



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/20/2022

ITEM NO: 10

DATE: August 25, 2022

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Remote Participation

- A. Discuss Remote Participation Expectations for Town Council Members and Commissioners,
- B. Approve a Modification as Recommended by the Council Policy Committee to Town Council Policy 2-01: Town Agenda Format and Rules, and
- C. Modify Town Council Policy 2-11: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum for Consistent Language Regarding Excused Absences

RECOMMENDATION:

Staff recommends that the Town Council:

1. Discuss remote participation expectations for Town Council Members and Commissioners,
2. Approve a modification as recommended by the Council Policy Committee to Town Council Policy 2-01: Town Agenda Format and Rules, and
3. Modify Town Council Policy 2-11: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum for consistent language regarding excused absences.

BACKGROUND:

In November 2021, the Town Council adopted modifications to Town Council Policy 2-01: Town Agenda Format and Rules to provide clarity for remote participation in light of the pandemic and the more common availability of Zoom and other conferencing software (see Attachment 1). These provisions reinforced the Town's longstanding preference for in-person participation by Council and Commission members while providing the public the option of participating remotely or in-person (see Attachment 1, page 5).

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

SUBJECT: Discuss Remote Participation and Consider Modifications to Town Council Policy 2-01: Town Agenda Format and Rules, and Town Council Policy 2-11: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum

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BACKGROUND (continued):

The existing provisions state that:

1. Requests by Council Members to attend a regular Council meeting via remote appearance are allowed on a limited basis and with no more than two remote participations in a row. Remote attendance shall be permitted for a medical, family or work event requiring a Council Member's absence or in the event the Council Member is out of the area on official Town business. In addition, at least a quorum of the Council must participate from a location within the Town.
2. Requests by Commissioners to attend a Commission meeting via remote appearance should be allowed on a limited basis to mirror the existing attendance requirements and with no more than two remote participations in a row.
3. When a Council Member or Commissioner is participating remotely, they shall have their camera on and be visible for the duration of the meeting.
4. The public may participate in all public meetings remotely by following the remote participation instructions that are provided on the agenda. The remote participation instructions shall be provided on all Town Council and Commission agendas.

DISCUSSION:

Currently, the Santa Clara County Health Officer recommends remote participation for government public meetings. Assembly Bill 361 allows towns/cities to hold remote meetings without posting agendas in physical locations or making remote meeting sites accessible to the public during a declared state of emergency. The Los Gatos Town Council has been adopting the required Resolutions to maintain its remote meetings given the State, County, and Town Emergency Declarations that remain in effect as well as other facts documented in the Resolutions.

AB 1944 (Lee) was introduced to protect the privacy of public officials when participating remotely. This bill is being held for a year by the author and did not move forward this legislative session. It is unsure what its future might be. If this or a similar bill does not move forward, then when the state of emergency is lifted, public officials will be required to share their private addresses when participating remotely and make those locations accessible to the community.

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DISCUSSION (continued):

It is expected that the Emergency Proclamations for the pandemic will be lifted at some point in the future and the guidance for government public meetings will be updated to facilitate in-person meetings. Council members have asked that the Council Policy Committee and Town Council take a fresh look at the remote participation provisions to prepare for this eventuality.

At its August 23rd meeting, the Council Policy Committee discussed the following questions submitted by a Council Member (the Committee's discussion points are summarized after each question):

- **How do we navigate hybrid meetings in the future?**
The Town has the equipment and technology to conduct hybrid Council and Commission meetings. This technology was used when Council was in-person for a couple of months in 2021.
- **Who must be in person?**
The Committee felt strongly that all Council Members and Commissioners should be required to be in person as part of their commitment to their positions. The Committee stated that this is important for government transparency.
- **If a Council/Commission/Committee member or staff member is ill or even has "just a cold" can they participate remotely, or is it an absence?**
The Policy currently provides for remote participation if a Council Member or Commissioner or their family member is ill (i.e., "medical or family event").

The Committee was concerned that a former Commissioner missed multiple meetings while on maternity leave and forfeited their position. The Committee recommended that the Policy be amended to allow for excused absences for parental leave consistent with the Family Medical Leave Act (see redline in Attachment 1).

Staff is also recommending that the Council amend Town Council Policy 2-11: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum to include similar language for consistency between the two Policies (see redline in Attachment 2).

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DISCUSSION (continued):

- **What constitutes a quorum if some members are remote and others in person?**

Based on existing law with a hybrid format, a quorum includes members participating in-person or remotely within Town limits. The Committee discussed that the meeting should be run by a member who is in person. For example, if the Mayor or Commission Chair is participating remotely, then the Vice Mayor or Vice Chair or next senior member on the body who is in person should chair the meeting. The Committee did not recommend that this be memorialized in the Policy.

- **If a Council or Commission member is participating remotely while meeting is in-person, will remote participant have to allow the public access to the remote location?**

Currently, State law dictates the noticing and access requirements under the Brown Act and related legislation. This may be subject to change as discussed earlier in this report.

COORDINATION:

The preparation of this report was coordinated with the Town Clerk and Town Attorney.

FISCAL IMPACT:

Modifications to the Town Council Policy regarding Town Agenda Format and Rules will not have a fiscal impact to the Town.

ENVIRONMENTAL ASSESSMENT:

The proposed modification to the Policy is not a project defined under CEQA, and no further action is required.

Attachments:

1. Town Council Policy 2-01: Town Agenda Format and Rules (redline)
2. Town Council Policy 2-11: Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum (redline)