

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Tuesday, May 23, 2023, 6:00 p.m.**
(or as soon thereafter as possible)

Location: **Tracy City Hall**
333 Civic Center Plaza, Tracy, CA.

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

This meeting will be open to the public for in-person and remote participation pursuant to Government Code Section 54953(e)

For Remote Public Comment:

During the Items from the Audience, public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:

- *Comments via:*
 - **Online by visiting <https://cityoftracyevents.webex.com>** and using the following **Event Number: 2558 070 6955** and **Event Password: TracyCC**
 - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or in WebEx by typing “Anonymous” when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.
 - **Join by phone by dialing +1-408-418-9388, enter 25580706955#8722922#**
Press *3 to raise the hand icon to speak on an item.

- *Protocols for commenting via WebEx:*
 - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
 - *Listen for the Mayor to open “Items from the Audience/Public Comment”, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - *Comments for the “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*

1. Call to Order
2. Actions, by Motion, of City Council pursuant to AB 2449, if any
3. Roll Call
4. ITEMS FROM THE AUDIENCE - *In accordance with Council Meeting Protocols and Rules of Procedure, adopted by Resolution No. 2019-240, and last amended by Resolution No. 2021-049, a five-minute maximum time limit per speaker will apply to all individuals speaking during "Items from the Audience/Public Comment". For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.*
5. DISCUSSION ITEMS
 - 5.A INTRODUCE AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 2.08.080(B) OF THE TRACY MUNICIPAL CODE, TO REFLECT THAT THE CITY MANAGER MAY BE REMOVED BY A THREE-FIFTHS (SIMPLE MAJORITY) VOTE OF THE CITY COUNCIL INSTEAD OF A FOUR-FIFTHS (SUPER MAJORITY) VOTE
6. Council Items and Comments
7. Adjournment



Mayor

Posting Date: May 22, 2023

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

May 23, 2023

AGENDA ITEM 5.A

INTRODUCE AND AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 2.08.080(B) OF THE TRACY MUNICIPAL CODE, TO REFLECT THAT THE CITY MANAGER MAY BE REMOVED BY A THREE-FIFTHS (SIMPLE MAJORITY) VOTE OF THE CITY COUNCIL INSTEAD OF A FOUR-FIFTHS (SUPER MAJORITY) VOTE

This agenda item is introduced by Councilmember Bedolla and Mayor Pro Tem Davis to address a critical and urgent issue facing the City. As documented in the attached Ordinance, the City Manager has exhibited a substantial dereliction of his duties, repeated exhibitions of favoritism towards select Councilmembers, failed to understand and abide by the Council-Manager form of government, and willfully disregarded local and State laws. All of his ongoing actions have been to the detriment of the City. We have attempted to discuss these issues on various occasions and have seen no improvement in his behavior. As such, we have lost complete confidence in the City Manager and are compelled to take this action to amend the Tracy Municipal Code to require only a simple majority vote to remove the City Manager.

While we recognize the Code was changed in direct response to the recommendation made by the San Joaquin County Grand Jury in its 2019 report "Tracy City Council: Restore the Public Trust", the Grand's Jury's recommendation was based upon the behaviors exhibited by past City Councils. We firmly believe the Grand Jury's recommendation was not intended to tie the hands of a current majority body, especially when such majority has lost complete confidence in one of its key appointed officials – the City Manager.

Prepared by: Councilmember Matt Bedolla
Mayor Pro Tem Eleassia Davis

ATTACHMENTS
Attachment A – Ordinance

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

ORDINANCE NO. _____

INTRODUCED BY COUNCILMEMBER BEDOLLA AND MAYOR PRO TEM DAVIS

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 2.08.080(B) OF THE TRACY MUNICIPAL CODE, TO REFLECT THAT THE CITY MANAGER MAY BE REMOVED BY A THREE-FIFTHS (SIMPLE MAJORITY) VOTE OF THE CITY COUNCIL INSTEAD OF A FOUR-FIFTHS (SUPER MAJORITY) VOTE

WHEREAS, The City of Tracy (City) is a general law city and operates under the authorities set forth in the Government Code by the California legislature; and

WHEREAS, The electorate of the City established a Council-Manager form of government in 1954, which is codified in Chapter 2.08 of the Tracy Municipal Code; and

WHEREAS, Under the Council-Manager form of government, the Mayor and Mayor Pro Tem have no greater powers than the other City Councilmembers, except as to ceremonial functions and when presiding over City Council meetings; and

WHEREAS, Under the Council-Manager form of government, the City Manager is appointed by and reports to the City Council, as a body; and

WHEREAS, The City Manager has repeatedly prioritized development items and items proposed by select Councilmembers onto the City Council agendas and delayed and/or ignored items raised by other members of the City Council, such as: ignoring the request to conduct a non-Council led town hall meeting for street repaving (and holding a Council workshop instead); timely bringing forward an ordinance to amend the City's Mobile Food Truck Ordinance; providing an update on the City's efforts to address storm drainage issues during rainy season; discussing tools used by "smart cities" to improve traffic flow; timely providing timelines of improvements on Lammers Road and Corral Hollow; providing a memorandum regarding Prologis' responsibilities timely and accurately providing the City's efforts to update its General Plan, and advancing efforts to attract a hospital and other critical resources to the City; and

WHEREAS, The City Manager informed certain City Councilmembers that the Planning Commission had requested, in Fall 2022, that staff return with an ordinance to amend the Planning Code to add buffers between cannabis businesses and other uses, and despite repeated requests by certain City Councilmembers to timely bring such item to the City Council for final consideration and approval, such item did not appear to the City Council until April 2023, after most cannabis conditional use permits already had been approved; and

WHEREAS, Under the City Manager's tenure, the City has issued building permits to select cannabis permit applicants, despite a failure for such applicants to fully satisfy conditions of approval under their respective conditional use permits; and

WHEREAS, the City Manager has failed to fully inform the City Council of actions taken by the City regarding its homelessness efforts and abused emergency authority granted to the City Manager, including: expending City funds to prepare a secondary site at Bricchetto, which action led to the City's payment of a claim due to pre-existing rights of a lessee in addition to site preparation costs of up to \$220,000; procurement of a Texas-based vendor for containers, without offering clear explanation or analysis of the availability of local vendors, which decision will lead to a loss of approximately \$600,000 of public funds due to defects as well as ongoing delays in providing additional available beds for the homeless population; the last minute decision to open and site a warming center at the Tracy Sports Complex, which action led to the City's payment of a claim due to an infringement of preexisting permit rights as well as conflicts with youth and parents utilizing the park; allowing a private citizen to negotiate the terms of modular units that have been leased by the City; and failing to disclose such information to the City Council prior to the City Council's approval of a services contract to an organization of which such private citizen is a principal officer.

WHEREAS, The City Council has learned that the City Manager, without authorization by the City Council, directed the finance department to process a City payment of \$5,000 to the "One World Event" held by the San Joaquin Chapter of the United Way on October 1, 2022; and

WHEREAS; The City Council has learned that the City Manager, without authorization by the City Council, directed the finance department to process City payments of two memberships to mayoral organizations, which memberships were prerequisites for the Mayor to attend conferences to such organizations, and failed to disclose the relevant payment to the City Council when the City Council considered and approved the Mayor's request to travel to the U.S. Mayor's Conference at the special meeting held on December 21, 2022; and

WHEREAS, Several Councilmembers have been told by certain City staff about alleged aggressive and hostile behavior exhibited by the City Manager on multiple occasions and the repeated imposition of undue pressure by the City Manager on City staff to complete actions within unrealistic timeframes, without following established policies and procedures, and/or willfully disregarding local and State laws; and

WHEREAS, Certain records disclosed in response to public records requests have revealed inappropriate communications by the City Manager with one or vendors of the City as well as the acceptance of gifts from one or more such vendors; and

WHEREAS, At the "New Mayors and Council Members" conference held in January 2023, the general counsel of the California League of Cities acknowledged to the City Manager, in the presence of Mayor Pro Tem, that such League counsel had received the City's Managers message seeking to discuss with such League counsel options for firing the City Attorney in light of the divided City Council; and

WHEREAS, The City Manager failed to directly communicate with and inform all City Councilmembers of a planned medical procedure and explain the processes he would establish to ensure that critical administrative items would be handled appropriately during his absence, and the majority of the City Council learned of his planned absence informally, either through discussions with other staff members and/or statements made by the City Manager in the presence of others; and

WHEREAS, Despite returning to his office on May 8, 2023, the City Manager failed to communicate with the majority of the City Council until all appeared for the City Council meeting on May 16, 2023; and

WHEREAS, Despite returning to the office on May 8, 2023, the City Manager failed to be available for agenda briefings with the majority of the City Council for the City Council meeting held on May 16, 2023, then attempted to pull from such meeting's agenda an item amending the City Council's Code of Conduct and Meeting Protocols and Rules of Procedures, which item had been discussed in two separate public workshops, starting with the February 4-5, 2023 City Council Retreat, which all Councilmembers and the City Manager attended, and publicly blamed his Assistant City Managers for not informing the Councilmembers of his concerns with this item; and

WHEREAS, Under the City Manager's tenure, staff has failed to hold public workshops, engage a consultant and take other appropriate measures, on an advanced and timely basis as other cities in the region have done, in order to develop a Housing Element that responsibly addresses Regional Housing Needs Allocation numbers allocated by the San Joaquin Council of Governments in substantially final form since July 2022; and

WHEREAS, Based on a recommendation made by the San Joaquin County Grand Jury in its 2019 report "Tracy City Council: Restore the Public Trust", which report can be find on the Grand Jury's website, the City Council amended the Tracy Municipal Code to require a supermajority vote (four-fifths) to remove the City Manager; and

WHEREAS, The Grand Jury's report documented that the City, in past years, had a series of unexplained departures of executive leaders, which departures created instability for the City; and

WHEREAS, The Grand's Jury's recommendation was based upon the behaviors exhibited by past City Councils and was not intended to tie the hands of a current majority body, especially where such majority has lost complete confidence in one of its key appointed officials - the City Manager; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals/Findings. The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

SECTION 2 Additional Findings. The City Council further finds that the City Manager has: repeatedly demonstrated favoritism amongst Councilmembers and failed to engage with all Councilmembers equally and fairly; has taken actions that reflect a fundamental lack of understanding of the City Manager's roles and responsibilities under the Council-Manager form of government; willfully disregarded local and State laws; and failed to exhibit leadership qualities by blaming his staff for acts or omissions.

SECTION 3. Amendment of Section 2.08.080.

Section 2.08.080(b), "Removal of the City Manager shall be only by a four-fifths vote of the members of the Council." of the Tracy Municipal Code is hereby amended to read as follows (with deletions in ~~strike through~~ and additions underlined):

(b) Removal of the City Manager shall be ~~only~~ by a ~~four~~-three-fifths vote of the members of the Council.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 5. Effective Date. This Ordinance shall be in full force and become effective 30 days from the date of its adoption.

SECTION 6. Publication. The City Clerk is directed to certify to the passage and adoption of this Ordinance causing it to be posted, as required by law.

SECTION 7. Codification. This Ordinance shall be codified in the Tracy Municipal Code.

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the ___ day of _____ 2023, and finally adopted on the ___ day of ___,2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTENTION: COUNCIL MEMBERS:

NANCY D. YOUNG
Mayor of the City of Tracy, California

ATTEST: _____
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of the
City of Tracy, California

Date of Attestation: _____