

TOWN COUNCIL  
MEETING  
DEPUTY TOWN CLERK  
DATE 8/1/05



# TOWN OF LOS GATOS

OFFICE OF THE TOWN CLERK

CIVIC CENTER  
110 E. MAIN STREET  
P.O. BOX 2  
LOS GATOS, CA 95031

## AFFIDAVIT OF CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA ) SS  
TOWN OF LOS GATOS )

**MARIAN V. COSGROVE**, BEING FIRST DULY SWORN, DEPOSES AND SAYS THAT SHE IS THE DULY ELECTED AND QUALIFIED TOWN CLERK OF THE TOWN OF LOS GATOS; AND THAT SHE HAS HELD THE PRESENT OFFICE OF TOWN CLERK SINCE DECEMBER 6<sup>TH</sup>, 2004 AND HAS RECEIVED INSUFFICIENT INFORMATION TO CERTIFY ANYTHING BUT THE NOVEMBER ELECTION OF 2004.

**MARIAN V. COSGROVE, TOWN CLERK**  
**TOWN OF LOS GATOS, CALIFORNIA**  
**AUGUST 1, 2005**

### BACKGROUND

In response to the Town's letter of July 5, 2005, which was sent by the Manager's Administrator, the Office of the Town Clerk, elected by the people of Los Gatos and in answer to the people who have elected that office, finds it once again impossible to certify legislative record that has not been reviewed by the Office of the Town Clerk.

Certification is attesting to the authenticity of the legislative record and acknowledging that all aspects of the formulation of that record have adhered to the conditions of law which the State has established for General Law cities. This your elected Town Clerk can not do, for you (the Town Manager, the Town Attorney, the Town Council) have removed all State mandated duties from your elected Town Clerk and given them to your Town Manager. You have also removed the Town Clerk's Office from the Civic Center by placing an ordinance in the Los Gatos Town Code that reads that anytime you see the words Town Clerk you are to replace them with the Manager's administrator except where you read that you can elect one. Of course you make that elected one ceremonial, and as a ceremonial office you do not expect it to keep an office at the Civic Center, nor do you supply a mail box or any official way for that office to communicate with staff or public.

Your current elected Town Clerk spent sixteen years answering to the public and working countless hours to ensure that the legislative record was current, correct, attainable and certifiable. The Office of Town Clerk, mandated by the State, can no longer do that work under the direction of the Manager and Attorney who have manipulated the Los Gatos Town Code in such a devious and underhanded manner. The State Code is explicit on how the people's government should be handled in these situations. It says to go to the voters and ask if they would prefer an appointed clerk. It does not say that the Manager, Attorney and Council can make the Office of Town Clerk and appointed one. It does not say to deviously erase the words Town Clerk from the Town Code by creating a small ordinance saying that now the words Town Clerk means appointed administrator. Of course new formulating cities can ask their constituents how they want their officers to serve and Chartered cities can change their chartered city code by ordinance and vote. These other systems of government are different than that established by the State for General Law cities, which we are one of, and whose government and laws we should be following, and the last election did show that 68% wanted a full time elected clerk compared to 32% appointed.

Having the duty to administer the Oath of Office for the Town and for the Council is far from a ceremonial duty. When employees of the Town swear to uphold the Constitution of their State and the United States of America, it is not an empty ceremony. It is a commitment to the people's government. It is not a joke to be laughed at. The Keeper of the Seal, (the Office of the Town Clerk,) is mandated by the State to acknowledge that the use of the agency seal is used appropriately, without any underhanded or devious intent. Your elected Town Clerk cannot do that at this time.

December 6, 2004, the elected Town Clerk made the Town Manager the Chief Deputy Clerk for the Town of Los Gatos in case of emergency. Since the Town Manager has caused three quarterly reports to go unsigned, has not sent the documents that were requested, or made the filed documents available to the elected Town Clerk, it is suggested that the Chief Deputy Clerk certify, attest and acknowledge all those records that have been processed through the Manager's Office and upon which the Town Council has acted. This will allow the Town Manager to be prepared to attest to and uphold all legislative actions and legal filings taken by Council and the Town Manager's appointed administrator.

The elected Office of the Town Clerk:

- Did ask for full Council packets to be supplied and they were not
- Did request the Council tapes or electronic access and they were not supplied
- Did ask for the ability to access records freely for auditing purposes and was locked out
- Did explain that I was expending \$2,2000 a month of my own funds to maintain this position and which now amounts to \$18,000 since December 2004
- Did wonder just what was going to happen to this position if you had had the retired police captain actually run for this ceremonial position. That person was planning on being elected and what do you think he would have done once he discovered he'd have to give up his retirement for \$150 a month. And then who would run under those conditions?

This emergency has been created by the Manager's Office and administrator. The current elected Town Clerk has had to work during the normal business hours of the Civic Center to replace her very own, already deposited, retirement funds she is unable to receive since she is still considered a full time employee of the Town of Los Gatos as defined by the Public Employees Retirement System. Because the Town Clerk can not be at the Civic Center between 8 and 5, and actually has a very full schedule that runs regularly from 5am to 9pm, she has requested records be sent to the Office of Town Clerk electronically or in packet form to her front door.

The Office of Town Clerk has consistently requested access to the records needed to be the custodian of the legislative record as mandated by State Code. With some cooperation from the Town Manager this elected position could have been upheld. The Town Clerk could have held another position and come in a few hours a week to review the necessary documents and procedures. From there the legislative record could have been reviewed for all pertinent materials and procedures and audited for proper execution of most current professional records management processes.

With the ability to access the records fully the Office of the Town Clerk could then certify to the completeness of the legislative record which is mandated by the State to be in the custody of that office. The Town Clerk could certify the authenticity of a true record open and available to the public as stipulated in the California State Public Records Act.

Since the Town Manager has not made these records available to the Town Clerk, and since these actions have caused a review problem as far as certifying any record since December 6, 2004, the Town Manager should declare an emergency and certify all records since that date, so as to be prepared to swear to their availability, authenticity and completeness. As Chief Deputy Clerk of the Town of Los Gatos, in charge of the formation and growth of all those records, one needs to be prepared to stand behind them in a court of law. You, (Manager, Attorney, Council,) have made it impossible for your elected Town Clerk to do so, and I could swear to nothing in court, nor would I put my name and reputation on the line for documents I have not seen, and which I could not swear were the ones they were purported to be.



# TOWN OF LOS GATOS

## CLERK DEPARTMENT

CIVIC CENTER  
110 E. MAIN STREET  
P.O. Box 949  
LOS GATOS, CA 95031

CERTIFIED MAIL #7004 2510 0005 1533 8491  
RETURN RECEIPT REQUESTED

July 5, 2005

Marian V. Cosgrove  
Town Clerk  
P.O. Box 2  
Los Gatos, CA 95031

RE: CLERK ADMINISTRATORS REPORT

Dear Marian:

The third quarterly report from the Clerk Administrator, which is required by Resolution 2004-135, is ready for your review and certification.

Please advise if you would like me to mail it, and the attached exhibits, to the above address or leave it in the vault with the first and second quarterly reports which have not yet been signed.

Looking forward to hearing from you to arrange a time, during normal business hours or prior to 8:00 a.m. if this would be more convenient for you; or if you would like the reports mailed to you.

Best regards

MarLyn J. Rasmussen  
Clerk Administrator

cc: Debra Figone, Town Manager  
Orry Korb, Town Attorney

