



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 04/02/2024

DATE: March 26, 2024
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Discuss the Code of Conduct Policy Sections V. and XI. Pertaining to Councilmember Communications

RECOMMENDATION:

Discuss the Code of Conduct Policy Sections V. and XI. pertaining to Councilmember communications

BACKGROUND:

The Town Council's Code of Conduct was adopted in 2004 and has been revised several times since then. The most recent revision was on October 4, 2022. Attachment 1 contains the redlined version of the Code of Conduct Policy at that time to show the evolution of the sections referenced below.

Code of Conduct Section V(C) addresses communications with the media and provides: "The title of Mayor carries with it the responsibility of communicating with the Town Council, Town Manager, members of the public, and the media regarding decisions made by a majority of the Town Council."¹

Code of Conduct Section XI addresses communications with the public and provides: "The public has a reasonable expectation that it may engage its Council Members on matters of community concern. In response, Council Members may express a preliminary opinion on general issues or policies that are in the development phase. In addition, Council Members may from time to time express opinions regarding broad policy matters which may be in conflict with currently adopted Council policies or explain an individual vote. Such statements are

¹ In 2022, language describing the Mayor as the "Town spokesperson" was replaced with the current language (see Attachment 1).

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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BACKGROUND (continued):

permissible if clearly characterized as personal opinion or policy change objectives rather than the opinion of the full Town Council.”

DISCUSSION:

The current Code of Conduct provides that:

- 1) The Mayor communicates with the media regarding decisions made by a majority of the Town Council.
- 2) Individual Councilmembers may express opinions on policies and explain individual votes so long as those statements are characterized as individual opinions or objectives and not representing the Town Council as a whole.

This topic is before the Policy Committee for a discussion of whether:

- 1) There is an interest in retaining these standards;
- 2) There is a clearer way to state these standards; and
- 3) There are other standards that the Policy Committee would like to recommend to the Town Council pertaining to Councilmember newsletters, emails, or other forms of communication with constituents.

Free Speech

Based on “free speech” considerations, the distinction between representing the opinion of the full Town Council as opposed to expressing individual opinions or explaining votes should be retained. Based on case law, Councilmembers should retain the ability to express opinions or explain votes. [*Bond v. Floyd*, 385 U.S. 116 (1966)(holding that Georgia legislature’s disqualification of elected representative on account of statements about the Vietnam War violated the representative’s right of free expression under the First Amendment)]. In the *Bond v. Floyd* decision, the court opines that government requires that legislators be given wide latitude to express their views on issues of policy. That said, the Town is free to require that legislators explain when they are expressing their own views as opposed to representing the Town Council as a whole.

Examples from Other Santa Clara County Jurisdictions

It will be helpful to get input from the Town Council on whether there is a clearer way to make this distinction between speaking on behalf of the Town Council and providing one’s individual opinion. Codes of Conduct from other jurisdictions in Santa Clara County provide as follows

DISCUSSION (continued):

Cupertino

The City of Cupertino's Code of Conduct provides:

“. . . when City elected/appointed officials and staff are presenting their individual opinions and positions on issues potentially relevant to the City, they must explicitly state that they do not represent their body or the City and must not allow any inference that they do.”

Gilroy

The City of Gilroy's Code of Conduct provides:

“When a Council Member is identified as a spokesperson, then only they will speak on behalf of the City Council.”

“No Council Member shall communicate in a manner that appears to come from the City or City staff or the City Council, or in a manner that suggests a position associated with the City or with the knowledge of the City Council.”

“Repeated or serious violations of these norms can be addressed by the Council by censure of a Council Member, following notice and an opportunity to be heard. This document formally authorizes the censure remedy to the City Council and allows for the basic due process protections of notice and hearing.”

Mountain View

The City of Mountain View's Code of Conduct provides:

“Personal opinions and comments may be expressed only if the Councilmember clarifies that these statements do not reflect the official position of the City Council.”

San Jose

The City of San Jose's Code of Conduct provides:

“A Council Member must clearly state when he or she is speaking on behalf of the City Council.”

COORDINATION:

This report was coordinated with the Town Manager.

FISCAL IMPACT:

This discussion will not have a fiscal impact on the Town.

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ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. October 4, 2022 Redline version of the Code of Conduct Policy.