



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 11/21/2023

ITEM NO: 18

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DATE: November 12, 2023

TO: Mayor and Town Councilmembers

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: Discuss and Provide Direction to Potentially Modify Town Policies and Procedures, Including Town Council Policy 2-04, "Town Council Code of Conduct," Town Council Policy 2-05, "Planning Commission Policies and Procedures," Town Council Policy 2-11, "Commission Appointments, Residency, and Attendance Requirements, and Establishing a Quorum," and the Commissioner Handbook

**RECOMMENDATION:**

Discuss and provide direction to potentially modify Town Policies and Procedures, including Town Council Policy 2-04, "Town Council Code of Conduct," Town Council Policy 2-05, "Planning Commission Policies and Procedures," Town Council Policy 2-11, "Commission Appointments, Residency, and Attendance Requirements, and Establishing a Quorum," and the Commissioner Handbook.

**BACKGROUND:**

The purpose of this agenda item is for the Town Council to discuss potential updates to the various Town documents that address Councilmember and Board and Commission member conduct. Currently the Town has a number of Town Council Policies relating to this topic:

- Town Council Policy 2-04: Town Council Code of Conduct includes a disciplinary process and states its "expectations of conduct" apply to Board and Commission members as well (Attachment 1).
- Town Council Policy 2-05: Planning Commission Policies and Procedures addresses legal and ethical standards, but not discipline (Attachment 2).
- The Commissioner Handbook provides:

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Reviewed by: Town Manager

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SUBJECT: Direction on Potential Changes to Town Council Code of Conduct Policy and Related Policies

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BACKGROUND (continued):

“If a member of a Town Board, Commission, or Committee does not follow the Commissioners Handbook, the Mayor or his/her designee will counsel that member regarding the rules and their importance to the Council and the Town (see Resolution 1999-167 and the Town Council Code of Conduct Policy).”

- In addition, Town Council Policy 2-11: Commission Appointments, Residency, and Attendance Requirements, and Establishing a Quorum provides that a Commissioner may be removed by a 3/5 vote of the Town Council for, among other things, failure to comply with all Town Policies, Guidelines, and Handbooks (Attachment 3, page 7).<sup>1</sup>

At its February 17<sup>th</sup> meeting, the Policy Committee discussed potential modifications to the documents referenced above. A copy of the staff report with its attachments is included as Attachment 4. The Policy Committee recommended:

- 1) Clarifying that the Code of Conduct applies to members of Town Boards, Commissions, and Committees in addition to Town Councilmembers.
- 2) Providing specific examples of what constitutes a major as opposed to a minor violation of the Code of Conduct.
- 3) Setting forth a process for subject of a complaint to present facts to the Town Council.
- 4) In the event that a public hearing is held regarding recommended discipline, providing the subject of the complaint with ten minutes to make an introductory statement and five minutes at the end of the public hearing to make an additional statement.
- 5) Providing that censure be done by adoption of a written statement.
- 6) Providing clarification regarding the rules that apply when one is speaking on behalf of a Board or Commission versus providing one's individual opinion.

The Policy Committee considered this topic again on March 28, 2023. Attachment 5 contains a copy of the staff report and its attachments. At the March 28<sup>th</sup> meeting, the Policy Committee recommended that this topic come to the full Town Council for discussion.

In October, staff brought to the Policy Committee's attention that the Commission Appointment Policy contains language pertaining to conflict of interest which is better suited for the Town Council Code of Conduct Policy. The Committee agreed that when the Council discusses the Code of Code Policy, staff should suggest this modification and the removal of the conflict language from the Commission Appointment Policy.

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<sup>1</sup> In addition, Town Code Section 2.40.030 provides that the Town Council may remove any member of a Town board or commission from office prior to the expiration of the member's term by the affirmative vote of not less than 3/5 of all the members of the Town Council.

SUBJECT: Direction on Potential Changes to Town Council Code of Conduct Policy and Related Policies

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DISCUSSION:

The Town Clerk requested Codes of Conduct from all Santa Clara County jurisdictions.<sup>2</sup> Staff has noted the following general themes:

- The Code of Conduct can encompass both the Council and the Boards and Commissions or there can be separate Codes of Conduct for Councilmembers as opposed to Board and Commission members.
- Some Codes of Conduct do not provide for Commissioner discipline. Instead, the Codes of Conduct provide that Commissioners can be removed by a 4/5 vote of the Council.
- Many Codes of Conduct do not establish a formal process for reviewing complaints.

Staff seeks direction from the Town Council on the following general questions:

- 1) Does the Town Council prefer that the Code of Conduct address only conduct? Or that the “Code of Conduct” be one chapter in a broader policy addressing Councilmember roles and responsibilities?
- 2) Should the complaint intake and processing procedure in the “Code of Conduct” apply to Board/Commission members as well as Town Councilmembers? If yes:
  - a. Should there continue to be a pre-determined evaluation committee or should complaints be handled on a case by case basis?
  - b. If there is a pre-determined evaluation committee, should the evaluation committee be the same for both Councilmember complaints and Board/Commission member complaints?
- 3) Should there be an option to discipline Board/ Commission members or should the option be removal only?<sup>3</sup>
  - a. If the option is removal only, should it be by a 3/5 or a 4/5 Town Council vote?
- 4) If there is an option for Board/Commission member discipline, should the options be the same as those for Councilmember discipline?
- 5) The Code of Conduct Policy currently provides that investigations will be conducted by contract attorneys. Does the Town Council prefer to use contract attorneys, non-lawyer investigators, or either?

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<sup>2</sup> A summary of local codes of conduct is contained in Attachment 6.

<sup>3</sup> Town Council Policy 2-11: Commission Appointments, Residency, and Attendance Requirements and Establishing a Quorum currently provides that Commissioners may be removed by a majority vote of the Town Council for violations of the Code of Conduct. Other jurisdictions have policies providing that Commissioners may be removed by a majority vote (or in some instances, a 4/5 vote) of the Town Council.

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CONCLUSION:

Based on the Town Council's feedback, staff will make proposed edits to the Code of Conduct Policy and conforming edits to any other affected Policies and the Commissioner Handbook and return to the Town Council for its consideration of the proposed revisions.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

Potential modifications to Council Policies and the Commissioner Handbook have no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

This is not a project as defined in the California Environmental Quality Act, and no further action is required.

Attachments:

1. Town Council Policy 2-04: Town Council Code of Conduct
2. Town Council Policy 2-05: Planning Commission Policies and Procedures
3. Town Council Policy 2-11: Commission Appointments, Residency, and Attendance Requirements, and Establishing a Quorum
4. Staff report for February 28, 2023, Policy Committee meeting
5. Staff report for March 28, 2023, Policy Committee meeting
6. Summary of Code of Conduct Provisions from Other County Jurisdictions