



**TOWN OF LOS GATOS**  
**OFFICE OF THE TOWN ATTORNEY**

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**MEMORANDUM**

**To:** Mayor & Council  
**From:** Robert Schultz, Town Attorney  
**Date:** January 21, 2021  
**Subject:** Ordinance and Policy Priorities for the January 26, 2021 Priority Setting Study Session

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The Town Attorney's Office is continually evaluating the Municipal Code for needed updates and provides this Memorandum to assist the Town Council in its Priority Setting Study Session. The list is in order of recommended priority. However, please realize that although these ordinances are in recommended priority, many issues may arise during the year that can alter these priorities.

**1. Face Covering Ordinance**

The health and safety of the public has been the Town's highest priority during the COVID-19 pandemic. In response to the crisis, the Town has followed all guidance, requirements, and protocols issued by the State of California and County of Santa Clara through their public health orders. A significant part of the Town's response has been to educate and encourage individuals and employees of local businesses to adhere to the requirement to use face coverings outside of the home when it is not possible to maintain a safe physical distance to prevent the spread of the COVID-19 virus. Examples include frequent information on this topic in the Town's news bulletins, on the Town's web site and on social media, as well as authorizing additional signage to be posted in multiple locations throughout the community.

Notwithstanding these education and communication efforts, the Town continues to receive complaints that some members of the public are not wearing face coverings when required by the public health order. Having a civil enforcement tool available whereby fines could be assessed using the provisions of Administrative Fines of the Los Gatos Town Municipal Code should encourage compliance with wearing face coverings in accordance with the Santa Clara County Health Orders and the California Department of Public Health Order.

**2. Public Art Ordinance**

Many municipalities in California have adopted ordinances requiring private sector development projects contribute to local art installations and programs. In 2016, the Town Council approved the Arts and Culture Commission's strategic plan, which identified public art, funding, and community engagement as its three major goals. In 2018, the Town Council

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directed staff to obtain further information regarding Public Art Ordinances and in response, hired Keyser Marston Associates to prepare an analysis on Private Sector Arts Contribution Programs. In 2019 after presenting the findings in the Keyser Marston report, the Town Council direct the preparation of a Public Art Ordinance. The draft ordinance has been prepared and is ready to be presented to Town Council.

### **3. Amendments to Tree Protection Ordinance**

The Town's Tree Protection Ordinance was adopted in 2015. During amendments to our code related to fire protection, issues were raised regarding fines and penalties associated with illegal trimming and removal of trees. Code amendments are necessary to strengthening code enforcement and increase civil penalties for illegal tree removal or damage.

### **4. Gender Neutralization of the Town Code**

As the Town works to create more inclusive environments for both staff and citizens, Gender Neutralization of the Code is an important milestone in the process, and one that has become a priority for many municipalities. The older language within our Code that contains increasingly obsolete gender-specific terms such as "she", "he", "chairman", "policeman" and other gender-specific terminology that is not considered inclusive in today's non-gender specific world.

### **5. Amendments to Solid Waste Ordinance**

The State of California adopted Senate Bill 1383. This bill requires organic waste in California landfills to be reduced 50 percent from 2014 levels by 2020 and 75 percent by 2025. It also requires that by 2025 at least 20 percent of edible food currently sent to landfills be recovered for human consumption. The bill requires the Town to adopt enforceable ordinances to ensure that all residential and commercial generators are compliant.

### **6. Campaign Financing and Reporting Ordinance**

The State of California adopted Assembly Bill (AB) 571. This bill recognizes that not all California cities and counties have set contribution limits for their elected candidates. This legislation applies contribution limits, set originally for State candidates, to city and county candidates in jurisdictions that have not set their own limits. The State legislation does not preclude the Town from setting its own limits (higher or lower) now or in the future. It simply applies the State candidate limits to cities and counties that have no adopted campaign contribution limits. The Council needs to decide whether to do nothing and have the State campaign limits apply to Town Council or return with an ordinance or resolution to set different campaign contribution limits from the States for Town races.

### **7. Commercial Cannabis Operations and Facilities Ordinance**

Los Gatos Town Code currently prohibits all medical marijuana operations and distribution facilities throughout the Town. With recent State law changes, cities and counties across California are exploring these new regulations and the fiscal tax impact of allowing Commercial Cannabis Operations and facilities. The tax rates adopted by the voters in other

jurisdictions range from 2.5% to 10% and preliminary estimates for the Town is between several hundred thousand dollars to \$1.5 million annually additional revenue. The analysis and review of these issues is consistent with council priority of Prudent Financial Management.

## **8. Public Nuisance /Blight/Administrative Abatement Hearing Ordinance**

The Town does not have a comprehensive Public Nuisance Ordinance related to the identification, definition, and enforcement of nuisances. Such an Ordinance would make identification of violations easier for residents and businesses to understand and thereby comply with, as well as to assist the Town in enforcing the Code and providing due process. The Nuisance Ordinance would provide a just, equitable, and practicable method for preventing, discouraging, and/or abating certain conditions which endanger the life, limb, health, property, safety, or welfare of the general public. Currently, the Administrative Abatement of Violations section of our Town Code is antiquated and needs to be updated to allow for the enforcement of Code violations through administrative hearings effectively applied and administered in a fair, expedient, and cost-efficient manner.

## **9. Mills Act Ordinance**

The Mills Act grants local governments the authority to establish, administer, and implement Mills Act Historic Preservation Tax Relief Programs (Mills Act programs). Cities and counties with Mills Act programs can enter into contracts with owners of qualified historic properties who actively participate in the preservation, restoration, and maintenance of their historic properties while potentially receiving property tax relief. Property owners must use any tax savings to extend the life of the structure(s) and protect the historic and aesthetic value of the property.

The potential drafting of a Mills Act Ordinance was considered by the Town Council in September 2019. Due to FPPC conflict of interest laws, only three Council members participated in the hearing. At the hearing, a Motion passed 2-1 to continue this item to a future Council meeting and directed staff to start conversations with partner agencies and provide examples of Mills Act Ordinances from surrounding jurisdictions.

## **10. Amendments to Sign Ordinance**

The Town's Sign Ordinance was adopted in 1976 and was last updated and amended in 1992. Based upon issues that have arisen during elections, my office conducted research regarding political sign and has determined based the US Supreme Court's decision in *Reed v Town of Gilbert*, 576 U.S. 155 (2015), that our current Sign Code appears to have aspects and sections that are no longer constitutional.

## **11. Shared Mobility Device Ordinance**

The Town does not have a Shared Mobility Device Ordinance. Shared mobility devices, such as electric scooters (e.g., Bird, Lime-S) and bikes (e.g. LimeBike, JUMP, Mobike, Spin), have surged locally and in cities throughout the United States. These mobility devices can be rented by the public via a smartphone application that unlocks the motorized devices from any

location and lets the user park it when the rider arrives at their chosen destination. These mobility devices are highly visible, drawing considerable attention and controversy when they arrive in any area. They have raised significant community concerns about safety and enforcement, including concerns about users riding on the sidewalk, doubling up on scooters, users failing to observe traffic controls in violation of the California Vehicle Code and other unsafe or uncivil rider behaviors. The devices have also posed new challenges in managing the safe public use of the street and sidewalks. The Town should adopt an ordinance regulating shared mobility service in the Town that would include permitting requirements and an operational framework.

## **12. Noise Ordinance**

The Town's Noise Ordinance was adopted in 1991. With the changes to the Town's Entertainment Policy, the Town needs to analyze and determine whether the noise levels set forth in the Noise Ordinance adequately protect the residents of Los Gatos from unnecessary, excessive, and disturbing noise and vibration.

## **13. Wireless Facilities Ordinance**

The Town's current Wireless Facilities Ordinance was adopted in 2003 to conform to the 1996 Telecommunications Act and is now outdated based on the ongoing changes to State and Federal legislation and leaves the Town unprepared for the scale of expansion that is on the horizon. Our current Ordinance only deals with the collocation of wireless facilities on existing utility poles. Various wireless facility companies are now proposing installations in the public right of way. Such installations could be on existing Town-owned structures, such as streetlight poles, or could involve the companies putting in their own new poles. The Town needs to update its wireless telecommunications ordinance to address the current status of Federal and State law as well as to reflect best practices in siting and design standards to preserve the aesthetics of the Town but to also facilitate providing competitive, varied, and high-quality wireless communications service infrastructure.

## **14. Claims/Settlement Authority Ordinance**

The Town's current Claims Ordinance has not been updated since 2003. With the passage of time, certain provisions have become outdated and other provisions have not historically been followed. This proposed update to the Ordinance would conform to current practice and update current settlement limits to allow for more expeditious settlement of claims and disposition of workers compensation claims.

*RWS*