



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 04/18/2023

ITEM NO: 17

DATE: April 13, 2023  
TO: Mayor and Town Council  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Rescission of Planning Commissioner Censure

**RECOMMENDATION:**

Rescission of Planning Commissioner censure.

**BACKGROUND:**

Earlier this year, the Town received a number of complaints regarding an email sent by Planning Commissioner Clark to the State Department of Housing and Community Development ("HCD"). A copy of the email to HCD is attached as Attachment 1.

Based on the divisive nature of the email, on February 15<sup>th</sup>, the Town Council verbally censured, and recommended counseling regarding future communications for, Planning Commissioner Clark for comments made to the HCD regarding the General Plan referendum proponents.

After the Town Council meeting, the American Civil Liberties Union ("ACLU") wrote to the Town Council and stated that the verbal censure and required counseling was unconstitutional in that the verbal censure was directed at comments made by the Planning Commissioner in her personal capacity. A copy of the ACLU's letter is attached as Attachment 2. The ACLU also made a Public Records Act request for all communications related to the complaints and the verbal censure. A copy of the complaints and documents provided in response to the ACLU's Public Records Act request is available at this link:

<https://losgatosca.justfoia.com/publicportal/requests/PR-2023-50/view>

I have reviewed the case law provided by the ACLU and concluded that the case law provides that public officials cannot be disciplined for comments made in their personal capacity. (Bond v. Floyd, 385 U.S. 116(1966))(holding that disqualifying a public official from taking office based

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Reviewed by: Town Manager, Finance Director and Community Development Director

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BACKGROUND (continued):

on statements endorsed as a private citizen violated the public official's First Amendment rights). Based on this case law and the fact that the email to HCD stated that the comments were being made in the sender's personal capacity, I recommend that the Town Council rescind its verbal censure of Planning Commissioner Clark for the divisive nature of the email to HCD. I also recommend against any subsequent disciplinary action based on the Commissioner's email to HCD since the email stated that the comments were being made as a private individual.

CONCLUSION:

Accordingly, I recommend that the Town Council:

- 1) Rescind its verbal censure of Planning Commission Clark; and
- 2) State that counseling regarding communications made in one's personal capacity should not have been provided and will not be provided in the future.

FISCAL IMPACT:

Rescission of the verbal censure will not have a direct fiscal impact, but will avoid litigation expenses and a potential award of attorney fees.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Email to HCD
2. Letter from ACLU