



**TOWN OF LOS GATOS  
FINANCE COMMISSION  
AGENDA REPORT**

MEETING DATE: November 14, 2022

ITEM NO: 4

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DATE: November 7, 2022  
TO: Chairperson and Finance Commission Members  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Discuss Options for Providing Information to the Finance Commission During Labor Negotiations

**RECOMMENDATION:**

Discuss options for Providing Information to the Finance Commission during labor negotiations.

**BACKGROUND:**

At its September meeting, the Finance Commission asked staff to return with options for providing information to the Finance Commission during labor negotiations. The Finance Commission is specifically concerned about impacts to the Town's budget resulting from financial commitments made during labor negotiations.

**Duties of Finance Commission**

Town Code Section 2.50.225 (see Attachment 1) sets forth the duties of the Town's Finance Commission. Subsection (c) of Section 2.50.225 states that one of the duties of the Finance Commission is to "minimize the [Town's] cost to provide core services and required activities."

**PREPARED BY:** Gabrielle Whelan  
Town Attorney

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

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BACKGROUND (continued):

State Law

The state Meyers-Milias-Brown Act (MMBA) is the law that governs California public agency labor negotiations.<sup>1</sup> The Act authorizes local agencies to adopt rules regarding employer-employee relations (Gov. Code Section 3507). The Town has adopted an Employer-Employee Relations resolution (see Attachment 2), which provides that the Town Council designates representatives of the Town for the purpose of meeting and conferring and consulting with recognized employee organizations. The MMBA requires that the parties to a negotiation meet and confer with each side's designated bargaining representatives.

DISCUSSION:

To minimize labor costs, the Finance Commission has expressed interest in being involved with labor negotiations. In accordance with the Town's Employer-Employee Resolution, the Town Council has designated the following representatives for purposes of labor negotiations: outside labor counsel, Assistant Town Manager, and Human Resources Director.

To develop options that balance the request of the Finance Commission and the bounds of labor negotiations, staff has consulted with outside labor and employment counsel to discuss best practices and has reviewed information from other jurisdictions. Based on staff's review and analysis, here are some options:

- 1) The Town could post a labor negotiations schedule on its website and provide that information to the Finance Commission.
- 2) The Finance Commission could provide written comments or recommendations to either the Town's designated labor negotiators or the Town Council before negotiations commence.
- 3) The Council always receives verbal communications preceding closed session. The Finance Commission could provide either comments or recommendations during verbal communications prior to any closed session regarding labor negotiations.
- 4) The Commission could invite the Town's negotiator(s) for a Q&A session before negotiations begin.

<sup>1</sup> A recent court decision highlights the degree to which a public agency's governing body has exclusive authority over labor negotiations [Pacifica Firefighters Association v. City of Pacifica, 76 Cal.App.5th 758 (2022)]. In the Pacifica decision, the City's voters adopted a ballot measure to provide that, in the event of an impasse in labor negotiations, salary and benefits would be set at an amount not less than the average for five neighboring cities. The court ruled that the authority for labor negotiations rested solely with the City Council and could not be delegated to the voters. As a result, the ballot measure was overturned.10272546.1 LO007-005

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SUBJECT: Options for Providing Information During Labor Negotiations

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CONCLUSION:

Staff looks forward to the Commission's discussion of these options and if the Commission has any preference for keeping the Finance Commission informed with regard to aspects of labor negotiations that will impact the Town's budget.

COORDINATION:

This report was coordinated with the Town Manager's Office, Town Attorney's Office, and Human Resources Department.

ATTACHMENTS:

1. Town Code Section 2.50.225
2. Employer-Employee Relations Resolution

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## **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 the Town Manager's 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 the Town Manager 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;

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- 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.
- ( Ord. No. 2314 , § 3(§ 1), 11-3-20; Ord. No. 2320 , § III, 9-7-21)

RESOLUTION NO. 1974-41

A RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS ESTABLISHING  
THE PROCEDURE FOR RECOGNITION OF  
EMPLOYEE ORGANIZATIONS AND CONFERRING  
WITH SAID ORGANIZATIONS.

WHEREAS, Government Code Section 3507 empowers a city to adopt reasonable rules and regulations after consultation in good faith with representatives of its employee organizations for the administration of employer-employee relations; and

WHEREAS, the Town of Los Gatos desires to adopt such reasonable rules and regulations as authorized by law;

NOW, THEREFORE, the Town Council of the Town of Los Gatos does hereby resolve as follows:

Section 1: DEFINITIONS.

As used in this Resolution the following terms shall have the meanings indicated:

- (A) Appropriate Unit - means a unit of employees established pursuant to Section 4 of this Resolution.
- (B) Town - means the Town of Los Gatos, a municipal corporation, and where appropriate herein, Town refers to the Town Council, the governing body of the Town, or any duly authorized management employee as herein defined.
- (C) Consult or Consultation in Good Faith - means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions.
- (D) Employee - means any person regularly employed by the Town, except those persons elected by popular vote.

- (E) Employee, Confidential - means an employee who is privy to decisions of Town management affecting employer-employee relations. The incumbents of the following classifications are hereby designated as confidential employees pursuant to the provisions of Section 3507.5 of the Government Code: Secretary to Town Manager, Secretary to Town Attorney, Police Clerk Matron III, Senior Secretary-Stenographer.
- (F) Employee-Management - means:
- (1) Any employee having significant responsibilities for formulating and administering Town policies and programs; and
  - (2) Any employee having authority to exercise independent judgment, including the Town Manager, department heads, assistant department heads, division heads, but excluding the foreman level. The incumbents of the following positions are hereby designated as management employees pursuant to the provisions of Section 3507.5 of the Government Code: Town Manager, Administrative Assistant, Administrative Aide, Town Attorney, Director of Public Works, Assistant Director of Public Works, Maintenance Superintendent, Planning Director, Assistant Planning Director, Chief Building Inspector, Chief of Police, Police Captain, Police Lieutenant, General Services Supervisor, Town Librarian, Superintendent of Parks and Forestry, Parks Supervisor.
- (G) Employee, Professional - means employees engaged in work requiring specialized knowledge and skills normally attained



through completion of a recognized and accredited course of instruction, as well as professional registration or licensing by the State of California.

- (H) Employee Organization - means any organization which meets the basic requirements for recognition, and which has as one of its primary purposes representation of employees in employee relations matters with the Town.
- (I) Impasse - means a deadlock in discussions between the representatives of a recognized employee organization and the Town over any matters concerning which they are required to meet and confer in good faith.
- (J) Majority Representative - means an employee organization, or its duly authorized representative, that has been granted formal recognition by the Town Manager as representing the majority of employees in an appropriate unit.
- (K) Mediation or Conciliation - means the efforts of an impartial third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse, through interpretation, suggestion, and advice. Mediation and conciliation are interchangeable terms.
- (L) Meet and Confer in Good Faith (sometimes referred to herein as "meet and confer" or "meeting and conferring") - means performance by duly authorized Town representatives and duly authorized representatives of a recognized employee organization of their mutual obligation to meet at reasonable times and confer in good faith regarding matters within the scope

of representation, including wages, hours, and other terms and conditions of employment, in an effort to:

- (1) Reach agreement on those matters within the authority of such representatives; and
- (2) Reach agreement on what will be recommended to the Town Council on those matters within the decision-making authority of the Town Council. This does not require either party to agree to a proposal or to make a concession.

- (M) Scope of Representation - means all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment.

Section 2: MEETING AND CONFERRING WITH RECOGNIZED EMPLOYEE ORGANIZATIONS.

- (A) The Town Council designates representatives of the Town for the purpose of meeting and conferring and consulting with recognized employee organizations. The Town, through its Town representatives, shall meet and confer in good faith with representatives of recognized employee organizations regarding matters within the scope of representation.
- (B) The meet and confer process between the Town representatives and all recognized employee organizations regarding matters within the scope of representation shall be carried on in the following manner: An initial meeting will be held no later than 120 days prior to the end of the fiscal year or the termination date of any current Memorandum of Understanding, whichever is later.

- (C) The Town shall not be required to meet and confer in good faith on any subject preempted by Federal or State law, nor shall it be required to meet and confer in good faith on Employee or Town rights as defined in (D) and (E) below. Proposed amendments to the regulations in this resolution are excluded from the scope of meeting and conferring.
- (D) Employees of the Town shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on appropriate matters of employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. Employees of the Town also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the Town. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of his exercise of these rights.
- (E) The rights of the Town include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set the standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take

all necessary action to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

- (F) Reasonable written notice shall be given to each recognized employee organization affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the Town Council or by any board or commission of the Town for the purpose of consulting with them on the proposed action. Each organization shall be given the opportunity to meet with such body prior to adoption.
- (G) If agreement is reached by representatives of the employee organization and the Town, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the Town Council for determination.
- (H) The Town of Los Gatos shall allow a reasonable number of the employee organization representatives (maximum of four [4]) reasonable time off without loss of pay or other benefits when formally meeting and conferring with representatives of the Town on matters within the scope of representation.

Section 3: PETITION FOR RECOGNITION OF EMPLOYEE ORGANIZATIONS.

- (A) An employee organization that seeks recognition for purposes of meeting and conferring in good faith as the majority representative of employees in an appropriate unit or units

shall file a petition with the Town Manager containing the following information and documentation:

- (1) Name and address of the employee organization.
- (2) Names and titles of its officers.
- (3) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the Town.
- (4) A statement whether the employee organization is a chapter or local of, or is affiliated directly or indirectly in any manner with, a regional, state, national, or international organization, and if so, the name and addresses of each such regional, state, national or international organization.
- (5) A copy of the organization's constitution and by-laws.
- (6) A statement that the employee organization has no restriction on membership based on race, color, creed, sex, or national origin.
- (7) A statement of the job classifications or titles of employees in the unit claimed to be appropriate, and the number of employees therein.
- (8) A statement signed by an appropriate officer certifying that the employee organization has in its possession sufficient employee signatures on a petition or authorization cards, dated within three months of the date upon which the petition is filed, to

establish that at least 35 percent of employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the Town. This statement shall be submitted to the Town Manager and shall accompany the petition for recognition. The Town Manager may require that evidence supporting this statement be submitted to a neutral third party for confirmation.

- (9) A request that the Town Manager recognize the employee organization as the majority representative of the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

Section 4: APPROPRIATE UNIT.

- (A) The Town Manager, after reviewing a petition filed by an employee organization seeking formal recognition as a majority representative, shall first determine whether the proposed unit qualifies as an appropriate unit. The following standards shall be applied in determining the appropriate unit:

- (1) The unit shall be the broadest feasible group of employees who share a community of interest. Factors to be considered include the extent to which employees have similar working conditions, supervision, educational and training requirements, skills, and related occupations or job classifications and duties.
- (2) Consideration shall be given to the effect of the unit on the efficient operation of Town services and

sound employer-employee relations.

- (3) Consideration may be given to the history of employee relations: (a) in the unit; (b) among other employees in the Town; and (c) in similar public employment, provided, however, that no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.

(B) In the establishment of appropriate units:

- (1) No job classification shall be included in more than one representation unit;
- (2) Confidential employees who are included in the same unit with non-management or non-confidential employees may not represent such employees on matters within the scope of representation.
- (3) Management employees shall not be included in the same unit as non-management employees.
- (4) Professional employees shall not be denied the right to be represented separately from non-professional employees.

(C) In the event of disagreement with the Town Manager's decision on the appropriate unit, the dispute shall be resolved by a Hearing Officer. This person shall be mutually selected by both parties. In the event the parties are unable mutually to agree on a hearing officer, either party may request the State Conciliation Service to submit a panel of no less than five (5) persons experienced in the arbitration process.

The parties shall then select the Hearing Officer by alternately striking names until the one remaining shall be the Hearing Officer.

The party entitled to strike the first name shall be determined by drawing lots. The decision of the Hearing Officer as to what constitutes the appropriate unit(s) shall be binding on all parties involved.

Section 5: RECOGNITION OF EMPLOYEE ORGANIZATIONS AS MAJORITY REPRESENTATIVE.

The Town Manager shall determine the majority representative of Town employees of an appropriate unit by arranging for a secret ballot election, or by any other reasonable method which is based upon written proof, and is designed to ascertain the free choice of a majority of such employees. The employee organization found by the Town Manager to represent a majority of the employees in each appropriate unit shall be granted formal recognition and shall be the only employee organization entitled to meet and confer with the Town on matters within the scope of representation for employees in such unit. Formal recognition of an organization shall not preclude other employee organizations, if any, or an individual employee, from consulting with management representatives on employer-employee relations matters of concern to him or them.

Section 6: DECERTIFICATION OR MODIFICATION OF AN ESTABLISHED UNIT.

A group of employees or an employee organization may petition for decertification or modification of an established unit, challenging the right of the recognized employee organization as the majority representative. Such petitions shall be filed only during the period January 1 through January 15, only when more than eighteen (18) months have elapsed from the date of certification of the recognized employee organization, and only during the final twelve (12) months of the term of any memorandum of understanding with the recognized



employee organization then in effect.

(A) A Petition for Decertification, including all accompanying documents, shall be verified and may be accompanied by Petition for Recognition by a challenging organization. The Petition for Decertification shall contain the following information:

- (1) The name of the recognized employee organization.
  - (2) An allegation that the recognized employee organization no longer represents a majority of the employees in the appropriate unit, and other relevant and material facts.
  - (3) A statement signed by an appropriate officer certifying that at least 40 percent of the employees in the organization do not desire to be represented by the recognized employee organization. The Town Manager may require that written evidence supporting this statement, dated within three months of the date upon which the Petition is filed, be submitted to a neutral third party for confirmation.
- The Town Manager shall arrange for a secret ballot election to determine if the recognized employee organization shall retain its recognition rights. The recognized employee organization shall be decertified if a majority of those casting valid ballots vote for decertification, provided that a majority of all the employees eligible to vote in the unit voted. There shall be no more than one decertification election in the same unit in any twelve-month period.

- (B) A Petition for Modification shall contain all the information set forth in Sections 3 and 4, together with a statement of all relevant facts in support of the proposed modified unit. It shall be accompanied by a statement signed by an appropriate officer certifying that a majority of the employees within the proposed modified unit have designated the employee organization to represent them in their employment relations with the Town. The Town Manager may require that written evidence supporting this statement, dated within three months of the date upon which the Petition is filed, be submitted to a neutral third party for confirmation. The Town Manager shall hold a hearing on the Petition, at which time all affected employee organizations shall be heard. Thereafter, the Town Manager shall determine the appropriate unit as between the existing unit and the proposed modified unit. If the Town Manager determines that the proposed modified unit is the appropriate unit, then he shall follow the procedures set forth in Sections 3-5, inclusive, for determining the recognition rights in such unit.
- (C) In the event of disagreement with the Town Manager's decision on the modified unit, the dispute shall be resolved by the Hearing Officer chosen in the manner provided in Section 4(C).

Section 7: RESOLUTION OF IMPASSES.

Impasse procedures may be invoked in the meet and confer process only after the possibility of settlement by direct discussion has been exhausted. Any party may initiate the impasse procedure by filing with the other party (or parties) affected a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled

by the Town Manager forthwith after the date of filing of the written request for such a meeting, with written notice to all parties affected. The purpose of such impasse meeting is to permit a review of the positions of all parties, in a final effort to reach agreement on the disputed issues. If agreement is not concluded, the parties shall pursue the impasse procedures in the order set forth in this section.

- (A) Mediation (or conciliation) (defined in Section 1[K]). A conciliator shall be mutually selected by the Town and the employee organization or organizations directly involved in the impasse from the State Conciliation Service of the State of California. All conciliation proceedings shall be private. The conciliator shall make no public recommendations, nor take any public position concerning the issues.
- (B) Any other dispute-resolving procedure to which the parties mutually agree, or the Town Council may order.
- (C) In the absence of agreement between the parties on point (B), the matter shall be referred to the Town Council which, after a hearing on the merits of the dispute, shall make the final determination.

The fees and expenses, if any, of mediators or of any other impasse procedure, shall be payable one-half by the Town and one-half by the employee organization or employee organizations. Fees and/or expenses of attorneys representing an employee or employee organization shall be borne by the employee or employee organization alone.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 15th day of April, 1974, by the following vote:

AYES:	COUNCILMEN	Ruth Cannon
		Mark B. DiDuca
		Egon Jensen
		Albert B. Smith
		John B. Lochner
NOES:	COUNCILMEN	None
ABSENT:	COUNCILMEN	None

SIGNED:

John B. Lochner  
MAYOR OF THE TOWN OF LOS GATOS

ATTEST:

Rose Aldag, Deputy  
CLERK OF THE TOWN OF LOS GATOS