

SEP 18 2019

**LOS GATOS TOWN FINANCE COMMISSION INITIATIVE**

**CLERK DEPARTMENT**

**BE IT ORDAINED** by the People of the Town of Los Gatos as follows:

**Section 1. Title.**

This measure shall be known and may be referred to as the “Town Finance Commission Initiative.”

**Section 2. Findings and Declarations.**

**WHEREAS**, the Town’s financial well-being is essential to ensuring that the Town can effectively provide services and fund all liabilities; and

**WHEREAS**, many residents of the Town possess substantial financial management experience and are eager to serve their community; and

**WHEREAS**, a Finance Commission consisting of qualified Town residents can help ensure the financial well-being of the Town and promote greater public understanding of Town financial matters; and

**WHEREAS**, a Finance Commission can increase citizen participation in Town governance and encourage greater resident engagement in Town financial decisions; and

**WHEREAS**, the People of Los Gatos wish to establish a Finance Commission to assist the Town Council in ensuring the financial well-being of the Town; and

**WHEREAS**, the People of Los Gatos do not wish to interfere with the budgetary authority or processes of the Town Council, but instead believe a Finance Commission can function as an advisory body and provide important guidance to the Town Council in carrying out its budgetary duties and establishing the Town’s fiscal policies and priorities.

**NOW, THEREFORE**, the People of the Town of Los Gatos do hereby amend the Los Gatos Town Code as follows:

**Section 3. Amendment to the Los Gatos Town Code.**

(New language is indicated by underlining, and deleted language is indicated by ~~striketrough~~.)

- 1) A new Division is added to Article V of Chapter 2 of the Los Gatos Town Code to read in its entirety as follows:**

Division 3. – Finance Commission.

Sec. 2.50.200. – Finance Commission established.

- (a) The Finance Commission shall be established to serve in an advisory capacity to the Town Council by reviewing Town finances, including but not limited to the annual budget, Comprehensive Annual Financial Report, and capital expenditures, and making recommendations about the Town’s financial, budgetary and investment matters and operations related thereto to the Town Council and any other Town department, agency, committee, commission or other body as the Town Council directs.
- (b) The Council Finance Committee is disbanded.
- (c) The Sales Tax Oversight Committee established by section 25.60.140 of the Town Code is disbanded and all powers and duties of that Committee are transferred to the Finance Commission.

Sec. 2.50.205. – Composition, appointment, terms.

- (a) The Finance Commission shall consist of five (5) voting citizen members (“Citizen Appointees”) and two (2) non-voting Council Liaisons.
- (b) Council Liaisons.
  - (1) The Town Council shall appoint two Town Council members as non-voting Council Liaisons.
  - (2) The Council Liaisons shall serve on the Finance Commission until replaced by the Town Council but shall not serve beyond their terms on the Town Council.
  - (3) One Council Liaison shall be the Mayor or Vice-Mayor of the Town.
- (c) Citizen Appointees.
  - (1) Except with respect to initial appointments as provided for in section 2.50.205(c)(5), each member of the Town Council shall appoint one Citizen Appointee, upon expiration of terms described in section 2.50.205(c)(4).
  - (2) Citizen Appointees must be residents and registered voters of the Town.

- (3) No member of the Town Council may serve as a Citizen Appointee.
- (4) Citizen Appointees shall serve four-year terms, which shall expire on a staggered basis such that every year one term shall expire, except that once every four years, two terms shall expire. The term of each Citizen Appointee shall commence on the first day of January (or as soon as practicable after the effective date of this Division for initial Citizen Appointees), and shall expire on the thirty-first day of the fourth successive December.
- (5) As soon as practicable after the effective date of this Division, the initial appointment of the first Citizen Appointees shall be carried out as follows: Town Council members shall draw lots to determine the order of expiration for the terms of the first five Citizen Appointees such that one Citizen Appointee's term shall expire each year for four years after the effective date of this Division, and one additional Citizen Appointee's term shall expire in the fourth year after the effective date of this Division. Following the expiration of each of the first five Citizen Appointees' terms, a Citizen Appointee shall be appointed to serve a four-year term.
- (6) Citizen Appointees must be certified public accountants, chartered financial analysts, or have a business, finance, economics or accounting degree, and must have at least five years of experience in at least one of the following:
- (A) Financial experience in a corporate, business, or government setting;
  - (B) Principal or officer at a financial auditing firm;
  - (C) Investment banking; or
  - (D) Finance or budget management.
- (7) Should a Citizen Appointee resign or otherwise leave office prior to the end of his or her term, the appointing Town Council member for that Citizen Appointee shall, as soon as practicable, appoint a new Citizen Appointee to serve the remainder of the term.

- (d) Section 2.40.030 of the Town Code shall not apply to the Finance Commission.
- (e) Administrative support for the Finance Commission shall be provided by the Town Manager, the Director of Finance and by other Town staff as necessary.

Sec. 2.50.210. – Meetings and Records.

- (a) The Finance Commission shall hold at least one meeting per calendar quarter.
- (b) Meetings shall be held as required by the business needs of the Finance Commission in the Town Council chamber in the Town Hall or such other locations as allowed by the Ralph M. Brown Act, at a time that is convenient for the Finance Commission and the public to encourage public participation.
- (c) Meetings shall be subject to the Ralph M. Brown Act.
- (d) Nothing in this Division shall be construed as excluding any documents from the California Public Records Act.

Sec. 2.50.215. – Chair.

- (a) The Finance Commission shall appoint and prescribe the term of office for its Chair.
- (b) The Chair must be a Citizen Appointee.
- (c) All Finance Commission meetings shall be called by the Chair.
- (d) The Chair shall set all Finance Commission meeting agendas.

Sec. 2.50.220. – Quorum.

A majority of the Citizen Appointees of the Finance Commission shall constitute a quorum. Except as otherwise prescribed by ordinance or State law, a vote by a majority of a quorum shall be sufficient to transact business.

Sec. 2.50.225. – Duties.

(a) The Finance Commission shall:

- (1) Serve as an on-going, substantive and expert advisory body to the Town and Town Council so that the Town and Town Council can make informed decisions about the Town's financial, budgetary and investment matters and operations related thereto.
- (2) Review the Town Manager's annual proposed budget prepared in accordance with section 2.30.295(6) of the Town Code, and provide written comments and recommendations to the Town Council.
  - (A) The Finance Commission's comments and recommendations shall include a recommendation about whether the Town Council should approve or disapprove the proposed budget. The Finance Commission may make a recommendation of approval of the budget conditional upon the Town Council's acceptance of one or more of the Finance Commission's recommendations.
  - (B) The Town Manager must provide a proposed budget to the Finance Commission at least twenty (20) business days before the first meeting at which the proposed budget is considered by the Town Council.
- (3) Review the Town Manager's draft Comprehensive Annual Financial Report (CAFR) for the preceding fiscal year, and provide written comments and recommendations to the Town Manager.
  - (A) The Town Manager shall respond in writing to the Finance Commission providing his or her rationale for accepting or rejecting each of the Finance Commission's comments and recommendations prior to presenting the CAFR to the Town Council for formal consideration.
  - (B) The Town Manager may not present the CAFR to the Town Council for formal consideration unless or until he or she considers and responds in writing to all of the Finance Commission's comments and recommendations.
- (4) Review the Director of Finance's summary of the Town's financial report required by section 53891 of the California Government Code and prepared in accordance with section 2.50.010(c) of the Town Code, and provide written comments and recommendations to the

Director of Finance prior to the publishing of the summary of the report.

- (5) Review the financial policies and procedures manual developed in accordance with section 2.50.010(f) of the Town Code, and provide written comments and recommendations to the Director of Finance.
- (6) Prior to the Town's expenditure of any revenues from the tax authorized by sections 25.60.010 et seq. of the Town Code, review the proposed expenditures and advise the Town Council on whether such expenditures meet the Town Council's objectives for that tax:
  - (A) Maintaining and enhancing neighborhood police patrols and local crime prevention programs;
  - (B) Improving traffic flow to reduce congestion;
  - (C) Repairing potholes and maintaining the Town's streets, roads, and sidewalks; and
  - (D) Maintaining the Town's long-term financial stability.
- (7) Issue an annual public report of the expenditures and appropriations of sales tax revenues approved by the Town Council during each fiscal year.
- (8) Make recommendations to the Town Council about policies and programs:
  - (A) To maximize the Town's revenues consistent with existing taxation structures and inter-governmental funding opportunities;
  - (B) To maximize fee generation consistent with market rate charges for Town-provided services and market rate fees for utilization of Town-owned assets;
  - (C) To minimize the City's cost to provide core services and required activities, consistent with the desired service level for residents and other internal and external customers;
  - (D) To set funding goals for reserves, and review on-going progress related thereto;

- (E) To assess the risk associated with the structure and documentation of any proposed debt financing;
  - (F) To fund the Town's long-term compensation and benefit program liabilities in the most responsible and cost-effective way; and
  - (G) To monitor investment performance, and make recommendations related to the Town's investment policy and performance.
- (9) Provide written comments and recommendations regarding the selection of auditors for the CAFR.
  - (10) Participate in pre-audit meetings with auditors, provided that the Finance Commission shall not participate in those portions of any meetings which pertain to confidential employment or attorney-client privileged matters.
  - (11) Review and monitor any events or issues which may affect the financial status of the Town.
- (b) The duties of the Finance Commission shall not be altered, abridged or abrogated in any way by any body except by a vote of the majority of the voters of the Town.
  - (c) The Town Council shall make changes to the budgetary and all other Town processes and calendars as necessary to allow for consideration of the comments and recommendations of the Finance Commission outlined herein.

Sec. 2.50.230. – Conflicting Provisions.

Should any provision of this Division be found to conflict with the Los Gatos Town Code, this Division shall prevail, consistent with the purposes of the Finance Commission as set forth herein.

- 2) **Section 25.60.140 of the Los Gatos Town Code is hereby amended as follows:**

**Sec. 25.60.140. - Citizens' oversight and annual audit.**

- (a) ~~There shall be a committee appointed by the Town Council to The Finance Commission established by sections 2.50.200 et seq. of the Town Code shall review and report on the receipt of revenue and expenditure of funds from the tax authorized by this chapter ("revenues and expenditures"). The number, qualifications and duties of Committee members shall be established by ordinance or resolution of the Town Council.~~
- (b) Beginning with the fiscal year that ends June 30, 2019, the Town's independent auditors shall, as part of their annual audit of the Town's financial statements, review the collection and expenditure of revenue from the tax authorized by this chapter. The auditors' review shall be a public document. The Finance Commission ~~committee~~ shall annually review the auditors' findings and report in writing to the Town Council regarding the auditors' findings regarding the revenues and expenditures. The Finance Commission's ~~committee's~~ statement shall be transmitted to the Town Council for consideration at a public meeting.
- ~~(c) By January 31, 2019, the Town Council shall adopt a resolution establishing the composition of the committee and further defining its responsibilities consistently with this section. Provisions defining the scope of committee responsibilities and reporting requirements shall address bond oversight, in the event that a decision is made at a later time to sell bonds that are in part backed by the revenues referenced in this section. The Town Council shall appoint the initial members of the committee no later than March 1, 2019.~~

#### **Section 4. Earliest Possible Election.**

The People of Los Gatos hereby expressly request that, if not adopted by the Town Council, this measure be submitted to the voters of Los Gatos at a regular or special election at the earliest time allowable by law.

#### **Section 5. Severability.**

Should any provision of this measure, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, voidable, or invalid, that determination shall have no effect on any other provision, or the application of this measure to any other person or circumstance and, to that end, the provisions hereof are severable. By approving this measure, the voters express their intent that each section and subsection would have been adopted irrespective of whether any one or more sections or subsections are found to be

invalid or unconstitutional, and that each section and subsection is therefore explicitly severable, part-by-part, phrase-by-phrase, and word-by-word, and that if any portion is determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, voidable, or invalid, that the least amount of language be severed from the ordinance. When possible, if any duty granted to the Finance Commission by this measure is found to conflict with powers specifically granted to the Town Council by the Legislature, or found to be otherwise unlawful, the offending section or subsection shall be amended or interpreted to allow the Finance Commission the maximum allowable duties under the law.

#### **Section 6. Competing Initiatives/Measures.**

This measure is intended to be comprehensive. It is the intent of the People of Los Gatos that, in the event this measure and one or more measures relating to the same subject shall appear on the same ballot, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure or measures appearing on the same ballot regarding the same subject, then this measure shall take effect to the extent not in conflict with said other measure or measures.

#### **Section 7. Effective Date.**

This measure shall be considered adopted and become effective upon the date of the election which it was approved by the voters.

#### **Section 8. Liberal Construction.**

This measure is an exercise of the initiative power of the People of Los Gatos regarding the establishment of a Finance Commission and shall be liberally construed to effectuate its purposes.

#### **Section 9. Legal Defense.**

The People of Los Gatos desire that this measure, if approved by a simple majority of voters and thereafter challenged in court, be defended by the Town of Los Gatos. The People of Los Gatos, by approving this measure by a simple majority of voters, hereby declare that the proponent(s) of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the Town fails to defend this measure, or the Town fails to appeal an adverse judgment against the constitutionality, statutory

permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponent(s) or the voters the Town of Los Gatos shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People of Los Gatos, and the Town of Los Gatos shall indemnify the proponent(s) for reasonable expenses and other losses incurred by the proponent(s), as agent(s), in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the Town to perform the defense itself.