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**MINUTES OF THE TOWN COUNCIL/PARKING
AUTHORITY/REDEVELOPMENT AGENCY
SEPTEMBER 5, 2006**

The Town Council of the Town of Los Gatos conducted a Regular Meeting on
Tuesday, September 5, 2006 at 7:00 PM

MEETING CALLED TO ORDER

ROLL CALL

Present: Council Member Steve Glickman, Vice Mayor Joe Pirzynski, Council
Member Barbara Spector, Council Member Mike Wasserman, and Mayor Diane
McNutt.

Absent: None.

PLEDGE OF ALLEGIANCE

Carlene, Patrick, and Camelle Tabari, St. Mary's School led the Pledge of
Allegiance. The audience was invited to participate.

CLOSED SESSION REPORT

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Government Code Section 54956.9[b])

Threat of litigation regarding Town Council decision denying a formula retail store
(American Apparel) - Conditional Use Permit No. U-06-006

Orry Korb, Town Attorney stated direction was given and no action was taken.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Government Code Section 54957)

Title: Town Attorney

Orry Korb, Town Attorney stated direction was given and no action was taken.

PRESENTATION/COMMENDATION

Barry Waite, President of KCAT15 provided an overview of the community
access station and discussed its programming vision and goals.

Tim Boyd, Transportation and Parking Commission member was not present to
receive his commendation this evening.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)
TOWN COUNCIL**

1. **Approve Council/Planning Commission Best Practices for Excellent Council and Commission Performance.**

Item #1 was pulled and will be heard after Other Business.

2. **Adopt resolution setting the sales prices for Below Market Price Housing Program Units located at 576 West Parr Avenue.
RESOLUTION 2006-095**

3. **PPW Job No. 04-63 - Federal Project STPL-5067(009) - Main Street Resurfacing and Streetscape and Los Gatos Almaden Road Resurfacing Adopt resolution authorizing the Town Manager to execute a program supplement agreement under the Master Agreement with the State of California Department of Transportation.
RESOLUTION 2006-096**

4. **PPW Job No. 05-17 - Project - Federal Project CML - 5067 (011) - Highway 9 Safety Improvements Adopt resolution authorizing the Town Manager to execute a program supplement agreement under the Master Agreement with the State of California Department of Transportation.
RESOLUTION 2006-097**

TOWN COUNCIL/REDEVELOPMENT AGENCY

5. **Approve Council/Agency minutes of August 21, 2006**

MOTION: Motion by Vice Mayor Joe Pirzynski to approve Consent Items #2-5.
Seconded by Council Member Steve Glickman.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Mr. Davis

- Commented on health and safety issues relating public water fountains in the parks.
- Commented regarding the sidewalks on Blossom Hill Road.

PUBLIC HEARINGS

6. Consider an appeal of a Planning Commission decision regarding modifications or revocation of Conditional Use Permit U-94-44 (Goguen's Last Call) for the operation of a bar on property zoned C-2. APN 529-07-046. Property location: 408 N. Santa Cruz Avenue. Property owner: Los Gatos Shopping Center, LLC. Appellant: Cynthia Goguen (continued from 8/21/06)

Orry Korb, Town Attorney provided a historical overview of issues related to the public hearing and discussed Council's options related to action.

Staff report made by **Debra Figone**, Town Manager. **Bill Conners**, Legal Representative for the Town made a subsequent report to the Council.

Council Comments

- Clarification regarding the terms of the Town's current Alcohol Policy.
- Clarification regarding the Conditional Use Permit restrictions, and whether modifications to the Conditional Use Permit would trigger the Alcohol Policy.
- Commented regarding the extent of the Police Department's efforts to work cooperatively with the downtown bars.
- Questioned the dates when contaminants were identified at the bar.
- Clarification regarding specific events that encouraged this matter to be brought to the Planning Commission.

Mr. Korb clarified the impact of Conditional Use Permit modifications.

Mr. Seaman clarified the history of the Police Department's efforts to identify problems and recommended courses of action.

Mayor Diane McNutt opened the public hearing.

Kent Washburn, Appellant and attorney for Cynthia Goguen, owner of Last Call, Presented arguments against the evidence presented by the Town.

- Commented on the number of calls for service and/or disturbances at the Last Call and Mountain Charlie's, another local bar.

Public Hearing continued Item #6

Council Comments

- Questioned why Cynthia Goguen is appealing the Planning Commission's decision.
- Questioned which of the 19 conditions of approval by the Planning Commission Last Call is contesting.
- Clarification on the impact of the Planning Commission's decision to modify Last Call's hours of operation.
- Questioned if the Cynthia Goguen understood that the Alcohol Policy states that the Conditional Use Permit should allow sales only to 10 p.m., and a waiver was granted as the hours of operations were changed to 11 p.m. weekdays and 12 a.m. Friday and Saturday.
- Questioned whether Cynthia Goguen feels that the inspection observations were adequate and that no additional action needed to be taken.
- Clarification that the purpose and objectives of the public hearing are to focus on the evidence presented regarding Last Call, not any other establishment.
- Questioned the appropriate and/or acceptable threshold for problems or violations.

Gavin Pate, security guard for the Last Call

- Commented on efforts made to improve safety in the bar.

Kirt Cannon, security guard for Last Call

- Stated that there has been no significant drug related issues that have occurred recently.
- Commented that Ms. Goguen informed him of safety issues and instructed him to ensure the safety of the customers and employees.

Greg Hewett

- Commented that the Last Call is similar to every other bar and is concerned that the bar is being treated unfairly.

Kevin Shannon

- Commented that he believes the Los Gatos/Monte Sereno Police Department did not take adequate measures to collaboratively work with the Last Call to resolve safety issues.
- Commented on the safety issues currently in place at the Last Call.

Public Comment continued

Ray Davis

- Suggested that emphasis should be placed on the safety of the public and how Last Call will address it.

Larry Lam

- Commented that his business has experienced problems potentially related to patrons of the Last Call.

Dennis Byron

- Commented that the Last Call should be given a second chance.

Norm Matteoni, attorney representing the property owner of 408 N. Santa Cruz Avenue.

- Commented that many similar establishments have enforced measures to ensure safety.
- Commented that he supports the evidence presented by the Town.

Charlotte Brooks

- Commented that she has never witnessed any acts of violence or drug use.
- She would like to see the hours of operation reinstated.

Nick Struthers

- Commented that the Last Call is a safe bar, and many positive changes have been implemented over the past 2 years.

Council Questions

- Clarification about the preventative measures implemented by the Police Department.
- Questioned the threshold for incidents at the Last Call.
- Questioned the impact of statistics relating to officers doing their field checks verses calls for service.

Public Hearing continued Item #6

Public Comment continued

Mr. Conners

- Addressed the Council's questions and reviewed the record of evidence that was provided to the Council.

Mr. Washburn, Appellant

- Requested all the police reports referenced as part of the discussion be included as part of the record.
- Commented on issues raised by staff related to waste, public drunkenness, bottle noise, transients giving alcohol to minors, and other serious incidents.
- Discussed issues related to transients loitering around the bar.

Council Discussion

MOTION: **Motion by Vice Mayor Joe Pirzynski** finding the Last Call in violation of its Conditional Use Permit (CUP) and that the Planning Commission erred, and that the Conditional Use Permit be revoked.
Seconded by Mayor Diane McNutt.

VOTE: **2/3** Steve Glickman, Barbara Spector, and Mike Wasserman voting no.

- Commented regarding not supporting the motion and that the Planning Commission did not err based on the evidence provided.
- Commented that a significant amount of Town resources are being used to address alcohol-related issues generated by the bar.
- Indicated that the Planning Commission action was appropriate.
- Commented on considering a motion that upholds the Planning Commission decision.

Public Hearing continued Item #6

MOTION: Motion by **Council Member Barbara Spector** finding the Planning Commission decision regarding hours of operation is a policy issue to be decided by Council, and upholding the Planning Commission's decision and modifying the hours of operation to close at 10:00 p.m. seven (7) days a week per the Town's Alcohol Policy.
Seconded by Council Member Mike Wasserman.

VOTE: Motion passed unanimously.

Mayor McNutt called for a recess.

OTHER BUSINESS

- 7. Adopt resolution rescinding Council Code of Conduct Resolution 2004-59 and adopting amended version of the Council Code of Conduct adding recommended enforcement procedures.
RESOLUTION 2006-098**

Mayor Diane McNutt opened public comment.

Public Comments

Ray Davis

- Commented that the Town can choose the option to explore ways to remove a Council Member from Council.
- Commented that there should be more than one member of Council on the evaluation committee.

Chris Miller

- Commented regarding the removal of a Council Member from office.

Mayor Diane McNutt closed the public comment.

Mr. Korb

- Explained if two members of Council were on the evaluation committee it could potentially lead to a Brown Act violation should a third Council Member be involved in an investigation.

Other Business continued Item #7

Council Discussion

- Suggested technical modifications by Council Member Steve Glickman to the following policy sections:

Evaluation of Complaints Alleging Violations

- Report details of complaint to Council Member in question, including persons(s) making the complaint, nature of the complaint, and copy of written complaint and all supporting documentation.

Major Violations and Investigations

- When interviewed, Council Member in question should be allowed to have counsel present.
- An interview should be conducted with complainant
- Initial findings should be articulated as "a finding that a full investigation is warranted."

Report of Findings

- Subject Council Member should be provided with a full copy of the investigative report, including supporting documentation.

Proceedings

- Exchange the word "should" for the word "shall" in the following sentence: "...significant policy violation shall be considered at a public hearing."
- Strike last sentence, "It shall not be conducted as an adversarial proceeding."

Council Discussion

- Commented that the recommended changes could be brought back to the Policy Committee for further consideration and recommendation to the Council.

Consensus to take comments back to Policy Committee for analysis and recommendation.

CONSENT ITEMS continued

Pulled Item #1

1. Approve Council/Planning Commission Best Practices for Excellent Council and Commission Performance.

Mr. Davis

- Commented on supporting the report.
- Commented on terminology issues relating to "customer service" and "denial."

CONSENT ITEMS continued

Pulled Item #1

Council Discussion

- Suggested to maker of the motion to consider amending the motion with regards to the heading on No.2 to read: "public service oriented" and heading on No.3 to read "when denial or condition of approval will suffice.
- Clarification relating to the language changes.
- The maker of the motion agreed to amend motion to include: heading on No.3 to read "when denial or condition of approval will suffice.

MOTION: **Motion by Council Member Steve Glickman to approve Best Practices for Excellent Council and Commission Performance with amendment to include: heading on No.3 to read "when denial or condition of approval will suffice." Seconded by Council Member Mike Wasserman.**

VOTE: Motion passed unanimously.

COUNCIL/TOWN MANAGER REPORTS

8. Council Matters

None this evening.

9. Manager Matters

None this evening.

ADJOURNMENT

Attest:

Jackie D. Rose,
Deputy Clerk