



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/15/2023

ITEM NO: 1

DATE: February 10, 2023
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Accept Recommendation of Censure of, and Counseling for, a Planning Commissioner Regarding Communication to the California Department of Housing and Community Development or Take Other Action

RECOMMENDATION:

Accept recommendation of censure of, and counseling for, a Planning Commissioner regarding communication to the California Department of Housing and Community Development or take other action.

BACKGROUND:

The Town has received a number of complaints (Attachment 1) regarding a letter sent by a Planning Commissioner to the State Department of Housing and Community Development ("HCD"). The letter asked whether HCD was aware that there was a referendum of portions of the Town's General Plan, stated that the referendum proponents were "rich white men," and asked for HCD's assistance.

When the Town receives complaints regarding Commissioner conduct, the Town applies its Code of Conduct (Attachment 2). Pursuant to the Code of Conduct, an evaluation committee consisting of the Mayor, Vice Mayor, Town Manager, and Town Attorney met to review the complaints and recommend a course of action.

DISCUSSION:

The primary questions raised by the complaints were whether:

- 1) The Planning Commissioner has a conflict of interest affecting her ability to serve as a Planning Commissioner;

PREPARED BY: Gabrielle Whelan
Town Attorney

Reviewed by: Town Manager and Town Attorney

DISCUSSION (continued):

- 2) The Planning Commissioner exhibited bias which will affect her ability to vote on Housing Element amendments in the future; and
- 3) There was a violation of the Town Council's Code of Conduct (which also applies to Commissioners).

The evaluation committee determined that there is no conflict of interest because neither she nor her employer financially benefit from housing development in Los Gatos. The evaluation committee also determined that Procedural Due Process will not preclude the Commissioner from voting on future Housing Element amendments. Procedural Due Process principles prohibit public officials from exhibiting bias or pre-judgment before making a "quasi-judicial" decision. The Town's Housing Element is a legislative rather than a "quasi-judicial" decision. Commissioners are free to express opinions on general policy matters such as housing or legislative matters such as the Housing Element.

The evaluation committee did conclude that there was a violation of the Town's Code of Conduct in that the proponents of the referendum were described by race and socio-economic status. This violates the Code of Conduct's requirement for "constructive communication." The letter was also inconsistent with the Planning Commissioner Handbook's admonitions to: be considerate of "all interests, attitudes, and differences of opinion," "observe the appearance as well as the principle of impartiality," and "treat everyone with respect and dignity,"

Despite this violation of the Code of Conduct, the evaluation committee recognized that Commissioner Clark is prepared and participates actively in her responsibilities as a Planning Commissioner and noted that this is the first time she has violated the Town's Code of Conduct. For those reasons, the review committee has concluded unanimously that removal from the Planning Commission is not warranted.

CONCLUSION:

The evaluation committee recommends that the Town Council censure the Planning Commissioner for violating the Code of Conduct requirement for "constructive communication." In addition, the committee recommends that the Mayor provide counseling to the Commissioner regarding future communications.

COORDINATION:

This report was coordinated between the Town Manager's and Town Attorney's office.

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SUBJECT: Complaints Re: Planning Commissioner Letter to HCD

DATE: February 10, 2023

FISCAL IMPACT:

There is no fiscal impact to the Town.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Complaints Received
2. Town Council Code of Conduct