



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

MEETING DATE: 01/29/2025

ITEM NO: 5

DATE: January 29, 2024
TO: Mayor and Town Council
FROM: Chris Constantin, Town Manager
SUBJECT: Discuss and Consider Revisions to the Code of Conduct Policy 2-04

RECOMMENDATION:

Discuss and consider revisions to the Code of Conduct Policy.

BACKGROUND:

The Town Council's Code of Conduct was adopted in 2004 and has been revised several times since then. On April 2, 2024, the Town Council discussed the Code of Conduct. During the discussion, the Council directed several actions.

- The Council acted to clarify that the Mayor's communication with the Town Council will conform with the Brown Act, and change the wording under Vice Mayor, Subsection A to "In the Mayor's absence, the Vice Mayor shall perform the duties of the Mayor," striking the word "formal." This passed unanimously
- The Council acted to add 'where not prohibited by the Brown Act' to the sentence referencing the Mayor's communication with Town Councilmembers and directed the Town Attorney to work on the following:
 - Explain the difference between a policy matter pending before the Town Council and a future quasi-adjudicatory project;
 - Separate out discussion of quasi-adjudicatory decisions and address participation in community meetings;
 - Change references to "full" Town Council to a "majority" of the Town Council;
 - Add "No Councilmember shall communicate in a manner that appears to come from the Town or Town staff or the Town Council;"
 - Provide examples of how to indicate to the press that a Councilmember is speaking on his or her own behalf and not on behalf of the Council; and
 - Change the last sentence of Section XI to "such statements are permissible if clearly characterized as personal opinion or policy change objectives including

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

those made on behalf of another elected official, or on behalf of a public or state agency or political subdivision, rather than the opinion of the majority of the Town Council.”

These changes were approved and made, but the revised Code of Conduct has not yet returned to the Town Council for final approval. The agenda report recommends changes based on the Council’s April 2024 actions.

Changes to Address Conflict of Interest

On November 26, 2024, the Council Policy Committee heard a presentation by the Town Manager regarding the Code of Conduct. The primary concern centered around placing the Town Attorney and Town Manager in a conflict position by participating in the classification and response to complaints against Councilmembers. As elected officials, the responsibility to determine what manner to address complaints falls to the Council themselves. Thus, this agenda report recommends changes to address this conflict of interest concern.

DISCUSSION:

Attachment 1 provides a redline version of the Code of Conduct policy. The policy integrates changes discussed and approved by the Town Council in April of 2024. Additionally, the proposed policy revisions include a change to the entire enforcement section to remove the Town Attorney and Town Manager from a material role in determining discipline.

Section XII. Enforcement has some significant changes to reflect making the process a Mayor and Council focused process, while also providing more explicit definitions of minor and major violations. This removes the conflict of interest for the two Council appointees.

In addition, the proposed policy includes explicit definitions to be used in determining the severity of the violation. The proposed addition of definitions includes:

- A **minor violation** is a breach of the Code of Conduct that does not significantly impair the functioning, reputation, or integrity of the Town or its governance processes. These violations typically involve isolated incidents that are unintentional or stem from a misunderstanding of procedures, policies, or expectations. Examples of minor violations include, but are not limited to:
 - Unprofessional or discourteous communication in a non-public setting.
 - Failure to comply with procedural requirements in meetings or decision-making.
 - Negligent, but not malicious, failure to disclose conflicts of interest when no substantial harm occurs.
 - Minor breaches of decorum during public meetings that do not disrupt proceedings.

- A **major violation** is a significant breach of the Code of Conduct that compromises public trust, damages the Town's reputation, disrupts governance, or results in legal, financial, or operational risks to the Town. These violations typically involve intentional, repeated, or grossly negligent actions. Examples of major violations include, but are not limited to:
 - Persistent or egregious unprofessional behavior toward staff, colleagues, or the public.
 - Engaging in actions that create substantial conflicts of interest or violate state or federal ethics laws.
 - Deliberately making false or misleading statements that undermine public trust or decision-making processes.
 - Conduct that disrupts public meetings in a manner that prevents the effective functioning of Town governance.
 - Misuse of Town resources, authority, or influence for personal gain or to harm others.

While the definition cannot fully address all potential situations, the definitions do provide more clarity than currently offered. The proposed revisions also allow for complaints to be referred and adjudicated by other means when such complaints relate to the jurisdiction of another entity. For example, a complaint involving a gift exceeding legal gift limits should be referred to the Fair Political Practices Commission.

The current policy is included as Attachment 2 for your reference.

COORDINATION:

This report was coordinated with the Town Manager.

FISCAL IMPACT:

The impact depends on the number of investigations requiring review by an outside firm.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. January 29, 2025 Redline version of the Code of Conduct Policy
2. Current Code of Conduct Policy