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**Subject:** 6/8/20 Finance Committee meeting -- Agenda Item #3  
**Attachments:** Finance Comm'n Initiative letter.pdf

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**From:** James Sutton <[jsutton@campaignlawyers.com](mailto:jsutton@campaignlawyers.com)>

**Sent:** Friday, June 5, 2020 4:20 PM

**To:** [rrrennie@losgatosca.gov](mailto:rrrennie@losgatosca.gov); Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>; [tduryea@aol.com](mailto:tduryea@aol.com); [ricketinsley1@gmail.com](mailto:ricketinsley1@gmail.com); [rondickel@gmail.com](mailto:rondickel@gmail.com)

**Cc:** Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>

**Subject:** 6/8/20 Finance Committee meeting -- Agenda Item #3

The attached letter relates to Item #3 on the agenda for Monday's Finance Committee meeting about the Finance Commission initiative on the November 2020 ballot.

James R. Sutton, Esq. | The Sutton Law Firm  
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dir 415/732-4501 | fax 415/732-7701 | cell 415/359-7701  
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THE SUTTON LAW FIRM

June 5, 2020

VIA EMAIL ONLY

Rob Rennie, Chair  
Terry Duryea, Vice Chair  
Councilmember Marico Sayoc  
Rick Tinsley  
Ron Dickel  
Los Gatos Finance Committee  
110 E. Main Street  
Los Gatos, CA 95030

RE: June 8, 2020 Finance Committee Meeting

Dear Chair Rennie and Other Committee Members:

We sent the attached letter to Mr. Schultz and Ms. Prevetti several weeks ago in response to City Attorney Schultz's March 3, 2020 legal analysis of the Finance Commission initiative sponsored by our client, the Los Gatos Community Alliance. We expected staff to forward the letter to Finance Committee members in connection with the Committee's discussion of the initiative, so were surprised to see that staff omitted the letter from the package of materials for Item #3 on the agenda of this Monday's Committee meeting (even though they included Mr. Schultz's March 3, 2020 memorandum).

We are now sending the letter directly to Finance Committee members so that you have more information about the initiative and in case staff raises any of the same issues outlined in Mr. Schultz's March 3 memorandum at Monday's meeting.

I also plan on participating in the interactive Zoom meeting in order to be available to answer any legal questions which Committee members may have about the initiative.

Sincerely,



James R. Sutton

Rob Rennie, Chair

June 5, 2020

Page 2

Attachment

cc: City Attorney Robert Schultz  
Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/dfm

#2040.02

## James Sutton

---

**From:** James Sutton  
**Sent:** Sunday, May 3, 2020 7:40 PM  
**To:** Robert Schultz Esq. (rschultz@losgatosca.gov)  
**Cc:** manager@losgatosca.gov  
**Subject:** Finance Commission legal issues  
**Attachments:** Finance Commn Initiative Legal Issues.pdf

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April 30, 2020

VIA EMAIL & U.S. MAIL

Robert Schultz, Esq.  
Los Gatos Town Attorney  
110 E. Main Street  
Los Gatos, CA 95030

RE: Finance Commission Initiative

Dear Mr. Schultz:

We hope that you, your family and other City employees are healthy and coping with the shelter-in-place changes to our professional and personal lives.

As you know, when the Town Council considered the Finance Commission initiative at its meeting last month, it decided to place the initiative on the ballot without having Town staff first study potential fiscal impacts under Elections Code section 9212. We nevertheless wanted to respond to the legal issues raised about the initiative at that meeting and in the staff memorandum prepared by you and Town Manager Laurel Prevetti dated March 3, 2020. We also wanted you, the City Council, the Town Manager and Finance Committee to have more information about these legal issues in connection with any future discussions about the initiative.

#### Preliminary Matters

As a preliminary matter, we were a bit surprised that your March 3<sup>rd</sup> memorandum infers that the initiative “may violate state law,” given the number of conversations which our firm had with you last year about various legal and procedural issues while we were drafting the initiative. In fact, you informed our office on September 12, 2019, after several of these conversations and right before we submitted the initiative to the City, that the final version of the initiative “appear[s] to resolve all conflicts with state law” (other than your concern about the length of the terms of the citizen appointees, see discussion below.) As you know, we attempted to respond to each and every legal concern you had about the Finance Commission, and certainly would

Robert Schultz, Esq.  
April 30, 2020  
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We also disagree with the characterization in the March 3<sup>rd</sup> memorandum that the Commission will impose 17 or 18 "new requirements" on the Finance Committee. The Finance Commission is a proposed new Commission, not a modification of the existing Finance Committee (and section 2.50.020 of the initiative in fact would completely "disband" the Finance Committee). The initiative would require the Commission to make recommendations to the Town Council about the budget, CAFR and other fiscal matters and would require Town staff to provide administrative support to the Commission, but the implication that these staffing duties would be burdensome is unfounded.

These "opinions" about the potential legality and scope of the initiative also raise the specter that Town staff is using government resources to oppose the initiative which, as you know, would be against the law. The law strictly prohibits elected officials and government employees from expending public resources to promote or oppose one side of a ballot measure. (Cal. Govt. Code section 8314; Cal. Govt. Code section 54964; Vargas v. Salinas (2009) 46 Cal.4th 1; Stanson v. Mott (1976) 17 Cal.3d 206.) In fact, Town officials and employees who violate this law commit a crime and may be personally liable for fines up to \$1,000 for violation. (Cal. Penal Code section 424.) We trust that Town staff will limit any comments about the Finance Commission initiative in the future to neutral descriptions, not personal opinions about whether or not it violates a provision of state law or how much work it may create for Town staff.

#### Procedural Points

We want to begin by emphasizing three important procedural points which should appease any legal concerns which you, the Council or others may have about the initiative.

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implementing the ordinance, as long as those rules and decisions are consistent with the language of the law and necessary to effectuate its purpose. Like other laws adopted by the Town Council or State Legislature, the initiative can not anticipate every detail about the implementation and operation of the Finance Commission, and governmental entities have the authority to adopt rules and regulations to implement laws and clarify their interpretation when these types of questions arise. (See, e.g., Cal. Govt. Code section 11342.600, stating that a governmental agency may adopt a regulation in order to “implement, interpret, or make specific the law enforced or administered by it”; Cal. School Bds. Assn. v. State Bd. of Education (2010) 191 Cal. App.4<sup>th</sup> 530, 544; citations omitted [permitting governmental agencies to “fill up the details” of statutory scheme if “reasonably necessary to implement the purpose of the statute”].)

2. The Town can interpret any ambiguities. Second, the initiative contains a provision requiring that it be “liberally construed to effectuate its purposes.” (Section 8.) This provision – which is standard in most local initiatives – specifically allows the Town to construe any unclear provisions or unanswered questions about the initiative in a broad manner, while also acknowledging that all such interpretations must be consistent with the underlying purposes and intent of the law. Courts have also confirmed that local initiatives should be interpreted broadly in order to preserve the right of citizens to adopt laws via initiative: “It has long been our judicial policy to apply a liberal construction to the [initiative] power wherever it is challenged. . . Enactments should be interpreted when possible to uphold their validity.” (Associated Home Builders v. Livermore(1976) 18 Cal.3d 582, 591 & 598.)

3. Truly problematic provisions – of which we believe there are none – may be “severed.” Finally, also like most other local initiatives, the initiative contains a “severability” clause which protects the law should – as we do not believe will happen – any one provision be deemed to be legally invalid for some reason. (Section 5.) I.e., even if one of the duties imposed on the Commission turns out to conflict with a state law – which, again, we believe none do – that provision could simply be “severed” from the initiative; in that case, the Commission would not be required to undertake that particular duty, but the overall initiative would survive and the Commission would still be required to perform all of the other functions listed in the initiative. Courts routinely invalidate certain provisions of initiatives because they violate the State Constitution or state law while leaving all other provisions in operation. (See, e.g., Calfarm Insurance v. Deukmejian (1989) 48 Cal.3d 805, 821; People’s Advocate v. Superior Court (1986) 181 Cal. App.3d 316, 330.)

Responses to Specific Legal Questions

1. Terms of office for citizen appointees. Your first legal question about the initiative relates to the length of the terms of the residents who are appointed to the Commission by a Town Councilmember; specifically, you questioned whether these citizen appointees will stay on the Commission after the Councilmember who appointed them leaves office, whether because the Councilmember's term of office has ended or he or she has resigned. As you know, we discussed this issue with you before submitting the initiative and ultimately drafted the initiative to have the terms of citizen appointees last for four years, from January 1 until December 31 of their fourth year in office. (Section 2.50.205(c)(4).) We chose to not include any reference to whether the Councilmember who makes the appointment remains in office because we did not believe that the initiative could anticipate every possible scenario of when Councilmembers take office and make appointments, and because Councilmembers are likely to make citizen appointments mid-point during their terms on the Council (such as for the initial appointments).

We believe that this provision is clear that citizen appointees remain on the Commission for the full four years from January 1 through December 31 of the fourth year, regardless of whether their appointing Councilmember leaves office during that time period. How appointments work for other Town commissions or in other jurisdictions does not seem relevant. Saying that, if a circumstance arises when the Town may have to interpret the duration of a particular citizen appointee in a different way, the Town will have the authority to do so, as mentioned above, as long as the interpretation is consistent with the intent of the initiative. In any case, any question about the term of office of citizen appointees can be easily resolved and does not impact the legality of the initiative.

2. Potential "violations" of state law. The March 3rd staff memorandum makes two references to potential inconsistencies between the initiative and state law. Again, we would have appreciated hearing these legal concerns during our numerous discussions while the initiative was still being drafted, so that – just as we were able to do with respect to other questions you raised at that time – we could have had the opportunity to respond and perhaps alter these provisions if necessary. In addition, it is difficult to respond to your supposed concerns without more specific information about exactly which provisions of state law you believe may be implicated.



A. Commission recommendations regarding maximizing fee generation for Town services and assets. Your first legal concern relates to the provision in the initiative which requires the Finance Commission to make recommendations regarding maximizing fee generation for services provided by the Town and for the use of Town assets consistent with market rate charges for these types of services. (Section 2.50.225(a)(8)(B).) The March 3<sup>rd</sup> memorandum states that this provision would violate state law because “the Town cannot provide market rate charges,” thereby implying that something in state law may prevent cities from charging market rates for the provision of municipal services or the use of municipal facilities. If state law is truly that restrictive (which we do not believe it is, based on our experience with how other cities charge fees for the use of municipal facilities), you can give that legal advice to the Finance Commission which can then decide to adjust its recommendations accordingly. Moreover, if, based on your legal advice, the Town Council believes that a specific recommendation put forward by the Commission would run afoul of state law, it can choose not to adopt that recommendation.

In any case, we question how an initiative which merely requires an advisory body to make recommendations to the Town Council could violate state law. The initiative does not mandate any specific policies or programs which the Commission has to recommend for maximizing revenues from Town-provided services or the use of Town assets, or for making the funding of the Town’s long-term compensation and benefits program responsible and cost-effective. Legal restrictions on how the Town may charge for municipal services or facilities does not mean that the initiative “violates state law” and in any case can be easily addressed through the recommendation process.

B. Commission recommendations regarding funding the Town’s compensation and benefits program. Your second legal concern relates to the provision which requires the Commission to make recommendations regarding responsible and cost-effective ways to fund the Town’s long-term compensation and benefit program liabilities “may violate state law.” (Section 2.50.225(8)(F).) According to your comments at the Council’s meeting earlier this month, you are concerned that discussing compensation issues in open session at a Finance Commission meeting may violate confidentiality rules. We agree that state law may place certain restrictions of the ability of governmental entities to publicly debate the compensation of individual public employees and even compensation packages for classes of public employees in order to protect employees’ privacy rights – but of course governmental entities discuss compensation issues and vote on changes in salary, benefit and pension levels at public

Robert Schultz, Esq.  
April 30, 2020  
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meetings all of the time. We trust that the Finance Commission, with your legal counsel, will be able to navigate the open meeting laws and these privacy interests when making recommendation to the Town Council regarding the Town's long-term compensation and benefit program liabilities.

Just as with the comments about how the Town may charge for municipal services or facilities, this comments about the Town's compensation and benefits program does not justify the claim that the initiative "violates state law"; again, any concern about the open meeting laws and employees' privacy right case be easily addressed through the recommendation process.

\* \* \*

Everyone's focus now is of course on staying healthy and maintaining essential public services. Once the crisis abates and the November election nears, we look forward to a robust public debate over the advantages of creating an appointed Commission comprised of Councilmembers and citizens to make recommendations to the Town Council about important financial, budgetary and investment matters and operations. In the meantime, we hope that this letter clarifies the legal questions raised about the initiative, and you should feel free to contact us if you would like to discuss these legal questions in more detail or have any additional questions about the initiative.

Sincerely,



James R. Sutton

cc: Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/lc  
#2040.02

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**Subject:** Agenda Item #3 - Finance Committee Meeting June , 2020  
**Attachments:** Finance Comm'n Initiative letter.pdf; comparision of responsibilities - landscape.pdf

**From:** Phil Koen <[pkoen@monteropartners.com](mailto:pkoen@monteropartners.com)>  
**Sent:** Sunday, June 7, 2020 1:01 PM  
**To:** Laurel Prevetti; Robert Schultz  
**Cc:** Rob Rennie; Marico Sayoc; Terry Duryea; Ron Dickel; Rick Tinsley; [jvannada@gmail.com](mailto:jvannada@gmail.com); Rick Van Hoesen ([rick.vanhoesen@gmail.com](mailto:rick.vanhoesen@gmail.com)); Lee Fagot; Heidi Owens; [matthew@matthewhudes.com](mailto:matthew@matthewhudes.com); Maria Ristow; Peter Hertan; Catherine Somers; Marcia Jensen; BSpector; James Sutton; Lee Quintana  
**Subject:** Agenda Item #3 - Finance Committee Meeting June , 2020

Dear Laurel,

Please ensure that this email, the attached letter from Sutton Law and the comparison of responsibilities analysis are included in the public record for the upcoming Finance Committee meeting.

We are very concerned that the Finance Commission ballot initiative (the "Initiative") and Mr. Schultz's March 3 "review of the ballot initiative" were included in the documents previously distribute for background reading, but Mr. Sutton's letter, which directly responds to material points in Mr. Schultz March 3 staff report, was not included. Reading Mr. Schultz's review without having the benefit of Mr. Sutton's legal response could lead to incorrect conclusions regarding the Initiative and prejudice the reader against the Initiative. You have been in possession of Mr. Sutton's letter for weeks, which leaves us unable to arrive at any reasonable explanation for the decision to not include this important document as background material for agenda item #3.

Mr. Sutton will be attending the Finance Committee meeting and is prepared to answer any questions regarding the Initiative. We are unclear as to how this will work given the 3-minute limitation placed on speakers. Our objective is to ensure the Finance Committee members and attending members of the public are fully and correctly informed about the Initiative. We request appropriate flexibility to achieve this goal.

In reading the Staff report for agenda item #3, we are troubled by the report because there is no discussion or detailed analysis of the Initiative other than noting that it is included in the background material. The staff report does not disclose that the Initiative has qualified for the November ballot by obtaining approximately 3,000 resident signatures. The staff report, under the conclusion section, states "staff looks forward to the discussion and receiving substantive input from the Finance Committee regarding the Committee Enabling Resolution," yet there is no analysis or comparison between the Initiative and the Enabling Resolution. The lack of any meaningful discussion of the measure as part of this agenda item raises fundamental questions of completeness and fairness of the deliberative process the staff is requesting from the Committee. To help remedy this omission, we have attached a document that compares the Initiative and the Enabling Resolution.

The residents of Los Gatos will have the opportunity to vote on the Initiative in 5 months. If the Initiative passes, all questions regarding the composition, voting and scope will be resolved, since the Initiative thoroughly addresses these points. It seems premature for this Committee and the Council

to consider any modifications to the current Enabling Resolution since any such changes would be replaced upon approval by voters of the Initiative. Why not wait to see the outcome of the election and then decide any next steps?

This Council and Staff have had many opportunities over the past 18 months to engage in meaningful discussion about restructuring the current Finance Committee. Both the Staff and the Council have, up to now, resisted any efforts to do so. It was this lack of action that convinced us that the only path forward for meaningful reform was through the initiative process. We even met with the Staff prior to launching the signature gathering phase to attempt a meaningful dialogue about the measure. The Staff declined to have that conversation stating that they had “no comments and no questions.”

It is therefore a bit of a head scratcher that on the eve of having voters directly decide on the scope and duties by voting on the Initiative, and after the Town Council has adopted the FY 21 budget without seeking any input from the current Finance Committee, the Staff is suddenly now eager to engage in reform discussions. Why now? What has happened that has changed the Staff’s position to now “look forward to .... receiving substantive input” when all such efforts have been consistently rebuffed for the past 18 months? Frankly, we find this strange and believe the Staff owes the residents an explanation of their change in position.

There is however one other alternative action that the Council could immediately take. Given that 3,000 voters, which is approximately 15% of all registered voters in the Town, have signed the petition to put this Initiative on the ballot, the Council could listen to this broad support and adopt the Initiative “as is.” This would result in the initiative not being on the ballot, will save the Town \$50,000 in printing and distribution costs at a time when it should be focused on conserving its scarce resources and immediately deliver the broad reform that residents are seeking.

Thank you.

Los Gatos Community Alliance

Phil Koen

Rick Van Hoesen

Jak VanNada

THE SUTTON LAW FIRM

June 5, 2020

VIA EMAIL ONLY

Rob Rennie, Chair  
Terry Duryea, Vice Chair  
Councilmember Marico Sayoc  
Rick Tinsley  
Ron Dickel  
Los Gatos Finance Committee  
110 E. Main Street  
Los Gatos, CA 95030

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James R. Sutton

Rob Rennie, Chair

June 5, 2020

Page 2

Attachment

cc: City Attorney Robert Schultz  
Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/dfm

#2040.02

## James Sutton

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**Cc:** manager@losgatosca.gov  
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April 30, 2020

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Los Gatos Town Attorney  
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Los Gatos, CA 95030

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3. Truly problematic provisions – of which we believe there are none – may be “severed.” Finally, also like most other local initiatives, the initiative contains a “severability” clause which protects the law should – as we do not believe will happen – any one provision be deemed to be legally invalid for some reason. (Section 5.) I.e., even if one of the duties imposed on the Commission turns out to conflict with a state law – which, again, we believe none do – that provision could simply be “severed” from the initiative; in that case, the Commission would not be required to undertake that particular duty, but the overall initiative would survive and the Commission would still be required to perform all of the other functions listed in the initiative. Courts routinely invalidate certain provisions of initiatives because they violate the State Constitution or state law while leaving all other provisions in operation. (See, e.g., Calfarm Insurance v. Deukmejian (1989) 48 Cal.3d 805, 821; People’s Advocate v. Superior Court (1986) 181 Cal. App.3d 316, 330.)

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We believe that this provision is clear that citizen appointees remain on the Commission for the full four years from January 1 through December 31 of the fourth year, regardless of whether their appointing Councilmember leaves office during that time period. How appointments work for other Town commissions or in other jurisdictions does not seem relevant. Saying that, if a circumstance arises when the Town may have to interpret the duration of a particular citizen appointee in a different way, the Town will have the authority to do so, as mentioned above, as long as the interpretation is consistent with the intent of the initiative. In any case, any question about the term of office of citizen appointees can be easily resolved and does not impact the legality of the initiative.

2. Potential "violations" of state law. The March 3rd staff memorandum makes two references to potential inconsistencies between the initiative and state law. Again, we would have appreciated hearing these legal concerns during our numerous discussions while the initiative was still being drafted, so that – just as we were able to do with respect to other questions you raised at that time – we could have had the opportunity to respond and perhaps alter these provisions if necessary. In addition, it is difficult to respond to your supposed concerns without more specific information about exactly which provisions of state law you believe may be implicated.

A. Commission recommendations regarding maximizing fee generation for Town services and assets. Your first legal concern relates to the provision in the initiative which requires the Finance Commission to make recommendations regarding maximizing fee generation for services provided by the Town and for the use of Town assets consistent with market rate charges for these types of services. (Section 2.50.225(a)(8)(B).) The March 3<sup>rd</sup> memorandum states that this provision would violate state law because “the Town cannot provide market rate charges,” thereby implying that something in state law may prevent cities from charging market rates for the provision of municipal services or the use of municipal facilities. If state law is truly that restrictive (which we do not believe it is, based on our experience with how other cities charge fees for the use of municipal facilities), you can give that legal advice to the Finance Commission which can then decide to adjust its recommendations accordingly. Moreover, if, based on your legal advice, the Town Council believes that a specific recommendation put forward by the Commission would run afoul of state law, it can choose not to adopt that recommendation.

In any case, we question how an initiative which merely requires an advisory body to make recommendations to the Town Council could violate state law. The initiative does not mandate any specific policies or programs which the Commission has to recommend for maximizing revenues from Town-provided services or the use of Town assets, or for making the funding of the Town’s long-term compensation and benefits program responsible and cost-effective. Legal restrictions on how the Town may charge for municipal services or facilities does not mean that the initiative “violates state law” and in any case can be easily addressed through the recommendation process.

B. Commission recommendations regarding funding the Town’s compensation and benefits program. Your second legal concern relates to the provision which requires the Commission to make recommendations regarding responsible and cost-effective ways to fund the Town’s long-term compensation and benefit program liabilities “may violate state law.” (Section 2.50.225(8)(F).) According to your comments at the Council’s meeting earlier this month, you are concerned that discussing compensation issues in open session at a Finance Commission meeting may violate confidentiality rules. We agree that state law may place certain restrictions of the ability of governmental entities to publicly debate the compensation of individual public employees and even compensation packages for classes of public employees in order to protect employees’ privacy rights – but of course governmental entities discuss compensation issues and vote on changes in salary, benefit and pension levels at public

Robert Schultz, Esq.  
April 30, 2020  
Page 6

meetings all of the time. We trust that the Finance Commission, with your legal counsel, will be able to navigate the open meeting laws and these privacy interests when making recommendation to the Town Council regarding the Town's long-term compensation and benefit program liabilities.

Just as with the comments about how the Town may charge for municipal services or facilities, this comments about the Town's compensation and benefits program does not justify the claim that the initiative "violates state law"; again, any concern about the open meeting laws and employees' privacy right case be easily addressed through the recommendation process.

\* \* \*

Everyone's focus now is of course on staying healthy and maintaining essential public services. Once the crisis abates and the November election nears, we look forward to a robust public debate over the advantages of creating an appointed Commission comprised of Councilmembers and citizens to make recommendations to the Town Council about important financial, budgetary and investment matters and operations. In the meantime, we hope that this letter clarifies the legal questions raised about the initiative, and you should feel free to contact us if you would like to discuss these legal questions in more detail or have any additional questions about the initiative.

Sincerely,



James R. Sutton

cc: Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/lc  
#2040.02

	Existing Finance		Finance
	Committee Enabling		Commsion
	Resolution		Ballot
Comparison of Responsibilities and Goals	2019-042		Intiative
Advisory Body to Council	yes		yes
Promote greater public understanding of Town's financial matters	yes		yes
Number of qualified citizen participants	3		5
Citizen participants have voting status	no		yes
Minimum meetings per year	not specified		4
Meeting agenda established by	not specified		Chair of Commission
Existence of Commission and duties elminated by vote of Town Council	yes		no
Eliminates and assumes all responsibility for the Sales Tax Oversight Committee	no		yes
<b>Specific duties</b>			
Review annual budget & make recommendations to the Council			x
Review 5/10 year financial plan			x
Review 5 year capital budget & make recommendations			x
Review annual audit	x		x
Participate in pre-audit meetings with auditors			x
Advise the Council on change & selection of auditors			x
Study all fiscal issues & recommend possible improvements			x
Annual review of the Town's investment policty	x		x
Monitor investment performance & recommend changes in investment policy as appropriate			x
Monitor Pension/OPEB obligations & recommend appropriate mitigation & reserve policies	x		x
Review and update Town's financial policies			x
Review CAFR	x		x
Annual review of proposals/recommendations regarding new and increased revenue sources	x		x
Make recommendations to minimize the Town's cost to provide core services consistent with desired service levels			x
Special projects as directed by Town Council	x		x
Review City Managers Annual Financial Report			x

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**Subject:** Item 4 June 8 Finance Committee Meeting-Observations from interviews with Finance Committee members for MP, LA and LAH  
**Attachments:** LGFC2020\_04SurveyFinCommNeighborCitiesEdit\_060720.docx

**From:** Terry Duryea <[tduryea@aol.com](mailto:tduryea@aol.com)>

**Sent:** Sunday, June 7, 2020 2:44 PM

**To:** Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Arn Andrews <[aandrews@losgatosca.gov](mailto:aandrews@losgatosca.gov)>; Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>

**Subject:** Item 4 June 8 Finance Committee Meeting-Observations from interviews with Finance Committee members for MP, LA and LAH

Hello Town Staff and Fellow Finance Committee members (bcc'd Committee members)

At the request of Town Staff, I did not include personal observations in my April 7 memo you received on the results of my survey of Finance Committees of Menlo Park, Los Altos, Los Altos Hills, and Campbell. With the Finance Committee meeting on us, I want to share my observations from talking with Finance Committee members of the first 3 cities

- Los Gatos is stronger financially than the other cities
  - Los Gatos has been more aggressive to prefund our pension obligations than the other cities
  - Which is good because Los Gatos has a greater risk from stock market volatility and investment return under performance vs CALPERs estimates than other cities because Los Gatos has a very "mature" pension plan--i.e. a greater percentage of participants are receiving benefits compared to current employees
    - o That is a key reason why in spite of a strong stock market performance since 2009 and significant additional payments toward our pension obligation, our unfunded pension liability continues to grow
  - A natural friction exists between Staff & the Finance Committee and in some cases between Finance Committee and Council
    - o Over time, the friction was both constructive and destructive depending on who Chaired the Finance Committee and leadership of the Town. The following examples that I would guess created friction--good and bad
      - Los Alto Finance Committee sent letter to Council expressing "discontent with current financial positioning of the city...and expressed the need for Council to have more accountability and consideration for the overall fiscal impact of their Council meeting decisions"
      - Los Altos Hills Finance Committee sent letter to Council reporting "serious internal control failures" in financial operations identified as part of the audit
- Fortunately, based on my experience, I see no reason to expect our Finance Committee to issue similar letters*
- Menlo Park Staff, Council and Committee agreed Committee would review public documents /reporting to identify opportunities to improve presentation (formatting) and usefulness of information to Council and general public
  - Los Altos Hills Finance Committee member provided special expertise to address major sewage disposal issues

I reviewed my April 7 memo in preparing for this meeting and noticed I inadvertently omitted the fact that that the Los Altos Finance Committee also reviews the annual audit and advises the council on change + selection of auditors. An edited copy of my April 7 memo is attached.

Respectfully submitted  
Terry Duryea

Date: April 7, 2020 (updated June 7, 2020)  
 From: Terry Duryea  
 To: Finance Committee members (bcc) and Town Staff

Hello fellow Finance Committee members and Town Staff

The memo summarizes the public information I found when researching the finance committee-like committees for 4 neighboring cities. The information sources included the city website, committee meeting agendas with attachments, committee meeting minutes, and reports to City Councils.

I am bccing this to you so as not so as not to violate the Brown Act. Please do not respond.

I understood from a March 5 meeting I attended with Laurel Prevetti, Arn Andrews and Rob Rennie that the Town was looking to our committee to review certain aspects of the Finance Committee focus in light of the proposed Initiative for the November ballot to form a Finance Commission. The following information is a summary of the responsibilities of other Finance Committees for the following cities:

- Los Altos Hills has a Finance & Investment Committee
- Los Altos has a Financial Commission
- Menlo Park has a Finance & Audit Committee
- Campbell has a subcommittee of the City Council made up of 2 Council members & 3 City Staff

As part of this research, I talked to committee members for the Los Altos and Los Altos Hills committees. But this report does not include any anecdotal information or observations they provided from those discussions.

<b>Responsibilities of the City's Finance Committee</b>				
	<b>Los Altos Hills</b>	<b>Los Altos</b>	<b>Menlo Park</b>	<b>Campbell</b>
Advisory body to council	X	x	x	**
Review annual budget + make recommendations	X	x	x	
Review 5/10 year plan	X	x		
Review 5 year capital budget + make recommendations	x	x	x	
Review annual audit	x	x	x	x
Advise the council on change + selection of auditors	x	x		
Study all fiscal issues + recommend possible improvements and economies	x			
Monitor investment performance + recommend changes as appropriate	x	x	x	x
Monitor Pension/OPEB obligations + recommend appropriate mitigation + reserve policies	x	x	x	
Review + update cities financial policy		x		
Review CAFR		x	x	x
Review City Managers Annual Financial Report		x	x	
Improve financial communication to public			x	
Assist in delivery of timely, clear & reliable financial info			x	
City/Town litigation exposure				x
Finance Committee have its own subcommittees	No	No	Yes	N/A
CAFR filed by 12/31	No	No	Yes-in November	No



Annual work plan	Yes	Yes	Yes	Unknown
Meeting frequency	Generally monthly	Generally monthly	5 times in 2019	2 times in 2019
Certificate of Excellence	Yes	Yes	Yes	Yes
** Campbell has no separate Finance Committee. It is a "sub-committee" of City Council				

The committee makeup for each of the Cities is:

Los Altos Hills	9 voting +3 non voting associates, all are residents
Los Altos	7 voting all residents + 1 Council member liaison
Menlo Park	7 voting, 5 residents plus Mayor and Vice Mayor
Campbell	2 Council members + City Mgr + 2 Finance Dept

The financial operations of the above cities and/or the relationships between Staff, Council and their respective committees is not all wine and roses. Based on reading the meeting minutes since December 2019, I identified the following items:

- \* *In December 2019, the Los Altos Hills Finance & Investment Committee chair sent a letter to the Council notifying them that as part of the audit of fiscal 2018-2019, the auditor reported to the Finance Committee that the audit had identified "three serious internal control failures...and [stated that] 25 adjusting journal entries [were] recommended to bring the financial statements into a position where the audit could be performed".*
- \* *The January 20, 2020 Los Altos Finance Commission minutes said the Chair will send an email to Council on behalf of Finance Commission regarding their "discontent with the current financial positioning of the City. [The letter also] expressed the need for Council to have more accountability and consideration for the overall fiscal impact of their Council meeting decisions on the City."*

Town Staff has reviewed my memo to ensure I do not violate the Brown Act. Therefore I have been careful to offer no opinions or conclusions, only information. Through Staff, I understand the Town will send us a Staff report prior to our committee meeting.

All the above information was gathered by me. Although I am a personal friend with one of the Town residents supporting the Finance Commission Initiative, the idea to do research and prepare a report was solely my idea—I gathered all the information.



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**Subject:** Ballot title and summary submitted to election officials as part of the petition - Agenda Item #3 - Finance Committee Meeting  
**Attachments:** Title and Ballot Summary.Town Finance Commission.pdf

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**From:** Phil Koen <[pkoen@monteropartners.com](mailto:pkoen@monteropartners.com)>

**Sent:** Sunday, June 7, 2020 2:44 PM

**To:** Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>

**Cc:** Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>; Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>; Terry Duryea <[tduryea@aol.com](mailto:tduryea@aol.com)>; Ron Dickel <[rondickel@gmail.com](mailto:rondickel@gmail.com)>; Rick Tinsley <[ricktinsley1@gmail.com](mailto:ricktinsley1@gmail.com)>; [jvannada@gmail.com](mailto:jvannada@gmail.com); Rick Van Hoesen ([rick.vanhoesen@gmail.com](mailto:rick.vanhoesen@gmail.com)) <[rick.vanhoesen@gmail.com](mailto:rick.vanhoesen@gmail.com)>; Lee Fagot <[leefagot@gmail.com](mailto:leefagot@gmail.com)>; Heidi Owens <[heidi.timmons.owens@gmail.com](mailto:heidi.timmons.owens@gmail.com)>; [matthew@matthewhudes.com](mailto:matthew@matthewhudes.com); Maria Ristow <[ristows@comcast.net](mailto:ristows@comcast.net)>; Peter Hertan <[phertan@alum.mit.edu](mailto:phertan@alum.mit.edu)>; Catherine Somers <[Catherine@losgatoschamber.com](mailto:Catherine@losgatoschamber.com)>; Marcia Jensen <[MJensen@losgatosca.gov](mailto:MJensen@losgatosca.gov)>; BSpector <[BSpector@losgatosca.gov](mailto:BSpector@losgatosca.gov)>

**Subject:** Ballot title and summary submitted to election officials as part of the petition - Agenda Item #3 - Finance Committee Meeting

Dear Laurel,

In addition to the items we previously requested to be included in the public record for the upcoming Finance Committee meeting, please include the attached ballot title and summary which was prepared by Mr. Schultz in conformance with the California Elections Code Section 9203. This ballot title and summary was included in the petition package that voters reviewed at the time of signing the petition.

We are including this so everyone understands what was disclosed to voters at the time they decided to sign the petition. The fact that we obtained signatures of approximately 15% of all registered voters in the Town should speak volumes as to the broad support for this initiative.

Thank you.

Los Gatos Community Alliance

The Town Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

**BALLOT TITLE**

A CITIZEN'S INITIATIVE MEASURE AMENDING THE TOWN CODE  
TO ESTABLISH A TOWN FINANCE COMMISSION


**BALLOT SUMMARY**

The Town of Los Gatos currently has a Council Finance Committee consisting of five (5) members - two (2) Town Council Members as voting members and three (3) citizen members as non - voting members, appointed by the Town Council. The function of the Finance Committee is to serve as an advisory committee to the Town Council regarding the Town's investment policy, the Comprehensive Annual Financial Report, the unfunded pension employment benefits and new and increased revenue sources. The purpose of the Finance Committee is not to advise on regular or routine financial administration, the Town's budget or spending priorities, nor to become involved in other than the financial impact of the projects /programs they are asked to review.

This initiative would amend the Los Gatos Town Code to disband both the Finance Committee and Sales Tax Oversight Committee and establish instead a Finance Commission consisting of seven (7) members - five (5) voting citizen members and two (2) non-voting Council Members, ( one of which would be either the Mayor or Vice-Mayor), with each Council Member appointing one Citizen Appointee. The function of the Finance Commission would be to serve in an advisory capacity to the Town Council and increase their duties and responsibilities in regard to the review of Town finances, including but not limited to: the Annual Budget, the Comprehensive Annual Financial Report, capital expenditures, the revenue and expenditure of Measure G Sales Tax, 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.

This ballot title and summary are hereby submitted to the elections official in conformance with California Elections Code Section 9203.

Dated: October 22, 2019

  
\_\_\_\_\_  
Robert Schultz  
Town Attorney

Attest:

  
Shelley Neis  
Town Clerk