



MEETING DATE: 10/16/2006

ITEM NO:

12a

COUNCIL AGENDA REPORT

DATE: OCTOBER 9, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: MAYOR DIANE MCNUTT AND COUNCIL MEMBER BARBARA SPECTOR
AS MEMBERS OF THE COUNCIL POLICY COMMITTEE

SUBJECT: ADOPT RESOLUTION RESCINDING COUNCIL CODE OF CONDUCT
RESOLUTION 2004-59 AND ADOPTING AMENDED VERSION OF THE
COUNCIL CODE OF CONDUCT ADDING RECOMMENDED
ENFORCEMENT PROCEDURES

RECOMMENDATION:

Adopt resolution (Attachment 1) rescinding the original Council Code of Conduct resolution and adopting amended version of the Council Code of Conduct adding recommended enforcement procedures.

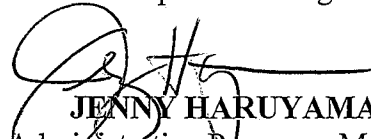
PURPOSE:

The purpose of this report is to provide the Council with recommended policy language to guide its discussions related to Code of Conduct enforcement procedures. Approval of the resolution would add these procedures to the existing Council Code of Conduct policy.

BACKGROUND:

In September 2006, the Council Policy Committee presented the Town Council with draft amendments (Exhibit A) to the Council Code of Conduct establishing disciplinary procedures and actions should policy violations occur. After discussing the proposed changes, Council Member Steve Glickman made several suggested technical modifications to the draft amendments as reflected in the Town Council Meeting Minutes (Attachment No. 2). The Council directed the Committee to review the recommended changes and report its recommendations to Council at a subsequent meeting.

PREPARED BY:


JENNY HARUYAMA
Administrative Programs Manager

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Reviewed by: PS Assistant Town Manager AK Town Attorney AK Town Manager
____ Clerk Administrator ____ Finance ____ Community Development

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DISCUSSION:

The Council Policy Committee reviewed Council Member Glickman's proposed amendment modifications. The following summarizes suggested language changes by Council Member Glickman and the Committee's recommendations. The proposed changes are outlined by policy section.

Evaluation of Complaints Alleging Violations

Council Member Recommendation

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

Committee Recommendation

The Committee agrees that language concerning the notification of complaints should be further clarified. The Committee recommends that the following language replace the last line of the first paragraph in the "Evaluation of Complaints Alleging Violations" section:

- *The notification shall include a copy of the written complaint and supporting documentation, if any, the identity of the person making the complaint, and nature of the complaint.*

Major Violations and Investigations

Council Member Recommendation

- When interviewed, Council Member in question should be allowed to have counsel present and that the requirement should include an initial interview with the accuser.
- Initial findings should be articulated as "a finding that a full investigation is warranted."

Committee Recommendation

The Committee recommends that these suggested changes not be included in the proposed policy language for the following reasons:

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- A Council Member has a right to counsel at any time during the investigation and proceedings. The Committee found it was not necessary to articulate that right in the proposed policy amendments.
- It is the intent of the proposed policy language to provide the Council Member in question an opportunity to respond to the allegation(s), with the response used to determine whether an investigation is warranted. If initiated, the investigation would fully explore all relevant facts, including interviews with all potential witnesses.
- The Committee found that the current language concerning findings is adequate.

The Committee recommends changing the section title from "Major Violations and Investigations" to "Allegations of Major Violations."

Report of Findings

Council Member Recommendation

- Regardless of the outcome, subject Council Member should be provided with a full copy of the investigative report, witness statements and all supporting documentation, including the deliberations by the Committee and any decision recorded for the record.

Committee Recommendation

The Committee agrees that language concerning the report of findings should be further clarified. It is recommended that the following language replace the last line of the third paragraph in the "Report of Findings," section:

- *Where the decision is to refer the matter to the Council, a copy of the full report, including documents relied on by the investigator, shall be provided with the notification, and a copy of both shall be provided to the whole Council.*

Proceedings

Council Member Recommendation

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

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Committee Recommendation

The Committee concurs that the word "should" in the second sentence of the first paragraph can be replaced with the word "shall" in the "Proceedings" section:

- *Investigative findings and recommended proceedings and disciplinary action that are brought forward to Council as a result of a significant policy violation shall be considered at a public hearing.*

The Committee does not recommend that the last sentence of the second paragraph of the "Proceedings" section be deleted from the proposed policy language. The intent of this language is to clarify that purpose of the proceeding is to allow the Council an opportunity to receive, discuss, and act on the investigative report presented to Council for consideration.

CONCLUSION:

The Council Policy Committee recommends that the Council adopt the attached resolution rescinding the original Council Code of Conduct resolution and approve the Committee's recommended amended version of the Council Code of Conduct. Alternatively, the Council could direct the Committee to further explore other policy questions and modify the attached draft policy language for adoption at a subsequent Council meeting.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Attachments:

- Attachment 1: Resolution Rescinding Council Code of Conduct Resolution 2004-59 and Adopting Amended Version of Council Code of Conduct as Reflected in Exhibit A.
- Attachment 2: September 5, 2006 Council Meeting Minutes

RESOLUTION NO.

RESOLUTION OF THE TOWN OF LOS GATOS RESCINDING COUNCIL CODE OF CONDUCT RESOLUTION 2004-59 AND ADOPTING AMENDED VERSION OF THE COUNCIL CODE OF CONDUCT ADDING RECOMMENDED ENFORCEMENT PROCEDURES

WHEREAS, in 2004, the Council adopted a Code of Conduct Policy that established guiding principles for appropriate conduct and behavior and set forth the expectations for Council Members; and

WHEREAS, the provisions of Council Code of Conduct reflect a commitment by Council Members to the people they serve and to each other, and more importantly, a desire to seek what is good for the community; and

WHEREAS, at the April 19, 2006 Special Council Meeting, the Council directed the Council Policy Committee to develop amendments to the Council Code of Conduct that would establish disciplinary procedures and actions should policy violations occur; and

WHEREAS, the amended Council Code of Conduct policy incorporates recommended procedures and processes related to policy enforcement, including but not limited to: policy violation complaints, investigations, findings, proceedings, and disciplinary actions.

THEREFORE, BE IT RESOLVED, the Town of Los Gatos does hereby rescind Council Code of Conduct Resolution 2004-59 and adopt amended version of the Council Code of Conduct adding recommended enforcement procedures as reflected in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____, 2006 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE
TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

**COUNCIL POLICY
TOWN OF LOS GATOS**

Subject:	Page	Enabling Actions:
Town Council Code of Conduct Policy	1 of 16	
Approved:	Effective Date: 9/5/05	Revised Date:

I. Preamble

Public trust and mutual respect are essential for effective political leadership and efficient governance. Democratic governance requires that decision makers be fair, independent, impartial, and accountable. Based on these values, the Los Gatos Town Council has adopted a Code of Conduct Policy that establishes guiding principles for appropriate conduct and behavior and sets forth the expectations of Council Members. The provisions of this policy reflect a commitment by Council Members to the people they serve and to each other, and more importantly, a desire to seek what is good for the community.

II. Form of Government

The Town of Los Gatos operates under a Council-Manager form of government as prescribed by Town Code. Accordingly, members of the Council are elected at-large, provide legislative direction, set Town policy, and ultimately answer to the public. The Town Manager serves as the Town's chief administrative officer and is responsible for directing the day-to-day operations of the Town and implementing policy direction. This is referenced in Section 2.30.305 of the Town Code:

"Neither the Town Council, nor any member thereof, shall direct or request the appointment of any person to or removal of any person from office by the Town Manager or by any other appointing officer, or in any manner take part in the appointment or removal of an officer or employee in the administrative service of the Town. Except for the purpose of inquiry, the Town Council and its members shall deal with the administrative services solely through the Town Manager, and neither the Town Council nor any member thereof shall give orders to any Town Officers, other than the Town Attorney, either publicly or privately."

III. Town Council Roles, Responsibilities, and Relationships

A council is a collection of diverse individuals who come together to constitute and act as an entity, and only when operating as an entity can they exercise authority and perform the fulfillment of their purpose. Working together as a council involves acknowledging and balancing the unique interests, expertise, and abilities of individual council members, and accepting final decisions of the Council as the official Town position on such matters. To achieve success, a council must clearly define and understand its roles, responsibilities, and relationships. The following outlines the key roles, responsibilities, and relationships of the Los Gatos Town Council:

Town Council Roles and Responsibilities

The role of the Town Council is to act as a legislative and quasi-judicial body. Through its legislative and policy authority, the Council is responsible for assessing and achieving the community's desire for its present and future and for establishing policy direction to achieve its desired outcomes. All members of the Town Council, including those who serve as Mayor and Vice Mayor have equal votes.

Town Council Relationship to its Work, Each Other and the Public

Members of the Town Council fulfill their role and responsibilities through shared values that are reflected in the relationships they have with each other and the public. Town Council Members are committed to approaching their work, each other, and the public in a manner that reflects:

- Ethical behavior and integrity
- Honesty
- Trust and respect for one another

The commitment of Town Council Members to their work, each other, and the public is also characterized by:

- Innovation and creative problem solving
- Future orientation and proactive efforts
- Open and constructive communication
- Shared purpose

IV. Mayoral and Vice Mayoral Selection Process

The selection of the Mayor and Vice Mayor usually occurs annually at the second meeting in November by majority vote of the Town Council. Section 2.20.035 of the Town Code establishes this provision.

Serving as Mayor and Vice Mayor is considered to be a privilege, not a right. The Mayor and Vice Mayor serve at the pleasure of the Town Council and may be replaced at any time by a majority vote of the Council. At the time of selection, any member of the Town Council may be nominated to serve as Mayor or Vice Mayor. Individuals who are elected to serve as Mayor and Vice Mayor are chosen because their ability to fulfill the roles and responsibilities of these positions, establish a collegial working relationship with the Council, and ultimately, serve the community.

V. Mayoral and Vice Mayoral Roles, Responsibilities, and Relationships

The following outlines some of the key roles, responsibilities, and relationships as they relate to the position of Mayor and Vice Mayor:

Mayor

- The Mayor is the presiding officer of the Town Council. In this capacity, the Mayor is responsible for developing Council agendas in cooperation with the Town Manager and leading Council meetings.
- The Mayor recommends various standing committee appointments to the Council for approval.¹ When making committee recommendations, the Mayor should attempt to balance shared responsibilities and opportunities among Council Members.
- As the presiding officer of the Town Council, the Mayor is responsible for establishing a professional and respectful working relationship with the Council and public through cooperation and collaboration. This includes an obligation to listen and consider issues, questions, and concerns of the public and Council Members as they relate to Council meetings and the agenda setting process.
- The title of Mayor carries with it the responsibility of communicating with the Town Council, Town Manager, and members of the public. In this capacity, the Mayor serves as the Town “spokesperson” representing the Council in official and ceremonial occasions.
- As the official Town spokesperson, the Mayor performs special duties consistent with the Mayoral office, including, but not limited to: signing of documents on behalf of the Town, issuing proclamations, serving as the official voting delegate for various municipal advocacy groups, such as the League of California Cities, and delivering the State of the Town Address.² The Town Council will determine any additional authority or duties that the Mayor shall perform.
- Special duties consistent of the Mayoral office may be delegated to the Vice Mayor or any other member of the Town Council.

¹ Council Agenda Format and Rules Policy

² Council Commendation and Proclamation Policy

- The Mayor may establish a series of achievable community goals during his/her year in office in collaboration with the Town Council and in consultation with the Town Manager. These proposed goals are subject to evaluation using criteria such as, but not limited to, their relationship to other Town priorities, the capacity of the Town budget, availability of staff, and other necessary resources required for implementation. Implementation of such goals, however, would require formal Council approval.
- In the event that a Council Member acts contrary to approved Council policies, the Mayor shall counsel the Council Member about the rules set forth in the Council Code of Conduct policy or other applicable Council policies.
- In the event that one or more members of a Town Board, Commission, or Committee acts in a manner contrary to approved Board/Commission policies and procedures, the Mayor may counsel those members about the rules set forth in the Town Commissioner Handbook.³

Vice Mayor

- In the Mayor's absence, the Vice Mayor shall perform the formal duties of the Mayor as noted elsewhere in this document.⁴
- When the Vice Mayor performs the duties of the Mayor in his/her absence, the Vice Mayor also carries the responsibility of communicating with the Town Manager, Town Council, and members of the public. This responsibility includes establishing a professional and respectful working relationship with the Council, Town Manager and public through cooperation and collaboration.
- In the event that the Mayor acts contrary to approved Council policies, the Vice Mayor shall counsel the Mayor about the rules set forth in the Council Code of Conduct policy or other applicable Council policies.

VI. Legal and Ethical Standards

Understanding that the Council's primary concern is the public interest, Council Members should work for the common good, rather than for private or personal interests. Council Members must serve as a model of leadership and civility to the community and treat all members of the public, each other, and the issues before them with respect to ensure open and effective government.

Council Conduct in Public Meetings

To ensure the highest standards of respect and integrity during public meetings, Council Members should:

³ Resolution 1999-167

⁴ Council Agenda Format and Rules Policy

- *Use formal titles.* The Council should refer to one another formally during Council meetings such as Mayor, Vice Mayor or Council Member or Mr., Mrs., or Ms., followed by the individual's last name.
- *Practice civility and decorum in discussions and debate.* Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of free democracy in action. During public discussions, Council Members should be respectful of others and diverse opinions, practice objectivity, and allow for the debate of issues. This does not allow, however, Council Members to make abusive, slanderous, and personal comments, and/or physical actions that could be construed as threatening.
- *Honor the role of the presiding officer in maintaining order and equity.* Respect the Mayor/Chair's efforts to focus discussion on current agenda items. Objections to the Mayor/Chair's actions should be voiced politely and with reason, following the procedures outlined in the Town Council Agenda Format and Rules Policy.
- *Demonstrate effective problem-solving approaches.* Council Members have a public stage to show how individuals with disparate points of view can find common ground and seek compromise that benefits the community as a whole. Council Members are role models for residents, business people, and other stakeholders involved in public debate.
- *Base decisions on the best available information.* Decisions should be made objectively and based upon the merits and substance of the matter at hand, not through established coalitions or well-defined voting blocks. Judgment of decisions should be reserved until all applicable information has been presented.
- *Be prepared and knowledgeable.* To effectively lead and inform the public, Council Members should be prepared and informed about issues on the agenda.
- *Be respectful of other people's time.* Council Members should stay focused, listen attentively, and act efficiently during public meetings. During public testimony, Council Members should refrain from engaging the speaker in dialogue. However, for purposes of clarification, Council may ask the speaker questions. Council comment and discussion should commence upon the conclusion of all public testimony.
- *Treat others as you would like to be treated.* To maintain effective interpersonal relationships, Council Members should treat others the way they would expect to be treated. Council Members should be professional in all situations and circumstances, conducting themselves in a consistent, confident, competent, and productive manner.

Implementation of Legal and Ethical Standards

Legal and ethical standards will be included in the regular orientations for Town Council Candidates and newly elected Council Members. Newly elected Council Members should sign a statement affirming they have read and understand the Town of Los Gatos Council Code of Conduct Policy. The Council will endeavor to annually affirm its understanding and commitment to the Code of Conduct policy.

VII. Legal Requirements

The Town Council operates under a series of laws that regulate its operations as well as the conduct of its members. The Town Attorney serves as the Town's legal officer and is available to advise the Council on these matters. Members of the Town Council recognize the importance of following the law so as not to compromise the effort to achieve the goals of the community.

Open Meeting Rules

The Ralph M. Brown Act.

- Requires that meetings of the Town Council be open and public. "Meetings" occur whenever three or more members of the Council hear, discuss, or deliberate on any matter that is relevant to the Town. This includes discussions that occur face to face, serially, through third parties, or through written, telephonic, or e-mail communications.
- Requires that the agenda for meetings be posted in advance and that discussions and actions be limited to items appearing on the posted agenda.
- Allows closed session discussions and actions in limited circumstances, including pending or anticipated litigation, property acquisition, labor negotiations or the appointment or evaluation of certain personnel.
- Requires that information provided for closed sessions and the discussions that occur therein remain confidential and can be revealed only with the approval of the Town Council.

Conflicts of Interest

Existing Town Conflict of Interest Policy.

- Members of the Council are prohibited from being appointed to the board of directors of nonprofit organizations receiving funds or in-kind contributions from the Town.⁵ This applies to all "legislative bodies," which are defined to include a private corporation or entity, including a nonprofit organization that was either created by the Town, or is governed by a board of directors to which Council has appointed one of its members.

⁵ Council Public Access to Council Decision Making Policy and Council Appointments and Memberships Policy

The Political Reform Act. The Act controls conflicts of interests through disclosure of financial interests and prohibition in participating in decision making.

- Members of the Town Council are prohibited from making, participating in or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. Financial interests can arise out of property ownership, business investment, leadership in a business entity, and receipt of income and gifts. Nevertheless, under certain circumstances, Council Members with conflicts may be allowed to participate in decision making if their economic interest is affected in a substantially similar manner as a significant segment of the public or if their participation is legally required in order for an action or decision to be completed.
- Members of the Town Council are prohibited from accepting gifts from a single source in any calendar year in excess of \$340 dollars, adjusted biennially by the Fair Political Practices Commission (FPPC) to reflect changes in the Consumer Price Index. The Town Attorney notifies the Council of that amount at the beginning of each calendar year and upon request. Council Members can also obtain this information directly from the FPPC. There are several exceptions, including gifts from a spouse, or from a child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person, information material, gifts that are returned or donated to a charity within 30 days without being claimed for a tax deduction, campaign contributions, inheritances and hospitality at a private residence.
- Members of the Town Council are prohibited from receiving loans from public officials, employees, vendors and consultants.
- Mass mailings of over two hundred or more identical pieces of mail sent at public expense may not contain the name or pictures of elected officials except as part of a standard letterhead.

Government Code Section 1090. Section 1090 prohibits "self dealing," which can occur if members of the Town Council have a financial interest in contracts made by them or by the Council. While existing contracts are not prohibited, members of the Town Council cannot in any way participate in making contracts in which they have either a direct or indirect financial interest. Serious criminal penalties can result from violations of section 1090. The maximum penalty for a willful violation is a felony with a maximum fine of \$1,000 or imprisonment in state prison and a permanent disqualification from holding any public office in the state.

Incompatible Offices. A public officer who is appointed or elected to another public office and enters the duties of the second office automatically vacates the first office if the two are incompatible. Offices are incompatible if any significant clash of duties exists between the two offices, if public policy suggests it would be improper to hold the dual offices, or if either office exercises power over the other.

Bias. Due process requires that decision makers in certain situations, such as public hearings in land use matters, be fair and impartial. A personal interest or involvement in the outcome of a matter or with any participants which is unrelated to the factors upon which an application may be judged requires disqualification. This rule does not preclude holding opinions, philosophies or strong feelings about issues or specific projects so long as the decision maker retains an open mind in considering the evidence.

Redevelopment Conflicts. The Council, as officers of the Redevelopment Agency, are generally prohibited from acquiring any interest in property included within the redevelopment project area. Property can, however, be acquired for personal residential use so long as the redevelopment agency certifies that it will not make or otherwise arrange for any improvements to the property.

VIII. Council Conduct and Communication with, and Participation in, all Boards, Commissions, and Committees

There are several committees that Town Council Members have been appointed to or have an interest in, including but not limited to: Town Council standing and ad hoc committees, Town boards and commissions, regional boards and commissions, and community-generated committees.

Included in these committees assignment are Council liaisons. A Council liaison is an assignment by the Council of one or more Council Members to an ad-hoc effort initiated by the Town or in which the Town is participating as a community partner. This assignment is distinguished from routine Los Gatos elected official appointments to regional boards and committees and is accomplished through Council consensus.

To avoid confusion and/or duplication of efforts, Council conduct and communication with and participation in these types of committees are governed by the following guidelines and rules:

Conduct

- *Town boards, commissions, and committees are advisory to the Council as a whole, not individual Council Members. The Town Council appoints individuals to serve on boards, commissions, and committees. It is the responsibility of Council Members to follow policy established by the Council. Council Members should not feel they have the power or right to influence a board, commission, or committee member in any way. These appointments should not be used as a political "reward."*
- *Council Members should be respectful of diverse opinions. A primary role of boards, commissions, and committees is to represent many points of view and to provide advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on boards, commissions, and committees, but must be fair and respectful of all board, commission, and committee members and their opinions.*

- *Keep political campaign support away from public forums.* Board, commission, and committee members may provide verbal, financial or in-kind assistance to a Council Member, but not in a public forum while conducting official Town duties. Conversely, Council Members may provide verbal, financial or in-kind assistance to board, commission, and committee members who are running for office, but not in an official forum in their capacity as a Council Member.

Communication

- *Council Members should advise Chair and/or applicable Town Council representative if attending a board, commission, or committee meeting. Council Members may attend any board, commission, or committee meeting, which are always open to any member of the public. However, if a Council Member wishes to attend the meeting of a committee to which he/she has not been appointed to serve on by the Council, the Council Member, as a courtesy, should advise the Town representative, if any, as well as the respective committee chair, and should be mindful of the influence of his/her presence. Unless otherwise directed by the Council, comments made by the Council Member should be made as an individual, not on behalf of the Town Council.*
- *Council Members should not deliberate on any Council action if they have specifically addressed a Town board or commission about that particular issue.* If a Council Member attends a Town board or commission meeting and wishes to address the board or commission on matters of interest to that individual Council Member, he/she should recuse himself/herself from deliberating on any Council action related to the issue discussed.
- *Statements made by Council representatives about the Town's official position should be based on current or past Council action.* When serving as a primary or alternate Council representative on a board, commission, or committee, statements made by Council Members regarding Town policy should reflect the majority opinion of the Council, which is defined by current or past official Council action via Council vote or consensus.
- *Primary Council representatives should update the Council about board, commission, and committee activities.* When serving as the primary Council representative on any board, commission, or committee, Council Members should periodically provide update reports to the Council during the "Council Matters" opportunity on the Council meeting agenda.
- *Recommended actions of a Council Committee should be reported to the Council.* When serving on Council committee, whether standing or ad hoc, all work undertaken by the committee must be directed by the Council and all recommended actions of a Council Committee shall be reported to the Council.

- *The Mayor may counsel members of a Town Board and Commission about appropriate public meeting conduct related to the business of the Town. In the event that one or more members of a Town Board, Commission, or Committee acts in a manner contrary to approved Board/Commission policies and procedures, the Mayor may counsel those members about the rules set forth in the Town Commissioner Handbook.*

Participation

- *Appointed primary Council representatives are responsible for attending and participating in applicable board, commission, and committee meetings. If a Council Member has been appointed as the primary Council representative for a board, commission, or committee, that Council Member is responsible for attending the regularly scheduled meetings. In the event that he or she is unable to attend, the primary representative should notify the chair, and the appointed alternate Council representative should attend in the place of the primary.*
- *Appointed alternate Council representatives should familiarize themselves with the practices and procedures of the respective board, commission, or committee. If a Council Member is appointed as an alternate Council representative to a board, commission, or committee, the alternate should initially attend one meeting to orient himself/herself to the board/commission/committee's practices and procedures and to avoid confusion or duplication of efforts. Alternates are discouraged from regular attendance at board/commission/committee meetings when the primary Council representative is available to attend.*

IX. Council Relationship with Town Staff

The Town Council respects the Council-Manager form of government. The Town Manager implements the Council's vision, policies, and goals through the Town staff and is responsible for directing the day-to-day operations of the Town as outlined in Section 2.30.305 of the Town Code. The Council values partnering and collaborating with the Town Manager and the Town organization to achieve the community's vision. The Council-Manager relationship is affected by the expectations, styles, and personalities of the Council and Manager who are in place at the time. Despite the value of partnership and collaboration, these policies are intended to establish boundaries and expectations based upon the role of the Town Manager as set forth by the Town Code and the Council-Manager form of government structure. As such, they transcend individual personalities and agreed upon styles that might affect their implementation.

Council Conduct and Communications with Town Staff

To enhance its working relationship with staff, Council should be mindful of the support and resources needed to accomplish Council goals. When communicating and working with staff, Council should follow these guidelines:

- *Council Members should treat staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. As with Council colleagues, practice civility and decorum in all interactions with Town staff.*
- *Council Members should respect the Council-Manager form of government. Routine questions of Town staff should be directed to the Town Manager, Town Attorney, or the Manager's designee. Council Members should not set up meetings with department staff directly, but work through the Town Manager. When in doubt about appropriate staff contact, Council Members should ask the Town Manager.*
- *The Town Manager and staff are responsible for implementing Town policy and/or Council action. The processing of Council policy and decisions takes place with the Town Manager and staff. Council should not direct policy/program administrative functions and implementation; rather it should provide policy guidance to the Town Manager.*
- *Council Members should attempt to communicate questions, corrections, and/or clarifications about reports requiring official action to staff prior to Council meetings. Early feedback will enable staff to address Council questions and incorporate minor corrections or changes to a Council report, resulting in a more efficient Council meeting discussion.*
- *Council Members should not direct the Town Manager to initiate any action, change a course of action, or prepare any report without the approval of Council. The Town Manager's responsibility is to advise on resources available and required for a particular course of action as it relates to the direction of the majority of the Council.*
- *Council Members should not attend department staff meetings unless requested by the Town Manager.*
- *All Council Members should have the same information with which to make decisions. Information requested by one Council Member will be shared with all members of the Council.*
- *Concerns related to the behavior or work of a Town employee should be directed to the Town Manager. Council Members should not reprimand employees directly nor should they communicate their concerns publicly.*
- *Council Members should not solicit political campaign support from Town staff. Although Town staff may, as private citizens with constitutional rights, support political candidates, such activities must take place away from the workplace.*

X. Council Conduct and Communication with the General Public

A fundamental principle of democracy is citizen access to elected officials. When meeting with constituents, Council Members should follow the following conduct and communication guidelines when addressing the general public and specific interest groups:

General Public

- *Council Members should respect the collaborative process of council decision making and the Council-Manager form of government. Council Members routinely meet with constituents to hear community concerns, explain Council actions, provide opinions about a particular issue, and/or address service requests or inquiries. When meeting with members of the community, Council Members should avoid making commitments that are inconsistent with prior Town Council action or existing policy or foreclose on decisions prior to hearing public testimony. If Council Members desire the assistance of staff while meeting with constituents, they should request that assistance from the Town Manager.*
- *Council Members should be mindful of their influence when attending community meetings that are not organized by the Town. The presence of Council Members can sometimes create a perception of support for a particular issue or an expectation that a specific action will be taken.*
- *While Council Members may take broad philosophical positions on issues of concern to the Town, they should not commit to a particular position prior to a public meeting. Council Members should not make public or private promises or commit to a specific position on current, pending, or future matters to be heard by the Council. In general, Council Members should not reach a decision on any agenda item prior to a scheduled public meeting.*
- *Council Members should keep political campaign support away from public forums. Council Members may provide verbal, financial, or in-kind assistance to persons running for office, but not in an official forum in their capacity as Council Member. Council Members, however, are free to exercise their rights as individuals to express opinions regarding political issues, including candidate endorsements.*

Land Use Applications

- Information obtained outside of the public hearing process related to a matter pending before the Town Council must be revealed on the official public record. When evaluating the merits of a land use application, Council Members must do so objectively and impartially. If a Council Member meets with a land use applicant or visits a proposed development site related to a matter pending before the Council and obtains information outside of the public hearing process, he or she must disclose that information on the official public record, as well as any facts obtained in the meeting that could influence a Council Member's decision. The merits of an application can only be evaluated based on information included in the public record.

Procurement

- *Unless authorized by Council, Council Members should not become involved in administrative processes for acquiring goods and services. The procurement of goods and services is governed by competitive selection processes. To preserve the integrity of this administrative process, Council Members should refrain from any involvement, unless otherwise directed by Council. Specific Council interests, however, can be referred to the Town Manager as appropriate.*

XI. Representing an Official Town Position

In the event that individual Council Members are asked to represent or express an official Town position, they should follow these guidelines:

- *Using the title of Council Member when conducting official Town business. Council Members may use their title when conducting official Town business, for informational purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.*
- *Representing an official Town position before a governmental agency. If a member of the Town Council appears before another governmental agency organization to give a statement on an issue affecting the Town, the Council Member should indicate the majority opinion of the Council, which is defined by current or past official Council action via Council vote or consensus.*
- *Sharing personal perspectives and opinions. Personal opinions and comments may be expressed only if the Council Member clarifies that these statements do not reflect the official position of the Town Council.*

XII. Council Conduct with the Media

Council Members are frequently contacted by the media for background information and quotes related to Town business and/or community issues. When addressing the media, Council Members should follow these guidelines:

- *Council Members should be professional in all situations and circumstances, conducting themselves in a respectful manner. When speaking with the media or writing letters to the media, Council Members should choose their words carefully to ensure that comments and statements are not taken out of context.*
- *Council Members should advise the entire Council in advance if they plan to submit a letter to the media. Early communication could help to alleviate potential misinterpretation and prepare members of the Council for questions from the media.*

- *Council Members should clarify whether they are speaking as an individual Council Member or representing the position of the Town Council. If a Council Member is contacted by the media or initiates contact with the media, he/she should be clear about whether his/her comments represent an official Town position/policy or a personal viewpoint.*
- *Council Members should coordinate with the Town Manager when addressing questions related to administrative functions or processes. To provide accurate information, Council Members should work with the Town Manager when making statements about administrative procedures and processes.*
- *Council Members should conform to the information policy governed by the Town Emergency/Disaster Preparedness Plan in the event of a disaster or emergency. To avoid confusion and ensure the dissemination of factual information during an emergency or disaster, requests for information should be routed through the appropriately trained public information personnel as prescribed by the Town Emergency/Disaster Preparedness Plan. The Town Manager serves as the Emergency Services Director during a disaster and is responsible for the response plan and the assignment of duties under that plan.*

XIII. Enforcement

Purpose

The Council Code of Conduct Policy establishes guiding principles for appropriate conduct and behavior and sets forth the expectations of Council Members. The purpose of the policy language is to establish a process and procedure that:

- Allows the public, Town Council, and Town employees to report Code of Conduct policy violations or other misconduct.
- Provides guidelines to evaluate Code of Conduct policy violations or other misconduct and implement appropriate disciplinary action when necessary.

Procedures

Reporting of Complaints

The following section outlines the process of reporting Council Member Code of Conduct policy violations or other misconduct:

- Complaints made by members of the public, the Town Manager, and Town Attorney should be reported to the Mayor. If a complaint involves the Mayor, it should be reported to the Vice Mayor.
- Complaints made by Council Members should be reported to the Town Manager or Town Attorney to adhere to Brown Act requirements.
- Complaints made by Town employees should be reported to the Town Manager, who will direct them to the Mayor or Vice Mayor.

Evaluation of Complaints Alleging Violations

Upon report of the complaint, Town Manager and Town Attorney will join the Mayor or Vice Mayor as an evaluation committee to determine the validity of the complaint and, if appropriate, an initial course of action as discussed below. Within seventy-two (72) hours of receipt by the Mayor or Vice Mayor, the Council Member in question shall be notified of the reported complaint by the Mayor or his/her designee. The notification shall include a copy of the written complaint and supporting documentation, if any, the identity of the person making the complaint, and nature of the complaint.

Unsubstantiated or Minor Violations

If the majority of the Committee agrees that the reported violation is without substance, no further action will be taken. If the reported violation is deemed valid but minor in nature, the Mayor or Vice Mayor shall counsel and, if appropriate, admonish the Council Member privately to resolve the matter. Admonishment is considered to be a reproof or warning directed to a Council Member about a particular type of behavior that violates Town policy.

Allegations of Major Violations

If the reported violation is considered to be serious in nature, the matter shall be referred to outside legal counsel selected by the Committee for the purpose of conducting an initial interview with the subject Council Member. The outside counsel shall report his/her initial findings back to the Committee.

If the Committee then determines that an investigation is warranted, the Committee shall direct the outside legal counsel to conduct an investigation. The investigation process would include, but is not limited to, the ascertainment of facts relevant to the complaint through interviews and the examination of any documented materials.

Report of Findings

At the conclusion of the investigation, outside legal counsel shall report back to the Committee in writing. The report shall either (1) recommend that the Council Member be exonerated based on a finding that the investigation did not reveal evidence of a serious violation of the Code of Conduct, or (2) recommend disciplinary proceedings based on findings that one or more provisions of the Code of Conduct or other Town policies have been violated. In the latter event, the report shall specify the provisions violated along with the facts and evidence supporting each finding.

The Committee shall review the report and its recommendations. If the consensus of the Committee is to accept the report and recommendations, the Committee shall implement the recommendations. Where the recommendation is exoneration, no further action shall be taken. Where the recommendation is to initiate disciplinary proceedings, the matter shall be referred to the Council. Where there is no consensus of the Committee regarding the recommendations, the matter shall be referred to the Council.

The subject Council Member shall be notified in writing of the Committee's decision within 72 hours. Where the decision is to refer the matter to the Council, a copy of the full report, including documents relied on by the investigator shall be provided with the notification, and a copy of both shall be provided to the whole Council.

Proceedings

Investigative findings and recommended proceedings and disciplinary action that are brought forward to Council as a result of a significant policy violation shall be considered at a public hearing. The public hearing should be set far enough in advance to allow the Council Member in question reasonably sufficient time to prepare a response.

Investigative findings shall be presented to the Town Council at a public hearing. The rules of evidence do not apply to the public hearing. It shall not be conducted as an adversarial proceeding.

Disciplinary Action

Considerations in Determining Disciplinary Action

Disciplinary action may be imposed by Council upon Council Members who have violated the Code of Conduct. Disciplinary action or sanctions are considered when a serious violation of Town policy has occurred by a Council Member. In determining the type of sanction imposed, the following factors may be considered:

- Nature of the violation
- Prior violations by the same individual
- Other factors which bear upon the seriousness of the violation

Type of Sanctions

At the discretion of the Council, sanctions may be imposed for violating the Code of Conduct or engaging in other misconduct. These actions may be applied individually or in combination. They include, but are not limited to:

- *Public Admonishment* – A reproof or warning directed to a Council Member about a particular type of behavior that violates Town policy.
- *Revocation of Special Privileges* – A revocation of a Council Member's Council Committee assignments, including standing and ad hoc committees, regional boards and commissions, and community-generated board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.
- *Censure* – A formal statement or resolution by the Council officially reprimanding a Council Member.

APPROVED AS TO FORM:

Town Attorney

**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 undisputed 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 that all provisions of the Alcohol Policy regarding hours of operation apply here and that the Planning Commission decision to the contrary constituted a policy matter 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.

NOTE: Comments in opposition to prior motion be incorporated in support of this motion.

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