



**TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 04/29/2024

ITEM NO: 2

DATE: April 25, 2024
TO: Council Policy Committee
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Discuss Code of Conduct Policy, Including Enforcement for Councilmembers and Commission Members, and Provide Direction to Staff

RECOMMENDATION:

Discuss Code of Conduct Policy, including enforcement for Councilmembers and Commission members, and provide direction to staff.

BACKGROUND:

The Town Council currently has an adopted Code of Conduct Policy, a copy of which is attached as Attachment 1. To date, the Policy Committee has recommended the following changes:

- 1) State that the Code of Conduct applies to Board and Commission members.
- 2) Provide specific examples of what will constitute a major vs. a minor violation;
- 3) Memorialize a process for the subject of a complaint to present facts to the deciding body;
- 4) Clarify how Board and Commission members should explain that their views do not represent the Board or Commission as a whole;
- 5) Address the use of third-party investigators for major violations of Board or Commission members;
- 6) Conform other affected Town policies with the updated Code of Conduct;
- 7) State that Councilmember communications will conform with the Brown Act;
- 8) Revise Section XI regarding communications to separate the discussion of perceived bias from the discussion of expressions of personal opinion.¹

¹ Attachment 2 is a redlined Code of Conduct Policy, reflecting recommendations #1 and 2 above.

PREPARED BY: Gabrielle Whelan
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Town Clerk

SUBJECT: Discuss Portions of the Code of Conduct Policy Addressing Enforcement for Councilmembers and Commission Members, and Provide Direction to Staff

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BACKGROUND (continued):

The Policy provides that its “expectations of conduct also apply to all members of the Town’s Boards, Committees, and Commissions” (hereafter “Commissions”). However, it does not address enforcement.

Section XII of the Policy addresses enforcement in the event of a violation of the Code of Conduct. In the event of a complaint alleging a violation, the Policy does not provide whether review and enforcement procedures apply to Board, Committee, and Commission members (“Commissioners”) in addition to Town Councilmembers. Section XII(B)(1) outlines to whom complaints are to be made. Section XII(B)(2) addresses evaluation of complaints and provides:

Upon report of a written complaint, the Town Manager and Town Attorney will join the Mayor or Vice Mayor as an evaluation committee to determine the validity of the complaint and, if appropriate, an initial course of action as discussed below. . . .

Section XII(B)(2) provides for notification to the subject of the complaint within seventy-two hours of receipt.

The remaining subsections of XII(B) describe classifications of violations and action to be taken, which are as follows:

- 1) Unsubstantiated: No action.
- 2) Valid but minor in nature: Private counseling and admonishment.
- 3) Major violation: Referred to outside legal counsel for initial interview and investigation if warranted.

DISCUSSION:

With regard to complaints and enforcement, staff seeks feedback from the Policy Committee on the following questions:

- 1) In the event of a potential Code of Conduct violation, should there be separate procedures and enforcement mechanisms for Commissioners as opposed to Town Councilmembers?
- 2) With regard to complaints received regarding Councilmember conduct, who should provide the initial review of those complaints? Commissioner conduct?
- 3) If the initial review of a complaint indicates that an investigation is warranted, is it necessary that the investigator be an attorney?

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DISCUSSION (continued):

These questions are addressed separately below.

- 1) In the event of a potential Code of Conduct violation, should there be separate procedures and enforcement mechanisms for Commissioners as opposed to Town Councilmembers?

The Town Clerk contacted all other Santa Clara County jurisdictions to ask 1) whether those jurisdictions have just one Code of Conduct that covers all elected and appointed officials or if there are separate Codes of Conduct for Commissioners and 2) whether the discipline and enforcement provisions differ for Councilmembers and Commissioners. Of the jurisdictions that responded, most do not have separate complaint procedures for Commissioners. Their Codes of Conduct simply provide that Commissioners can be removed by the Town Council – with about half requiring a majority vote and half requiring a super-majority vote.² Here is a summary of other practices within the County:

- a) Campbell: There is a separate Code of Conduct for Commissioners. It primarily addresses communications and conflicts of interest. Commissioners may be removed by a majority vote of the City Council.
- b) Cupertino: One section of the City Council Procedures Manual addresses discipline of Commissioners. Commissioners may be disciplined, including removal, by the City Council.
- c) Gilroy: There is a “Council Norms” document but no document addressing Commissioners. The policy provided does not include discipline or enforcement for Commissioners.
- d) Los Altos: There is an Accountability Policy, which applies to the City Council only. There is a Council Norms document, which includes a section addressing discipline or removal of Commissioners. Commissioners can be disciplined or removed by a 3/5 vote of the City Council.
- e) Mountain View: There is a Code of Conduct for the Town Council. One section of the Code of Conduct addresses removal (but not discipline) Commissioners. Commissioners may be removed by a 4/5 vote of the City Council.

² With regard to Commissioner removal, Town Code Section 2.40.030 currently provides that Commissioners can be removed by a three-fifths vote of the Town Council. If the Policy Committee recommends including in a policy (separately from the Town Code) that Commissioners can be removed by a vote of the Town Council, it will be helpful to know whether the Policy Committee recommends retaining the three-fifths vote requirement.

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DISCUSSION (continued):

- f) San Jose: There is a Council and Commission Code of Conduct. There is a separate Council Conduct Policy that applies only to Councilmembers and addresses discipline. There is a Council Code of Conduct Policy that applies only to Councilmembers and provides that admonition, sanction, and censure are the available forms of discipline.
 - g) Saratoga: There is a Code of Conduct for Councilmembers, but it does not reference Commissioners.
 - h) Sunnyvale: Within the Council Policy manual, there is a separate section specific to Commissioners. The Mayor can impose counseling, verbal reprimands, or written warnings on Commissioners. A Commissioner can be censured by a majority vote of the City Council. The Mayor or a City Council majority may call for an investigation when warranted. A Commissioner may be removed for violating the Code of Conduct by a 4/5 majority of the City Council.
- 2) With regard to complaints received regarding Councilmember conduct, who should provide the initial review of those complaints?

The Town's existing Code of Conduct provides that complaints are initially reviewed by the Mayor or Vice Mayor, Town Manager, and Town Attorney.

A question for the Policy Committee is whether the review committee should be expanded to two Councilmembers and, if so, whether it should be an ad hoc committee that is formed periodically.

Staff recommends that the Town Manager and Town Attorney provide support to the elected officials in review of the complaints, but not serve as members of the review committee.

- 3) If the initial review indicates that an investigation is warranted, who should conduct the investigation?

The Code of Conduct currently provides that investigations are to be conducted by an attorney. Attorney investigations can cost more per hour than investigations conducted by other professional investigators. In order to save costs, staff recommends that this language be revised to indicate that the investigation shall be conducted by a professional third party investigator.

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DISCUSSION (continued):

In addition to the complaint and enforcement questions, staff also seeks input from the Policy Committee on the following:

- 1) The Code of Conduct currently contains sections addressing Mayor and Vice Mayor selection as well as Mayoral and Vice Mayoral Roles, Responsibilities, and Relationships. Staff recommends that these sections be moved to a separate Policy and seeks direction from the Policy Committee.
- 2) The Code of Conduct currently contains a section regarding maintaining civility at Town Council meetings. Staff recommends that this section be moved to a separate Policy (potentially the Town Agenda Format and Rules policy) and seeks direction from the Policy Committee.

CONCLUSION:

Staff looks forward to the Policy Committee's discussion and direction to staff. Based on the direction, staff will return with appropriate draft language for further discussion and when the Policy Committee is ready, it may make a recommendation to the Town Council to make modifications to the Code of Conduct Policy and/or create a new Policy for Commissions. For reference, the redline Code of Conduct provided at the March 28, 2023, Policy Committee meeting and included in the November 21, 2023, Town Council meeting materials is attached.

COORDINATION:

This report was coordinated with the Town Manager and the Town Clerk.

FISCAL IMPACT:

A recommendation that the investigation procedures in the Code of Conduct not be applied to Commission members would mean that no outside investigator would be retained.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Current Code of Conduct Policy
2. Redlined Code of Conduct Policy Provided in the Meeting Materials at the November 21, 2023, Town Council Meeting