



TOWN OF LOS GATOS
OFFICE OF THE TOWN ATTORNEY

MEMORANDUM

To: Mayor & Council
From: Robert Schultz, Town Attorney
Date: January 7, 2020
Subject: Ordinance and Policy Priorities for the January 14, 2020
Priority Setting Study Session

The Town Attorney's Office is continually evaluating the Municipal Code for needed updates and provides this Memorandum to assist the Town Council in its Priority Setting Study Session. The list is in order of recommended priority. However, please realize that although these ordinances are in recommended priority, many issues may arise during the year that can alter these priorities.

1. Fire Prevention and Protection Ordinance

Over the last ten years, wildfires in California have increased in severity and defensible space is vital for protecting homes from wildfire. Home hardening, adequate defensible space, vegetation management and compliance with mitigation measures are all critical components to making the Town's Wildland Urban Interface (WUI) area resilient to the threat of wildfires. Based on Staff's assessment, changes to Chapter 9 (Fire Prevention and Protection), Chapter 11 (Garbage, Refuse, and Weeds), and Chapter 29 (Tree Protection) should be made.

2. Accessory Dwelling Unit Ordinance

In 2017, the State enacted laws resulting in changes to the state's requirements for Accessory Dwelling Units and the State enacted further amendments to refine the mandates to support development of ADUs and address barriers to the development of ADUs. Subsequently in the fall of 2019, the Legislature adopted, and the Governor signed several bills that require additional changes to the Town's ADU ordinance.

3. Family Daycare Homes Ordinance

Under previous law, a small family daycare home, which may provide care for up to 8 children, is considered a residential use of property for purposes of all local ordinances. Current law authorizes a city, county, or city and county to either classify a large family daycare home, which may provide care for up to 14 children, as residential use of the property or to provide a process for applying for a permit to use the property as a large

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family daycare home. The new law will instead require a large family daycare home to be treated as a residential use of property for purposes of all local ordinances. Changes need to be made to the Town's Code provisions relating to family daycare homes so that it complies with the most recent changes to California law.

4. Special Events Ordinance

The Town's Special Events Ordinance was updated in February of 2018. Now that staff has had some time to put the ordinance into practice, there are minor edits regarding application timelines, block Party permits, and minor/small events that should be adopted before the summer season of events.

5. Below Market Price Ordinance

Pursuant to Council's direction, the Policy Committee has discussed potential amendments to the Town Code regarding below market price (BMP) regulations and staff is preparing potential amendments to the Town Code and the BMP Housing Program Guidelines based on the discussion and direction of the Policy Committee.

6. Public Art Ordinance

Many municipalities in California have adopted ordinances requiring private sector development projects to contribute to local art installations and programs. In 2019, the Town Council directed staff to prepare an ordinance to require private sector commercial and multi-family residential projects to contribute to local art installments and programs.

7. Political Signs Ordinance

The Town may not ban political and other non-commercial signs, however reasonable "time, place and manner" regulations may very well qualify as content-neutral and reasonable. The Town's political sign ordinance has not been updated since 1992 and may not be in compliance with state and federal case law so the ordinance should be updated before the 2020 election.

8. Council Vacancy Ordinance

State Law sets forth the procedures for filling vacancies in elected city offices and gives two specific statutory options for the Town Council to follow – appointment and special election. State law also allows the Town to adopt its own ordinance designating the specific method for the Town Council to follow. In order to give the public confidence that the procedure is established and will be followed in each instance, and to streamline research conducted by staff, it is recommended that an ordinance be adopted spelling out the procedures.

9. Term Limits and Finance Commission Ordinance

The Town has received two ballot measures proposing amendments to Town Code to add term limitations for members of the Town Council and to create a Finance Commission composed entirely of residents. Proponents of the initiatives have until March 16 to obtain approximately 3,000 signatures. If the requisite signatures are obtained, the Town Council could decide to direct staff to prepare its own competing ballot measures containing some or none of the Proponents proposed ballot measures. The second measure is usually offered as a less extreme approach to the original. When conflicting measures are voted on at the same election, the one receiving the most affirmative votes controls.

10. Public Nuisance/Administrative Abatement Hearing Ordinance

The Town does not have a comprehensive Public Nuisance Ordinance related to the identification, definition, and enforcement of nuisances. Such an ordinance would make identification of violations easier for residents and businesses to understand and thereby comply with, as well as to assist the Town in enforcing the Code and providing due process. The Nuisance Ordinance would provide a just, equitable, and practicable method for preventing, discouraging, and/or abating certain conditions which endanger the life, limb, health, property, safety, or welfare of the general public. Currently, the Administrative Abatement of Violations section of our Town Code is antiquated and needs to be updated to allow for the enforcement of Code violations through administrative hearings effectively applied and administered in a fair, expedient, and cost-efficient manner.

11. Shared Mobility Device Ordinance

The Town does not have a Shared Mobility Device Ordinance. Shared mobility devices, such as electric scooters (e.g., Bird, Lime-S) and bikes (e.g., LimeBike, JUMP, Mobike, Spin), have surged locally and in cities throughout the United States. These mobility devices can be rented by the public via a smartphone application that unlocks the motorized devices from any location and lets the user park it when the rider arrives at their chosen destination. These mobility devices are highly visible, drawing considerable attention and controversy when they arrive in any area. They have raised significant community concerns about safety and enforcement, including concerns about users riding on the sidewalk, doubling up on scooters, users failing to observe traffic controls in violation of the California Vehicle Code, and other unsafe or uncivil rider behaviors. The devices have also posed new challenges in managing the safe public use of the street and sidewalks. The Town should adopt an ordinance regulating shared mobility service in the Town that would include permitting requirements and an operational framework.

12. Drone Ordinance

The Town does not have a Drone Ordinance. The issue of drones and Radio Controlled (RC) aircraft, otherwise referred to as unmanned aerial systems (UAS) is a growing concern for towns and cities with multiple incidents of interference with firefighting, other aircraft, and accidents. Towns/cities are attempting to address the dramatic increase in recreational

UAS with various types of regulations and are beginning to enact regulations that supplement and/or codify federal law. The major challenge in drafting these ordinances is the federal pre-emption of this issue but a Drone Ordinance could regulate the following issues for the Town: 1) Protection of persons and property in the jurisdiction; 2) Aviation safety, including a specific prohibition against careless and reckless operations that endanger life or property; 3) Designated take-off and landing zones for UAS within the Town limits; 4) Identification of critical infrastructure within the Town limits, or immediately adjacent to its boundaries, with appropriate rules for operation of UAS in proximity to that infrastructure; and 5) Permissible hours of operation.

13. Noise Ordinance

The Town's Noise Ordinance was adopted in 1991. With the changes to the Town's Entertainment Policy, the Town needs to analyze and determine whether the noise levels set forth in the Noise Ordinance adequately protect the residents of Los Gatos from unnecessary, excessive, and disturbing noise and vibration.

14. Wireless Facilities Ordinance

The Town's current Wireless Facilities Ordinance was adopted in 2003 to conform to the 1996 Telecommunications Act and is now outdated based on the ongoing changes to State and Federal legislation and leaves the Town unprepared for the scale of expansion that is on the horizon. Our current Ordinance only deals with the collocation of wireless facilities on existing utility poles. Various wireless facility companies are now proposing installations in the public right of way. Such installations could be on existing Town-owned structures, such as street light poles, or could involve the companies putting in their own new poles. The Town needs to update its wireless telecommunications ordinance to address the current status of Federal and State law as well as to reflect best practices in siting and design standards to preserve the aesthetics of the Town but to also facilitate providing competitive, varied, and high-quality wireless communications service infrastructure.

15. Claims/Settlement Authority Ordinance

The Town's current Claims Ordinance has not been updated since 2003. With the passage of time, certain provisions have become outdated and other provisions have not historically been followed. This proposed update to the ordinance would conform to current practice and update current settlement limits to allow for more expeditious settlement of claims and disposition of workers compensation claims.

16. Campaign Financing and Reporting Ordinance

Many towns and cities have enacted a campaign ordinance that provides for additional or different campaign requirements exclusively in its jurisdiction as long as the provisions are stricter than those in the Fair Political Reform Act. The Town currently does not have an ordinance that governs the Town's election campaign regulations with regard to making and reporting of campaign contributions and expenditures.

17. Mills Act

The Town Council decided in January 2019 to not include this topic as a priority and goal or as an Ordinance for the Town Attorney to work on. Due to public comment at subsequent Council meetings, Mayor Leonardis placed this agenda item on the September 10, 2019 agenda. However, because of FPPC conflict of interest of four of the five Council members, only three Council members participated in the discussion. At the Council meeting, a motion passed 2-1 to continue this item to a future Council meeting and directed staff to start conversations with partner agencies and provide examples of Mills Act Ordinances from surrounding jurisdictions. Since three Council members must unanimously approve a Mills Act Ordinance, staff is of the opinion that this ordinance should not be a high priority until the conflict of interests no longer exist and a full Council can here this agenda item.

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