



**TOWN OF LOS GATOS  
COUNCIL FINANCE COMMITTEE AGENDA  
JUNE 08, 2020  
110 EAST MAIN STREET  
LOS GATOS, CA  
5:00 PM**

*Rob Rennie, Council Member  
Marico Sayoc, Council Member  
Ron Dickel, Committee Member  
Terry Duryea, Committee Member  
Rick Tinsley, Committee Member*

**IMPORTANT NOTICE REGARDING THE JUNE 8, 2020 COUNCIL FINANCE COMMITTEE MEETING**

This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29- 20 dated March 17, 2020, regarding the COVID- 19 pandemic. The live stream of the meeting may be viewed on television and/or online at <https://meetings.municode.com/PublishPage/index?cid=LOSGATOS&ppid=4bc370fb-3064-458e-a11a-78e0c0e5d161&p=0>. **In accordance with Executive Order N-29- 20, the public may only view the meeting on television and/or online and not in the Council Chamber.**

**PARTICIPATION**

If you are not interested in providing oral comments real-time during the meeting, you can view the live stream of the meeting on television (Comcast Channel 15) and/or online at <https://www.youtube.com/channel/UCFh35XRBWer1DPx-F7vvhcg>.

If you are interested in providing oral comments real-time during the meeting, you must join the Zoom webinar at <https://losgatosca.gov.zoom.us/j/91880156091> password: 454854.

During the meeting:

- When the Chair announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press \*9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- When called to speak, please limit your comments to three (3) minutes, or such other time as the Chair may decide, consistent with the time limit for speakers at a Council meeting.

If you are unable to participate in real-time, you may email to [PublicComment@losgatosca.gov](mailto:PublicComment@losgatosca.gov) with the subject line “Public Comment Item #\_\_” (insert the item number relevant to your comment) or “Verbal Communications – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 3:00 p.m. on the day of the meeting. All comments received will become part of the record. The Chair has the option to modify this action on items based on comments received.

## **REMOTE LOCATION PARTICIPANTS**

*The following Committee Members are listed to permit them to appear electronically or telephonically at the Council Finance Committee meeting: COUNCIL MEMBER ROB RENNIE, COUNCIL MEMBER MARICO SAYOC, COMMISSIONER RON DICKEL, COMMISSIONER TERRY DURYEA, COMMISSIONER RICK TINSLEY. All votes during the teleconferencing session will be conducted by roll call vote. All votes during the teleconferencing session will be conducted by roll call vote.*

## **MEETING CALLED TO ORDER**

## **ROLL CALL**

**CONSENT ITEMS** *(Items appearing on the Consent Items are considered routine and may be approved by one motion. Any member of the Committee or public may request to have an item removed from the Consent Items for comment and action. A member of the public may request to pull an item from Consent by following the Participation Instructions contained on Page 2 of this agenda. If an item is pulled, the Chair has the sole discretion to determine when the item will be heard. Unless there are separate discussions and/or actions requested by the Committee, staff, or a member of the public, it is requested that items under the Consent Items be acted on simultaneously.)*

1. Approve Council Finance Committee Minutes of February 3, 2020.

**VERBAL COMMUNICATIONS** *(Members of the public are welcome to address the Committee on any matter that is not listed on the agenda consistent with the Participation Instructions contained on Page 2 of this agenda. To ensure all agenda items are heard and unless additional time is authorized by the Chair, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

**OTHER BUSINESS** *(Up to three minutes may be allotted to each speaker on any of the following items consistent with the Participation Instructions contained on Page 2 of this agenda.)*

2. Provide Direction to the Town Pension and OPEB Trusts Oversight Committee on Investment Methodologies for Additional Discretionary Payments (ADPs).
3. Review the Finance Committee's Enabling Resolution 2019-042 and Provide Input as it Relates to Composition, Voting, and Purpose and Scope of the Committee.

## **ADJOURNMENT**



**TOWN OF LOS GATOS  
COUNCIL FINANCE COMMITTEE  
AGENDA REPORT**

MEETING DATE: 06/08/2020

ITEM NO: 1

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**DRAFT  
Minutes of the Council Finance Committee Meeting  
February 3, 2020**

The Council Finance Committee of the Town of Los Gatos conducted a meeting on Monday, February 3, 2020, at 5:00 p.m.

**MEETING CALLED TO ORDER AT 5:02 P.M.**

**ROLL CALL**

Present: Council Member Rob Rennie, Council Member Marico Sayoc, and Committee Members Ron Dickel, Terry Duryea, and Rick Tinsley.

Absent: None

Staff Present: Town Manager Laurel Prevetti, Assistant Town Manager Arn Andrews, Finance Director Stephen Conway, and Finance and Budget Manager Gitta Ungvari

**CONSENT ITEMS**

1. Approve Council Finance Committee Meeting Draft Minutes of December 9, 2020.

**MOTION:** Motion by Council Member Rob Rennie to approve the item with adding the verbiage "to the Town Council" to Item 2. **Seconded** by Council Member Marico Sayoc.

**VOTE:** Motion passed unanimously.

2. Approve the Town Council Finance Committee Meeting Schedule for the 2020 Calendar Year.

**Motion** by Council Member Marico Sayoc to accept the meeting schedule with the addition of a February 8, 2021 meeting. **Seconded** by Council Member Rob Rennie.

**VOTE:** Motion passed unanimously.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

3. Adopt Committee Reorganization: Selection of Chair and Vice Chair.

**MOTION:** Motion by Council Member Marico Sayoc to nominate Council Member Rob Rennie as a Chair. **Seconded by Council Member Rob Rennie.**

**VOTE:** Motion passed unanimously.

**MOTION:** Motion by Council Member Marico Sayoc to nominate Terry Duryea as Vice Chair. **Seconded by Council Member Rob Rennie.**

**VOTE:** Motion passed unanimously.

4. Review the Two Available California Employers' Pension Prefunding Trust (CEPPT) Asset Allocation Options and Provide a Recommendation to the Town Pension/OPEB Oversight Committee.

Arn Andrews, Assistant Town Manager presented the Staff Report.

Opened Public Comment.

Phil Koen

- Commented that all available funds should be paid directly to CalPERS paying of loss/gain bases.

Closed Public Comment.

Committee members discussed the information, focusing on two primary considerations: (1) concerns about existing and future assets remaining idle in the CEPPT account regardless of which asset allocation was chosen, and (2) the need for a clearly defined methodology for allocating assets to pay off amortization bases. The Committee recommended CEPPT Strategy 2 to the Town Pension/OPEB Oversight Committee and requested that the two considerations also be conveyed to the Oversight Committee.

**ADJOURNMENT:**

The meeting adjourned at 6:03 p.m.



PAGE 3 OF 3

SUBJECT: Draft Minutes of the Council Finance Committee Meeting of February 3, 2020

DATE: February 21, 2020

This is to certify that the foregoing is a true  
and correct copy of the minutes of the  
February 3, 2020 meeting as approved by the  
Council Finance Committee.

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Gitta Ungvari, Finance and Budget Manager



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

MEETING DATE: 06/08/2020

ITEM NO: 2

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DATE: June 1, 2020  
TO: Council Finance Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Provide Direction to the Town Pension and OPEB Trusts Oversight Committee on Investment Methodologies for Additional Discretionary Payments (ADPs)

**RECOMMENDATION:**

Provide direction to the Town Pension and OPEB Trusts Oversight Committee on investment methodologies for additional discretionary payments (ADPs).

**BACKGROUND:**

On September 3, 2019, the Town Pension and OPEB Trusts Oversight Committee (Oversight Committee) directed staff to utilize the funds in the PARS account to make payments directly to CalPERS toward existing long-term amortization bases. Per the Oversight Committee direction, the first additional discretionary payment (ADP) of \$4,753,965 for the 2016 gain/loss amortization base was transferred to CalPERS from PARS on October 11, 2019. Under the same direction, the remaining PARS account balance in conjunction with committed Pension/OPEB fund balance was to be used as an ADP to pay a 2015 gain/loss amortization base of approximately \$3,660,342 prior to September 2020.

On February 3, 2020, the Council Finance Committee reviewed the two CEPPT asset allocation options available through CalPERS and staff's recommendation that Strategy 2 be brought forward to the Oversight Committee. The Council Finance Committee discussion regarding asset allocation options focused on two primary considerations: concerns about existing and future assets remaining idle in the CEPPT account regardless of which asset allocation was chosen, and that a clearly defined methodology for allocating assets to pay off amortization bases should be employed. In addition, one Committee member expressed concerns that the current ADP payment approach adopted on September 3, 2019, was not fully understood by the Oversight Committee and not the optimum approach.

**PREPARED BY:** Arn Andrews  
Assistant Town Manager

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

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SUBJECT: Provide direction to the Town Pension and OPEB Trusts Oversight Committee on investment methodologies for additional discretionary payments (ADPs)

DATE: June 2, 2020

BACKGROUND (continued):

To ensure that assets are deployed on a continual basis from the CEPPT to selected amortization bases, the Finance Committee ultimately suggested that a monthly transfer schedule be adopted similar to the dollar cost averaging that was utilized when the PARS account was first established. The preliminary methodology recommended was for minimum monthly payments of \$300,000 or approximately one-twelfth (1/12) of the total assets available at the time. Following the Finance Committee meeting, staff consulted with CalPERS regarding the proposed methodology and was informed that it would result in a significant administrative challenge.

Based on the discussions with CalPERS, staff presented the initial monthly methodology provided by the Finance Committee and a revised staff recommendation for quarterly payments to the Oversight Committee on March 3, 2020. At the conclusion of the discussion, the Oversight Committee voted to make the second amortization base payoff in full and referred the development of a future ADP payment methodology back to the Finance Committee.

DISCUSSION:

Since the Finance Committee last discussed ADP payment methodologies, staff has learned that any additional discretionary payments provided to CalPERS are not treated as an additional unique market exposure. Instead as CalPERS receives monies in practice, they attribute a prorated proportional share of whatever the investment returns are for those additional payments in a single fiscal year rather than a daily share price type of exposure similar to a mutual fund.

As an example, if the Town made an ADP halfway through the year and the CalPERS PERF Fund ended the year up 10%, the ADP would receive 6/12s of the return or 5%. This methodology could create a scenario where if the CalPERS portfolio were to perform better after payment of an additional amortization base but remain below the expected rate of return for the year, the Town's ADP would be allocated a proportionate investment loss as opposed to an investment gain since deposit. As a result, the Town may wish to make an annual payment to CalPERS at the beginning of each fiscal year to obtain the benefit of a full year of returns.

In addition, the Finance Committee may wish to consider alternative options for dollar cost averaging future ADPs. One option the Committee could consider would be utilizing the CalPERS CEPPT products to gain dollar cost averaged market exposures while accumulating funds for an annual ADP to the CalPERS PERF Fund. As previously discussed, CEPPT provides two asset allocations with varying degrees of exposure to equity, fixed income, Treasury Inflation Protected Securities (TIPS), Real Estate Investment Trusts (REITs), and liquidity.

SUBJECT: Provide direction to the Town Pension and OPEB Trusts Oversight Committee on investment methodologies for additional discretionary payments (ADPs)

DATE: June 2, 2020

DISCUSSION (continued):

The CEPPT products are fully unitized with unit values being determined on a daily basis with a daily share price. On any given day, they have a unit value which when multiplied by the number of units owned equals the market value of assets under management.

CEPPT Strategy 1 has a medium risk tolerance with a 5.0% expected return and 8.2% expected volatility. CEPPT Strategy 2 has a lower risk tolerance with a 4.0% expected return and 5.2% expected volatility. Previously the Oversight Committee opted to use Strategy 2 with the understanding that the lower volatility asset allocation was conducive to the timing of frequent asset transfers to the CalPERS PERF Fund.

Given the CalPERS methodology, the Finance Committee may wish to consider utilizing either asset allocation depending on the timing of transfers to PERF and the desired equity exposure.

Following are the two asset allocations:

Asset Allocation Targets	Benchmark	Strategy 1	Strategy 2
Global Equity	MSCI ACWI IMI (Net)	40% +/- 5%	14% +/- 5%
Fixed Income	Bloomberg Barclays U.S. Aggregate Bond Index	47% +/- 5%	73% +/- 5%
Global Real Estate (REITs)	FTSE EPRA/NAREIT Developed Liquid (net)	8% +/- 5%	8% +/- 5%
Treasury Inflation Protected Securities (TIPS)	Bloomberg Barclays U.S. TIPS Index (Series L)	5% +/- 3%	5% +/- 3%
Liquidity	91-Day Treasury Bill	0% +2%	0% +2%

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SUBJECT: Provide direction to the Town Pension and OPEB Trusts Oversight Committee on investment methodologies for additional discretionary payments (ADPs)

DATE: June 2, 2020

CONCLUSION:

Given the methodology utilized by CalPERS for ADPs received into the PERF Fund, the Finance Committee should reevaluate dollar cost averaging strategies for future Town ADPs and provide the Oversight Committee with recommendations.

COORDINATION:

This staff report has been coordinated with the Town Manager and Director of Finance

FISCAL IMPACT:

No fiscal impact beyond the normal market exposures attributed to pension assets.

ENVIRONMENTAL ASSESSMENT:

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



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

MEETING DATE: 06/08/2020

ITEM NO: 2

DESK ITEM

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DATE: June 8, 2020  
TO: Council Finance Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Provide Direction to the Town Pension and OPEB Trusts Oversight Committee on Investment Methodologies for Additional Discretionary Payments (ADPs)

**REMARKS:**

Attachment 1 contains public comments received after publishing the Staff Report and before 11:01 am Monday, June 8, 2020.

**Attachment distributed with this Desk Item:**

1. Public Comments received after publishing the Staff Report and before 11:01 a.m. on Monday June 8, 2020.

**PREPARED BY:** Arn Andrews  
Assistant Town Manager

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

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**Subject:** Agenda Item #2 - Timing of an ADP

**From:** Phil Koen <[pkoen@monteropartners.com](mailto:pkoen@monteropartners.com)>

**Sent:** Monday, June 8, 2020 10:13 AM

**To:** Rob Rennie; Marico Sayoc; Terry Duryea; Ron Dickel; Rick Tinsley

**Cc:** Laurel Prevetti; jak vannada; Lee Fagot

**Subject:** Agenda Item #2 - Timing of an ADP

Dear Finance Committee,

Staff has raised the question as to the “timing” of an ADP to minimize **downside risk** of incurring a loss base in the year the ADP is made. Staff hypothesizes that “the Town may wish to make an annual payment (I am assuming an ADP and not the annual minimum payment) at the beginning of each fiscal year to obtain the benefit of a full year of returns”.

Staff is correct in their statement that CALPERS will attribute a “prorated proportional share” of whatever the investment return for that year to the ADP. The easiest way to think of this is that the ADP will earn the actual return for that investment year based on the “time weighted invested fund exposure” for the year. For instance, the \$3.6m that was originally planned to be paid to CALPERS by May 1, would have a “time weighted invested fund exposure” of only 60 days. For CALPERS that means the \$3.6m ADP would only have a \$591,000 ( $\$3.6m \times (60/365)$ ) exposure to the FY 20 actual returns. If we assumed that CALPERS has a 0% return for FY 20, the “base loss” for that year would be 7% (because 7% is the expected return for FY 20 but 0% was realized). Using a 7% “loss”, the FY 20 loss base attributed to the \$3.6m ADP would be \$41,370 ( $\$591,000 \times 7\%$ ). That loss would be added to the schedule of prior year’s gain/loss bases and amortized over a 20-year period. Based on the desire to avoid a “loss base” the Council decided to defer the \$3.6m ADP payment until the start of the fiscal year 2021.

But was this really the right thing to do? I don’t believe it was. When considering the timing of an ADP the only factor to consider is to insure the Town gets credit in the next fiscal year for extinguishing the target loss base prior to CALPERS cut-off date, which I believe is May 1. When making an ADP, debt is being paid down. The most important point is to remember that when a loss base is extinguished, the 7% interest charge associated with this loss base stops and the principal amount is removed from the calculation of next year’s mandatory UAL payment. If ADP’s are made prior to May 1, CALPERS will factor all payments into the next year’s mandatory UAL.

Examining Council’s decision to defer the \$3.6m ADP until the next fiscal year, the Council failed to realize that by not making the payment by May 1, the Town would not capture the reduction in the next year’s mandatory UAL payment. The trade off the Council made was in their desire to avoid an incremental \$41,370 loss base associated with the \$3.6m ADP, they gave up a \$280,000 reduction in the FY 21 mandatory UAL payment, which was the amount of the benefit associated with paying off the targeted 2015 loss base. I believe it would have been better to realize a \$280k reduction in the FY 21 UAL payment in exchange for incurring a \$41k “base loss”.

The point of revisiting the Council’s decision is to reinforce that it is impossible to “time” the market and the Town should refrain from attempting to do so. It is best to simply make the ADP when the Town’s cash flow can afford it, with an eye to making the payments prior to May 1. The Staff’s recommendation of making ADP’s at the beginning of the year does not provide any “protection” from the current year’s investment return. What it does do is to maximize the “time weighted invested fund exposure”.

This leads me to the notion of “unique market exposure”. Since CALPERS invests in a diversified class of assets, the notion of a “market” exposure really doesn’t exist. The return generated by CALPERS is the blended result of numerous

investments across many different assets classes (publicly traded equities, debt, real estate, private equity, etc.), each having unique risk vs return profile and operating independently. It isn't apparent to me that the concept of a "unique market exposure" is really relevant when it comes to making an ADP which is really a "pay-off" of debt. The rule of thumb of paying off debt is, the sooner the better so you avoid the 7% compounding interest charge.

While admittedly it is a confusing concept, ADP's are addressing prior years losses that have occurred and are being charged interest. Once the loss base is extinguished, it is no longer an element of the UAL calculation and interest on that loss base stops. That is the "looking back" part of an ADP. As a result, the benefits of making an ADP are certain.

That doesn't mean that the ADP will be protected from future "losses". That is the "looking forward" part of the ADP. The entire concept of how pension liabilities are funded is based on the assumption that the assets managed by CALPERS will generate a 7% return over the long haul. The decision as to when to make an ADP should not be based on your guess as to the "look forward" performance in any year. The CALPERS system is designed so that there will be fluctuations around the long-term investment return target of 7%. The years that experience a "loss" will be offset by the years that experience a "gain". The decision as to when to make an ADP should be based on the "looking back" benefit of making the payment to reduce the debt.

In closing, I do think that the Staff has made a good recommendation to use the CEPPT as a "holding tank" for future ADP's. The reason has nothing to do with the concept of "dollar cost averaging" which I do not believe is relevant when talking about funding a pension liability. Using the CEPPT will give the Town the flexibility to choose when to make ADP's while having funds invested in a trust which, while correlated to CALPERS investment returns, is still distinct.

At the end of the day, the Town still needs to make sizeable ADP's to pay down the unfunded pension liability as quickly as possible to minimize the 7% compounding interest charge.

Thank you.

Phil Koen



From: Jack Van Nada  
To: Laurel Prevetti  
Cc:  
Subject: For today's Finance Committee meeting Item 2  
Date: Monday, June 8, 2020 2:45 PM

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## Finance Committee Meeting 6-8-20 Item 2.

I am one of the co-sponsors of the Finance Commission Initiative.

To provide the public with a little background, I would like them to know that Mr. Keon and I asked for a meeting with the Town's Manager and Assistant manager to **discuss any concerns or comments** they would like to address before we had to go the initiative route. That was September 27<sup>th</sup> of 2019. The meeting ended in less than five minutes when we were told they had concerns, but no comments.

Next, in a Council meeting when the Council was inches away from adopting the initiative, Councilmember Jensen told us that she wanted us to get the signatures of the voters. So we did. Over 3000 signatures in 6 weeks. The citizens spoke and now the initiative is on the ballot for November 3, 2020.

I don't understand the staff's desire to now want to discuss this. Once the initiative has the signatures and all has been approved, the Council is getting the election they asked for. We endorse that decision unless they decide to adopt it very soon. That would save the town \$50,000.

I would like to ask:

- 1) What is the objective of this meeting?
- 2) What is to happen as a result of this meeting?
- 3) Why has staff waited this long to discuss potential changes to the FC charter?
- 4) Why has staff never engaged with the parties who created the initiative?
- 5) All of this may have been avoidable had the staff been willing to logically discuss our concerns before we had to take the initiative route.

What we do know is that without an initiative, the Council can kill the FC at any time. The initiative **prevents the removal** of the Finance Committee without a **vote of the people**. Please recall that this Finance Commission is strictly advisory to the Council. It could be an even bigger asset to the staff than they now provide with additional members and duties. It is my hope that the Finance Committee advises the Council to adopt the Finance Commission initiative.

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*Jak Van Nada -*

*Los Gatos Community Alliance*

*Facts Matter; Transparency Matters; Honesty Matters*



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

MEETING DATE: 06/08/2020

ITEM NO: 3

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DATE: June 2, 2020  
TO: Council Finance Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Review the Finance Committee's Enabling Resolution 2019-042 and Provide Input as it Relates to Composition, Voting, and Purpose and Scope of the Committee

**RECOMMENDATION:**

Review the Finance Committee's Enabling Resolution 2019-042 and provide input as it relates to composition, voting, and purpose and scope of the Committee.

**BACKGROUND:**

For many years, the Council Finance Committee consisted of two Council Members who met annually with the Town's independent auditor to discuss the Comprehensive Annual Financial Report (CAFR) prior to its consideration by the full Town Council. During the January 2017 Strategic Priorities session, the Town Council directed staff to return with options for increased public participation in the Finance Committee.

On February 21, 2017, the Town Council considered several options for increasing public involvement on the Finance Committee (Attachment 1) and directed staff to prepare an enabling resolution for the Finance Committee that would add three non-voting members of the public and clarify the scope of the Committee. On March 7, 2017, the Town Council adopted this enabling resolution for the Finance Committee (Attachment 2).

On December 18, 2018, the Town Council discussed the Internal Service Funds and Reserves and made several motions, including a request to re-evaluate the purpose and composition of the Council Finance Committee to determine if any changes are needed. On January 15, 2019, the Town Council heard proposed recommendations (Attachment 3) and chose to unanimously reaffirm the existing Resolution 2017-008. Subsequently on August 6, 2019, the Town Council

**PREPARED BY:** Arn Andrews  
Assistant Town Manager

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

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BACKGROUND (continued):

rescinded Resolution 2017-008 in order to facilitate the timely convening of the initial Sales Tax Oversight Committee meeting. Attachment 4 is the current adopted Enabling Resolution for the Finance Committee (2019-042).

DISCUSSION:

Similar to the initial discussion with Council in 2017, the current incumbents on the Finance Committee could provide relevant input regarding the evolution of the Finance Committee and potential changes to the current Resolution. Committee member input on the following core elements of the existing Resolution would be particularly helpful: Committee composition, voting, and purpose and scope. The current Resolution includes:

*Committee composition* – The Town Finance Committee consists of five (5) members. Two (2) Town Council Members, appointed annually by the Mayor, and three (3) adult residents, appointed by the Town Council.

*Voting* – The two Town Council Members are voting members and the three (3) adult resident members are non-voting members.

*Purpose and scope* - The function of the Committee shall be to serve in an advisory capacity to the Town Council regarding the following:

1. Annual review of the Town's investment policy;
2. Annual review of the independent financial audit (Comprehensive Annual Financial Report);
3. Annual review of and potential recommendations to address the Town's CalPERS unfunded pension and Other Post-Employment Benefits (OPEB) liabilities;
4. Annual review of proposals and make recommendations regarding new and increased revenue sources;
5. In the event the Town's Sales Tax Oversight Committee does not have the required five (5) members, the Council Finance Committee resident members will serve as members of the Sales Tax Oversight Committee.
6. Special projects as directed by the Town Council, Town Manager, or Finance Director.

It is not the purpose of the Committee to advise on regular or routine financial administration, nor to become involved in other than the financial impact of the projects/programs they are asked to review.

PAGE 3 OF 3

SUBJECT: Review the Finance Committee's Enabling Resolution 2019-042

DATE: June 2, 2020

DISCUSSION (continued):

Additional reference materials include: the proposed ballot initiative (Attachment 5), review of the ballot initiative by the Town Attorney (Attachment 6), and materials provided by Committee Member Duryea (Attachment 7).

CONCLUSION:

Staff looks forward to the discussion and receiving substantive input from the Committee regarding the Committee Enabling Resolution. The Committee's ideas/recommendations will be provided to the Town Council for consideration of potential modifications to the Resolution.

COORDINATION:

This staff report was coordinated with the Town Manager, Town Attorney, and Director of Finance.

FISCAL IMPACT:

None

Attachments:

1. February 21, 2017 Staff Report
2. Resolution 2017-008
3. January 15, 2019 Staff Report
4. Resolution 2019-042
5. Proposed ballot initiative
6. Town Attorney review
7. Committee Member Duryea materials



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 02/21/2017

ITEM NO: 10

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DATE: FEBRUARY 13, 2017  
TO: MAYOR AND TOWN COUNCIL  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: OPTIONS TO INCREASE PUBLIC PARTICIPATION ON THE COUNCIL FINANCE COMMITTEE

**RECOMMENDATION:**

Staff recommends that the Council review the options and select one to increase public participation on the Council Finance Committee.

**BACKGROUND:**

At the January 31, 2017 meeting of the Town Council Priority Setting Session, staff was directed to explore options for increasing public participation on the two-member Town Council Finance Committee. The direction from Council was the result of requests from the public to provide input and to share expertise on a variety of financial issues facing the Town. The issues include CalPERS pension liability, Other Post Retirement Benefits (OPEB), and the annual financial audit/Comprehensive Annual Financial Report (CAFR).

Historically, the Council Finance Committee met annually to discuss the Comprehensive Annual Financial Report (CAFR). Last year, the Committee also met to discuss the CalPERS unfunded liability. The Committee typically gives a member of the public three minutes to provide input.

Given that the unfunded liability with CalPERS pensions and Other Post-Employment Benefits (OPEB) is a Council Strategic Priority, staff intends to bring options and strategies to the Council Finance Committee in March for discussion and possible recommendation prior to a full Town Council discussion in April. Consequently, staff anticipates additional Council Finance Committee meetings in 2017.

The public's input, perspectives, and ideas are an important part of the Town's deliberation of financial concerns, particularly unfunded liabilities. Staff requests Council's direction regarding a preferred approach to increase public participation on the Council Finance Committee.

**PREPARED BY:** KAY WINER  
Interim Assistant Town Manager

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

DISCUSSION:

**Options:**

There are three primary models for meaningful public participation.

1. The first is creation of a separate Finance Commission, comprised of public members appointed by the Council. The Commission would advise and make recommendations to the Town Council. Staff's research shows that this model is often structured to focus on specific financial issues, such as the budget or monitoring a tax measure. The Commission is advisory to the Council. This model was proposed by staff, but rejected by Council.
2. The second is to add members of the public to the existing two-member Council Finance Committee after a formal application and interview process. To implement this approach, the Council would need to adopt a resolution which would: define the purpose and scope of the Finance Committee; determine if the public members can vote; identify the qualifications, if any, to serve on the Committee; specify the number of public members; and align the process and term for appointments to be consistent with other Town Commissions.
3. The third model is to welcome the public to participate in all Council Finance Committee meetings without formal appointment. The public would be invited to join the Council Committee members at the table and participate in the discussion of all agenda items without strict time limits. The Committee Chair would lead the agenda and facilitate the discussion. This approach is similar to the way the Council Policy Committee currently functions.

If the Council wishes to pursue approach #2 (adding public members to the Council Finance Committee), staff recommends that the following parameters be drafted in a resolution for adoption at the next Council meeting.

- **Council Finance Committee Purpose and Scope**

Presently, the Council Finance Committee deals with a full range of finance-related issues facing the Town. The public members of the Finance Committee would participate in all meetings. The Council may wish to define the purpose and scope of the Committee. For example, the major issues that the public has already expressed interest in and a keen desire for participation, include CalPERS unfunded pension liability, OPEB, and the annual audit/Comprehensive Annual Financial Report (CAFR).

- **Voting**

Another issue to consider is whether the public members of the Finance Committee would have voting rights or if their function is to provide input to the Council Committee members during deliberations.

- **Potential Qualifications to Serve as a Public Member of Finance Committee**

1. Resident of Los Gatos and a registered voter;
2. Five years of experience in at least one of the following:
  - a. Financial experience in a corporate, business, or government setting;
  - b. Principal or officer at a financial auditing firm;
  - c. Investment banking;
  - d. Finance or budget management;
  - e. Certified public accountant (CPA)

- **Options for Number of Public Members**

The Town Council would need to determine the number of public members to join the two Council members on the Committee.

- **Selection Process**

Staff recommends that the appointment process follow the same procedures as described in the Town Council Policy entitled Commission Appointment Policy.

- **Term of Appointment**

The Town Commissioners typically serve for three (3) years. Terms of appointment should be for at least three years to allow sufficient time for the public members to develop an in depth understanding of the financial policies and issues facing the Town to provide meaningful input. Appointees to the Finance Committee should have the opportunity to serve additional terms, consistent with other Commission appointments.

**CONCLUSION:**

The Town Council has made the decision to increase public participation on the Finance Committee. This report provides alternatives on the role and functions of the public members, appointment process, and length of service on the Finance Committee. Since this is a new process for the Council, it can be viewed as a “pilot,” and evaluated after the first year of implementation, with any appropriate changes made at that time.



PAGE 4 OF 4

SUBJECT: OPTIONS TO INCREASE PUBLIC PARTICIPATION ON COUNCIL FINANCE  
COMMITTEE

DATE: FEBRUARY 13, 2017

COORDINATION:

This report was coordinated with the Finance Department and Town Attorney's Office.

FISCAL IMPACT:

The existing staff would continue to support the Council Finance Committee. Staff has also met with members of the community to answer their questions and review Town financial documents. At this time, the Finance Department is able to absorb additional fiscal impacts related to increased public participation.

ENVIRONMENTAL ASSESSMENT:

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

## RESOLUTION 2017-008

### RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ESTABLISHING THE TOWN COUNCIL FINANCE COMMITTEE

**WHEREAS**, the Town Council of the Town of Los Gatos has determined that there is a need for adult resident input to Council and staff regarding financial policy issues, and to promote citizens participation and understanding regarding the financial condition of the Town; and

**WHEREAS**, the Town Council of the Town of Los Gatos does hereby establish the terms and conditions for citizen appointment to and conduct of the Town Council Finance Committee. The Committee is advisory to the Town Council and shall be formed, convened, and governed by the following bylaws as adopted by the Town Council:

- A. The Town Council Finance Committee shall consist of five (5) members – two (2) Town Council Members as voting members, appointed annually by the Mayor, and three (3) adult residents as non-voting members, appointed by the Town Council, whose term of office shall be for three (3) years with no limitations on reappointments.
- B. A quorum shall consist of the two voting Council Members. The resident members of the Finance Committee shall participate in all meetings.
- C. Resident applicants shall follow the Town's standard recruitment and selection process and shall have the following qualifications to serve on the Council Finance Committee:
  1. Resident of Los Gatos and a registered voter;
  2. Five years of experience in at least one of the following:
    - a. Financial experience in a corporate, business, or government setting;
    - b. Principal or officer at a financial auditing firm;
    - c. Investment banking;
    - d. Finance or budget management;
    - e. Certified public accountant (CPA)
- D. The terms of office of the resident members shall be staggered and overlapped in such a manner that the terms of no more than one-third of the members expire each year.
- E. Resident members shall conform with all current Town Resolutions and Policies.
- F. The Town Council shall fill any resident member vacancies occurring during the term of the Committee.
- G. The members of the Committee shall serve without compensation, provided that with advance budgetary approval of the Town Council, the actual and necessary expenses (if any) incurred by the members in the conduct of Town business shall be reimbursable pursuant to the provisions of the current Administrative Policy.
- H. The Committee shall establish a regular time and location for its meetings and shall conduct its meetings in compliance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950).
- I. Minutes of the actions taken during the Committee's meetings shall be kept and shall be a public record.

ATTACHMENT 2

- J. The function of the Committee shall be to serve in an advisory capacity to the Town Council regarding the following:
1. Annual review of the Town's investment policy;
  2. Annual review of the independent financial audit (Comprehensive Annual Financial Report);
  3. Annual review of and potential recommendations to address the Town's CalPERS unfunded pension and Other Post-Employment Benefits (OPEB) liabilities;
  4. Annual review of proposals and make recommendations regarding new and increased revenue sources;
  5. Special projects as directed by the Town Council, Town Manager, or Finance Director.
- K. It is not the purpose of the Committee to advise on regular or routine financial administration, nor to become involved in other than the financial impact of the projects/programs they are asked to review.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council Finance Committee is hereby established as an advisory committee to the Los Gatos Town Council.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 7<sup>th</sup> day of March, 2017, by the following vote:

COUNCIL MEMBERS:

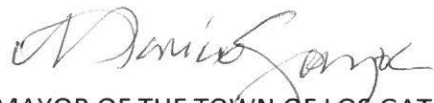
AYES: Marcia Jensen, Steve Leonardis, Rob Rennie, Barbara Spector, Mayor Marico Sayoc

NAYS: None.

ABSENT: None.

ABSTAIN: None.

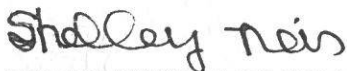
SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 3-10-17

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 3/10/17



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 01/15/2019

ITEM NO: 7

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DATE: JANUARY 10, 2019  
TO: TOWN COUNCIL  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: RESCIND RESOLUTION 2017-008 AND ADOPT A REPLACEMENT RESOLUTION  
ESTABLISHING THE TOWN COUNCIL FINANCE COMMITTEE

**RECOMMENDATION:**

Rescind Resolution 2017-008 and adopt a replacement resolution establishing the Town Council Finance Committee.

**BACKGROUND:**

For many years, the Council Finance Committee consisted of two Council Members who met annually with the Town's independent auditor to discuss the Comprehensive Annual Financial Report (CAFR) prior to its consideration by the full Town Council. During the January 2017 Strategic Priorities session, the Town Council directed staff to return with options for increased public participation in the Finance Committee.

On February 21, 2017, the Town Council considered several options for increasing public involvement on the Finance Committee (see Attachment 1) and directed staff to prepare an enabling resolution for the Finance Committee that would add three non-voting members of the public and clarify the scope of the Committee. On March 7, 2017, the Town Council adopted this enabling resolution for the Finance Committee (see Attachment 2).

Since that time, the Finance Committee has been primarily focused on addressing the Town's pension and Other Post-Employment Benefits (OPEB) obligations by recommending the formation of an IRS 115 Pension Trust, recommending initial investment strategies for both the Town's Pension and OPEB Trusts, and reviewing actuarial information and the Trusts' performance statements. Other activities included the annual review of the CAFR and the Town's Investment Policy among other items.

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

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BACKGROUND (continued):

With the establishment of the Pension Trust, the Town Council also established the Town Pension and OPEB Trusts Oversight Committee, appointed the Council Members as Oversight Committee members, and adopted its governing Investment Policy. The Oversight Committee has primary fiduciary responsibilities for managing the assets of both Trusts in the interest of current and former employees who do or will receive retirement and/or retiree health benefits.

During much of 2018, the Finance Committee expressed interest in reviewing the Town's budget to determine if additional resources might be available to be redeployed to unfunded pension and OPEB obligations. Based on the existing Finance Committee Resolution, staff explained that such a review is outside the scope of the Finance Committee's purview. In addition, budget decisions are an appropriation of public funds and are one of the key roles of the Town Council as the governing body authorized to expend funds on behalf of and accountable to the residents of Los Gatos. Given the continued interest by the Committee, staff did provide information to the Committee on the Town's funds, their purposes, and target levels as a courtesy prior to the Town Council's consideration of this same information. The Committee had robust discussions, questioning municipal financing practices and suggesting that the Town has too many Internal Service Funds and Reserves which has led to "excess cash" being reserved instead of being put towards a more productive use such as pension and OPEB liabilities.

On December 18, 2018, the Town Council discussed the Internal Service Funds and Reserves and made several motions, including a motion to return with analysis regarding a possible Internal Service Fund Policy and a motion to use the Finance Committee as the venue for public comment prior to returning to Council for the policy discussion. Given that the latter motion is not consistent with the current enabling resolution for the Committee, the Council also requested to re-evaluate the purpose and composition of the Council Finance Committee to determine if any changes are needed.

ANALYSIS:

As the Town Council considers the role of the Finance Committee in its advisory capacity to the Council, the Council may wish to consider the following items:

- The establishment of the Oversight Committee memorialized the fiduciary responsibilities inherent in the management of the Pension and OPEB Trusts within this governing body. As such, the Oversight Committee should be the only body discussing investment strategies, asset allocations, and actuarial assumptions.

ANALYSIS (continued):

- If the goal of the Town Council is to broaden public involvement in the Town's budget process, a larger community effort would be more appropriate rather than a single Committee. While welcome, financial expertise is not required for participation on the priorities and services of the Town. If this is an area that the Council would like to explore, staff is prepared to provide additional information.
- Given the interest of the Council to engage the public in the discussion regarding a potential Internal Service Fund Policy, staff recommends conducting outreach on this topic outside of any Council Committee. If the Town Council would prefer a Council Committee host the discussion, then the Council Policy Committee would be the appropriate venue given its wide scope to consider all matters of policy. Known interested residents would be invited to participate with either approach and the Council would receive the input as part of its consideration of the policy issue.

With these considerations in mind, staff recommends that the Town retain a Council Finance Committee to advise the Town Council on revenue enhancement recommendations as well as to conduct an annual review of the CAFR and the Town's Investment Policy.

The Town Council should decide if the current composition of the Finance Committee is meeting its goals for public participation. Options include:

- Return to the former composition of two Council Members
- Re-establish the Finance Committee as a Finance Commission with resident members only
- Maintain the current hybrid of voting Council Members and non-voting resident members

Staff recommends maintaining the current hybrid composition with the revised purpose described above (see Attachment 3).

COORDINATION:

The preparation of this report was coordinated between the Offices of the Town Manager and the Town Attorney and the Finance Department.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

PAGE 4 OF 4

SUBJECT: RESCIND RESOLUTION 2017-008 AND ADOPT A REPLACEMENT RESOLUTION  
ESTABLISHING THE TOWN COUNCIL FINANCE COMMITTEE

DATE: JANUARY 10, 2019

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. February 21, 2017 Report on Public Participation Options for the Finance Committee
2. Resolution 2017-008 Establishing the Town Council Finance Committee
3. Draft Resolution

## **RESOLUTION 2019-042**

### **RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS RESCINDING RESOLUTION 2017-008 AND ADOPTING REVISED ENABLING RESOLUTION TO ESTABLISH THE TOWN COUNCIL FINANCE COMMITTEE**

**WHEREAS**, the Town Council of the Town of Los Gatos has determined that there is a need for adult resident input to Council and staff regarding financial policy issues, and to promote citizens participation and understanding regarding the financial condition of the Town; and

**WHEREAS**, the Town Council of the Town of Los Gatos does hereby establish the terms and conditions for citizen appointment to and conduct of the Town Council Finance Committee. The Committee is advisory to the Town Council and operates in the manner herein after prescribed; and

**WHEREAS**, on March 7, 2017, the Town Council adopted Resolution 2017-008 to establish the Council Finance Committee; and

**WHEREAS**, the Council Finance Committee contains the necessary expertise to support the Town's Sales Tax Oversight Committee; and

**WHEREAS**, the Town needs a viable Committee structure to ensure the Sales Tax Oversight Committee can meet and fulfill its obligations.

**WHEREAS**, the Council Finance Committee shall be formed, convened, and governed by the following bylaws as adopted by the Town Council:

- A. The Town Council Finance Committee shall consist of five (5) members - two (2) Town Council Members as voting members, appointed annually by the Mayor, and three (3) adult residents as non-voting members, appointed by the Town Council, whose term of office shall be for three (3) years with no limitations on reappointments.
- B. A quorum shall consist of the two voting Council Members. The resident members of the Finance Committee shall participate in all meetings.

ATTACHMENT 4



- C. Resident applicants shall follow the Town's standard recruitment and selection process and shall have the following qualifications to serve on the Council Finance Committee:
1. Resident of Los Gatos and a registered voter;
  2. Five years of experience in at least one of the following:
    - a. Financial experience in a corporate, business, or government setting;
    - b. Principal or officer at a financial auditing firm;
    - c. Investment banking;
    - d. Finance or budget management;
    - e. Certified public accountant (CPA)
- D. The terms of office of the resident members shall be staggered and overlapped in such a manner that the terms of no more than one-third of the members expire each year.
- E. Resident members shall conform with all current Town Resolutions and Policies.
- F. The Town Council shall fill any resident member vacancies occurring during the term of the Committee.
- G. The members of the Committee shall serve without compensation, provided that with advance budgetary approval of the Town Council, the actual and necessary expenses (if any) incurred by the members in the conduct of Town business shall be reimbursable pursuant to the provisions of the current Administrative Policy.
- H. The Committee shall establish a regular time and location for its meetings and shall conduct its meetings in compliance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950).
- I. Minutes of the actions taken during the Committee's meetings shall be kept and shall be a public record.
- J. The function of the Committee shall be to serve in an advisory capacity to the Town Council regarding the following:
1. Annual review of the Town's investment policy;
  2. Annual review of the independent financial audit (Comprehensive Annual Financial Report);
  3. Annual review of and potential recommendations to address the Town's CalPERS unfunded pension and Other Post-Employment Benefits (OPEB) liabilities;
  4. Annual review of proposals and make recommendations regarding new and increased revenue sources;
  5. In the event the Town's Sales Tax Oversight Committee does not have the required five (5) members, the Council Finance Committee resident members will serve as members of the Sales Tax Oversight Committee.

6. Special projects as directed by the Town Council, Town Manager, or Finance Director.
- K. It is not the purpose of the Committee to advise on regular or routine financial administration, nor to become involved in other than the financial impact of the projects/programs they are asked to review.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council Finance Committee is hereby established as an advisory committee to the Los Gatos Town Council.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 6<sup>th</sup> day of August, 2019 by the following vote:

**COUNCIL MEMBERS:**

**AYES:** Marcia Jensen, Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Steven Leonardis

**NAYS:** None

**ABSENT:** None

**ABSTAIN:** None

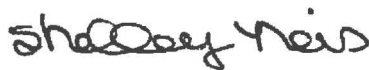
SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:



TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: 8/19/19



SEP 18 2019

**LOS GATOS TOWN FINANCE COMMISSION INITIATIVE**

**CLERK DEPARTMENT**

**BE IT ORDAINED** by the People of the Town of Los Gatos as follows:

**Section 1. Title.**

This measure shall be known and may be referred to as the "Town Finance Commission Initiative."

**Section 2. Findings and Declarations.**

**WHEREAS**, the Town's financial well-being is essential to ensuring that the Town can effectively provide services and fund all liabilities; and

**WHEREAS**, many residents of the Town possess substantial financial management experience and are eager to serve their community; and

**WHEREAS**, a Finance Commission consisting of qualified Town residents can help ensure the financial well-being of the Town and promote greater public understanding of Town financial matters; and

**WHEREAS**, a Finance Commission can increase citizen participation in Town governance and encourage greater resident engagement in Town financial decisions; and

**WHEREAS**, the People of Los Gatos wish to establish a Finance Commission to assist the Town Council in ensuring the financial well-being of the Town; and

**WHEREAS**, the People of Los Gatos do not wish to interfere with the budgetary authority or processes of the Town Council, but instead believe a Finance Commission can function as an advisory body and provide important guidance to the Town Council in carrying out its budgetary duties and establishing the Town's fiscal policies and priorities.

**NOW, THEREFORE**, the People of the Town of Los Gatos do hereby amend the Los Gatos Town Code as follows:

**Section 3. Amendment to the Los Gatos Town Code.**

(New language is indicated by underlining, and  
deleted language is indicated by ~~striketrough~~.)

- 1) A new Division is added to Article V of Chapter 2 of the Los Gatos Town Code to read in its entirety as follows:**

Division 3. – Finance Commission.

Sec. 2.50.200. – Finance Commission established.

- (a) The Finance Commission shall be established to serve in an advisory capacity to the Town Council by reviewing Town finances, including but not limited to the annual budget, Comprehensive Annual Financial Report, and capital expenditures, and making recommendations about the Town's financial, budgetary and investment matters and operations related thereto to the Town Council and any other Town department, agency, committee, commission or other body as the Town Council directs.
- (b) The Council Finance Committee is disbanded.
- (c) The Sales Tax Oversight Committee established by section 25.60.140 of the Town Code is disbanded and all powers and duties of that Committee are transferred to the Finance Commission.

Sec. 2.50.205. – Composition, appointment, terms.

- (a) The Finance Commission shall consist of five (5) voting citizen members ("Citizen Appointees") and two (2) non-voting Council Liaisons.
- (b) Council Liaisons.
  - (1) The Town Council shall appoint two Town Council members as non-voting Council Liaisons.
  - (2) The Council Liaisons shall serve on the Finance Commission until replaced by the Town Council but shall not serve beyond their terms on the Town Council.
  - (3) One Council Liaison shall be the Mayor or Vice-Mayor of the Town.
- (c) Citizen Appointees.
  - (1) Except with respect to initial appointments as provided for in section 2.50.205(c)(5), each member of the Town Council shall appoint one Citizen Appointee, upon expiration of terms described in section 2.50.205(c)(4).
  - (2) Citizen Appointees must be residents and registered voters of the Town.

- (3) No member of the Town Council may serve as a Citizen Appointee.
- (4) Citizen Appointees shall serve four-year terms, which shall expire on a staggered basis such that every year one term shall expire, except that once every four years, two terms shall expire. The term of each Citizen Appointee shall commence on the first day of January (or as soon as practicable after the effective date of this Division for initial Citizen Appointees), and shall expire on the thirty-first day of the fourth successive December.
- (5) As soon as practicable after the effective date of this Division, the initial appointment of the first Citizen Appointees shall be carried out as follows: Town Council members shall draw lots to determine the order of expiration for the terms of the first five Citizen Appointees such that one Citizen Appointee's term shall expire each year for four years after the effective date of this Division, and one additional Citizen Appointee's term shall expire in the fourth year after the effective date of this Division. Following the expiration of each of the first five Citizen Appointees' terms, a Citizen Appointee shall be appointed to serve a four-year term.
- (6) Citizen Appointees must be certified public accountants, chartered financial analysts, or have a business, finance, economics or accounting degree, and must have at least five years of experience in at least one of the following:
- (A) Financial experience in a corporate, business, or government setting;
  - (B) Principal or officer at a financial auditing firm;
  - (C) Investment banking; or
  - (D) Finance or budget management.
- (7) Should a Citizen Appointee resign or otherwise leave office prior to the end of his or her term, the appointing Town Council member for that Citizen Appointee shall, as soon as practicable, appoint a new Citizen Appointee to serve the remainder of the term.

- (d) Section 2.40.030 of the Town Code shall not apply to the Finance Commission.
- (e) Administrative support for the Finance Commission shall be provided by the Town Manager, the Director of Finance and by other Town staff as necessary.

Sec. 2.50.210. – Meetings and Records.

- (a) The Finance Commission shall hold at least one meeting per calendar quarter.
- (b) Meetings shall be held as required by the business needs of the Finance Commission in the Town Council chamber in the Town Hall or such other locations as allowed by the Ralph M. Brown Act, at a time that is convenient for the Finance Commission and the public to encourage public participation.
- (c) Meetings shall be subject to the Ralph M. Brown Act.
- (d) Nothing in this Division shall be construed as excluding any documents from the California Public Records Act.

Sec. 2.50.215. – Chair.

- (a) The Finance Commission shall appoint and prescribe the term of office for its Chair.
- (b) The Chair must be a Citizen Appointee.
- (c) All Finance Commission meetings shall be called by the Chair.
- (d) The Chair shall set all Finance Commission meeting agendas.

Sec. 2.50.220. – Quorum.

A majority of the Citizen Appointees of the Finance Commission shall constitute a quorum. Except as otherwise prescribed by ordinance or State law, a vote by a majority of a quorum shall be sufficient to transact business.

Sec. 2.50.225. – Duties.

(a) The Finance Commission shall:

- (1) Serve as an on-going, substantive and expert advisory body to the Town and Town Council so that the Town and Town Council can make informed decisions about the Town's financial, budgetary and investment matters and operations related thereto.
- (2) Review the Town Manager's annual proposed budget prepared in accordance with section 2.30.295(6) of the Town Code, and provide written comments and recommendations to the Town Council.
  - (A) The Finance Commission's comments and recommendations shall include a recommendation about whether the Town Council should approve or disapprove the proposed budget. The Finance Commission may make a recommendation of approval of the budget conditional upon the Town Council's acceptance of one or more of the Finance Commission's recommendations.
  - (B) The Town Manager must provide a proposed budget to the Finance Commission at least twenty (20) business days before the first meeting at which the proposed budget is considered by the Town Council.
- (3) Review the Town Manager's draft Comprehensive Annual Financial Report (CAFR) for the preceding fiscal year, and provide written comments and recommendations to the Town Manager.
  - (A) The Town Manager shall respond in writing to the Finance Commission providing his or her rationale for accepting or rejecting each of the Finance Commission's comments and recommendations prior to presenting the CAFR to the Town Council for formal consideration.
  - (B) The Town Manager may not present the CAFR to the Town Council for formal consideration unless or until he or she considers and responds in writing to all of the Finance Commission's comments and recommendations.
- (4) Review the Director of Finance's summary of the Town's financial report required by section 53891 of the California Government Code and prepared in accordance with section 2.50.010(c) of the Town Code, and provide written comments and recommendations to the



Director of Finance prior to the publishing of the summary of the report.

- (5) Review the financial policies and procedures manual developed in accordance with section 2.50.010(f) of the Town Code, and provide written comments and recommendations to the Director of Finance.
- (6) Prior to the Town's expenditure of any revenues from the tax authorized by sections 25.60.010 et seq. of the Town Code, review the proposed expenditures and advise the Town Council on whether such expenditures meet the Town Council's objectives for that tax:
  - (A) Maintaining and enhancing neighborhood police patrols and local crime prevention programs;
  - (B) Improving traffic flow to reduce congestion;
  - (C) Repairing potholes and maintaining the Town's streets, roads, and sidewalks; and
  - (D) Maintaining the Town's long-term financial stability.
- (7) Issue an annual public report of the expenditures and appropriations of sales tax revenues approved by the Town Council during each fiscal year.
- (8) Make recommendations to the Town Council about policies and programs:
  - (A) To maximize the Town's revenues consistent with existing taxation structures and inter-governmental funding opportunities;
  - (B) To maximize fee generation consistent with market rate charges for Town-provided services and market rate fees for utilization of Town-owned assets;
  - (C) To minimize the City's cost to provide core services and required activities, consistent with the desired service level for residents and other internal and external customers;
  - (D) To set funding goals for reserves, and review on-going progress related thereto;

- (E) To assess the risk associated with the structure and documentation of any proposed debt financing;
  - (F) To fund the Town's long-term compensation and benefit program liabilities in the most responsible and cost-effective way; and
  - (G) To monitor investment performance, and make recommendations related to the Town's investment policy and performance.
- (9) Provide written comments and recommendations regarding the selection of auditors for the CAFR.
  - (10) Participate in pre-audit meetings with auditors, provided that the Finance Commission shall not participate in those portions of any meetings which pertain to confidential employment or attorney-client privileged matters.
  - (11) Review and monitor any events or issues which may affect the financial status of the Town.
- (b) The duties of the Finance Commission shall not be altered, abridged or abrogated in any way by any body except by a vote of the majority of the voters of the Town.
  - (c) The Town Council shall make changes to the budgetary and all other Town processes and calendars as necessary to allow for consideration of the comments and recommendations of the Finance Commission outlined herein.

Sec. 2.50.230. – Conflicting Provisions.

Should any provision of this Division be found to conflict with the Los Gatos Town Code, this Division shall prevail, consistent with the purposes of the Finance Commission as set forth herein.

- 2) **Section 25.60.140 of the Los Gatos Town Code is hereby amended as follows:**

**Sec. 25.60.140. - Citizens' oversight and annual audit.**

- (a) ~~There shall be a committee appointed by the Town Council to The Finance Commission established by sections 2.50.200 et seq. of the Town Code shall review and report on the receipt of revenue and expenditure of funds from the tax authorized by this chapter ("revenues and expenditures"). The number, qualifications and duties of Committee members shall be established by ordinance or resolution of the Town Council.~~
- (b) Beginning with the fiscal year that ends June 30, 2019, the Town's independent auditors shall, as part of their annual audit of the Town's financial statements, review the collection and expenditure of revenue from the tax authorized by this chapter. The auditors' review shall be a public document. The Finance Commission ~~committee~~ shall annually review the auditors' findings and report in writing to the Town Council regarding the auditors' findings regarding the revenues and expenditures. The Finance Commission's ~~committee's~~ statement shall be transmitted to the Town Council for consideration at a public meeting.
- (c) ~~By January 31, 2019, the Town Council shall adopt a resolution establishing the composition of the committee and further defining its responsibilities consistently with this section. Provisions defining the scope of committee responsibilities and reporting requirements shall address bond oversight, in the event that a decision is made at a later time to sell bonds that are in part backed by the revenues referenced in this section. The Town Council shall appoint the initial members of the committee no later than March 1, 2019.~~

#### **Section 4. Earliest Possible Election.**

The People of Los Gatos hereby expressly request that, if not adopted by the Town Council, this measure be submitted to the voters of Los Gatos at a regular or special election at the earliest time allowable by law.

#### **Section 5. Severability.**

Should any provision of this measure, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, voidable, or invalid, that determination shall have no effect on any other provision, or the application of this measure to any other person or circumstance and, to that end, the provisions hereof are severable. By approving this measure, the voters express their intent that each section and subsection would have been adopted irrespective of whether any one or more sections or subsections are found to be

invalid or unconstitutional, and that each section and subsection is therefore explicitly severable, part-by-part, phrase-by-phrase, and word-by-word, and that if any portion is determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, voidable, or invalid, that the least amount of language be severed from the ordinance. When possible, if any duty granted to the Finance Commission by this measure is found to conflict with powers specifically granted to the Town Council by the Legislature, or found to be otherwise unlawful, the offending section or subsection shall be amended or interpreted to allow the Finance Commission the maximum allowable duties under the law.

#### **Section 6. Competing Initiatives/Measures.**

This measure is intended to be comprehensive. It is the intent of the People of Los Gatos that, in the event this measure and one or more measures relating to the same subject shall appear on the same ballot, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure or measures appearing on the same ballot regarding the same subject, then this measure shall take effect to the extent not in conflict with said other measure or measures.

#### **Section 7. Effective Date.**

This measure shall be considered adopted and become effective upon the date of the election which it was approved by the voters.

#### **Section 8. Liberal Construction.**

This measure is an exercise of the initiative power of the People of Los Gatos regarding the establishment of a Finance Commission and shall be liberally construed to effectuate its purposes.

#### **Section 9. Legal Defense.**

The People of Los Gatos desire that this measure, if approved by a simple majority of voters and thereafter challenged in court, be defended by the Town of Los Gatos. The People of Los Gatos, by approving this measure by a simple majority of voters, hereby declare that the proponent(s) of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the Town fails to defend this measure, or the Town fails to appeal an adverse judgment against the constitutionality, statutory

permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponent(s) or the voters the Town of Los Gatos shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People of Los Gatos, and the Town of Los Gatos shall indemnify the proponent(s) for reasonable expenses and other losses incurred by the proponent(s), as agent(s), in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the Town to perform the defense itself.



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 03/03/2020

ITEM NO: 10

DESK ITEM

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DATE: March 3, 2020  
TO: Mayor and Town Council  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Finance Commission Initiative

- a. Accept Elections Official's Certification of the Sufficiency of the Finance Commission Initiative Petition.
- b. Adopt a Resolution Calling the Election and Direct the Inclusion of the Preliminary Estimated Cost of the Election for the Finance Commission Initiative of \$54,200 in the Town Manager's Proposed Operating Budget for Fiscal Year 2020/21; or
- c. Order Report Pursuant to California Elections Code Section 9212.

**REMARKS:**

Attachment 5 includes public comment received between 11:01 a.m. Thursday, February 27, 2020 and 11:00 a.m. Tuesday, March 3, 2020.

Attachment 4 is an amended Resolution Calling the Election that amends the ballot question and adds Section 5 and 6 to incorporate the deadlines to file arguments for and against the measure.

In regard to the public comment received, staff disagrees with the statement " that the only substantive changes this initiative makes to the current advisor-only Finance Committee is to a) increase public participation by expanding the number of resident members to 5; b) expand the scope of the Committee to include a review the annual budget; and c) to transfer the Sales Tax Oversight Committee powers and duties to the Finance Commission."

**PREPARED BY:** Robert Schultz, Town Attorney  
Shelley Neis, Town Clerk

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Reviewed by: Town Manager and Finance Director

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REMARKS (continued):

The initiative substantially changes the duties and responsibilities of the current Finance Committee and includes a number of requirements that have the potential to have a fiscal impact on the Town. These new requirements include, but are not limited to, the following:

- Requires each member of the Town Council to appoint one Citizen Appointee to serve a four-year term with staggered terms. This is a different process from all other Town Commissions and Boards, and the initiative does not include the process of selection or removal for Commissioners. In addition, other provisions of the initiative are inconsistent and incompatible with the selection process. There will be a fiscal impact to implement this process, provide a legal opinion, and possibly defend litigation.
- Requires meetings to be determined by the Finance Commission and the Chair sets the agendas. This is a different process than all other Boards and Commissions, and even the Town Council. This will have a fiscal impact based upon the duties and responsibilities of the Finance Commission that are set forth in the initiative.
- Requires the Finance Commission to provide written comments and recommendations to the Town Council on the annual budget. There will be a fiscal impact on staff to prepare written comments and additional meetings will be required.
- Requires the proposed budget to be presented to the Finance Commission at least twenty (20) business days before the first meeting at which the proposed budget is considered by the Town Council. There will be a fiscal impact on the Town organization to prepare a budget within this timeframe and additional meetings will be required.
- Requires the Finance Commission to provide written comments and recommendations to the Town Council on the CAFR. There will be a fiscal impact on staff to prepare written comments and additional meetings will be required.
- Requires the Town Manager to respond in writing to the Finance Commission providing his or her rationale for accepting or rejecting each of the Finance Commission's comments and recommendations prior to presenting the CAFR to the Town Council for formal consideration. There will be a fiscal impact on staff to prepare written comments and additional meetings will be required.
- Requires the Finance Commission to provide written comments and recommendations to the Town Council regarding the Director of Finance's summary of the Town's financial report. There will be a fiscal impact on staff to prepare written comments and additional meetings will be required.
- Requires the Finance Commission to provide written comments and recommendations to the Town Council regarding the Town's administrative financial policies and procedures manual. There will be a fiscal impact on the Town organization to prepare written comments and additional meetings will be required. In addition, Town Council currently does not review Administrative Policies, so this requirement imposes a duty and responsibility outside of Council's purview.

REMARKS (continued):

- Requires the Finance Commission to make recommendations to the Town Council regarding policies and programs to maximize the Town's revenues consistent with existing taxation structures and inter-governmental funding opportunities. This will require additional staff time and meetings.
- Requires the Finance Commission to make recommendations to the Town Council regarding policies and programs to maximize fee generation consistent with market rate charges for Town-provided services and market rate fees for utilization of Town-owned assets. This will require additional staff time and meetings. In addition, this section would violate state law as the Town cannot provide market rate charges.
- Requires the Finance Commission to make recommendations to the Town Council regarding policies and programs to minimize the Town's cost to provide core services and required activities, consistent with the desired service level for residents and other internal and external customers. This will require additional staff time and meetings.
- Requires the Finance Commission to make recommendations to the Town Council regarding policies and programs to set funding goals for reserves and review on-going progress related thereto. This will require additional staff time and meetings.
- Requires the Finance Commission to make recommendations to the Town Council regarding policies and programs to assess the risk associated with the structure and documentation of any proposed debt financing. This will require additional staff time and meetings.
- Requires the Finance Commission to make recommendations to the Town Council regarding the Town's long-term compensation and benefit program liabilities in the most responsible and cost-effective way. This will require additional staff time and meetings. This provision may violate state law.
- Requires the Finance Commission to provide written comments and recommendations to the Town Council regarding the selection of auditors for the CAFR. There will be a fiscal impact on staff to prepare written comments and additional meetings will be required. In addition, Town Council currently is not involved in the selection process of professionals hired by Town and would give the Finance Commission a role that the Council does not have in administrative matters.
- Requires the Finance Commission to participate in pre-audit meetings with auditors. This will require additional staff time and meetings.
- Requires the Finance Committee to review and monitor any events or issues which may affect the financial status of the Town. This will require additional staff time and meetings.

Based upon all of the new responsibilities and duties of the Finance Commission that are set forth in the initiative, it is staff's recommendation that Town Council order a report pursuant to California Elections Code Section 9212 to study and determine the exact fiscal impacts of the initiative.



PAGE 4 OF 4

SUBJECT: Finance Commission Ballot Initiative

DATE: March 3, 2020

Attachments Previously Received with the Staff Report:

1. Proposed Initiative
2. Certification of Sufficiency
3. Resolution Calling the Election

Attachments Received with this Desk Item:

4. Amended Resolution Calling the Election
5. Public Comment

Date: April 7, 2020  
From: Terry Duryea  
To: Finance Committee members and Town Staff

Hello fellow Finance Committee members.

The memo summarizes the public information I found when researching the finance committee-like committees for 4 neighboring cities. The information sources included the city website, committee meeting agendas with attachments, committee meeting minutes, and reports to City Councils.

I am bcc'ing this to you so as not to violate the Brown Act. Please do not respond.

I understood from a March 5 meeting I attended with Laurel Prevetti, Arn Andrews and Rob Rennie that the Town was looking to our committee to review certain aspects of the Finance Committee focus in light of the proposed Initiative for the November ballot to form a Finance Commission. The following information is a summary of the responsibilities of other Finance Committees for the following cities:

- Los Altos Hills has a Finance & Investment Committee
- Los Altos has a Financial Commission
- Menlo Park has a Finance & Audit Committee
- Campbell has a subcommittee of the City Council made up of 2 Council members & 3 City Staff

As part of this research, I talked to committee members for the Los Altos and Los Altos Hills committees. But this report does not include any anecdotal information or observations they provided from those discussions.

<b>Responsibilities of the City's Finance Committee</b>				
	<b>Los Altos Hills</b>	<b>Los Altos</b>	<b>Menlo Park</b>	<b>Campbell</b>
Advisory body to council	X	x	x	**
Review annual budget + make recommendations	X	x	x	
Review 5/10 year plan	X	x		
Review 5 year capital budget + make recommendations	x	x	x	
Review annual audit	x		x	x
Advise the council on change + selection of auditors	x			
Study all fiscal issues + recommend possible improvements and economies	x			
Monitor investment performance + recommend changes as appropriate	x	x	x	x
Monitor Pension/OPEB obligations + recommend appropriate mitigation + reserve policies	x	x	x	
Review + update cities financial policy		x		
Review CAFR		x	x	x
Review City Managers Annual Financial Report		x	x	
Improve financial communication to public			x	
Assist in delivery of timely, clear & reliable financial info			x	
City/Town litigation exposure				x
Finance Committee have its own subcommittees	No	No	Yes	N/A
CAFR filed by 12/31	No	No	Yes-in November	No

Annual work plan	Yes	Yes	Yes	Unknown
Meeting frequency	Generally monthly	Generally monthly	5 times in 2019	2 times in 2019
Certificate of Excellence	Yes	Yes	Yes	Yes
** Campbell has no separate Finance Committee. It is a “sub-committee” of City Council				

The committee makeup for each of the Cities is:

Los Altos Hills	9 voting +3 non voting associates, all are residents
Los Altos	7 voting all residents + 1 Council member liaison
Menlo Park	7 voting, 5 residents plus Mayor and Vice Mayor
Campbell	2 Council members + City Mgr + 2 Finance Dept

The financial operations of the above cities and/or the relationships between Staff, Council and their respective committees is not all wine and roses. Based on reading the meeting minutes since December 2019, I identified the following items:

- \* *In December 2019, the Los Altos Hills Finance & Investment Committee chair sent a letter to the Council notifying them that as part of the audit of fiscal 2018-2019, the auditor reported to the Finance Committee that the audit had identified “three serious internal control failures...and [stated that] 25 adjusting journal entries [were] recommended to bring the financial statements into a position where the audit could be performed”.*
- \* *The January 20, 2020 Los Altos Finance Commission minutes said the Chair will send an email to Council on behalf of Finance Commission regarding their “discontent with the current financial positioning of the City. [The letter also] expressed the need for Council to have more accountability and consideration for the overall fiscal impact of their Council meeting decisions on the City.”*

Town Staff has reviewed my memo to ensure I do not violate the Brown Act. Therefore I have been careful to offer no opinions or conclusions, only information. Through Staff, I understand the Town will send us a Staff report prior to our committee meeting.

All the above information was gathered by me. Although I am a personal friend with one of the Town residents supporting the Finance Commission Initiative, the idea to do research and prepare a report was solely my idea—I gathered all the information.

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

MEETING DATE: 06/08/2020

ITEM NO: 3

DESK ITEM

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DATE: June 8, 2020  
TO: Council Finance Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Review the Finance Committee's Enabling Resolution 2019-042 and Provide Input as it Relates to Composition, Voting, and Purpose and Scope of the Committee

**REMARKS:**

Attachment 8 contains public comments received after publishing the Staff Report and before 11:01 a.m. on Monday June 8, 2020.

**Attachments previously distributed with the Staff Report:**

1. February 21, 2017 Staff Report
2. Resolution 2017-008
3. January 15, 2019 Staff Report
4. Resolution 2019-042
5. Proposed ballot initiative
6. Town Attorney review
7. Committee Member Duryea materials

**Attachment distributed with this Desk Item:**

8. Public Comments received after publishing the Staff Report and before 11:01 a.m. on Monday June 8, 2020.

**PREPARED BY:** Arn Andrews  
Assistant Town Manager

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

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**Subject:** 6/8/20 Finance Committee meeting -- Agenda Item #3  
**Attachments:** Finance Comm'n Initiative letter.pdf

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**From:** James Sutton <[jsutton@campaignlawyers.com](mailto:jsutton@campaignlawyers.com)>  
**Sent:** Friday, June 5, 2020 4:20 PM  
**To:** [rrrennie@losgatosca.gov](mailto:rrrennie@losgatosca.gov); Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>; [tduryea@aol.com](mailto:tduryea@aol.com); [ricketinsley1@gmail.com](mailto:ricketinsley1@gmail.com); [rondickel@gmail.com](mailto:rondickel@gmail.com)  
**Cc:** Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>  
**Subject:** 6/8/20 Finance Committee meeting -- Agenda Item #3

The attached letter relates to Item #3 on the agenda for Monday's Finance Committee meeting about the Finance Commission initiative on the November 2020 ballot.

James R. Sutton, Esq. | The Sutton Law Firm  
150 Post Street, Suite 405, San Francisco, CA 94108  
dir 415/732-4501 | fax 415/732-7701 | cell 415/359-7701  
[www.campaignlawyers.com](http://www.campaignlawyers.com) | [jsutton@campaignlawyers.com](mailto:jsutton@campaignlawyers.com)

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# THE SUTTON LAW FIRM

June 5, 2020

VIA EMAIL ONLY

Rob Rennie, Chair  
Terry Duryea, Vice Chair  
Councilmember Marico Sayoc  
Rick Tinsley  
Ron Dickel  
Los Gatos Finance Committee  
110 E. Main Street  
Los Gatos, CA 95030

RE: June 8, 2020 Finance Committee Meeting

Dear Chair Rennie and Other Committee Members:

We sent the attached letter to Mr. Schultz and Ms. Prevetti several weeks ago in response to City Attorney Schultz's March 3, 2020 legal analysis of the Finance Commission initiative sponsored by our client, the Los Gatos Community Alliance. We expected staff to forward the letter to Finance Committee members in connection with the Committee's discussion of the initiative, so were surprised to see that staff omitted the letter from the package of materials for Item #3 on the agenda of this Monday's Committee meeting (even though they included Mr. Schultz's March 3, 2020 memorandum).

We are now sending the letter directly to Finance Committee members so that you have more information about the initiative and in case staff raises any of the same issues outlined in Mr. Schultz's March 3 memorandum at Monday's meeting.

I also plan on participating in the interactive Zoom meeting in order to be available to answer any legal questions which Committee members may have about the initiative.

Sincerely,



James R. Sutton

Rob Rennie, Chair

June 5, 2020

Page 2

Attachment

cc: City Attorney Robert Schultz  
Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/dfm

#2040.02

## James Sutton

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**From:** James Sutton  
**Sent:** Sunday, May 3, 2020 7:40 PM  
**To:** Robert Schultz Esq. (rschultz@losgatosca.gov)  
**Cc:** manager@losgatosca.gov  
**Subject:** Finance Commission legal issues  
**Attachments:** Finance Commn Initiative Legal Issues.pdf

James R. Sutton, Esq. | The Sutton Law Firm  
150 Post Street, Suite 405 | San Francisco, CA 94108  
dir 415/732-4501 | cell 415/359-7701 | fax 415/732-7701  
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April 30, 2020

VIA EMAIL & U.S. MAIL

Robert Schultz, Esq.  
Los Gatos Town Attorney  
110 E. Main Street  
Los Gatos, CA 95030

RE: Finance Commission Initiative

Dear Mr. Schultz:

We hope that you, your family and other City employees are healthy and coping with the shelter-in-place changes to our professional and personal lives.

As you know, when the Town Council considered the Finance Commission initiative at its meeting last month, it decided to place the initiative on the ballot without having Town staff first study potential fiscal impacts under Elections Code section 9212. We nevertheless wanted to respond to the legal issues raised about the initiative at that meeting and in the staff memorandum prepared by you and Town Manager Laurel Prevetti dated March 3, 2020. We also wanted you, the City Council, the Town Manager and Finance Committee to have more information about these legal issues in connection with any future discussions about the initiative.

Preliminary Matters

As a preliminary matter, we were a bit surprised that your March 3<sup>rd</sup> memorandum infers that the initiative “may violate state law,” given the number of conversations which our firm had with you last year about various legal and procedural issues while we were drafting the initiative. In fact, you informed our office on September 12, 2019, after several of these conversations and right before we submitted the initiative to the City, that the final version of the initiative “appear[s] to resolve all conflicts with state law” (other than your concern about the length of the terms of the citizen appointees, see discussion below.) As you know, we attempted to respond to each and every legal concern you had about the Finance Commission, and certainly would

Robert Schultz, Esq.  
April 30, 2020  
Page 2

have worked to resolve any questions about the Finance Commission's recommendations for fee generation or compensation and benefit programs (the questions raised in your March 3<sup>rd</sup> memorandum) if you had raised those questions with us at the time. In any case, we hope that this letter clarifies these and any other remaining legal questions, so that any future comments about the initiative by the City will not include inferences about potential violations of state law.

We also disagree with the characterization in the March 3<sup>rd</sup> memorandum that the Commission will impose 17 or 18 "new requirements" on the Finance Committee. The Finance Commission is a proposed new Commission, not a modification of the existing Finance Committee (and section 2.50.020 of the initiative in fact would completely "disband" the Finance Committee). The initiative would require the Commission to make recommendations to the Town Council about the budget, CAFR and other fiscal matters and would require Town staff to provide administrative support to the Commission, but the implication that these staffing duties would be burdensome is unfounded.

These "opinions" about the potential legality and scope of the initiative also raise the specter that Town staff is using government resources to oppose the initiative which, as you know, would be against the law. The law strictly prohibits elected officials and government employees from expending public resources to promote or oppose one side of a ballot measure. (Cal. Govt. Code section 8314; Cal. Govt. Code section 54964; Vargas v. Salinas (2009) 46 Cal.4th 1; Stanson v. Mott (1976) 17 Cal.3d 206.) In fact, Town officials and employees who violate this law commit a crime and may be personally liable for fines up to \$1,000 for violation. (Cal. Penal Code section 424.) We trust that Town staff will limit any comments about the Finance Commission initiative in the future to neutral descriptions, not personal opinions about whether or not it violates a provision of state law or how much work it may create for Town staff.

#### Procedural Points

We want to begin by emphasizing three important procedural points which should appease any legal concerns which you, the Council or others may have about the initiative.

1. The Town own can adopt rules and regulations to implement details about Finance Commission. First, if the initiative were to become law, the Town would of course be able to adopt rules or regulations and otherwise make decisions about

Robert Schultz, Esq.

April 30, 2020

Page 3

implementing the ordinance, as long as those rules and decisions are consistent with the language of the law and necessary to effectuate its purpose. Like other laws adopted by the Town Council or State Legislature, the initiative can not anticipate every detail about the implementation and operation of the Finance Commission, and governmental entities have the authority to adopt rules and regulations to implement laws and clarify their interpretation when these types of questions arise. (See, e.g., Cal. Govt. Code section 11342.600, stating that a governmental agency may adopt a regulation in order to “implement, interpret, or make specific the law enforced or administered by it”; Cal. School Bds. Assn. v. State Bd. of Education (2010) 191 Cal. App.4<sup>th</sup> 530, 544; citations omitted [permitting governmental agencies to “fill up the details” of statutory scheme if “reasonably necessary to implement the purpose of the statute”].)

2. The Town can interpret any ambiguities. Second, the initiative contains a provision requiring that it be “liberally construed to effectuate its purposes.” (Section 8.) This provision – which is standard in most local initiatives – specifically allows the Town to construe any unclear provisions or unanswered questions about the initiative in a broad manner, while also acknowledging that all such interpretations must be consistent with the underlying purposes and intent of the law. Courts have also confirmed that local initiatives should be interpreted broadly in order to preserve the right of citizens to adopt laws via initiative: “It has long been our judicial policy to apply a liberal construction to the [initiative] power wherever it is challenged. . . Enactments should be interpreted when possible to uphold their validity.” (Associated Home Builders v. Livermore(1976) 18 Cal.3d 582, 591 & 598.)

3. Truly problematic provisions – of which we believe there are none – may be “severed.” Finally, also like most other local initiatives, the initiative contains a “severability” clause which protects the law should – as we do not believe will happen – any one provision be deemed to be legally invalid for some reason. (Section 5.) I.e., even if one of the duties imposed on the Commission turns out to conflict with a state law – which, again, we believe none do – that provision could simply be “severed” from the initiative; in that case, the Commission would not be required to undertake that particular duty, but the overall initiative would survive and the Commission would still be required to perform all of the other functions listed in the initiative. Courts routinely invalidate certain provisions of initiatives because they violate the State Constitution or state law while leaving all other provisions in operation. (See, e.g., Calfarm Insurance v. Deukmejian (1989) 48 Cal.3d 805, 821; People’s Advocate v. Superior Court (1986) 181 Cal. App.3d 316, 330.)

Responses to Specific Legal Questions

1. Terms of office for citizen appointees. Your first legal question about the initiative relates to the length of the terms of the residents who are appointed to the Commission by a Town Councilmember; specifically, you questioned whether these citizen appointees will stay on the Commission after the Councilmember who appointed them leaves office, whether because the Councilmember's term of office has ended or he or she has resigned. As you know, we discussed this issue with you before submitting the initiative and ultimately drafted the initiative to have the terms of citizen appointees last for four years, from January 1 until December 31 of their fourth year in office. (Section 2.50.205(c)(4).) We chose to not include any reference to whether the Councilmember who makes the appointment remains in office because we did not believe that the initiative could anticipate every possible scenario of when Councilmembers take office and make appointments, and because Councilmembers are likely to make citizen appointments mid-point during their terms on the Council (such as for the initial appointments).

We believe that this provision is clear that citizen appointees remain on the Commission for the full four years from January 1 through December 31 of the fourth year, regardless of whether their appointing Councilmember leaves office during that time period. How appointments work for other Town commissions or in other jurisdictions does not seem relevant. Saying that, if a circumstance arises when the Town may have to interpret the duration of a particular citizen appointee in a different way, the Town will have the authority to do so, as mentioned above, as long as the interpretation is consistent with the intent of the initiative. In any case, any question about the term of office of citizen appointees can be easily resolved and does not impact the legality of the initiative.

2. Potential "violations" of state law. The March 3rd staff memorandum makes two references to potential inconsistencies between the initiative and state law. Again, we would have appreciated hearing these legal concerns during our numerous discussions while the initiative was still being drafted, so that – just as we were able to do with respect to other questions you raised at that time – we could have had the opportunity to respond and perhaps alter these provisions if necessary. In addition, it is difficult to respond to your supposed concerns without more specific information about exactly which provisions of state law you believe may be implicated.

A. Commission recommendations regarding maximizing fee generation for Town services and assets. Your first legal concern relates to the provision in the initiative which requires the Finance Commission to make recommendations regarding maximizing fee generation for services provided by the Town and for the use of Town assets consistent with market rate charges for these types of services. (Section 2.50.225(a)(8)(B).) The March 3<sup>rd</sup> memorandum states that this provision would violate state law because “the Town cannot provide market rate charges,” thereby implying that something in state law may prevent cities from charging market rates for the provision of municipal services or the use of municipal facilities. If state law is truly that restrictive (which we do not believe it is, based on our experience with how other cities charge fees for the use of municipal facilities), you can give that legal advice to the Finance Commission which can then decide to adjust its recommendations accordingly. Moreover, if, based on your legal advice, the Town Council believes that a specific recommendation put forward by the Commission would run afoul of state law, it can choose not to adopt that recommendation.

In any case, we question how an initiative which merely requires an advisory body to make recommendations to the Town Council could violate state law. The initiative does not mandate any specific policies or programs which the Commission has to recommend for maximizing revenues from Town-provided services or the use of Town assets, or for making the funding of the Town’s long-term compensation and benefits program responsible and cost-effective. Legal restrictions on how the Town may charge for municipal services or facilities does not mean that the initiative “violates state law” and in any case can be easily addressed through the recommendation process.

B. Commission recommendations regarding funding the Town’s compensation and benefits program. Your second legal concern relates to the provision which requires the Commission to make recommendations regarding responsible and cost-effective ways to fund the Town’s long-term compensation and benefit program liabilities “may violate state law.” (Section 2.50.225(8)(F).) According to your comments at the Council’s meeting earlier this month, you are concerned that discussing compensation issues in open session at a Finance Commission meeting may violate confidentiality rules. We agree that state law may place certain restrictions of the ability of governmental entities to publicly debate the compensation of individual public employees and even compensation packages for classes of public employees in order to protect employees’ privacy rights – but of course governmental entities discuss compensation issues and vote on changes in salary, benefit and pension levels at public

Robert Schultz, Esq.  
April 30, 2020  
Page 6

meetings all of the time. We trust that the Finance Commission, with your legal counsel, will be able to navigate the open meeting laws and these privacy interests when making recommendation to the Town Council regarding the Town's long-term compensation and benefit program liabilities.

Just as with the comments about how the Town may charge for municipal services or facilities, this comments about the Town's compensation and benefits program does not justify the claim that the initiative "violates state law"; again, any concern about the open meeting laws and employees' privacy right case be easily addressed through the recommendation process.

\* \* \*

Everyone's focus now is of course on staying healthy and maintaining essential public services. Once the crisis abates and the November election nears, we look forward to a robust public debate over the advantages of creating an appointed Commission comprised of Councilmembers and citizens to make recommendations to the Town Council about important financial, budgetary and investment matters and operations. In the meantime, we hope that this letter clarifies the legal questions raised about the initiative, and you should feel free to contact us if you would like to discuss these legal questions in more detail or have any additional questions about the initiative.

Sincerely,



James R. Sutton

cc: Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/lc  
#2040.02

---

**Subject:** Agenda Item #3 - Finance Committee Meeting June , 2020  
**Attachments:** Finance Comm'n Initiative letter.pdf; comparision of responsibilities - landscape.pdf

**From:** Phil Koen <[pkoen@monteropartners.com](mailto:pkoen@monteropartners.com)>

**Sent:** Sunday, June 7, 2020 1:01 PM

**To:** Laurel Prevetti; Robert Schultz

**Cc:** Rob Rennie; Marico Sayoc; Terry Duryea; Ron Dickel; Rick Tinsley; [jvannada@gmail.com](mailto:jvannada@gmail.com); Rick Van Hoesen ([rick.vanhoesen@gmail.com](mailto:rick.vanhoesen@gmail.com)); Lee Fagot; Heidi Owens; [matthew@matthewhudes.com](mailto:matthew@matthewhudes.com); Maria Ristow; Peter Hertan; Catherine Somers; Marcia Jensen; BSpector; James Sutton; Lee Quintana

**Subject:** Agenda Item #3 - Finance Committee Meeting June , 2020

Dear Laurel,

Please ensure that this email, the attached letter from Sutton Law and the comparison of responsibilities analysis are included in the public record for the upcoming Finance Committee meeting.

We are very concerned that the Finance Commission ballot initiative (the "Initiative") and Mr. Schultz's March 3 "review of the ballot initiative" were included in the documents previously distribute for background reading, but Mr. Sutton's letter, which directly responds to material points in Mr. Schultz March 3 staff report, was not included. Reading Mr. Schultz's review without having the benefit of Mr. Sutton's legal response could lead to incorrect conclusions regarding the Initiative and prejudice the reader against the Initiative. You have been in possession of Mr. Sutton's letter for weeks, which leaves us unable to arrive at any reasonable explanation for the decision to not include this important document as background material for agenda item #3.

Mr. Sutton will be attending the Finance Committee meeting and is prepared to answer any questions regarding the Initiative. We are unclear as to how this will work given the 3-minute limitation placed on speakers. Our objective is to ensure the Finance Committee members and attending members of the public are fully and correctly informed about the Initiative. We request appropriate flexibility to achieve this goal.

In reading the Staff report for agenda item #3, we are troubled by the report because there is no discussion or detailed analysis of the Initiative other than noting that it is included in the background material. The staff report does not disclose that the Initiative has qualified for the November ballot by obtaining approximately 3,000 resident signatures. The staff report, under the conclusion section, states "staff looks forward to the discussion and receiving substantive input from the Finance Committee regarding the Committee Enabling Resolution," yet there is no analysis or comparison between the Initiative and the Enabling Resolution. The lack of any meaningful discussion of the measure as part of this agenda item raises fundamental questions of completeness and fairness of the deliberative process the staff is requesting from the Committee. To help remedy this omission, we have attached a document that compares the Initiative and the Enabling Resolution.

The residents of Los Gatos will have the opportunity to vote on the Initiative in 5 months. If the Initiative passes, all questions regarding the composition, voting and scope will be resolved, since the Initiative thoroughly addresses these points. It seems premature for this Committee and the Council

to consider any modifications to the current Enabling Resolution since any such changes would be replaced upon approval by voters of the Initiative. Why not wait to see the outcome of the election and then decide any next steps?

This Council and Staff have had many opportunities over the past 18 months to engage in meaningful discussion about restructuring the current Finance Committee. Both the Staff and the Council have, up to now, resisted any efforts to do so. It was this lack of action that convinced us that the only path forward for meaningful reform was through the initiative process. We even met with the Staff prior to launching the signature gathering phase to attempt a meaningful dialogue about the measure. The Staff declined to have that conversation stating that they had “no comments and no questions.”

It is therefore a bit of a head scratcher that on the eve of having voters directly decide on the scope and duties by voting on the Initiative, and after the Town Council has adopted the FY 21 budget without seeking any input from the current Finance Committee, the Staff is suddenly now eager to engage in reform discussions. Why now? What has happened that has changed the Staff’s position to now “look forward to .... receiving substantive input” when all such efforts have been consistently rebuffed for the past 18 months? Frankly, we find this strange and believe the Staff owes the residents an explanation of their change in position.

There is however one other alternative action that the Council could immediately take. Given that 3,000 voters, which is approximately 15% of all registered voters in the Town, have signed the petition to put this Initiative on the ballot, the Council could listen to this broad support and adopt the Initiative “as is.” This would result in the initiative not being on the ballot, will save the Town \$50,000 in printing and distribution costs at a time when it should be focused on conserving its scarce resources and immediately deliver the broad reform that residents are seeking.

Thank you.

Los Gatos Community Alliance

Phil Koen

Rick Van Hoesen

Jak VanNada



# THE SUTTON LAW FIRM

June 5, 2020

VIA EMAIL ONLY

Rob Rennie, Chair  
Terry Duryea, Vice Chair  
Councilmember Marico Sayoc  
Rick Tinsley  
Ron Dickel  
Los Gatos Finance Committee  
110 E. Main Street  
Los Gatos, CA 95030

RE: June 8, 2020 Finance Committee Meeting

Dear Chair Rennie and Other Committee Members:

We sent the attached letter to Mr. Schultz and Ms. Prevetti several weeks ago in response to City Attorney Schultz's March 3, 2020 legal analysis of the Finance Commission initiative sponsored by our client, the Los Gatos Community Alliance. We expected staff to forward the letter to Finance Committee members in connection with the Committee's discussion of the initiative, so were surprised to see that staff omitted the letter from the package of materials for Item #3 on the agenda of this Monday's Committee meeting (even though they included Mr. Schultz's March 3, 2020 memorandum).

We are now sending the letter directly to Finance Committee members so that you have more information about the initiative and in case staff raises any of the same issues outlined in Mr. Schultz's March 3 memorandum at Monday's meeting.

I also plan on participating in the interactive Zoom meeting in order to be available to answer any legal questions which Committee members may have about the initiative.

Sincerely,



James R. Sutton

Rob Rennie, Chair

June 5, 2020

Page 2

Attachment

cc: City Attorney Robert Schultz  
Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/dfm

#2040.02

## James Sutton

---

**From:** James Sutton  
**Sent:** Sunday, May 3, 2020 7:40 PM  
**To:** Robert Schultz Esq. (rschultz@losgatosca.gov)  
**Cc:** manager@losgatosca.gov  
**Subject:** Finance Commission legal issues  
**Attachments:** Finance Commn Initiative Legal Issues.pdf

James R. Sutton, Esq. | The Sutton Law Firm  
150 Post Street, Suite 405 | San Francisco, CA 94108  
dir 415/732-4501 | cell 415/359-7701 | fax 415/732-7701  
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150 Post Street, Suite 405 ■ San Francisco, CA 94108  
Tel: 415/732-7700 ■ Fax: 415/732-7701 ■ www.campaignlawyers.com

April 30, 2020

VIA EMAIL & U.S. MAIL

Robert Schultz, Esq.  
Los Gatos Town Attorney  
110 E. Main Street  
Los Gatos, CA 95030

RE: Finance Commission Initiative

Dear Mr. Schultz:

We hope that you, your family and other City employees are healthy and coping with the shelter-in-place changes to our professional and personal lives.

As you know, when the Town Council considered the Finance Commission initiative at its meeting last month, it decided to place the initiative on the ballot without having Town staff first study potential fiscal impacts under Elections Code section 9212. We nevertheless wanted to respond to the legal issues raised about the initiative at that meeting and in the staff memorandum prepared by you and Town Manager Laurel Prevetti dated March 3, 2020. We also wanted you, the City Council, the Town Manager and Finance Committee to have more information about these legal issues in connection with any future discussions about the initiative.

Preliminary Matters

As a preliminary matter, we were a bit surprised that your March 3<sup>rd</sup> memorandum infers that the initiative “may violate state law,” given the number of conversations which our firm had with you last year about various legal and procedural issues while we were drafting the initiative. In fact, you informed our office on September 12, 2019, after several of these conversations and right before we submitted the initiative to the City, that the final version of the initiative “appear[s] to resolve all conflicts with state law” (other than your concern about the length of the terms of the citizen appointees, see discussion below.) As you know, we attempted to respond to each and every legal concern you had about the Finance Commission, and certainly would

Robert Schultz, Esq.  
April 30, 2020  
Page 2

have worked to resolve any questions about the Finance Commission's recommendations for fee generation or compensation and benefit programs (the questions raised in your March 3<sup>rd</sup> memorandum) if you had raised those questions with us at the time. In any case, we hope that this letter clarifies these and any other remaining legal questions, so that any future comments about the initiative by the City will not include inferences about potential violations of state law.

We also disagree with the characterization in the March 3<sup>rd</sup> memorandum that the Commission will impose 17 or 18 "new requirements" on the Finance Committee. The Finance Commission is a proposed new Commission, not a modification of the existing Finance Committee (and section 2.50.020 of the initiative in fact would completely "disband" the Finance Committee). The initiative would require the Commission to make recommendations to the Town Council about the budget, CAFR and other fiscal matters and would require Town staff to provide administrative support to the Commission, but the implication that these staffing duties would be burdensome is unfounded.

These "opinions" about the potential legality and scope of the initiative also raise the specter that Town staff is using government resources to oppose the initiative which, as you know, would be against the law. The law strictly prohibits elected officials and government employees from expending public resources to promote or oppose one side of a ballot measure. (Cal. Govt. Code section 8314; Cal. Govt. Code section 54964; Vargas v. Salinas (2009) 46 Cal.4th 1; Stanson v. Mott (1976) 17 Cal.3d 206.) In fact, Town officials and employees who violate this law commit a crime and may be personally liable for fines up to \$1,000 for violation. (Cal. Penal Code section 424.) We trust that Town staff will limit any comments about the Finance Commission initiative in the future to neutral descriptions, not personal opinions about whether or not it violates a provision of state law or how much work it may create for Town staff.

#### Procedural Points

We want to begin by emphasizing three important procedural points which should appease any legal concerns which you, the Council or others may have about the initiative.

1. The Town own can adopt rules and regulations to implement details about Finance Commission. First, if the initiative were to become law, the Town would of course be able to adopt rules or regulations and otherwise make decisions about

Robert Schultz, Esq.

April 30, 2020

Page 3

implementing the ordinance, as long as those rules and decisions are consistent with the language of the law and necessary to effectuate its purpose. Like other laws adopted by the Town Council or State Legislature, the initiative can not anticipate every detail about the implementation and operation of the Finance Commission, and governmental entities have the authority to adopt rules and regulations to implement laws and clarify their interpretation when these types of questions arise. (See, e.g., Cal. Govt. Code section 11342.600, stating that a governmental agency may adopt a regulation in order to “implement, interpret, or make specific the law enforced or administered by it”; Cal. School Bds. Assn. v. State Bd. of Education (2010) 191 Cal. App.4<sup>th</sup> 530, 544; citations omitted [permitting governmental agencies to “fill up the details” of statutory scheme if “reasonably necessary to implement the purpose of the statute”].)

2. The Town can interpret any ambiguities. Second, the initiative contains a provision requiring that it be “liberally construed to effectuate its purposes.” (Section 8.) This provision – which is standard in most local initiatives – specifically allows the Town to construe any unclear provisions or unanswered questions about the initiative in a broad manner, while also acknowledging that all such interpretations must be consistent with the underlying purposes and intent of the law. Courts have also confirmed that local initiatives should be interpreted broadly in order to preserve the right of citizens to adopt laws via initiative: “It has long been our judicial policy to apply a liberal construction to the [initiative] power wherever it is challenged. . . Enactments should be interpreted when possible to uphold their validity.” (Associated Home Builders v. Livermore(1976) 18 Cal.3d 582, 591 & 598.)

3. Truly problematic provisions – of which we believe there are none – may be “severed.” Finally, also like most other local initiatives, the initiative contains a “severability” clause which protects the law should – as we do not believe will happen – any one provision be deemed to be legally invalid for some reason. (Section 5.) I.e., even if one of the duties imposed on the Commission turns out to conflict with a state law – which, again, we believe none do – that provision could simply be “severed” from the initiative; in that case, the Commission would not be required to undertake that particular duty, but the overall initiative would survive and the Commission would still be required to perform all of the other functions listed in the initiative. Courts routinely invalidate certain provisions of initiatives because they violate the State Constitution or state law while leaving all other provisions in operation. (See, e.g., Calfarm Insurance v. Deukmejian (1989) 48 Cal.3d 805, 821; People’s Advocate v. Superior Court (1986) 181 Cal. App.3d 316, 330.)

Responses to Specific Legal Questions

1. Terms of office for citizen appointees. Your first legal question about the initiative relates to the length of the terms of the residents who are appointed to the Commission by a Town Councilmember; specifically, you questioned whether these citizen appointees will stay on the Commission after the Councilmember who appointed them leaves office, whether because the Councilmember's term of office has ended or he or she has resigned. As you know, we discussed this issue with you before submitting the initiative and ultimately drafted the initiative to have the terms of citizen appointees last for four years, from January 1 until December 31 of their fourth year in office. (Section 2.50.205(c)(4).) We chose to not include any reference to whether the Councilmember who makes the appointment remains in office because we did not believe that the initiative could anticipate every possible scenario of when Councilmembers take office and make appointments, and because Councilmembers are likely to make citizen appointments mid-point during their terms on the Council (such as for the initial appointments).

We believe that this provision is clear that citizen appointees remain on the Commission for the full four years from January 1 through December 31 of the fourth year, regardless of whether their appointing Councilmember leaves office during that time period. How appointments work for other Town commissions or in other jurisdictions does not seem relevant. Saying that, if a circumstance arises when the Town may have to interpret the duration of a particular citizen appointee in a different way, the Town will have the authority to do so, as mentioned above, as long as the interpretation is consistent with the intent of the initiative. In any case, any question about the term of office of citizen appointees can be easily resolved and does not impact the legality of the initiative.

2. Potential "violations" of state law. The March 3rd staff memorandum makes two references to potential inconsistencies between the initiative and state law. Again, we would have appreciated hearing these legal concerns during our numerous discussions while the initiative was still being drafted, so that – just as we were able to do with respect to other questions you raised at that time – we could have had the opportunity to respond and perhaps alter these provisions if necessary. In addition, it is difficult to respond to your supposed concerns without more specific information about exactly which provisions of state law you believe may be implicated.

A. Commission recommendations regarding maximizing fee generation for Town services and assets. Your first legal concern relates to the provision in the initiative which requires the Finance Commission to make recommendations regarding maximizing fee generation for services provided by the Town and for the use of Town assets consistent with market rate charges for these types of services. (Section 2.50.225(a)(8)(B).) The March 3<sup>rd</sup> memorandum states that this provision would violate state law because “the Town cannot provide market rate charges,” thereby implying that something in state law may prevent cities from charging market rates for the provision of municipal services or the use of municipal facilities. If state law is truly that restrictive (which we do not believe it is, based on our experience with how other cities charge fees for the use of municipal facilities), you can give that legal advice to the Finance Commission which can then decide to adjust its recommendations accordingly. Moreover, if, based on your legal advice, the Town Council believes that a specific recommendation put forward by the Commission would run afoul of state law, it can choose not to adopt that recommendation.

In any case, we question how an initiative which merely requires an advisory body to make recommendations to the Town Council could violate state law. The initiative does not mandate any specific policies or programs which the Commission has to recommend for maximizing revenues from Town-provided services or the use of Town assets, or for making the funding of the Town’s long-term compensation and benefits program responsible and cost-effective. Legal restrictions on how the Town may charge for municipal services or facilities does not mean that the initiative “violates state law” and in any case can be easily addressed through the recommendation process.

B. Commission recommendations regarding funding the Town’s compensation and benefits program. Your second legal concern relates to the provision which requires the Commission to make recommendations regarding responsible and cost-effective ways to fund the Town’s long-term compensation and benefit program liabilities “may violate state law.” (Section 2.50.225(8)(F).) According to your comments at the Council’s meeting earlier this month, you are concerned that discussing compensation issues in open session at a Finance Commission meeting may violate confidentiality rules. We agree that state law may place certain restrictions of the ability of governmental entities to publicly debate the compensation of individual public employees and even compensation packages for classes of public employees in order to protect employees’ privacy rights – but of course governmental entities discuss compensation issues and vote on changes in salary, benefit and pension levels at public



Robert Schultz, Esq.  
April 30, 2020  
Page 6

meetings all of the time. We trust that the Finance Commission, with your legal counsel, will be able to navigate the open meeting laws and these privacy interests when making recommendation to the Town Council regarding the Town's long-term compensation and benefit program liabilities.

Just as with the comments about how the Town may charge for municipal services or facilities, this comments about the Town's compensation and benefits program does not justify the claim that the initiative "violates state law"; again, any concern about the open meeting laws and employees' privacy right case be easily addressed through the recommendation process.

\* \* \*

Everyone's focus now is of course on staying healthy and maintaining essential public services. Once the crisis abates and the November election nears, we look forward to a robust public debate over the advantages of creating an appointed Commission comprised of Councilmembers and citizens to make recommendations to the Town Council about important financial, budgetary and investment matters and operations. In the meantime, we hope that this letter clarifies the legal questions raised about the initiative, and you should feel free to contact us if you would like to discuss these legal questions in more detail or have any additional questions about the initiative.

Sincerely,



James R. Sutton

cc: Town Manager Laurel Prevetti  
Phil Koen  
Jak Vannada

JRS/lc  
#2040.02

	Existing Finance		Finance
	Committee Enabling		Commision
	Resolution		Ballot
Comparison of Responsibilities and Goals	2019-042		Intiative
Advisory Body to Council	yes		yes
Promote greater public understanding of Town's financial matters	yes		yes
Number of qualified citizen participants	3		5
Citizen participants have voting status	no		yes
Minimum meetings per year	not specified		4
Meeting agenda established by	not specified		Chair of Commission
Existence of Commission and duties eliminated by vote of Town Council	yes		no
Eliminates and assumes all responsibility for the Sales Tax Oversight Committee	no		yes
<b>Specific duties</b>			
Review annual budget & make recommendations to the Council			x
Review 5/10 year financial plan			x
Review 5 year capital budget & make recommendations			x
Review annual audit	x		x
Participate in pre-audit meetings with auditors			x
Advise the Council on change & selection of auditors			x
Study all fiscal issues & recommend possible improvements			x
Annual review of the Town's investment policy	x		x
Monitor investment performance & recommend changes in investment policy as appropriate			x
Monitor Pension/OPEB obligations & recommend appropriate mitigation & reserve policies	x		x
Review and update Town's financial policies			x
Review CAFR	x		x
Annual review of proposals/recommendations regarding new and increased revenue sources	x		x
Make recommendations to minimize the Town's cost to provide core services consistent with desired service levels			x
Special projects as directed by Town Council	x		x
Review City Managers Annual Financial Report			x

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**Subject:** Item 4 June 8 Finance Committee Meeting-Observations from interviews with Finance Committee members for MP, LA and LAH  
**Attachments:** LGFC2020\_04SurveyFinCommNeighborCitiesEdit\_060720.docx

**From:** Terry Duryea <[tduryea@aol.com](mailto:tduryea@aol.com)>

**Sent:** Sunday, June 7, 2020 2:44 PM

**To:** Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Arn Andrews <[aandrews@losgatosca.gov](mailto:aandrews@losgatosca.gov)>; Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>

**Subject:** Item 4 June 8 Finance Committee Meeting-Observations from interviews with Finance Committee members for MP, LA and LAH

Hello Town Staff and Fellow Finance Committee members (bcc'd Committee members)

At the request of Town Staff, I did not include personal observations in my April 7 memo you received on the results of my survey of Finance Committees of Menlo Park, Los Altos, Los Altos Hills, and Campbell. With the Finance Committee meeting on us, I want to share my observations from talking with Finance Committee members of the first 3 cities

- Los Gatos is stronger financially than the other cities
  - Los Gatos has been more aggressive to prefund our pension obligations than the other cities
  - Which is good because Los Gatos has a greater risk from stock market volatility and investment return under performance vs CALPERS estimates than other cities because Los Gatos has a very "mature" pension plan--i.e. a greater percentage of participants are receiving benefits compared to current employees
    - o That is a key reason why in spite of a strong stock market performance since 2009 and significant additional payments toward our pension obligation, our unfunded pension liability continues to grow
  - A natural friction exists between Staff & the Finance Committee and in some cases between Finance Committee and Council
    - o Over time, the friction was both constructive and destructive depending on who Chaired the Finance Committee and leadership of the Town. The following examples that I would guess created friction--good and bad
      - Los Alto Finance Committee sent letter to Council expressing "discontent with current financial positioning of the city...and expressed the need for Council to have more accountability and consideration for the overall fiscal impact of their Council meeting decisions"
      - Los Altos Hills Finance Committee sent letter to Council reporting "serious internal control failures" in financial operations identified as part of the audit
- Fortunately, based on my experience, I see no reason to expect our Finance Committee to issue similar letters*
- Menlo Park Staff, Council and Committee agreed Committee would review public documents /reporting to identify opportunities to improve presentation (formatting) and usefulness of information to Council and general public
  - Los Altos Hills Finance Committee member provided special expertise to address major sewage disposal issues

I reviewed my April 7 memo in preparing for this meeting and noticed I inadvertently omitted the fact that that the Los Altos Finance Committee also reviews the annual audit and advises the council on change + selection of auditors. An edited copy of my April 7 memo is attached.

Respectfully submitted  
Terry Duryea

Date: April 7, 2020 (updated June 7, 2020)  
From: Terry Duryea  
To: Finance Committee members (bcc) and Town Staff

Hello fellow Finance Committee members and Town Staff

The memo summarizes the public information I found when researching the finance committee-like committees for 4 neighboring cities. The information sources included the city website, committee meeting agendas with attachments, committee meeting minutes, and reports to City Councils.

I am bccing this to you so as not so as not to violate the Brown Act. Please do not respond.

I understood from a March 5 meeting I attended with Laurel Prevetti, Arn Andrews and Rob Rennie that the Town was looking to our committee to review certain aspects of the Finance Committee focus in light of the proposed Initiative for the November ballot to form a Finance Commission. The following information is a summary of the responsibilities of other Finance Committees for the following cities:

- Los Altos Hills has a Finance & Investment Committee
- Los Altos has a Financial Commission
- Menlo Park has a Finance & Audit Committee
- Campbell has a subcommittee of the City Council made up of 2 Council members & 3 City Staff

As part of this research, I talked to committee members for the Los Altos and Los Altos Hills committees. But this report does not include any anecdotal information or observations they provided from those discussions.

<b>Responsibilities of the City's Finance Committee</b>				
	<b>Los Altos Hills</b>	<b>Los Altos</b>	<b>Menlo Park</b>	<b>Campbell</b>
Advisory body to council	X	x	x	**
Review annual budget + make recommendations	X	x	x	
Review 5/10 year plan	X	x		
Review 5 year capital budget + make recommendations	x	x	x	
Review annual audit	x	x	x	x
Advise the council on change + selection of auditors	x	x		
Study all fiscal issues + recommend possible improvements and economies	x			
Monitor investment performance + recommend changes as appropriate	x	x	x	x
Monitor Pension/OPEB obligations + recommend appropriate mitigation + reserve policies	x	x	x	
Review + update cities financial policy		x		
Review CAFR		x	x	x
Review City Managers Annual Financial Report		x	x	
Improve financial communication to public			x	
Assist in delivery of timely, clear & reliable financial info			x	
City/Town litigation exposure				x
Finance Committee have its own subcommittees	No	No	Yes	N/A
CAFR filed by 12/31	No	No	Yes-in November	No

Annual work plan	Yes	Yes	Yes	Unknown
Meeting frequency	Generally monthly	Generally monthly	5 times in 2019	2 times in 2019
Certificate of Excellence	Yes	Yes	Yes	Yes
** Campbell has no separate Finance Committee. It is a “sub-committee” of City Council				

The committee makeup for each of the Cities is:

Los Altos Hills	9 voting +3 non voting associates, all are residents
Los Altos	7 voting all residents + 1 Council member liaison
Menlo Park	7 voting, 5 residents plus Mayor and Vice Mayor
Campbell	2 Council members + City Mgr + 2 Finance Dept

The financial operations of the above cities and/or the relationships between Staff, Council and their respective committees is not all wine and roses. Based on reading the meeting minutes since December 2019, I identified the following items:

- \* *In December 2019, the Los Altos Hills Finance & Investment Committee chair sent a letter to the Council notifying them that as part of the audit of fiscal 2018-2019, the auditor reported to the Finance Committee that the audit had identified “three serious internal control failures...and [stated that] 25 adjusting journal entries [were] recommended to bring the financial statements into a position where the audit could be performed”.*
- \* *The January 20, 2020 Los Altos Finance Commission minutes said the Chair will send an email to Council on behalf of Finance Commission regarding their “discontent with the current financial positioning of the City. [The letter also] expressed the need for Council to have more accountability and consideration for the overall fiscal impact of their Council meeting decisions on the City.”*

Town Staff has reviewed my memo to ensure I do not violate the Brown Act. Therefore I have been careful to offer no opinions or conclusions, only information. Through Staff, I understand the Town will send us a Staff report prior to our committee meeting.

All the above information was gathered by me. Although I am a personal friend with one of the Town residents supporting the Finance Commission Initiative, the idea to do research and prepare a report was solely my idea—I gathered all the information.

.....

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**Subject:** Ballot title and summary submitted to election officials as part of the petition - Agenda Item #3 - Finance Committee Meeting

**Attachments:** Title and Ballot Summary.Town Finance Commission.pdf

---

**From:** Phil Koen <[pkoen@monteropartners.com](mailto:pkoen@monteropartners.com)>

**Sent:** Sunday, June 7, 2020 2:44 PM

**To:** Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Robert Schultz <[RSchultz@losgatosca.gov](mailto:RSchultz@losgatosca.gov)>

**Cc:** Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>; Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>; Terry Duryea <[tduryea@aol.com](mailto:tduryea@aol.com)>; Ron Dickel <[rondickel@gmail.com](mailto:rondickel@gmail.com)>; Rick Tinsley <[ricktinsley1@gmail.com](mailto:ricktinsley1@gmail.com)>; [jvannada@gmail.com](mailto:jvannada@gmail.com); Rick Van Hoesen ([rick.vanhoesen@gmail.com](mailto:rick.vanhoesen@gmail.com)) <[rick.vanhoesen@gmail.com](mailto:rick.vanhoesen@gmail.com)>; Lee Fagot <[leefagot@gmail.com](mailto:leefagot@gmail.com)>; Heidi Owens <[heidi.timmons.owens@gmail.com](mailto:heidi.timmons.owens@gmail.com)>; [matthew@matthewhudes.com](mailto:matthew@matthewhudes.com); Maria Ristow <[ristows@comcast.net](mailto:ristows@comcast.net)>; Peter Hertan <[phertan@alum.mit.edu](mailto:phertan@alum.mit.edu)>; Catherine Somers <[Catherine@losgatoschamber.com](mailto:Catherine@losgatoschamber.com)>; Marcia Jensen <[MJensen@losgatosca.gov](mailto:MJensen@losgatosca.gov)>; BSpector <[BSpector@losgatosca.gov](mailto:BSpector@losgatosca.gov)>

**Subject:** Ballot title and summary submitted to election officials as part of the petition - Agenda Item #3 - Finance Committee Meeting

Dear Laurel,

In addition to the items we previously requested to be included in the public record for the upcoming Finance Committee meeting, please include the attached ballot title and summary which was prepared by Mr. Schultz in conformance with the California Elections Code Section 9203. This ballot title and summary was included in the petition package that voters reviewed at the time of signing the petition.

We are including this so everyone understands what was disclosed to voters at the time they decided to sign the petition. The fact that we obtained signatures of approximately 15% of all registered voters in the Town should speak volumes as to the broad support for this initiative.

Thank you.

Los Gatos Community Alliance

The Town Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

### **BALLOT TITLE**

A CITIZEN'S INITIATIVE MEASURE AMENDING THE TOWN CODE  
TO ESTABLISH A TOWN FINANCE COMMISSION

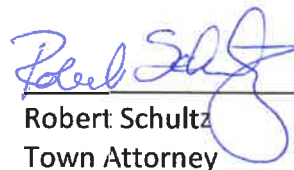
### **BALLOT SUMMARY**

The Town of Los Gatos currently has a Council Finance Committee consisting of five (5) members - two (2) Town Council Members as voting members and three (3) citizen members as non - voting members, appointed by the Town Council. The function of the Finance Committee is to serve as an advisory committee to the Town Council regarding the Town's investment policy, the Comprehensive Annual Financial Report, the unfunded pension employment benefits and new and increased revenue sources. The purpose of the Finance Committee is not to advise on regular or routine financial administration, the Town's budget or spending priorities, nor to become involved in other than the financial impact of the projects /programs they are asked to review.


This initiative would amend the Los Gatos Town Code to disband both the Finance Committee and Sales Tax Oversight Committee and establish instead a Finance Commission consisting of seven (7) members - five (5) voting citizen members and two (2) non-voting Council Members, (one of which would be either the Mayor or Vice-Mayor), with each Council Member appointing one Citizen Appointee. The function of the Finance Commission would be to serve in an advisory capacity to the Town Council and increase their duties and responsibilities in regard to the review of Town finances, including but not limited to: the Annual Budget, the Comprehensive Annual Financial Report, capital expenditures, the revenue and expenditure of Measure G Sales Tax, and making recommendations about the Town's financial budgetary and investment matters and operations related thereto to the Town Council and any other Town department, agency, committee, commission or other body as the Town Council directs.

This ballot title and summary are hereby submitted to the elections official in conformance with California Elections Code Section 9203.

Dated: October 22, 2019

  
Robert Schultz  
Town Attorney

Attest:

  
Shelley Neis  
Town Clerk