apply to the following contracts or subcontracts:

(1) A contract or subcontract with a business with which Council, Appointed Employees, City Treasurer or a member of a board or commission is affiliated **unless** the member or his or her immediate family exercises management and control over the business. A Council Member, Appointed Employees, City Treasurer or a member of a board or commission exercises management and control if he or she is:

(A) An officer or director of a corporation, but specifically excludes volunteer Board of Director members who receive no Financial Benefit;

(B) A majority shareholder of a closely held corporation;

(C) A shareholder with more than five percent beneficial interest in a publicly traded corporation;

(D) A general partner or limited partner with more than 20 percent beneficial interest in the partnership; or

(E) A general partner regardless of percentage of beneficial interest and who occupies a position of, or exercises management or control of the business.

(2) A contract with the City entered into before a member of the Council, elected Treasurer, appointed employee or a member of a board or commission, commenced his or her service.

(3) A settlement agreement resolving a claim or other legal dispute.

(4) The Appointed Employees shall be allowed to contract with the City the terms and conditions of their employment.

(d) A City Council Member shall recuse (as defined by the Fair Political Practices Commission) themselves from any vote regarding any Memorandum of Understanding between the City and any lawfully recognized bargaining unit in which a City Council member has an immediate family member.


SECTION 2: This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4: This Ordinance shall be published once in a newspaper of general circulation, within 15 days from and after its final passage and adoption.

The foregoing Ordinance 1261 was introduced at a regular meeting of the City Council of the City of Tracy on the 21th day of August, 2018, and finally adopted on the 4th day of September, 2018 by the following vote:

AYES: COUNCIL MEMBERS: DEMENT, RANSOM, YOUNG, VARGAS, RICKMAN
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:


CITY CLERK

