



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/18/2022

ITEM NO: 11

DESK ITEM

DATE: October 18, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Discuss the Housing Element Process and the Next Steps for the Referendum of the 2040 General Plan Land Use and Community Design Elements, and Provide Direction on the Preferred Approach for the Referendum

REMARKS:

The following information is provided in response to questions from Council Members since the posting of the staff report, and attachment 1 contains public comments received between 11:01 a.m. Monday October 17, 2022 and 11:00 a.m. Tuesday, October 18, 2022.

How different does a new/replacement Land Use Element need to be from the Land Use Element that is the subject of the referendum?

Case law addressing this issue provides that the new legislation can't be "essentially identical" to, or retain all the "essential features" of, the referended legislation. The new legislation needs to be "essentially different." Courts recommend that public agencies focus on the features that gave rise to the objection to begin with and avoid re-enacting those features. For example, I have located case law discussing referenda of a lease and a franchise (but no cases in the land use context). In both cases, the public agency re-approved the lease and franchise, but with slightly different terms such as the length of the agreements. The court ruled that, when entry into the lease and the franchise was the subject of the referendum, the public agency could not just make slight changes to the terms.

What is the remedy in the event that new legislation is "essentially identical" to the referended legislation?

The remedy for a referendum proponent would be to seek a writ of mandate to overturn the agency's approval of the new legislation and to seek a stay against its implementation. Alternatively, the new legislation could be referended.

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SUBJECT: Housing Element Process and Next Steps on Referendum of 2040 General Plan
Land Use and Community Design Elements

DATE: October 18, 2022

REMARKS (continued):

If the Land Use and Community Design Elements are rescinded, will the resolution suspending those two Elements need to be revised?

Yes, the Town Council would need to adopt a resolution to either:

- 1) Provide that the 2020 Land Use and Community Design Elements will remain in effect until revised Elements are adopted; or
- 2) Adopt revised Elements.

ATTACHMENTS:

1. Public Comments