



**TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE AGENDA
OCTOBER 26, 2021
TELECONFERENCE
LOS GATOS, CA
5:00 PM**

*Maria Ristow, Chair
Marico Sayoc, Vice Chair*

**IMPORTANT NOTICE REGARDING THE OCTOBER 26, 2021
COUNCIL POLICY COMMITTEE MEETING**

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, this meeting will not be physically open to the public and the Council will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below).

PARTICIPATION

To watch or provide oral comments real-time during the meeting, you must join the Zoom webinar at

<https://us02web.zoom.us/j/89143801416?pwd=emN6M2JnUEhCOG1NRjZLKzhKOFpXQT09>

Password: 307447.

Or Telephone:

Dial: USA 636 651 0008 US Toll or USA 877 336 1839 US Toll-free

Conference code: 969184

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 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 11:00 a.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.

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COUNCIL POLICY COMMITTEE AGENDA
OCTOBER 26, 2021
TELECONFERENCE
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5:00 PM**

REMOTE LOCATION PARTICIPANTS

The following Committee Members are listed to permit them to appear electronically or telephonically at the Policy Committee meeting: CHAIR MARIA RISTOW, VICE CHAIR MARICO SAYOC. All votes during the teleconferencing session will be conducted by roll call vote.

MEETING CALL TO ORDER

ROLL CALL

PRESENTATIONS

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Committee may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Chair asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 1 of this agenda. If an item is removed, the Chair has the sole discretion to determine when the item will be heard.)*

1. Approve Draft Policy Committee Meeting Minutes of August 24, 2021.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Policy Committee on any matter that is not listed on the agenda consistent with the Participation Instructions contained on page 1 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 comment. In the event additional comments 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 on page 1 of the agenda.)*

2. Recommend to the Town Council the Approval of Proposed Updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct.
3. Recommend Approval to the Town Council the Proposed Updates to the Town Purchasing Policy.
4. Review and Discuss Policy Regarding the Authority of the Town Manager to Resolve Workers' Compensation Claims on Behalf of the Town of Los Gatos.

ADJOURNMENT *(Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time).*



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

MEETING DATE: 10/26/2021

ITEM NO: 1

**DRAFT
Minutes of the Town Council Policy Committee Regular Meeting
August 24, 2021**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting via Teleconference via COVID-19 Shelter in Place Guidelines on Tuesday, August 24, 2021, at 5:00 p.m.

MEETING CALLED TO ORDER AT 5:00 P.M.

ROLL CALL

Members Present: Maria Ristow, Marico Sayoc.

Staff Present: Laurel Prevetti, Town Manager; Matt Morley, Parks and Public Works Department Director; Joel Paulson, Community Development Department Director; Shelley Neis, Town Clerk; Jenna De Long, Deputy Clerk; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve the Draft Minutes of the May 25, 2021 Policy Committee Meeting.

Approved.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

2. Review and Provide Direction on the Recommended Modifications to the Planning Commission, Historic Preservation Committee, Conceptual Development Advisory Committee, and General Plan Committee Enabling Resolutions and Applications.

Joel Paulson, Community Development Director, presented the staff report.

After discussion, the Policy Committee unanimously agreed to forward a recommendation to the Town Council to approve the changes to each of the applications recommended by each Committee/Commission with the following modifications: (1) combine the first three questions

on all applications as recommended by the General Plan Committee and (2) let the applicant choose which Element of the General Plan to comment on for the General Plan Committee application. The Committee also unanimously agreed to forward a recommendation to the Town Council to approve the changes to each of the enabling resolutions recommended by each Committee. The Policy Committee discussed and did not take a position on expanding the role of the General Plan Committee to consider and make recommendations on policy documents and Town Code amendments.

3. Provide Direction on Potential Modifications to the Flag Policy and/or a New Policy for Artwork or Symbols on Town Property, Including Streets.

Laurel Prevetti, Town Manager, presented the staff report.

Lee Fagot

- Commented that the Town should recruit local artists from Los Gatos to submit proposals for artwork in Town and the artwork selected should be welcoming and representative of Los Gatos.

After discussion, the Policy Committee unanimously agreed to request staff notify the Arts and Culture Commission of their potential role as it may relate to a modified Flag Policy and forward the potential modifications to the Flag Policy item to the full Town Council for discussion and direction before any further staff work occurs.

ADJOURNMENT

The meeting adjourned at 6:01 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the August 24, 2021 meeting as approved by the Town Council Policy Committee.

Holly Zappala, Management Analyst



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

MEETING DATE: 10/26/2021

ITEM NO: 2

DATE: October 22, 2021
TO: Council Policy Committee
FROM: Laurel Prevetti, Town Manager
SUBJECT: Recommend to the Town Council the Approval of Proposed Updates to
Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04:
Town Council Code of Conduct

RECOMMENDATION:

Recommend to the Town Council the approval of proposed updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct.

BACKGROUND:

Since April 2021, the Town Council has listened to public comments at its meeting that have become increasingly hateful and harassing, escalating to disturbances at in-person Council meetings this fall. Proposed updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct intend to clarify rules for civility and decorum as well as identify enforcement mechanisms if these rules are disobeyed.

DISCUSSION:

Both Council Policies should be amended to include specific rules for civility at Town Council meetings. Attachments 1 and 2 contain the proposed redline additions.

Consistent with case law, the proposed rules state:

- The purpose of the Town Council meeting is to conduct the important business of the community in an effective and efficient manner.
- For the benefit of the entire community, the Town of Los Gatos asks that all speakers follow the Town's meeting guidelines by treating everyone with respect and dignity. This is done by following meeting guidelines set forth in State law, in the Town Code (e.g., Section 2.20.020), and on the cover sheet of the Council agenda.

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

SUBJECT: Proposed Updates to Council Policy 2-01: Town Agenda Format and Rules and
Council Policy 2.04: Town Council Code of Conduct

DATE: October 22, 2021

DISCUSSION (continued):

- The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council Meetings.
- Town Council and staff are well aware of the public's right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred, and bigotry statements are completely unacceptable and will not be tolerated in any way, shape or form at Town Council meetings.
- All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.
- Any disturbance resulting from a member of the public not following these rules can be muted if participating remotely or required to leave if participating in-person. Violators may be cited for violation of the California Penal Code Section 403.

Once these additional rules are in place, the Mayor should explain these rules to the public at each meeting. This practice serves multiple purposes. First, it reminds the Mayor and other Council Members of how disruptions must be handled, and that the rules must be applied in an even-handed manner. Second, it lets the audience know at the outset that the Council has adopted rules prohibiting disruptions, and what the consequences will be if someone chooses to engage in conduct that willfully disrupts the meeting. Third, should someone be removed from the meeting, and later challenge the removal in court, it will assist in the defense of the action.

Attachment 3 contains Town Code Section 2.20.020 for the Committee's reference.

CONCLUSION:

Staff recommends that the Council Policy Committee discuss the proposed changes, suggest any modifications, and forward a recommendation for Council approval.

COORDINATION:

The information contained in this report was coordinated with the Town Clerk and Town Attorney.

FISCAL IMPACT:

There is not a fiscal impact associated with updating the policies.

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SUBJECT: Proposed Updates to Council Policy 2-01: Town Agenda Format and Rules and
Council Policy 2.04: Town Council Code of Conduct

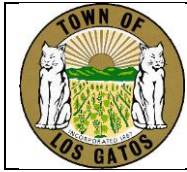
DATE: October 22, 2021

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Redlined Updates to Council Policy 2-01: Town Agenda Format and Rules
2. Redlined Updates to Council Policy 2.04: Town Council Code of Conduct
3. Town Code Section 2.20.020



TITLE: Town Agenda Format and Rules

POLICY NUMBER: 2-01

EFFECTIVE DATE: 12/15/1986

PAGES: 7

ENABLING ACTIONS: 1986-183; 1987-024; 1988-124; 1993-181; 1994-057; 1996-108; 2001-077; 2004-033; 2009-002

REVISED DATES: 12/15/1986; 3/2/1987; 6/6/1988; 6/15/1992; 12/6/1993; 4/4/1994; 8/5/1996; 7/2/2001; 4/5/2004; 1/20/2009; 3/16/2009; 12/6/2010; 8/5/2013; 3/3/2015; 9/20/2016; 6/20/2017; 8/1/2017; 12/4/18; 8/20/19; 12/3/19; 6/1/2021

APPROVED:

PURPOSE

To establish procedures which standardize Town agendas and insure an orderly meeting. This Policy applies to Town Council and all Town Boards, Commissions, and Committees.

POLICY

The following policies have been established:

A. Order of the Agenda

Subject to the Mayor's, or Chair's, discretion to change the order of consideration of any agenda item during any individual meeting:

- Meeting Call to Order
- Roll Call
- Pledge of Allegiance
- Appointments
- Presentations
- Closed Session Report
- Council Matters
- Manager Matters
- Consent Calendar
- Verbal Communications
- Public Hearings
- Other Business
- Adjournment (No later than midnight without vote)

TITLE: Town Agenda Format and Rules	PAGE: 2 of 7	POLICY NUMBER: 2-01
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B. Closed Session Report

At the first Council meeting following any Closed Session, the Town Attorney will report on the Closed Session describing what occurred, but without reporting any information which could damage the Town's position on a) potential or existing litigation, b) the acquisition or disposition of property, or c) any employee's privacy interests. In addition, the Closed Session agenda shall clearly identify the subject of each agenda item consistent with the requirements of the *Brown Act*.

C. Communications by Members of the Public

1. *Verbal Communications.* Comments by members of the public during the initial Verbal Communications portion of the agenda on items not on the Council agenda shall be limited to 30 minutes and no more than three (3) minutes per speaker. As an item not listed on the agenda, no response is required from Town staff or the Council and no action can be taken. However, the Council may instruct the Town Manager to place the item on a future agenda. At the conclusion of the first Verbal Communications, the agenda will proceed onto the Public Hearings and Other Business sections of the agenda. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications section can be opened prior to Adjournment.
2. *Public Hearings.* Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than five (5) minutes for all speakers. Appellants and applicants shall be provided no more than three (3) minutes to rebut at the end of the public hearing. Other members of the public testifying at public hearings shall be limited to no more than three (3) minutes.
3. *Submittal of written materials by Applicant and Appellant.* To allow Town Council, Boards, Commissions, Committees, Town Staff, and the public the opportunity to review material in advance of a hearing, all materials submitted by the Applicant or Appellant must be received by the Town Clerk fourteen (14) days prior to the scheduled public hearing. Documents and materials received from the Applicant or Appellant after the deadline will be accepted; however, the Town Staff may not have the time to analyze the documents and material, and Town Council may not have the time to consider materials submitted after the deadline. The submittal of any additional material by the Applicant or Appellant shall not be considered prima facie evidence (sufficient to establish a fact or raise a presumption) under Town Code Section 29.20.300.
4. *Other Agenda Items.* Comments by members of the public concerning any other item on an agenda shall be limited to no more than three (3) minutes per item.
5. *Mayor's Discretion.* All time limits noted above shall be subject to change at the Mayor's discretion. If a member of the public speaks on the wrong item, the time used would be deducted from the speaker's overall public comment time allowance on the correct item.

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D. Consent Calendar

Items on the Council agenda that are considered to be of a routine and non-controversial nature are placed on the Consent Calendar. Typical items include meeting minutes, final reading and adoption of ordinances, resolutions approving agreements, awards of contracts, status staff reports, etc.

Consent items shall be approved by a single Council motion unless a member of the Council requests that an item be removed for separate Council action. Members of the public may speak on an item on the Consent Calendar during the public comment portion before the Council votes on the Consent Calendar. Items removed from the Consent Calendar may be considered at that meeting at the Mayor's discretion. If an item is removed for discussion, members of the public may speak to that item even if they previously spoke on the item during public comment.

E. Presentations

The Presentations portion of the agenda is intended to allow organized groups to make formal presentations to the Council and to recognize and honor deserving individuals and organizations. All matters included on the Presentations portion of the agenda require the prior approval of the Mayor and shall be limited to no more than ten (10) minutes, unless the Mayor grants additional time.

F. Council Matters

Members of Council may report on the activities of the committees to which they belong or the meetings they attend, question staff briefly on matters upon which the Council has taken action or given direction, make brief announcements, or discuss whether to place particular items on future agendas for action by the Council. Future agenda items to be briefly discussed here shall be identified consistent with Section G of this policy, or may be raised for the first time under this item.

G. Adjournment

Council meetings will be adjourned at midnight unless a majority of the Council Members present vote to extend the adjournment time.

H. Americans with Disabilities Notice on Town Agendas

As part of the requirements under the Americans with Disabilities Act, the Town is required to provide notice of whom to contact in advance of a public meeting for assistance to disabled individuals who might wish to participate. The following notice shall be provided in at least one location on each Town agenda for Council, Boards, Commissions, or Committees.

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk Administrator at (408) 354-6834. Notification 48 hours before the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting [28 CFR §35.102-35.104]

I. Preparation of the Agenda

The agenda is prepared by staff in consultation with the Mayor for the Mayor's final approval. If there is a disagreement between the Mayor and staff, the Mayor makes the ultimate call on the Agenda and its items. Any member of the Council may submit a request through the Town Manager or directly to the Mayor to make a change or addition to the agenda. In no event may the subject of whether to amend the agenda be discussed outside of a public meeting by more than two (2) members of the Council.

Items thus proposed to be added to the agenda require the Mayor's agreement to be added for action. If the Mayor does not agree, the item shall be listed on the agenda for discussion purposes only under the Council Matters section of the agenda. Council may then discuss whether to place the item on a future agenda for action. Two (2) or more members of the Council must vote in favor of placing an item on a future agenda for action. The Mayor in good faith will make every effort to place the item on the first available Council agenda in consultation with the Town Manager.

If the wish of the Council is to add an item on the agenda of the current meeting, then the *Brown Act* generally requires a two-thirds (2/3) vote or a unanimous vote of those present if less than five (5) Council Members are present, with a finding that there is a need to take immediate action and the need for action came to the attention of the Town after the agenda was posted.

J. Agenda Schedule and Preparation

In general, questions or inquiries from Council Members to the Town Manager and/or Town Attorney regarding agenda items should be responded to within 24 hours, and then placed into Addenda and/or Desk Items, as appropriate.

Thursday, prior to the meeting	Written agenda is finalized and printed. Agenda packets distributed to Town Council Members. Public comments on agenda items received by 11:00 a.m. will be included in the agenda packet.
Friday, prior to the meeting	Additional information from staff available after the Thursday distribution of the agenda packet, and public comments received prior to 11:00 a.m. on Friday will be distributed to Town Council members as an Addendum to a staff report.

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Monday, prior to the meeting Additional information from staff available after the Friday Addendum and public comment received prior to 11:00 a.m. on Monday will be distributed to Town Council members as an Addendum to a staff report.

Day of Council Meeting Council comments and questions received by 7:00 a.m. and public comments received by 11:00 a.m. on the morning of a Council meeting will be included in a Desk Item for distribution to Town Council members by 3:00 p.m. on the afternoon of a Council meeting. Council comments and questions received after 7:00 a.m. may be addressed during the Council meeting. Public comment received after 11:00 a.m. will not be distributed to the Council in the Desk Item; however, public comment may be submitted by individuals during the Council meeting.

In general, questions or inquiries from Council Members to the Town Manager and/or Town Attorney regarding agenda items should be responded to within 24 hours, and then placed into Addenda and/or Desk Items, as appropriate.

K. Agenda Posting

Council Agendas shall be posted at least 72 hours prior to a regular meeting, and at least 24 hours prior to a special meeting. Notice of any meeting of a formally appointed Committee where two Council Members could be present shall be posted at least 24 hours in advance of any such meeting with a note as to the time and location, and an invitation to the public to attend.

L. Conduct of Town Council Meetings

The Council shall adopt:

1. Robert's *Rules of Order* or
2. Some other rules of order, or
3. Allow the Mayor to conduct the meeting as deemed appropriate so long as all members of the Town Council concur.

M. Attendance at Meetings

The Town Council Rules provisions concerning Remote Attendance shall apply to all Boards, Commissions, and Committees as well as the Town Council as follows:

1. Requests by Council Members to attend a regular Council meeting via remote appearance are allowed on a limited basis and with no more than two remote participations in a row. Remote attendance shall be permitted for a medical, family or work event requiring a Council Member's absence or in the event the Council Member is out of the area on official Town business. In addition, at least a quorum of the Council must participate from a location within the Town.

TITLE: Town Agenda Format and Rules	PAGE: 6 of 7	POLICY NUMBER: 2-01
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2. Requests by Commissioners to attend a Commission meeting via remote appearance should be allowed on a limited basis to mirror the existing attendance requirements and with no more than two remote participations in a row.
3. When a Council Member or Commissioner is participating remotely, they shall have their camera on and be visible for the duration of the meeting.
4. The public may participate in all public meetings remotely by following the remote participation instructions that are provided on the agenda. The remote participation instructions shall be provided on all Town Council and Commission agendas.

N. Proposed Reconsideration of Prior Council Actions

Reconsideration of prior Council actions is discouraged and may only occur in special circumstances subject to the procedural restrictions outlined herein. Reconsideration does not include, and this Policy does not prohibit, the repeal of a resolution or ordinance in response to a lawsuit or a referendum challenging that adoption.

Step 1 – Motion to Place Reconsideration of a Prior Action on a Future Council Agenda

- a) The motion must be made by a Council Member who previously voted on the prevailing side of the prior action;
- b) The maker of the motion shall specifically articulate the new information, analysis and/or circumstances that warrant(s) reconsideration of the prior action;
- c) The motion must be adopted by a majority of the full Council; and
- d) The motion may only be made and considered at the next regularly scheduled meeting of the Council after the item was originally acted upon.

Step 2 – Full Reconsideration of the Prior Action, if a motion as outlined in Step 1 is approved.

- a) The full reconsideration of the prior action will be placed on the next available Council agenda following the agenda-setting and required public notification process.
- b) The agenda, public notification and staff report for the full reconsideration of the prior action shall clearly state that the item has been previously acted upon by the Council and is being reconsidered by the Council.
- c) Action on the reconsideration of the prior action shall adhere to regular Council policies and practices as if the item was being heard for the first time.
- d) The full reconsideration of the prior action (whether sustained, reversed or otherwise modified) will be the final action on that item, and no further reconsiderations will be considered.

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O. Motions by the Chairperson

The Chairperson of the meeting may make or second motions. The Chairperson may also restate, or ask that the maker restate, all motions immediately prior to any vote.

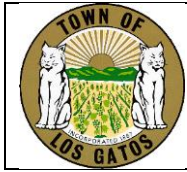
P. Behavior Expectations and Consequences at Town Council Meetings:

The public is welcome to participate in the meetings, understanding that the purpose of the meeting is to conduct the important business of the Town in an efficient and effective manner. At each meeting, the Mayor should state:

1. For the benefit of the entire community, the Town of Los Gatos asks that all speakers follow the Town's meeting guidelines by treating everyone with respect and dignity. This is done by following meeting guidelines set forth in State law, in the Town Code, and on the cover sheet of the Council agenda.
2. The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council meetings.
3. Town Council and staff are well aware of the public's right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred, and bigotry statements are completely unacceptable and will not be tolerated in any way, shape, or form at Town Council meetings.
4. All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.
5. Any disturbance resulting from a member of the public not following these rules can be muted if participating remotely or required to leave if participating in-person. Violators may be cited for violation of the California Penal Code Section 403.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



TOWN OF
LOS GATOS
CALIFORNIA

COUNCIL POLICY MANUAL

Small Town Service

Community Stewardship

Future Focus

TITLE: Town Council Code of Conduct

POLICY NUMBER: 2-04

EFFECTIVE DATE: 5/3/2004

PAGES: 8

ENABLING ACTIONS: 2004-059; 2006-111

REVISED DATES: 12/17/2012; 3/3/2015;
12/17/2019

APPROVED:

I. Preamble

The legal responsibilities of the Los Gatos Town Council are set forth by applicable state and federal laws. In addition, the Town Council has adopted regulations, including this Code of Conduct Policy, that hold Council Members to standards of conduct above and beyond what is required by law. This Policy is written with the assumption that Council Members, through training, are aware of their legal and ethical responsibilities as elected officials.

II. Form of Government

The Town of Los Gatos operates under a Council-Manager form of government as prescribed by Town Code, Section 2.30.305. Accordingly, members of the Council are elected at-large, provide legislative direction, set Town policy, and ultimately answer to the public. The Town Manager serves as the Town's chief administrative officer and is responsible for directing the day-to-day operations of the Town and implementing policy direction.

III. Town Council Roles and Responsibilities

The role of the Town Council is to act as a legislative and quasi-judicial body. Through its legislative and policy authority, the Council is responsible for assessing and achieving the community's desire for its present and future and for establishing policy direction to achieve its desired outcomes. All members of the Town Council, including those who serve as Mayor and Vice Mayor, have equal votes.

Members of the Town Council fulfill their role and responsibilities through the relationships they have with each other and the public. Town Council Members should approach their work, each other, and the public in a manner that reflects ethical behavior, honesty and integrity. The commitment of Town Council Members to their work is characterized by open constructive communication, innovation, and creative problem solving.

ATTACHMENT 2

TITLE: Town Council Code of Conduct	PAGE: 2 of 9	POLICY NUMBER: 2-04
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IV. Mayoral and Vice Mayoral Selection Process

Per Town Municipal Code, Section 2.20.035, the selection of the Mayor and Vice Mayor occurs annually at a special meeting in December by majority vote of the Town Council. The Mayor and Vice Mayor serve at the pleasure of the Town Council and may be replaced by a majority vote of the Council.

V. Mayoral and Vice Mayoral Roles, Responsibilities, Relationships

The following outlines some of the key roles, responsibilities, and relationships as they relate to the positions of Mayor and Vice Mayor:

Mayor

- A. The Mayor is the presiding officer of the Town Council. In this capacity, the Mayor is responsible for developing Council agendas in cooperation with the Town Manager and leading Council meetings.
- B. The Mayor recommends various standing committee appointments to the Council for approval.¹ This will be done at a Council meeting in December of each year. When making committee recommendations, the Mayor should attempt to balance shared responsibilities and opportunities among Council Members. The Mayor may also appoint citizens to committees not established by Town ordinance or resolution as s/he deems appropriate.
- C. The title of Mayor carries with it the responsibility of communicating with the Town Council, Town Manager, and members of the public. In this capacity, the Mayor serves as the Town “spokesperson” representing the Council in official and ceremonial occasions.
- D. As the official Town spokesperson, the Mayor performs special duties consistent with the Mayoral office, including, but not limited to: signing of documents on behalf of the Town, issuing proclamations, serving as the official voting delegate for various municipal advocacy groups, and delivering the State of the Town Address at his or her discretion.² The Town Council will determine any additional authority or duties that the Mayor shall perform.
- E. Special duties consistent with the Mayoral office may be delegated to the Vice Mayor or any other member of the Town Council.
- F. In the event that one or more members of a Town Board, Commission, or Committee acts in a manner contrary to approved Board/Commission policies and procedures, the Mayor may counsel those members about the rules set forth in the Town Commissioner Handbook.³

¹ Council Agenda Format and Rules Policy

² Council Commendation and Proclamation Policy

³ Resolution 1999-167

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Vice Mayor

- A. In the Mayor's absence, the Vice Mayor shall perform the formal duties of the Mayor.⁴
- B. When the Vice Mayor performs the duties of the Mayor in his/her absence, the Vice Mayor also carries the responsibility of communicating with the Town Manager, Town Council, and members of the public.

VI. Council Conduct in Public Meetings

To ensure the highest standards of respect and integrity during public meetings, Council Members should:

- A. *Use formal titles.* The Council should refer to one another formally during Council meetings such as Mayor, Vice Mayor or Council Member or Mr., Mrs., or Ms., followed by the individual's last name.
- B. *Practice civility and decorum in discussions and debate.* Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of free democracy in action. During public discussions, Council Members should be respectful of others and diverse opinions and allow for the debate of issues.
- C. *Honor the role of the presiding officer in maintaining order and equity.* Respect the Mayor/Chair's efforts to focus discussion on current agenda items.
- D. *Council decisions should be reserved until all applicable information has been presented.*
- E. *Conduct during public hearings.* During public testimony, Council Members should refrain from engaging the speaker in dialogue. For purposes of clarification, Council Members may ask the speaker questions. Council comment and discussion should commence upon the conclusion of all public testimony

VII. Maintaining Civility at Council Meetings

The public is welcome to participate at Town Council meetings and the Mayor should remind the public of the Town's expectations for civility in order for the business of the Town to be completed efficiently and effectively. These expectations include and are not limited to:

- A. For the benefit of the entire community, the Town of Los Gatos asks that all speakers follow the Town's meeting guidelines by treating everyone with respect and dignity. This is done by following meeting guidelines set forth in State law, in the Town Code, and on the cover sheet of the Council agenda.
- B. The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council Meetings.
- C. Town Council and staff are well aware of the public's right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred, and bigotry statements are completely unacceptable and will not be tolerated in any way, shape or form at Town Council meetings.

⁴ Council Agenda Format and Rules Policy

TITLE: Town Council Code of Conduct	PAGE: 4 of 9	POLICY NUMBER: 2-04
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- D. All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.
- E. Any disturbance resulting from a member of the public not following these rules can be muted if participating remotely or required to leave if participating in-person. Violators may be cited for violation of the California Penal Code Section 403.

VIII. Legal Requirements

The Town Council operates under a series of laws that regulate its operations as well as the conduct of its members. The Town Attorney serves as the Town's legal officer and is available to advise the Council on these matters.

A. Training

Biannual training in the following areas shall be provided by staff to Council Members:

1. The Ralph M. Brown Act
2. Town / CA State Law on Conflict of Interest (AB 1234)
3. Government Section 1090
4. Incompatible Offices
5. The Fair Political Practices Commission Forms
6. Bias
7. Town / CA State Law on Harassment (SB 1343)

B. Procurement

Unless authorized by the Town Council, Council Members shall not become involved in administrative processes for acquiring goods and services.

C. Land Use Applications

The merits of an application shall only be evaluated on information included in the public record. Council Members shall disclose ex parte communication and any information obtained outside of the public record that may influence his/her decision on a matter pending before the Town Council. Council disclosure shall occur after the Public Hearing section of the agenda, and before Council deliberations.

D. Code of Conduct Policy

Newly elected Council Members are strongly encouraged to sign a statement affirming they have read and understand the Town of Los Gatos Council Code of Conduct Policy.

E. Non-Profit Organizations

Council Members may not sit on boards of directors of non-profit organizations which receive funding or in-kind contributions from the Town, unless the role serves a legitimate Town purpose, such as the League of California Cities, and the participation is approved by the full Council.

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IX. Council Participation in Boards, Commissions and Committees, and Reporting Requirements

There are several committees that Town Council Members have been appointed to or have an interest in, including but not limited to: Town Council standing and ad hoc committees, Town boards and commissions, regional boards and commissions, and community-generated committees.

Primary Council representatives should update the Council about board, commission, and committee activities. When serving as the primary Council representative on any board, commission, or committee, Council Members should periodically provide updated reports to the Council during the “Council Matters” opportunity on the Council meeting agenda.

Recommended actions by Council Committees should be reported to the Council. When serving on a Council Committee, whether standing or ad hoc, all work undertaken by the Committee must be directed by the Council, and all recommended actions of a Council Committee shall be reported to the Council.

X. Council Relationship with Town Staff

The Town Council has adopted a Council-Manager form of government. The Town Manager’s powers and duties are outlined in the Town Code, Section 2.30.295.

Council Conduct and Communication with Town Staff

To enhance its working relationship with staff, Council should be mindful of the support and resources needed to accomplish Council goals. When communicating and working with staff, Council should follow these guidelines:

- A. *Council Members should treat staff as professionals.* Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. As with Council colleagues, practice civility and decorum in all interactions with Town staff.
- B. *Council Members should direct questions about policy, budget, or professional opinion to the Town Manager, Town Attorney or Department Directors.* Council Members can direct questions and inquiries to any staff for information that is readily available to the general public or easily retrievable by staff.
- C. *The Town Manager and staff are responsible for implementing Town policy and/or Council action.* The processing of Council policy and decisions takes place with the Town Manager and staff. Council should not direct policy/program administrative functions and implementation; rather it should provide policy guidance to the Town Manager.
- D. *Council Members should attempt to communicate questions, corrections, and/or clarifications about reports requiring official action to staff prior to Council meetings.* Early feedback will enable staff to address Council questions and incorporate minor corrections or changes to a Council report, resulting in a more efficient Council meeting

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discussion; however, this does not preclude Council Members from asking questions at Council Meetings.

- E. *Council Members should not direct the Town Manager to initiate any action, change a course of action, or prepare any report without the approval of Council.* The Town Manager's responsibility is to advise on resources available and required for a particular course of action as it relates to the direction of the majority of the Council.
- F. *Council Members should not attend department staff meetings unless requested by the Town Manager.*
- G. *All Council Members should have the same information with which to make decisions.* Information requested by one Council Member will be shared with all members of the Council.
- H. *Concerns related to the behavior or work of a Town employee should be directed to the Town Manager.* Council Members should not reprimand employees.
- I. *Per California Government Code, Sections 3201-3209, Council Members should not solicit financial contributions from Town staff or use promises or threats regarding future employment.* Although Town staff may, as private citizens with constitutional rights, support political candidates, such activities cannot take place during work hours, at the workplace, or in uniform.

XI. Council Communication with the Public and other Council Members

The Public has a reasonable expectation that it may engage its Council Members on matters of community concern. In response, Council Members may express a preliminary opinion on issues or projects raised. Any such preliminary statement shall not constitute a prejudgment or create a presumption of bias on any issue or a project. In addition, Council Members may from time to time express opinions regarding broad policy matters which may be in conflict with currently adopted Council policies. Such statements are permissible if clearly characterized as personal opinion or policy change objectives.

XII. Enforcement

A. Purpose

The Council Code of Conduct Policy establishes guiding principles for appropriate conduct and behavior and sets forth the expectations of Council Members. The purpose of the policy language is to establish a process and procedure that:

- 1. Allows the public, Town Council, and Town employees to report Code of Conduct policy violations or other misconduct.
- 2. Provides guidelines to evaluate Code of Conduct policy violations or other misconduct and implement appropriate disciplinary action when necessary.

B. Procedures

1. Reporting of Complaints

The following section outlines the process for reporting Council Member Code of Conduct Policy violations or other misconduct:

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- a. Complaints made by members of the public, the Town Manager, and Town Attorney should be reported to the Mayor. If a complaint involves the Mayor, it should be reported to the Vice Mayor.
- b. Complaints made by Council Members should be reported to the Town Manager or Town Attorney to adhere to Brown Act requirements.
- c. Complaints made by Town employees should be reported to the Town Manager, who will direct them to the Mayor or Vice Mayor.

2. Evaluation of Complaints Alleging Violations

Upon report of a written complaint, the Town Manager and Town Attorney will join the Mayor or Vice Mayor as an evaluation committee to determine the validity of the complaint and, if appropriate, an initial course of action as discussed below. If the Town Manager or Town Attorney is the complainant, the longest serving uninvolved Council Member will replace the Town Manager or Town Attorney on the evaluation committee.

Within seventy-two (72) hours of receipt of the complaint by the Mayor or Vice Mayor, the Council Member in question shall be notified of the reported complaint by the Mayor or his/her designee. The notification shall include a copy of the written complaint and supporting documentation, if any, the identity of the complainant and nature of the complaint.

3. Unsubstantiated or Minor Violations

If the majority of the Committee agrees that the reported violation is without substance, no further action will be taken. If the reported violation is deemed valid but minor in nature, the Mayor or Vice Mayor shall counsel and, if appropriate, admonish the Council Member privately to resolve the matter. Admonishment is considered to be a reproof or warning directed to a Council Member about a particular type of behavior that violates Town policy.

4. Allegations of Major Violations

If the reported violation is considered to be serious in nature, the matter shall be referred to outside legal counsel selected by the Committee for the purpose of conducting an initial interview with the subject Council Member. The outside counsel shall report his/her initial findings back to the Committee.

If the Committee then determines that an investigation is warranted, the Committee shall direct the outside legal counsel to conduct an investigation. The investigation process would include, but is not limited to, the ascertainment of facts relevant to the complaint through interviews and the examination of any documented materials.

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5. Report of Findings

At the conclusion of the investigation, outside legal counsel shall report back to the Committee in writing. The report shall either (1) recommend that the Council Member be exonerated based on a finding that the investigation did not reveal evidence of a serious violation of the Code of Conduct, or (2) recommend disciplinary proceedings based on findings that one or more provisions of the Code of Conduct or other Town policies have been violated. In the latter event, the report shall specify the provisions violated along with the facts and evidence supporting each finding.

The Committee shall review the report and its recommendations. If the consensus of the Committee is to accept the report and recommendations, the Committee shall implement the recommendations. Where the recommendation is exoneration, no further action shall be taken. Where the recommendation is to initiate disciplinary proceedings, the matter shall be referred to the Council. Where there is no consensus of the Committee regarding the recommendations, the matter shall be referred to the Council.

The subject Council Member shall be notified in writing of the Committee's decision within 72 hours. Where the decision is to refer the matter to the Council, a copy of the full report, including documents relied on by the investigator shall be provided with the notification, and a copy of both shall be provided to the whole Council.

6. Proceedings

Investigative findings and recommended proceedings and disciplinary action that are brought forward to Council as a result of a significant policy violation shall be considered at a public hearing. The public hearing should be set far enough in advance to allow the Council Member in question reasonably sufficient time to prepare a response.

Investigative findings shall be presented to the Town Council at a public hearing. The rules of evidence do not apply to the public hearing. It shall not be conducted as an adversarial proceeding.

C. Disciplinary Action

1. Considerations in Determining Disciplinary Action

Disciplinary action may be imposed by Council upon Council Members who have violated the Council Code of Conduct Policy. Disciplinary action or sanctions are considered when a serious violation of Town policy has occurred by a Council Member. In determining the type of sanction imposed, the following factors may be considered:

- a. Nature of the violation
- b. Prior violations by the same individual
- c. Other factors which bear upon the seriousness of the violation

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2. Types of Sanctions

At the discretion of the Council, sanctions may be imposed for violating the Code of Conduct or engaging in other misconduct. These actions may be applied individually or in combination. They include, but are not limited to:

- a. *Public Admonishment* – A reproof or warning directed to a Council Member about a particular type of behavior that violates Town policy.
- b. *Revocation of Special Privileges* – A revocation of a Council Member’s Council Committee assignments, including standing and ad hoc committees, regional boards and commissions, and community-generated board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.
- c. *Censure* – A formal statement or resolution by the Council officially reprimanding a Council Member.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Sec. 2.20.020. Same—Interruptions and rules for conduct.

- (a) Understanding that the purpose of the meetings of the Town Council is to conduct the people's business for the benefit of all the people, in the event that any meeting of the Town Council is willfully interrupted by a person or group of persons so as to render the orderly conduct of the meeting impossible, the Mayor, Vice-Mayor or any other member of the Town Council acting as the chair, may order the removal of the person or persons responsible for the disruption and bar them from further attendance at the Council meeting, or otherwise proceed pursuant to Government Code section 54957.9 or any applicable penal statute or Town ordinance. For purposes of these rules "willfully interrupt" includes, but is not limited to, doing any of the following after being directed by the chair to cease and being warned that continuing to do so will be a violation of law:
- (1) Addressing the Town Council without first being recognized.
 - (2) Persisting in addressing a subject or subjects other than that before the Town Council.
 - (3) Repetitiously addressing the same subject.
 - (4) Continuing to speak after the allotted time has expired.
 - (5) Failing to relinquish the podium when directed to do so.
 - (6) As a speaker, interrupting or attempting to interrupt members of the Town Council or members of the Town staff.
 - (7) From the audience, interrupting or attempting to interrupt, a speaker, members of the Town Council or members of the Town staff, or shouting or attempting to shout over a speaker, members of the Town Council or members of the Town staff, or displays such as clapping, stamping, loud talking, hissing and booing.
 - (8) Violations of rules of conduct established by the Town Council.
- (b) The Town Council may establish rules for the conduct of its proceedings by resolution.
- (c) Nothing in this section or any rules of conduct that may be adopted by the Town Council shall be construed to prohibit public criticism of the policies, procedures, programs or services of the Town or of the acts or omissions of the Town Council or Town staff.
- (d) Any person who violates any of the provisions of this section 2.20.020 shall be guilty of a misdemeanor.
- (e) If any subsection, sentence, clause or phrase of this section 2.20.020 is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this section. The Town Council hereby declares that it would have passed this section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more subsections, sections, clauses or phrases had been declared invalid or unconstitutional.

(Code 1968, § 2-3; Ord. No. 2074, § I, 11-6-00)

ATTACHMENT 3

Created: 2021-07-02 11:59:43 [EST]

(Supp. No. 86)



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

MEETING DATE: 10/26/2021

ITEM NO: 3

DATE: October 18, 2021
TO: Council Policy Committee
FROM: Laurel Prevetti, Town Manager
SUBJECT: Recommend Approval to the Town Council the Proposed Updates to the Town Purchasing Policy

RECOMMENDATION:

Recommend approval to the Town Council the proposed updates to the Town Purchasing Policy.

BACKGROUND:

At its January 25, 2021, the Council Policy Committee added an update to the Town Purchasing Policy to its work plan for 2021. The existing Purchasing Policy was created in 2008 and can be found as Attachment 1 to this report.

DISCUSSION:

Staff reached out to other comparable municipalities in Santa Clara County to request copies of their Purchasing Policies and corresponding code sections. Staff received responses from the cities of Campbell, Gilroy, Morgan Hill, Saratoga, and Sunnyvale.

Purchasing guidelines vary across municipalities and are tailored to each agency. The following table shows where each of the above-referenced cities falls in reference to the purchase amount thresholds that trigger requirements for purchase orders (PO), quotes, formal bidding procedures, and Council approval. The table also shows which of the agencies have opted into the California Uniform Public Construction Cost Accounting Act (the Act) for public works (PW) projects and what year the policy was last updated.

PREPARED BY: Holly Zappala
Management Analyst

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

DISCUSSION (continued):

City	Policy Revised	Opted into the Act	PO Required Amount	Quotes Required	Formal Bids Required	Council Approval Required
Campbell	2017	Yes	\$200	\$5,000	\$25,000 & limits in the Act for PW projects	\$50,000
Gilroy	2020	No	\$3,000	\$3,000	\$100,000 for goods/services & \$35,000 for PW projects	\$100,000 for goods/services & \$35,000 for PW projects
Morgan Hill	2019	Yes	\$5,000	\$500	\$25,000 & limits in the Act for PW projects	\$60,000
Saratoga	2015	Yes	\$5,000	\$1,000	Only PW projects in excess of informal bid limit in the Act	\$25,000
Sunnyvale	2019	No	\$1.0	\$15,000	\$50,000	\$100,000
Los Gatos (existing)	2008	No	\$1,000	\$1,000 if feasible \$5,000 required	\$25,000	\$50,000
Los Gatos (proposed)	2021	Yes	\$3,000	\$3,000	\$50,000 for goods/services & limits in the Act for PW projects	\$100,000

The proposed 2021 Town Purchasing Policy, found in Attachment 2 to this report, provides updated thresholds, aligns with current Town practices, and memorializes certain Town procedures, such as the Request for Proposal process. Additionally, the proposed update adds important guidelines to bring the Town into compliance with evolving regulations such as Senate Bill 1383 and incorporates best practices addressing equity in purchasing.

Town Code sections 2.50.105 through 2.50.145 that reference Purchasing should be updated in tandem with the Purchasing Policy in order to ensure consistency. The corresponding, proposed red-lined updates to the Code sections can be found as Attachment 3 to this report.

DISCUSSION (continued):

An overview of the major proposed updates to the policy is as follows:

1. Opts the Town of Los Gatos “in” to the California Uniform Construction Cost Accounting Act (the Act) for public works projects. The Act is legislation that was enacted in 1983 to help promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state. The Act is a voluntary program available to all public entities in the State, but it applies only to those public agencies that have “opted in” to the provisions set forth by the Act using the processes outlined in the Act. Key provisions include:
 - a. The Act allows for public project work in the amount of \$60,000 or less to be performed by a public agency’s force account using the public agency’s own resources, or by negotiated contract, or by purchase order;
 - b. public projects in the amount of \$200,000 or less may use informal or formal bidding procedures; and
 - c. public projects at a cost of more than \$200,000 must use formal bidding procedures to let the contract.

Every five years, the Act Commission reviews the informal bid limits for inflation and other factors to determine whether adjustments should be made. If an adjustment is made, the State Controller notifies the affected public agencies. In order for Los Gatos to “opt in” to the Act, the Council must elect by resolution to become subject to the Act and the Town must file a copy of the approved resolution with the State Controller’s Office. A draft copy of the resolution to opt in can be found as Attachment 4 to this report.

2. Reflects a decentralized purchasing process, removes the Town Purchasing Agent, and adds Department Purchasing Representatives in order to align with current Town practices.
3. Adds Healthy Food & Beverage Guidelines per direction from Santa Clara County Public Health.
4. Memorializes the Town Request for Proposal process. This includes Requests for Information, Requests for Statements of Qualifications, or others as deemed appropriate.
5. Adds specific language to the Recycled Products and Materials section in order to be in compliance with Senate Bill 1383 (SB 1383), a state-wide effort to reduce emissions of short-lived climate pollutants. Beginning January 1, 2022, SB 1383 requires cities and counties to procure annually a quantity of recovered organic waste products. As there is so much paper present in the solid waste disposal stream, the procurement of recycled content and recyclable paper will grow demand for these products and support recycling to help meet the organic waste diversion goals of SB 1383.
6. Expands the current preference for local businesses to include preference for minority, disabled, and woman-owned businesses, consistent with the Town Council’s Strategic Priority of advancing Diversity, Equity, and Inclusion efforts.

7. Increases the Purchase Order requirement/staff level purchase approval threshold from \$1,000 to \$3,000.
8. Sets the threshold for requiring at least three quotes prior to purchasing to \$3,000. The current guideline is \$1,000 if feasible and required for over \$5,000.
9. Increases the threshold for requiring formal bidding procedures (excluding public works projects, which would align with the thresholds in the Act) from \$25,000 to \$50,000.
10. Increases the threshold for Town Council approval from over \$50,000 to \$100,000.

CONCLUSION:

Staff looks forward to the Committee's discussion and feedback on the proposed updates to the Purchasing Policy. If the Committee considers the update is ready for Council consideration, staff recommends forwarding it to the Council with a recommendation of approval.

COORDINATION:

This report was coordinated with all Town Departments.

FISCAL IMPACT:

There is not a fiscal impact associated with updating the policy.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

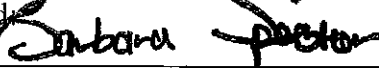
1. Existing 2008 Purchasing Policy
2. Proposed 2021 Purchasing Policy
3. Proposed red-line changes to Town Code Sections 2.50.105 through 2.50.145
4. Draft Resolution in the Matter of Uniform Public Construction Cost Accounting Procedures

TOWN COUNCIL POLICY
TOWN OF LOS GATOS

Subject: Town Purchasing Policy and
Procedures Manual

Page: 1 of 14

Approved:



Effective Date:
8/04/2008

Revised Date:

PURPOSE

The purpose of the Purchasing Policy is to guide purchasing practices and provide an overview of purchasing objectives, policies and functions.

SCOPE

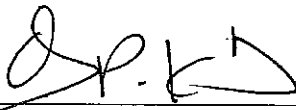
The provisions of this policy shall apply to elected and appointed officials, Town employees, volunteers and vendors seeking to do business with the Town. It identifies those with the authority and the responsibility to acquire goods and services on behalf of the Town, and addresses policies on matters including, but not limited to:

- The purchase of goods and services, leases of real property, or the sale or purchase of real property.
- All contracts funded by the Town of Los Gatos and the Los Gatos Redevelopment Agency for research and development, professional studies, design and engineering, construction and construction-related matters, to the extent allowed by applicable law.
- The disposition of surplus property.

POLICY & PROCEDURES

See attached policy document.

APPROVED AS TO FORM:



Town Attorney

Town of Los Gatos Purchasing Manual

1. POLICY PURPOSE

The purpose of the Purchasing Policy is to guide purchasing practices and provide an overview of purchasing objectives, policies and functions.

2. SCOPE OF POLICY

The provisions of this policy shall apply to elected and appointed officials, Town employees, volunteers and vendors seeking to do business with the Town. It identifies those with the authority and the responsibility to acquire goods and services on behalf of the Town, and addresses policies on matters including, but not limited to:

- The purchase of goods and services, leases of real property, or the sale or purchase of real property.
- All contracts funded by the Town of Los Gatos and the Los Gatos Redevelopment Agency for research and development, professional studies, design and engineering, construction and construction-related matters, to the extent allowed by applicable law.
- The disposition of surplus property.

3. OVERVIEW OF THE PURCHASING PROCESS

Section 2.50.110 of the Los Gatos Code establishes a Centralized Purchasing Division which has the authority to purchase equipment, materials and services. Centralized purchasing standardizes the bidding and evaluation procedures, achieves economy of scale benefits, provides consistency in dealing with vendors, and ensures an open, fair, and competitive procurement process.

4. PURCHASING AGENT

Section 2.50.115 of the Town Code establishes the Town Manager or his/her designee as the Purchasing Agent for the Town. When so acting the Town Manager shall:

- Give preference to merchants whose place of business is located within the Town limits, quality and price being equal.
- Establish and enforce specifications with respect to equipment, materials and services required by the Town.
- Inspect or supervise the inspection of all deliveries of equipment, materials and services, and determine their quality, quantity and conformity with specifications thereof.
- Have charge of such general storerooms and warehouses as the Town may establish.
- Transfer to, or between, offices, departments or agencies, equipment, materials or services and, on approval of the Town Council with such notice as may be required, sell to the highest bidder surplus, obsolete or unused equipment or materials.

Town of Los Gatos Purchasing Manual

5. PURCHASING GUIDELINES

a) Standards of Purchasing Practice

The Town of Los Gatos adheres to the following Standards of Practice:

- 1) To regard public service as a sacred trust, giving primary consideration to the interests of the public agency that employs us.
- 2) To purchase without prejudice, seeking to obtain the maximum value for each dollar expended.
- 3) To avoid unfair practices, giving all qualified vendors equal opportunity.
- 4) To honor our obligations and require that obligations to our public agency be honored.
- 5) To accord vendor representatives courteous treatment, remembering that these representatives are important sources of information and assistance in solving our purchasing needs.
- 6) To refuse to accept any form of commercial bribery, and prevent any appearance of so doing.
- 7) To be receptive to counsel from our colleagues, and to cooperate with them to promote a spirit of teamwork and unity.
- 8) To conduct ourselves with fairness and dignity, and to demand honesty and truth in the purchasing process.
- 9) To strive for greater knowledge of purchasing methods and of the materials we purchase.
- 10) To cooperate with organizations and individuals involved in activities designed to enhance the development of the purchasing profession, remembering that our actions reflect on the entire purchasing profession.

b) Gifts and Unauthorized Purchases

- 1) **Gifts:** Consistent with existing Town policy, Town employees, officers or officials are not entitled to any special consideration from vendors and merchants in their personal affairs nor are such Town employees, officers, or officials to attempt to procure materials for the personal use of any other person. Town employees, officers or officials shall not solicit or accept gifts except for those items that can be shared by all staff such as food and flowers.
- 2) **Unauthorized Purchases:** Except for emergencies or other authorized exemption, no purchases shall be made without specific authorization as outlined in this policy. Purchase transactions that are either entered into by an individual that is not authorized to contract on behalf of the Town or entered into by an individual normally authorized to contract, but who uses an unauthorized procurement method, or exceeds their delegated authority may be held personally liable for the cost of the purchase or contract and/or result in disciplinary action and up to and including

Town of Los Gatos Purchasing Manual

termination of employment. If a department accepts responsibility for payment of incurred charges from an unauthorized purchase, the department must submit the following:

- i) A purchase requisition containing all required information.
- ii) Evidence of the purchase and receipt of item(s), i.e invoices, packing slips etc.
- iii) A written statement explaining the circumstances that led to the unauthorized purchase, and the steps taken to prevent its reoccurrence.

c) Green Procurement

Whenever possible, goods and services that are proven to be ecologically sound, healthy, energy-efficient, renewable, reusable, highly durable, or have recyclable content should be considered for purchase to support environmental friendly or "green" initiatives. Examples of such products may include, but are not limited to: alternative fuel vehicles, recyclable, and/or biodegradable products, or products made out of recycled materials, and low-emission paints, and native plants for landscaping purposes.

d) Purchasing Authority

The Town Manager or designee is authorized to enter into and sign on behalf of the Town contracts for goods, services, including professional services less than \$50,000. All contracts over \$50,000 must be approved by the Town Council.

e) Purchase Orders

- 1) Purchase orders (PO) represent a commitment related to unperformed contracts for goods or services between a Town Department and vendor. When a PO is executed, an "encumbrance" against the program account identified in the PO is created.
- 2) Purchase orders are required for purchases over \$1,000. Prior to purchase, a requisition should be generated, followed by a PO. When an invoice is received, it is processed against the PO and the payment will be deducted from the outstanding encumbrance associated with the PO.
- 3) Change Orders: Overpayment of purchase orders cannot exceed more than 10% of the original authorized amount. In instances where, due to unforeseen developments the cost of goods or services exceeds 10% of the original amount plus contingencies, a change order must be processed. Approval of change orders is subject to authorization limits provided in this policy.

Town of Los Gatos Purchasing Manual

f) Insurance and Indemnity

Insurance is required in connection with a purchase or contract that involves service performed on Town property, a professional services contract, or whenever there may be an inherent risk of personal injury in the activity involved. When insurance and indemnity are required, the contractor shall hold the Town harmless, agree to defend, and maintain insurance for property damage, general liability and workers' compensation in the form and amounts determined by the Town Attorney. Exceptions to these requirements must be approved by the Town Attorney.

1) *General Liability and Bodily Injury Insurance*

Commercial general liability insurance for at least \$1,000,000 combined limit for bodily injury and property damage that provides that the Town, its officers, employees and agents are additional insured under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider thereof that the insurance will operate as primary insurance for work performed, and that no other insurance affected by Town or other named insured will be called on to cover a loss covered thereunder.

2) *Automobile Liability Insurance*

Automobile liability insurance in an amount not less than \$1,000,000 per person/per occurrence.

3) *Workers' Compensation Insurance*

Workers' Compensation Insurance for all employees, all in strict Compliance with State laws, and to protect the Town from any and all claims thereunder, including a waiver of subrogation.

4) *Professional Liability Insurance*

In addition, engineering related services, auditors and other certain professional service contracts may need professional liability insurance in an amount not less than \$1,000,000.

5) *Certificate of Insurance*

A Certificate of Insurance must be filed with the Town prior to engaging in any operation or activity set forth in the purchase order/service contract.

g) Business License

Vendors providing services within Town limits, or delivering goods to the Town must have a Town of Los Gatos Business License. The department initiating a purchase or contract for services is responsible for insuring that the vendor or contractor has a business license.

Town of Los Gatos Purchasing Manual

h) Multi-Year Contracts

A contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the Town, provided that the term of the contract and renewal provisions are included in the original solicitation process. Contracts committing the Town over five fiscal years are not recommended and shall be allowed only under special circumstance as approved by the Town Council. Contracts in excess of one (1) year shall include a provision automatically terminating the contract in the event that the Town Council does not budget funds to pay the contract in future year.

i) Independent Contractors

In compliance with Public Code 31000, Town may contract with an "outside" source personal services when:

- Special skills, knowledge and resources are unavailable within the Town.
- Town employees cannot complete the work in a reasonable time.
- A situation requires independent, impartial evaluation by a consultant with recognizable professional expertise and stature.
- It will be less expensive to contract for the work.
- Another branch of government (county/state/fed) dictates that the Town contract with a specified vendor.
- Circumstances may require special skills for a limited time. Those skills may be unavailable from current employees or prospective temporary employees.

6. PURCHASING AUTHORIZATION LIMITS

The following authorization limits apply to all purchases except Public Works Projects. Public Works Projects purchasing authorizations and information are discussed later in this document.

a) *Formal Bid – Purchases more than \$50,000*

- Authority to award – Town Council.
- Formal bid or Request for Proposal process is required, unless the purchase is for personal property (equipment) or professional/personal services.
- Award to the lowest cost, responsive, responsible bidder.

b) *Formal Bid – Purchases more than \$25,000 - \$49,999*

- Authority to award – Town Manager.
- Formal bid or Request for Proposal process is required, unless the purchase is for personal property (equipment) or professional/personal services.
- Award to the lowest cost, responsive, responsible bidder.

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- c) *Informal Bid – Purchases more than \$5,000 and up to \$25,000*
 - Authority to award – Town Manager.
 - Quotes must be received from three competitive sources.
 - Award to the lowest cost, responsive, responsible bidder.
- d) *Small Purchases – Purchases more than \$1,000 and up to \$5,000*
 - Authority to award – Department Director or authorized designee.
 - Seek competitive quotations when feasible.
 - Award to the lowest cost, responsive, responsible bidder.
 - Require a purchase order.
- e) Purchases under \$1,000 do not require a purchase order or competitive quotations, but must be authorized by Department Director or authorized designee.

7. SPECIAL TYPES OF PURCHASES

a) Purchases Requiring Competitive Bids

All contracts greater than \$50,000 shall be awarded by competitive sealed bidding. The Town Manager is authorized to award contracts up to \$50,000. Town Council approval is required for awards greater than \$50,000. Contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading competitive bidding requirements.

1) Competitive Sealed Bidding Process:

- i) **Invitation and Notice:** An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement. Reasonable public notice of the invitation for bids shall be given not less than ten (10) calendar days prior to the date of the opening of bids. Notice shall be published at least twice in a newspaper of general circulation, printed and published in the Town, or if there is none, it shall be posted in at least three (3) public places in the Town, including the Town website. The Purchasing Agent shall also advertise pending purchases by a notice posted on the public bulletin board in the Town Hall.
- ii) **Bid Opening:** Bids shall be opened publicly in the presence of one or more witnesses at the place and not earlier than the time designated in the invitation for bids. The amount of each bid and such other relevant

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information as the Town deems appropriate, together with the name of each bidder shall be open to public inspection in accordance with the policy.

- iii) **Bid Evaluation and Acceptance:** Bids received at or prior to the time set for bid opening shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.
 - iv) **Correction or Withdrawal of Bids:** Subject to any provisions of federal or state granting authorities to the contrary, correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, shall be in accordance with this section. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no corrections to bid or provisions shall be permitted but, in lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - The mistake is clearly evident on the face of the bid document; or
 - The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the Town.
 - v) **Award:** The contract shall be awarded by appropriate written notice to the lowest cost, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
- 2) **Tie bids:** If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Town Council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening.

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- 3) **Cancellation of Invitations:** An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation. Each solicitation issued by the Town shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part at the Town discretion with or without a showing of good cause.
- 4) **Determination of Non-responsibility:** If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Town Manager or his or her delegate. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- 5) **Right of Nondisclosure:** Information furnished by a bidder or offeror in reliance upon a written offer of confidentiality by the Town pursuant to this section shall not be disclosed by the Town outside of the office of the purchasing agent or using agency without prior written consent by the bidder.
- 6) **Performance Bonds:** The Town Council shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Town. If the Town Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.
- 7) **Protests:** Any participating bidder may file a protest of a contract award or proposed contract award. The protest or appeal must be made in writing within 10 days of award notification and contain at least the following information:
 - The name, address and telephone number of the protester.
 - The signature of the protester.
 - The bid number and date of bid closing.
 - A statement of the legal and/or factual ground on which the protest or appeal is based, including copies of information relevant to the bid.

b) Contracting for Professional/Personal Services

For the purpose of procuring of professional/personal services, the Town department or agency using such a professional/person may award a contract for service in accordance with the purchasing authorizations and limitations of this policy.

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1) Selection Procedure.

- i) **Request for Qualifications and Notice:** Adequate notice of the need for the desired professional services shall be given by the Town through a request for qualifications. The request for qualifications shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.
- ii) **Statement of Qualifications:** Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. The Town may specify a uniform format for statements of qualifications.
- iii) **Interviews:** The head of the Town department or agency or his or her designee using the professional services may conduct interviews with any offeror who has submitted a statement of qualifications for the purpose of ranking the qualifications of the offerors, based on the evaluation factors set forth in the request for qualifications. Interviews shall not disclose any information derived from statements submitted by other offerors.
- iv) **Award:** Award shall be made to the offeror determined to be the best qualified based on evaluation factors set forth in the request for qualifications. If terms cannot be agreed upon with the best-qualified offeror, then negotiations will be formally terminated with the selected offeror. If statements were submitted by one or more offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

2) Tie Bids: See "Competitive Sealed Bids" (2).

3) Cancellation of Invitations: See "Competitive Sealed Bids" (3).

3) Determination of Non-responsibility: See "Competitive Sealed Bids" (4).

4) Right of Nondisclosure: See "Competitive Sealed Bids" (5).

5) Bid and Performance Bonds: See "Competitive Sealed Bids" (6).

6) Protests: See "Competitive Sealed Bids" (7).

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c) Cooperative Purchasing

The Town Manager is authorized to enter into cooperative purchasing arrangements with other governmental entities without separate competitive bidding by the Town if a governmental agency has solicited bids and awarded a contract for services or materials which the Town desires to obtain, and participation in such a purchase is agreeable to the bidder awarded the contract and the Town Manager finds that participation in such group purchasing agreement is for the benefit of the Town.

d) Sole Source Purchasing

- 1) A contract may be awarded without competition when the Town determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service or construction item. Purchases of less than \$50,000 must be approved by the Town Attorney. Town Council approval is required to purchase any items or service valued over \$50,000.
- 2) The Town Manager or his or her designee shall conduct negotiations, as appropriate, as to price, delivery and terms. A statement of the basis for the sole source determination shall be placed in the contract file.

e) Open (Blanket) Purchases

Open procurement can be used when very similar goods or services are purchased frequently during the year. Generally, the individual purchases are small in relation to the total amount authorized. Bids and approvals must be obtained annually using the same criteria as for a single item purchase order.

f) Petty Cash Reimbursement

The Petty Cash Fund is used to reimburse purchases which were originally paid out-of-pocket by a Town official or employee. Petty Cash reimbursements will either be paid in cash or by check, depending on the amount.

g) Credit Card Purchases

- 1) Credit card purchases are limited to small purchases of up to \$5,000. Guidelines and conditions for small purchases as set forth in this policy will be followed.
- 2) Credit cards are issued to individual employees and are to be used for official Town business only. Credit cards belong to the Town and can be cancelled or revoked at any time at the discretion of the Town Manager. Should any employee lose or have his/her credit card stolen, it is their responsibility to contact the credit card company immediately. Also, they must notify their supervisor in writing one (1) working day after discovery. The supervisor must notify the Purchasing Agent as soon as possible.
- 3) It is the responsibility of the employee to furnish receipts for all credit card purchases. Payment for purchases without receipts may become the responsibility of the employee.

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h) Emergency Purchases

- 1) The Town may make emergency purchases of supplies, services, or construction items when there is a threat to public health, welfare, or safety; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Town Manager or designee has the authority to deem a situation as an emergency.
- 2) **Operational Necessities:** After normal working hours, departments may make emergency purchases to meet statutory deadlines and/or immediate unforeseen emergencies of all types, when the Purchasing Agent or designee is not available. Such purchases shall be for statutory or emergency needs only and reported to the Purchasing Agent or their designee during the next scheduled work period. A requisition must be generated by the next business day.

i) Contract Renewals

Annual renewals for personal/professional services require an amended contract signature page indicating all changes, including but not limited to: pay rate, period of performance, change in service performance or terms.

8. PUBLIC WORKS PROJECTS

a) Bidding Requirements

Public works projects over \$5,000 are subject to bidding and other requirements set forth by statutes. A public project of more than twenty-five thousand dollars (\$25,000.00) and not more than one hundred thousand dollars (\$100,000.00) may be let to contract by informal procedures as set forth in Section 22032 et seq., of the Public Contract Code.

b) Scope of Public Work Contracts

"Public works contracts" include contracts for a project for the erection, improvement, painting, or repair of public buildings and works; work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; street or sewer work, except maintenance or repair; and furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

c) Informal Bid Process

When using informal bidding procedures for a public project, a notice inviting informal bids will be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Town Code Section 2.50.132, and to all construction trade journals as specified by the California

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Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors or construction trade journals may be notified at the discretion of the department soliciting bids; provided however:

- If there is no list of qualified contractors maintained by the Town for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.
- If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to that contractor or contractors.

d) Prevailing Wage

Public works projects over \$999.99 are subject to prevailing wage law. "Public works contracts" for the purpose of prevailing wage law are defined as the construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds.

e) Town Contractual Requirements

Contractors must meet the following requirements to enter into a contract with the Town of Los Gatos to complete public works projects:

- Be selected through the proper bid process.
- Properly licensed by the State of California.
- Provide a copy of Tax Identification Number.
- If project exceeds \$999.99, contractor must pay its employees the Prevailing Wage Rate.
- Must carry Workers' Compensation and Liability Insurance.
- Must testify that the contractor will adhere to all of the requirements listed above.
- May be required to provide Payment and Performance Bonds.

9. SURPLUS SUPPLIES AND EQUIPMENT

a) Assessing Value of Surplus Property

Surplus property is used to generically describe any Town property that is no longer needed or useable by the holding department. The Purchasing Agent

or designee has the authority to declare item(s) with a market value of less than \$10,000 surplus. Items with a market value greater than \$10,000 will be formally declared surplus by the Council. Each department shall periodically review its equipment, material, and inventory, and shall promptly notify the Purchasing Agent of any surplus property.

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b) Surplus Disposal

The Purchasing Agent or designee shall determine or approve one of the following methods of disposition that is most appropriate and in the best interest of the Town:

- 1) **Transfer to Another Department:** Surplus property may be transferred between Town departments.
- 2) **Trade-In:** Property declared as surplus may be offered as a trade-in credit toward the acquisition of new property. All trade-in offers will be submitted to the Purchasing Agent for review and approval.
- 3) **Disposal:** The Purchasing Agent may offer surplus property for sale. All surplus property is for sale "as is", with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility or usability of the property offered for sale.

c) Methods of Disposal

- 1) **Public Auction:** Surplus property may be sold at public auction. Town staff may conduct Public Auctions, use internet auction sites, or the Town may contract with a professional auctioneer.
- 2) **Sealed Bids:** Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner shall be sold to the highest responsible bidder.
- 3) **Selling for Scrap:** Surplus property may be sold as scrap if the Purchasing Agent deems that the value of the raw material exceeds the value of the property as a whole.
- 4) **Negotiated Sale:** Surplus property may be sold outright if the Purchasing Agent determines that only one known buyer is available or interested in acquiring the property.
- 5) **No Value Item:** Where the Purchasing Agent determines that specific supplies or equipment are surplus and of minimal value to the Town due to spoilage, obsolescence of other cause or where the Purchasing Agent determines that cost of disposal of such supplies or equipment would exceed the recovery value, the Purchasing Agent shall dispose of the same in such manner as he or she deems appropriate and in the best interest of the Town.

d) Proceeds from Surplus Sale/Trade-In

Proceeds from the sale or trade-in of surplus property shall be returned to the appropriate fund.



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EFFECTIVE DATE: August 4, 2008		PAGES:
ENABLING ACTIONS:	REVISED DATES:	
APPROVED:		

I. PURPOSE

The purpose of this Purchasing Policy is to define the policies and processes for the procurement of goods and services for the Town of Los Gatos in conformance with Federal and State codes and regulations and Town Code Sections 2.50.105 through 2.50.145. This policy establishes procurement authorization levels and provides uniform guidelines for procurement activities to ensure proper and efficient procurement activity.

II. SCOPE

The provisions of this policy shall apply to elected and appointed officials, Town employees, volunteers, and vendors seeking to do business with the Town. It identifies those with the authority and responsibility to procure on behalf of the Town, and addresses policies on matters including, but not limited to, the purchase of goods and services, public works projects, emergency purchases, Town contracts for services, and the disposition of surplus property.

III. CODE OF CONDUCT

All Town employees are responsible for impartially assuring fair and competitive access to Town procurement opportunities by responsible vendors. In addition, all employees shall conduct themselves in a manner that avoids any impropriety and that fosters the highest level of public confidence in the integrity of the Town’s purchasing system.

- 1. Conflict of Interest:** No employee shall participate in a procurement when the employee knows that their spouse, domestic partner, child, stepchild, parent, stepparent or other close family member or friend will either benefit from the procurement and/or has an employment arrangement contingent on or will be affected by the procurement.
- 2. No Gifts or Gratuities:** No Town employee shall solicit, demand, accept or agree to accept a gift of goods or services, payment, loan, advance, deposit of money, or

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employment offer presented, promised in return for, or in anticipation of favorable consideration in a Town procurement.

3. **Conduct with Vendors:** Conduct with vendors who provide goods or services to the Town shall be fair, open, and transparent. Town employees shall refrain from showing favoritism to vendors or being unduly influenced, safeguard confidentiality when required to do so, and select vendors on the basis of meeting appropriate and fair criteria.
4. **Accountability.** Town employees shall abide by and be accountable for the codes of conduct established in this policy. Policy violations may result in disciplinary action and/or termination of employment.

IV. EXCLUSIONS/EXCEPTIONS

The provisions of this policy shall not apply to any of the following, with the exception of the requirements for a contract, as determined by the Town Attorney:

1. Employee benefits
2. Bond and trust account payments
3. Employee reimbursements
4. Escrow payments
5. Fuel (gasoline/diesel)
6. Insurance
7. Membership/dues
8. Media advertisements
9. Offsite training expenses
10. Pass-through payments
11. Postage
12. Refunds
13. Travel expenses
14. Utility payments
15. Contracts governed by any State or Federal law which prescribes a different procedure
16. Goods or services accepted in compliance with the terms and conditions of a grant, gift, or bequest to the Town

V. DEFINITIONS

For purposes of this policy, the following words and phrases shall be interpreted as follows:

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Awarding Authority – The governing body or staff person authorized to approve the purchase of goods and services on behalf of the Town based on level of review and/or predetermined monetary amounts established by this policy.

Bid – Formal written offer, in response to a solicitation, to furnish goods including supplies, equipment, and vehicles, and/or services in conformity with the specifications, delivery terms, and conditions required at a guaranteed maximum cost.

Change Order – A document signed and approved by an authorized Town employee and the Finance Department that modifies the terms of the original approved purchase order and/or agreement in scope, cost, schedule, account coding, and/or other similar factor.

Contract or Agreement – A written legal document between two or more parties, which documents agreed upon particulars, including some or all of the following: scope of work; deliverables; milestones or measures; time and insurance requirements; use of equipment or property; fees or payments.

Cost – As applied to a single transaction for the purchase of goods or services, means the total amount to be expended by the Town, inclusive of sales or use tax. Cost includes amounts expended for delivery, set-up, testing, and included maintenance services.

Department Directors – Means and includes the Assistant Town Manager, Community Development Director, Human Resources Director, Finance Director, Library Director, Police Chief, Information Technology Manager, Town Clerk, and Parks and Public Works Director. In the case of vacancy or absence, to mean the interim or acting Director.

Department Purchasing Representative – A Town employee designated by their Department Director as having the authority to solicit bids or proposals and place orders with vendors on behalf of their Department, subject to the limitations established in this Policy, Town Code Sections 2.50.105 through 2.50.145, and the approval of the appropriate awarding authority.

Disposable Kitchen and Office Supplies – Include, but are not limited to: coffee cups, plates, pens, binders, trash, and recycle liners.

Emergency – An emergency is a sudden, unexpected occurrence that poses a clear and imminent danger and requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, as declared by the Director of Emergency Services/Town Manager.

Employee – An individual who performs services for the Town as an elected or appointed official or as a compensated employee of the Town or of a temporary services agency retained by the Town.

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Goods – Includes supplies, materials, and equipment to be furnished or used by any Town Department, including items purchased by the Town and furnished to contractors for use in public works projects.

Independent Contractor – An individual or business with whom the Town contracts to provide services. An independent contractor differs from an employee in that the Town specifies the deliverable that is to result from the contracted work but does not have the right to direct or control the manner in which the work is performed.

Insurance – All vendors engaged in services on Town property, or whenever there may be an inherent risk of personal injury in the activity involved, regardless of the cost of the service, are required to maintain public liability insurance, property damage insurance, and workers compensation insurance, in accordance with State law, for each occurrence naming the Town of Los Gatos as additional insured. A Certificate of Insurance must be filed with the Town prior to engaging in any operation of activity set forth in the purchase order. If a vendor is providing a good such as equipment, insurance may be required if the purchase entails set-up, testing, and/or maintenance as part of the purchase or lease. Refer to the insurance requirements in effect at the time of procurement. Insurance requirements are maintained by the Town Clerk Department and Town Attorney. Exceptions to the standard insurance requirements must be authorized by the Town Attorney. The purchasing Department should request insurance from the vendor and ensure current insurance documents are on file with the Town.

Maintenance Work – As defined in Section 22002 of the Public Contract Code, and means duties that include any or all of the following: (a) routine, recurring and usual work for the preservation or protection of any publicly owned or operated facility, (b) minor repainting, (c) resurfacing of streets and highways at less than one inch, (d) landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems, or (e) work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems.

Paper Products – Include, but are not limited to: paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging folders, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

Printing and Writing Papers – Include, but are not limited to: copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

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Professional Services – Services which require the exercise of professional discretion and independent judgment, based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience. Examples of professional service providers include appraisers, architects, attorneys, engineers, instructors, land surveyors, physicians, information technology services, graphic designers, construction inspectors, etc.

Public Works Project – As defined in Section 22002 of the Public Contract Code, and means any of the following, but does not include “maintenance work”:

1. Constructions, reconstruction, erection alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility; or
2. Painting or repainting of any publicly owned, leased, or operated facility.

Purchase Order – An approved purchase order represents a written agreement for the purchase of supplies or services, documenting specifications and costs. Purchase orders encumber funds in the accounting systems to ensure the availability of funds under the agreement. Purchase orders are required for purchases over \$3,000.

Purchase Requisition – A purchase requisition form is prepared by staff, electronically through the Town’s financial software system. A purchase requisition includes vendor information, business license and insurance information, and purchase specifications. After Departmental approval, the purchase requisition is submitted to the Finance Department for approval and conversion into a purchase order.

Quote – A written promise from a vendor or provider guaranteeing the cost of specific goods, including supplies, materials, equipment, or services.

Recovered Organic Waste Products – Products made in California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

Recycled-Content Paper – Paper products and printing and writing paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

Senate Bill 1383 (SB 1383) – Senate Bill approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane admissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

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Senate Bill 1383 Regulations (SB 1383 Regulations) – The Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle that created 14 CCR, Division 7, Chapter 12 and amended portions of the regulations of 14 CCR and 27 CCR.

Services (*General*) – Work performed or labor, time and effort expended by an independent contractor, including professional services and excluding contracts for public works projects. Examples include custodial services and building and equipment maintenance.

Surplus Property – Any Town property that is no longer needed or useable by the holding Department.

VI. DECENTRALIZED PURCHASING SYSTEM

The Town has adopted a decentralized purchasing system pursuant to Town Code Section 2.50.110. This means that for most purchases, requesting Departments can directly implement the appropriate procurement process, subject to the limitations established in this policy and subject to the approval of the appropriate awarding authority. The Finance Department and Town Manager oversee this process. Nothing precludes staff from seeking procurement assistance from the Finance Department or Town Manager, especially to clarify policies, processes, and procedures.

VII. BUSINESS LICENSES

Pursuant to Town Code Chapter 14, a Town business license is required for vendors located within Town limits, or if an agent of the business comes into Town to conduct business. The Department initiating the purchase or contract for services is responsible for ensuring that the vendor has a business license. Common carriers only delivering goods and other government entities less than two times per quarter are not subject to the business license certification requirement.

VIII. TYPES OF PURCHASES

For the purpose of this policy, purchases fall into one of the following categories: general purchase of goods and/or services, public works projects, and emergency purchases.

As a general rule, purchases shall be based on a competitive procurement process. The rigor of the procurement process increases with the dollar value of the purchase. Although formal bidding can result in lower purchase prices, there are costs associated with the process in terms of time and effort and smaller value procurements may not attract vendor interest in a rigorous process. For that reason, the smaller the purchase, the lesser the requirements in procurement process and vice versa.

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IX. PURCHASE OF GOODS AND/OR SERVICES

Under no circumstance can any purchase be split or separated into smaller components to determine the appropriate awarding authority or for any other purpose.

1. Goods and services costing up to and including **\$3,000** (including tax, shipping, and handling):
 - a. May be approved at the staff level by a Department Purchasing Representative as designated by Department Directors.
 - b. No Purchase Order is required prior to the purchase being made or work commencing.
 - c. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.
 - d. A Town-issued purchasing credit card may be used to pay, subject to purchasing limits and the rules set forth in the Town Procurement Card Procedure.

2. Good and services costing over **\$3,000** and up to and including **\$50,000** (including tax, shipping, and handling):
 - a. Department Director must approve purchase.
 - b. A purchase order is required prior to purchase being made or work commencing.
 - c. At least three quotes must be solicited from different vendors and supporting documentation must be submitted with the purchase requisition.
 - d. For purchase of goods that are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. For purchase of services or goods that are not standardized or not of uniform quality or other factors in addition to cost must be taken into account, and the purchase is not awarded to the vendor with the lowest quote, an explanation of why and any documentation to support the decision must be submitted with the purchase requisition.
 - e. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.
 - f. For information regarding sole source or single source vendors, see Section XV of this policy.

3. Goods and services costing over **\$50,000** and up to and including **\$100,000** (including tax, shipping, and handling):
 - a. Town Manager, or Finance Department designee, must approve purchase.
 - b. A purchase order is required prior to purchase being made or work commencing.
 - c. For purchase of goods that are standardized or of uniform quality, a Formal Bid Procedure as outlined in Town Code Section 2.50.140 shall be followed. For purchase of services or goods that are not standardized or not of uniform quality or other factors in addition to cost must be taken into account, a Request for Proposal Process as outlined in Town Code Section 2.50.141 shall be followed (see Section XIII of this policy for more information). This excludes public works

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- projects - for bidding methods related to public works projects, see Section X of this policy.
 - d. Vendor evaluation and selection criteria must be clearly outlined and presented with the purchase requisition when applicable.
 - e. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.
 - f. For information regarding sole source or single source vendors, see Section XV of this policy.
4. Goods and services costing over **\$100,000**:
- a. Town Council must approve purchase.
 - b. A purchase order is required prior to the purchase being made or work commencing.
 - c. For purchase of goods that are standardized or of uniform quality, a Formal Bid Procedure as outlined in Town Code Section 2.50.140 shall be followed. For purchase of services or goods that are not standardized or not of uniform quality or other factors in addition to cost must be taken into account, a Request for Proposal Process as outlined in Town Code Section 2.50.141 shall be followed (see Section XIII of this policy for more information). This excludes public works projects - for bidding methods related to public works projects, see Section X of this policy.
 - d. Vendor evaluation and selection criteria must be clearly outlined and presented to the Town Council when applicable.
 - e. For a service purchase, contract, insurance, and business license are required. See Section XIV of this policy for more information.

X. PUBLIC WORKS PROJECTS

For public works projects as defined in this policy and the Public Contract Code:

1. The Town has adopted the **California Uniform Public Construction Cost Accounting Act** (the Act), per Town Code Section 2.50.131. These procedures are intended to provide uniformity of cost accounting standards for construction work performed or contracted by public entities in the State and a method for the bidding of public works projects. This section is designed to provide a synopsis of the general provisions of the Act and adopt local administrative procedures to comply with the intent of the Act. The Act should be consulted for detailed information (see the California State Controller's website at: https://sco.ca.gov/ard_cuccac.html and the Manual, currently at: www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf). Every five years, the Act Commission reviews the informal bid limits for inflation and other factors to determine whether adjustments should be made. If an adjustment is made, the State Controller notifies the affected public agencies.

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2. Generally, the Act permits the Town to solicit bids and award contracts for public works projects as follows:
 - a. Public project work in the amount defined in the Act (currently \$60,000) or less may be performed by force account using the Town's own staff resources, or by negotiated contract, or by purchase order (Section 22032(a)) with no bid requirement.
 - b. Public projects in the amount defined in the Act (currently \$200,000) or less may use the informal bidding procedures set forth in Section 22032(b) of the Act.
 - c. Public projects at a cost defined in the Act (currently more than \$200,000) must use formal bidding procedures to let the contract pursuant to Public Contract Code Section 22032(c).
 - d. Contractors List: At least once per calendar year, the Town must establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing written notice to all construction trade journals designated for that Agency under Public Contract Code Section 22036. The notice must invite all licensed contractors to submit the name of their firms to the Town for inclusion on the Town's list of qualified bidders for the following 12 months. The Town can choose a specific date in which to renew the list of qualified contractors and may add a contractor to the list at any time during the year pursuant to the Act.
 - e. Maintenance work, as defined in this policy and the Public Contract Code, is separate and distinct from public works projects and does not fall under the Act.
 - f. All requirements of the Act, as amended from time to time, shall apply to this Policy.
3. Procedures
 - a. Development of Plans and Specifications
 - i. The Department will prepare plans and specifications that will permit the widest opportunity to prospective bidders to respond to the request for bids based on the specifications. Prior to the plans and specifications, the insurance requirements and legal aspects for the project must be reviewed and approved by the Town Attorney.
 - ii. Bid bonds, performance bonds, and payment bonds may be required in amounts stated in the specifications.
 - b. Solicitation of Bids and Proposals
 - i. **Informal Bids:** A notice inviting informal bids shall be prepared, describing the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids. The notice shall be mailed, not less than 10 calendar days before bids are due, either to all Contractors on the Contractors List for the category of work to be bid, or to all construction trade journals as specified by the Act Commission in accordance with Section 22036 of the

Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the Department soliciting bids, provided, however:

1. If there is no Contractors List maintained by the Town for the particular category or work to be performed, the notice shall be sent only to the construction trade journals specified by the California Uniform Construction Cost Accounting Commission.
 2. If the product or service is proprietary in nature such that it can only be obtained from a certain contractor or contractors, the notice may be sent exclusively to such contractor or contractors.
- ii. **Formal Bids:** Notices describing the project, stating where to obtain more information, the time and place for submitting sealed bids, and their opening shall be pursuant to Section 22037:
1. Published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation in the Town's jurisdiction;
 2. Sent electronically, if available, by either facsimile or e-mail to all construction trade journals specified in Section 22036 at least 15 days before the date of opening of bids;
 3. Other notice, if necessary or desired by the Town.
- iii. **Rejections of Bids:** In its discretion, the Town may reject any bids presented after re-evaluating its cost estimates of the project and furnishing written notice to an apparent low bidder. The Town shall have the option of either of the following:
1. Abandoning the project;
 2. Re-advertising for bids in the manner described above; or
 3. The Council may override the requirement for bidding if it determines that the public project will be performed more economically by the Town without a contract, or that materials and supplies can be purchased at a lower price in the open market, or if no bids are received through the formal or informal procedure, the project may be performed by Town employees.
- iv. **Award of Contract**
1. Contracts valued over \$100,000 shall be awarded by Town Council.
 2. Contracts valued up to and including \$100,000 may be awarded by the Town Manager or designee.
 3. If all bids received through an informal bidding process are in excess of the amount defined in the Act (currently \$200,000) as requiring a formal bid process, the Town Council may, by adoption of a resolution by a four-fifths vote, award the contract at the amount defined in the Act (currently \$212,500) or less, to the lowest responsible bidder, if it determines the cost estimate

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of the Town was reasonable pursuant to Section 22034. If the Council does not award the contract, but wants to proceed with the project, the specifications must be reviewed and formal bids solicited.

v. Monitoring and Administration

1. Public works projects must be bid in accordance with the California Uniform Public Construction Cost Accounting Act.
 - a. Public works projects must be awarded to the lowest responsible bidder.
 - b. Contracts over \$3,000 require a purchase order prior to purchase being made or work commencing unless otherwise authorized as an emergency purchase.
2. Anyone working on a public works project must be paid prevailing wages as determined by the California Department of Industrial Relations.
3. Contractors completing public works projects must be properly licensed by the State of California, provide a Tax Identification Number, and carry the required liability and workers' compensation insurance.

XI. EMERGENCY PURCHASES

In a declared emergency, essential goods and services may need to be obtained outside the processes and authorities established in this Policy. A separate Emergency Procurement Policy identifies when the Town is able to acquire the goods and services required to address an immediate threat to life-safety, public health, and property. The Policy allows for the necessary flexibility during the immediate response phase of a disaster while still maintaining an effective purchasing process and complying with applicable local and state purchasing laws. Where the Town is included in a major disaster or emergency declared by the President of the United States, this Policy also assures that Town procurements comply with Federal regulations applicable to Federal disaster grant reimbursement as defined in Title 2 of the Code of Federal Regulations, Part 200 (2 CFR Part 200).

In a non-declared emergency, when purchases are immediately necessary for the preservation of life, property, public health, or continued operation of a Department, the Town Manager must approve the purchase. Once the Finance Department receives Town Manager approval, a purchase order will be issued. All requirements, including obtaining an executed agreement, business license, and insurance should be completed after the fact by the Department. Failure to complete necessary procedures before the good/service were needed does not constitute an emergency.

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XII. PREFERENCE FOR LOCAL AND MINORITY, DISABLED, AND WOMAN-OWNED BUSINESSES

It is the intent of the Town to ensure full and equitable opportunities for minority business enterprises, women business enterprises, disabled business enterprises, and local businesses.

For the purchase of goods or services, when two or more proposals, bids, or quotes are the same, in unit, quality, service, and total cost, preference shall be given to local businesses who operate within the Town of Los Gatos limits, minority business enterprises, women business enterprises, and disabled business enterprises.

1. Preference shall be given if the quote for service or taxable good is:
 - a. Up to and including \$10,000 and is within 5% of the lowest quote
 - b. More than \$10,000 and up to \$500,000 and is within 3% of the lowest quote
 - c. More than \$500,000 and up to \$1,000,000 and within 2% of the lowest quote
 - d. More than \$1,000,000 and within 1% of the lowest quote
2. A local business shall be defined as a vendor or contractor who has a fixed place of business in Town limits and the point of sale occurs within Town limits, is current in the payment of their business license fee, is in compliance with Town laws, and does not owe any money to the Town.
3. The Town will take all necessary affirmative steps to assure that minority businesses, women business enterprises, disabled business enterprises, and labor surplus area firms are used when possible, including those identified in 2 CFR Section 200.321:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

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4. The preference does not prohibit the Town from basing purchasing decisions on the quality of goods/services.

XIII. FORMAL BIDDING PROCEDURES AND REQUEST FOR PROPOSAL (INCLUDING REQUEST FOR INFORMATION, REQUEST FOR STATEMENT OF QUALIFICATIONS, ETC.) PROCESS

1. **Formal Bidding Procedures.** All purchases for goods of a standardized or uniform quality in excess of \$50,000, except public works projects, are subject to a Formal Bid Procedure as outlined in Town Code Section 2.50.140. When competitive bids are required:
 - a. Notice inviting bids shall be published at least 14 days before the opening of bids. Notice shall be published at least twice in a newspaper of general circulation in Town, posted on the Town bulletin boards and website, and solicited from all vendors on any relevant bidders' list. The notice should include the details of where to submit bids (Clerk Department) and the date, time, and location of the bid opening.
 - b. When deemed necessary by the purchasing Department, bidder's security may be prescribed. Bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit bid security upon refusal or failure to execute the contract within 10 days after the notice of award of contract has been mailed, unless the Town is responsible for the delay. The awarding authority may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest bidder, the amount of the lowest bidder's security being applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
 - c. Sealed bids shall be submitted to the Town Clerk and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be available for public inspection during regular business hours for at least 30 calendar days.
 - d. Contract shall be awarded by appropriate written notice to the lowest cost, responsible, and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
 - e. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising the bids, the awarding authority may accept the one it chooses or accept the lowest bid made by negotiation with the bidders at the time of the bid opening.
 - f. An invitation for bids may be cancelled, or any bids may be rejected in whole or in part at Town discretion with or without showing of good cause.
 - g. The awarding authority shall have authority to require a performance bond before entering into a contract in such amount as it shall find reasonably

necessary to protect the best interests of the Town. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

- h. Any participating bidder may file an appeal/protest of a contract award or proposed contract award. The protest or appeal must be made in writing within 10 days of award notification and contain at least the following information:
 - ii. The name, address, email, and phone number of the protester.
 - iii. The signature of the protester.
 - iv. The bid number and date of bid closing.
 - v. A statement of the legal grounds on which the appeal is based, including all information relevant to the bid.
- i. The awarding authority may advise against a formal bidding process due to a significant business purpose or disruption of services.

2. Requests for Proposals Process.

- a. Purchases for services and goods not standardized or not of uniform quality or requiring other factors in addition to cost to be taken into account, in excess of \$50,000, except public works projects, are subject to a Request for Proposal Process as outlined in Town Code Section 2.50.141. When a Request for Proposal process is used:
 - i. The following information should be included in the Request when relevant: submittal deadline, contact information, introduction, background, scope of work, payment details, information to be submitted, timeline, evaluation criteria, insurance requirements, disqualifications, contract terms and conditions, and the public nature of materials submitted.
 - ii. Any dollar amount may be used.
 - iii. Proposals shall be submitted to the designated Town personnel electronically or in a sealed envelope prior to the deadline.
 - iv. The purchasing Department shall solicit, whenever possible, at least three competitive proposals.
 - v. The Town may utilize various other accepted requests for procurement in place of a Request for Proposal, including a Request for Information, Request for Statement of Qualifications, or others as deemed appropriate.
 - vi. The Request shall be posted online at least 10 days in advance, unless a shorter timeframe is warranted.
 - vii. Any interested vendors shall be treated fairly and given identical information and an equal opportunity to compete.
 - viii. Once responses are received, the proposals will be confidentially evaluated and scored in accordance with the established criteria.

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Interviews, presentations, site visits, etc. may be conducted depending on the nature of the procurement.

- ix. When a top-rated proposer is identified, good faith negotiations will commence. If an agreement cannot be reached in consideration of cost and/or scope, the next highest-rated proposer will be engaged and so on, until a mutually acceptable agreement is reached.

XIV. CONTRACTS

Contracts are required for the purchase of services.

1. A contract may be entered into for any period of time deemed to be in the best interest of the Town, provided that the term of the contract and renewal provisions are included in the original solicitation process. Contracts committing the Town over five fiscal years are not recommended and should be reviewed and approved by the awarding authority on a case-by-case basis.
2. Contracts in excess of one year shall include a provision automatically terminating the contract in the event that the Town Council does not budget funds to pay the contract in future years.
3. Insurance, as defined in this policy, is required for any vendor in connection with a contract that involves service performed on Town property.
4. If a vendor is providing a good such as equipment, a contract may be required if the purchase also entails a service such as set-up, testing, and/or maintenance as part of the purchase or lease.
5. All contracts must be approved as to form by the Town Attorney and routed through the Town's standard contract routing process, registered by the Town Clerk and reviewed, at a minimum, by the Finance Department and Town Manager's Office. The Town Manager will sign all contracts on behalf of the Town.
6. Departments will use a standard Town template contract. The master template is created and edited by the Town Attorney and maintained by the Clerk Department. Any changes must be approved by the Town Attorney.
7. Contracts may not be split or separated into smaller components.

XV. SOLE SOURCE/SINGLE SOURCE VENDORS

Sole Source is defined as the selection of a good or service that can only be obtained from one vendor because of its specialized, proprietary, or unique character.

Single source is defined as the selection of a good or service that may be available from two or more vendors, but there is a compelling reason to select one particular vendor.

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The requesting Department is responsible for supplying concise written justification, in the form of a memorandum, to be approved by the Department Director and Town Attorney, for the sole or single source purchase.

XVI. PROFESSIONAL SERVICES

Departments may seek the advice and assistance of professional service providers when there is a need for a specific expertise that is otherwise unavailable or the workload is such that additional assistance is required and the critical nature of the need justifies the cost.

1. In those cases where a professional service provider is sought due to workload issues, care shall be taken to structure services such that the professional service provider is clearly performing as an independent contractor and not as a temporary employee.
2. Reasonable alternatives, such as borrowing staff with the required expertise from another Department or establishing a full- or part-time Town position shall be considered before determining that the use of a professional service provider is cost effective and necessary.
3. Professional service providers are ordinarily selected based upon a number of criteria in addition to price. Examples include qualifications and relevant experience, understanding of the Town's needs, proposed methodology and approach, etc.
4. Professional services are legally exempt from selection solely based on cost. However, the complexity of the professional service provider selection process should be commensurate with the value of the proposed contract. For example, seeking a proposal from a single provider might be appropriate for a \$3,000 contract, but the issuance of a written Request for Proposals may be more appropriate for a \$50,000 contract. The Town Attorney may advise if a Request for Proposal process should be initiated.
5. The awarding authority, based on the cost of the service, shall be empowered to engage a professional service provider without the necessity of providing multiple quotes, a formal bid process, or a Request for Proposal process. This does not preclude any of these processes from occurring if desired by the awarding authority.
6. When services are required on a frequent or routine basis, a list of qualified "on-call" vendors may be established through a Request for Proposal (or Request for Information, Request for Statement of Qualifications, etc.) process. Following establishment of the list, vendors may be utilized without further selection process based on availability, cost, expertise, or other criteria. The list shall remain active for no more than five years. After

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five years, the Department shall utilize another Request for Proposal (or Request for Information, Request for Statement of Qualifications, etc.) process in order to update the list.

XVII. COOPERATIVE PURCHASING AGREEMENTS

When it is in the Town's best interest, Departments may purchase goods or services through cooperative purchasing agreements of other governmental or public agencies. Use of cooperative purchasing agreements is encouraged as a way of obtaining goods and services by aggregating volume, securing value pricing, and reducing administrative overhead. Measured use of cooperative purchasing agreements can significantly reduce the time and resources needed to competitively bid goods and service contracts.

1. Purchases through cooperative purchasing agreements may be accomplished without soliciting competitive quotes.
2. Departments wanting to utilize a cooperative purchasing agreement must submit all information regarding the cooperative purchasing agreement with the purchase requisition.

XVIII. ADDITIONAL PURCHASING GUIDELINES

1. **Alternate Vendor**
 - b. In the event that a vendor with the lowest quote is unable to provide the product(s), alternate vendors will be utilized in sequence of lowest responsible quote meeting requirements.
2. **Standardization**
 - a. Standardization is an organized process to adopt one product or group of products to be used by the Town, such as a particular computer hardware or software. Product standardization may be utilized to create efficiencies, enhance safety, increase productivity, promote brand consistency, or to foster interoperability.
 - b. Product standardization decisions are made by consensus of the Town Manager, Town Attorney, and Finance Director after careful consideration and review of recommendations from staff.
3. **Purchase Requisitions**
 - a. A purchase requisition is required to be submitted for a purchase order to be issued when necessary.

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- b. The requesting Department prepares the requisition using the Town's financial software for the entire amount of the purchase, including tax, shipping and handling, etc. and includes the appropriate account codes.
- c. Prior to submitting the purchase requisition for approval, all documents verifying compliance with this policy must be attached. These documents may include:
 - a. Written quotes including product specifications and tabulation, if appropriate or required;
 - b. First page of the staff report, if Council approval required or received;
 - c. Executed contract or amendment to contract for services;
 - d. Insurance and endorsements if required by contract, or alternatively, waiver of these documents approved by Town Attorney;
 - e. Verification of valid business license if required; and/or
 - f. Sole or single source memorandum for approval by Town Attorney.
- d. Upon receipt of a purchase requisition, the Finance Department reviews the document for accuracy and completeness. If the purchase requisition is not complete and/or accurate, a purchase order will not be issued, and the requesting Department will be notified of any necessary corrections. If the purchase requisition is complete and accurate, a purchase order will be issued in accordance with the guidelines of this policy.
- e. Approval of the purchase requisition represents that the Department has sufficient funds available to pay for the purchase, all necessary documents are attached and acceptable, and the guidelines of this policy have been followed.
- f. A purchase order is required prior to the purchase being made or work commencing unless otherwise noted in this policy.
- g. Purchases under \$3,000 do not require a purchase order, but must be authorized by the purchasing Department per Section IX of this policy.

4. Purchase Orders

- a. A purchase order is the principle document used to obtain goods and services for the Town.
- b. Purchase orders are required for all goods or services costing over \$3,000.
- c. A purchase order establishes an encumbrance against a program account.
- d. The Finance Department will issue a purchase order only after Town staff at all approval levels have first reviewed and approved the purchase requisition. Approval levels are as follows:
 - a. Department Director or designee
 - b. Insurance verification by the Clerk Department if applicable
 - c. Business License verification by Finance Department staff if applicable
 - d. Approval for compliance with this policy by Finance Department
 - e. Confirmation that the appropriate awarding authority has approved the purchase by Finance Department (i.e., Town Council).

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5. Change Orders

- a. Where the actual cost of goods exceeds 10% of the original purchase order, a change order must be requested from Finance by the responsible Department.
- b. Where the actual cost of goods is within 10% of the original purchase order amount, payment may be made subject to verification of the amount(s) by the responsible Department.
- c. Where the actual cost of services differs from the original purchase order amount specified in the service contract, a contract amendment must be submitted by the Department with the change order request.
- d. Change orders that increase any purchase order of goods or services over \$100,000 will require prior approval from Town Council.
- e. Documents outlining compliance with this policy must be submitted to Finance with the change order (i.e., a Council staff report).

6. Blanket Purchase Orders

- a. Blanket purchase orders can be utilized for goods or services that are used by the Town for ongoing operations. For a blanket purchase order, vendors agree to honor a price for a given period of time, and the Town may not specifically know how much of the product will be consumed or where or when it will be consumed.
- b. A blanket purchase order provides for obtaining pricing for anticipated but unidentified goods or services.
- c. Blanket purchase orders have the same requirements for goods and services as outlined in this policy.

XIX. RECYCLED PRODUCTS AND MATERIALS

It is the Town's intent to minimize negative environmental impacts of the Town's activities by ensuring the procurement of services and products that reduce toxicity, maximize recyclability and recycled content, and conserve natural resources, material, and energy.

In 2016, Governor Brown signed into law Senate Bill 1383 (SB 1383), in a state-wide effort to reduce emissions of short-lived climate pollutants (SLCP). Beginning January 1, 2022, SB 1383 requires cities and counties to procure annually a quantity of recovered organic waste products. As there is so much paper present in the solid waste disposal stream, the procurement of recycled content and recyclable paper will grow demand for these products and support recycling to help meet the organic waste diversion goals of SB 1383.

Town Departments and direct service providers to the Town, as applicable, must comply with the Town's Organic Waste Product Procurement Procedure for purchasing and mandatory recordkeeping for paper products, printing and writing paper, and disposable kitchen and office supplies.

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Requirements for purchasing paper products, printing and writing paper, and disposable kitchen and office supplies are as follows:

1. All purchases must contain 30 percent postconsumer recycled content, when available at no greater cost than nonrecycled products.
2. Products must be recyclable as defined by FTC “Green Guides.”
3. Departments must require vendors to certify postconsumer content and recyclability claims.
4. Departments/employees must provide records to the recordkeeping designee, as outlined in the Town Organic Waste Product Procurement Procedure, of all paper products, printing and writing paper, and disposable kitchen and office supplies purchased from a vendor within thirty days of the purchase (both recycled content and non-recycled content, if any is purchased). Records shall include a copy of the invoice or other documentation of purchase, written certifications for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content paper products and/or non-recycled content printing and writing paper are provided, include a description of why recycled-content paper products and/or recycled content printing and writing paper were not provided.

Departments should meet the following guidelines for non-paper products, provided the goods are available within a reasonable timeframe, meet reasonable performance standards, and are available at a reasonable cost:

1. All computer products purchased by the Town should be in compliance with the Federal Energy Star program.
2. All pesticides purchased by the Town shall be of the least toxic available.
3. Whenever possible, goods and services procured by the Town shall be from businesses that are certified green businesses by the Bay Area Green Business Program.

XX. HEALTHY FOOD AND BEVERAGE GUIDELINES

The Town of Los Gatos is committed to promoting and encouraging ways for Town staff, residents, and visitors to improve their overall health and wellness. One way to achieve the goal of supporting healthy living is to offer, purchase, and serve food and beverages of the

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greatest nutritional value and in appropriate serving sizes. The following guidelines help the Town promote a healthy work environment leading to greater job satisfaction, higher morale, and reduced health care costs and absenteeism. These guidelines are applicable when Town funds are being used and are not directed at individuals' meals, snacks, or beverages purchased or brought from home using non-Town funds. The guidelines apply to Town-sponsored meetings, celebrations, events, and in vending machines on Town property.

2. Beverages

- a. Water is presented as an attractive and appealing option.
- b. Sparkling water may be offered as an alternative to soda.
- c. Decaffeinated beverages are offered.
- d. Coffee and tea may be served unsweetened.
- e. Juices that provide more beneficial nutrients, like orange and grapefruit, are preferred.
- f. Recommended beverages include water, fat-free or skim milk, non-dairy milk alternatives (i.e., soy, almond, or oat), 100% fruit or vegetable juices, diet beverages, calorie-free sports drinks, and low-calorie sparkling water products.

3. Food and Desserts

- a. Healthy options are attractively presented and appealing.
- b. Reasonable portions are provided by cutting food in halves or quarters (i.e., cookies, sandwiches, or bagels are sliced in half).
- c. Either a fully plant-based offering or an attractive plant-based alternative is offered.
- d. A gluten-free option is offered.
- e. Foods are prepared using healthy cooking techniques such as baking, roasting, grilling, or steaming.
- f. Desserts are served in small portion sizes and healthier food options such as fresh fruit are also provided.
- g. Recommended foods include fruits, vegetable, whole grains, lean protein (i.e., skinless chicken breast, turkey, beans, tofu), and lower fat condiments such as vinaigrette, hummus, mustard, or salsa.

4. Food vending

- a. Contents of package must be a single serving size.
- b. No more than 35% calories from fat, with the exception of packages of nuts or seeds.
- c. At least one snack food item offered should meet the Food and Drug Administration's definition of "low sodium."
- d. At least one snack item offered should contain at least two grams of dietary fiber per serving.

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XXI. UNAUTHORIZED PURCHASES

Unauthorized purchases are required to be ratified by the appropriate awarding authority.

1. The employee making the unauthorized purchase must provide a written explanation of why the purchase was made.
2. The written explanation must be reviewed and approved by the appropriate awarding authority.
3. In the event that a vendor has been paid and the unauthorized purchase is not subsequently ratified, the employee may be held responsible for reimbursing the Town.

XXII. SURPLUS GOODS AND EQUIPMENT

The Town Manager or their designee has the authority to declare items with a market value of less than \$100,000 surplus. Items with a market value greater than \$100,000 will be formally declared surplus by the Town Council. Each Department shall periodically review its inventory and promptly notify the Town Manager of any surplus property. Proceeds from the sale or trade-in of surplus property shall be returned to the appropriate fund.

1. **Surplus Disposal:** The declaring authority shall determine or approve one of the following methods of disposition that is most appropriate and in the best interest of the Town:
 - a. Transfer to another Department: Surplus property may be transferred between Town Departments.
 - b. Trade-In: Surplus property may be offered as a trade-in credit toward the acquisition of new property.
 - c. Disposal: The surplus property may be offered for sale. All surplus property is for sale "as is," with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility, or usability of the property offered for sale.
2. **Methods of Disposal:**
 - a. Public Auction: Surplus property may be sold at public auction. Town staff may conduct public auctions, use online auction sites, or the Town may contract with a professional auctioneer.
 - b. Sealed Bids: Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner should be sold to the highest responsible bidder.

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- c. Selling for Scrap: Surplus property may be sold as scrap if the declaring authority deems that the value of the raw material exceeds the value of the property as a whole.
- d. Negotiated Sale: Surplus property may be sold outright if the declaring authority determines that only one known buyer is available or interested in acquiring the property.
- e. Donation: Surplus property unlikely to generate significant revenue may be donated to other public agencies or to non-profit organizations. Any non-profit must be qualified under section 501(c)(3) of the Internal Revenue Code in order to receive a donation.
- f. No Value Item: Where the Town Manager determines that specific supplies or equipment are surplus and of minimal value to the Town due to spoilage, obsolescence, or other cause; or where the Town Manager determines that cost of disposal of such supplies or equipment would exceed the recovery value, the Town Manager shall dispose of the supplies in such manner as he or she deems appropriate and in the best interest of the Town.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

DIVISION 2. - PURCHASING^[8]

Footnotes:

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State Law reference— Purchasing of supplies and equipment by municipalities, Gov. Code § 54201 et seq.

Sec. 2.50.105. - Purchasing system adopted.

In order to establish efficient procedures for the purchase of ~~equipment, materials and services, to secure for the Town equipment, materials and services~~ goods and services for the Town at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted. Nothing in this chapter shall prevent the Town from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(Code 1968, § 23-1)

Sec. 2.50.110. - ~~Dec~~Centralized Purchasing ~~Process~~Division.

There is hereby established a ~~Dec~~Centralized Purchasing ~~Process~~Division in which ~~is vested authority for the purchase of equipment, materials and services.~~ requesting Departments can directly solicit bids or proposals and place orders with vendors, subject to the limitations established in this section, the Town Purchasing Policy, and the approval of the appropriate awarding authority. The Town Finance Department and Town Manager shall oversee the procurement process.

(Code 1968, § 23-2)

Sec. 2.50.115. -- ~~Department~~ Purchasing ~~Representatives~~Agent.

~~The Town Manager shall act as Purchasing Agent for the Town. When so acting the Town Manager shall:~~ Department Directors shall designate one or more of their Department's employee(s) as a Department Purchasing Representative who will coordinate the procurement process in conjunction with the Finance Department and concurrence of the Town Manager. Department Purchasing Representatives shall have the authority to:

- (1) Purchase or provide for the purchase or lease of all goods and services for the use of their Town Departments in accordance with the provisions of this section, and such administrative rules and regulations put forth in the Purchasing Policy and/or prescribed by the Town Council.~~Give preference to merchants whose place of business is located within the Town limits, quality and price being equal.~~
- (2) ~~Establish and enforce specifications with respect to equipment, materials and services required by the Town.~~Recommend execution of contracts for the purchase or lease of goods and services.

- (3) ~~Inspect or supervise the inspection of all deliveries of equipment, materials and services, and determine their quality, quantity and conformity with specifications therefor. Act to procure the needed quality of goods and services at the least expense to the Town.~~
- (4) ~~Have charge of such general storerooms and warehouses as the Town Council may provide. Keep informed of current developments in the field of purchasing, prices, market conditions, services, and new products.~~
- (5) ~~Transfer to, or between, offices, departments or agencies, equipment, materials or services and, on approval of the Town Council with such notice as may be required, sell to the highest bidder surplus, obsolete or unused equipment or materials. Prescribe and maintain such policies and administrative forms as are reasonably necessary to the operation of this chapter and other rules and regulations.~~
- (6) Supervise the inspection of all goods and services purchased or leased to ensure performance with regulations.
- (7) When necessary, oversee the maintenance of a bidder's list and records needed for the efficient operation of purchasing.

~~(Code 1968, § 23-3)~~

~~Sec. 2.50.120. — Estimates of requirements of using agencies.~~

~~All using agencies shall file detailed estimates of their requirements for equipment, materials and services in such manner, at such time, and for such future periods as the Purchasing Agent shall prescribe.~~

~~(Code 1968, § 23-4)~~

~~Sec. 2.50.125. - Use of requisitions.~~

~~Using agencies of this Town Departments shall submit requests for equipment, materials, goods and services to the Purchasing Agent by standard requisition forms, or by other means as may be established by the purchasing manual over a certain amount defined in the Purchasing Policy by standard electronic purchase requisition forms. A purchase requisition is required to be submitted in order for a purchase order to be issued when necessary.~~

~~(Code 1968, § 23-5)~~

~~Sec. 2.50.130. — Use of bidding procedures required; exceptions. Except as otherwise authorized or required by this chapter or under State or Federal law, purchases of goods and services shall be by bidding procedures.~~

- (a) When the expenditure required for the purchase of ~~equipment, materials, supplies, goods~~ and services exceeds ~~twenty-five thousand dollars (\$25,000.00), the amount defined in the Purchasing Policy,~~ such purchases shall be contracted for and let to the lowest responsible bidder after notice pursuant to section 2.50.140. Purchases which do not exceed the ~~amount above specified specified amount~~ shall be made by ~~the Purchasing Agent a Department Purchasing Representative~~ only after an informal investigation of the sources of supply for the purpose of ascertaining the lowest price

for which the commodities desired can be acquired and appropriate cost accounting principles are employed.

- (b) The letting of purchases to the lowest responsible bidder pursuant to section 2.50.140 may be dispensed with when any of the following circumstances exist, unless otherwise required by State or Federal law:
- (1) The Town Council or the Purchasing Agent finds that an emergency requires that an order be placed with the nearest available source of supply. An emergency situation exists as defined in the Purchasing Policy and separate Emergency Procurement Policy.
 - (2) The Purchasing Agent finds that the commodity can be obtained from only one (1) vendor, or when the purchase is to be made through a county or other public agency. The commodity can be obtained only from a sole or single source vendor due to its uniqueness or special characteristics, as defined in the Purchasing Policy.
 - (3) The Town Council finds that because of the uniqueness or special characteristics of the commodity, it would be more advantageous to the Town to purchase by negotiated bid. When it would be impractical, impossible, or would not be likely to result in a lower price to the Town from a responsible bidder, or would cause unnecessary expense or delay under the circumstances as determined by the awarding authority.
 - (4) The purchase qualifies for the informal bid process as detailed in a public works project and falls under the Cost Accounting Policies and Procedures Manual of the California Uniform Public Construction Cost Commission and adopted by resolution.
 - (5) The Town Council or the Purchasing Agent finds that the services being purchased are clearly professional in nature, such as accounting, legal, planning, or architectural, and the selection of the contractor should be based on the quality and history of the contractor in addition to the price offered. For professional services which require the exercise of professional discretion and independent judgment, based on an advanced or specialized knowledge, expertise, or training gained by formal studies or experience. Examples of professional service providers include appraisers, architects, attorneys, engineers, instructors, land surveyors, physicians, information technology services, graphic designers, construction inspectors, etc.
 - (6) State or federal law forbids selection on the basis of lowest responsible bidder alone. Where the Town makes use of a cooperative purchasing agreement pursuant to the guidelines set forth in the Purchasing Policy.
 - (7) When a Request for Proposal (or Request for Information, Request for Qualifications, etc.) process is utilized pursuant to the guidelines set forth in the Purchasing Policy.
 - (8) When State or Federal law forbids selection on the basis of the lowest responsible bidder alone.
 - (9) When no acceptable bids are received from any responsible bidder after following the procedures set forth in Section 2.50.140.
 - (10) When the Town has elected to purchase goods or services directly from the State of California, County of Santa Clara, or any other California municipality.

(Code 1968, § 23-6; Ord. No. 1958, § I, 10-4-93; Ord. No. 2020, § X, 9-16-96)

Sec. 2.50.131. Informal bid procedures Public Works Projects.

~~A public project, as defined by the Act, of more than twenty-five thousand dollars (\$25,000.00) and not more than one hundred thousand dollars (\$100,000.00) may be let to contract by informal procedures as set forth in Section 22032 et seq., of the Public Contract Code. The Town has adopted the California Uniform Public Construction Cost Accounting Act for public works projects as defined in Section 22002 of the Public Contract Code.~~

(Ord. No. 1958, § II, 10-4-93; Ord. No. 2151, § A, 10-2-06)

~~Sec. 2.50.132. — Informal bid procedure for public works projects~~Contractors list.

~~A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission. Public projects, as defined by the California Uniform Public Construction Cost Accounting Act and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.~~

(Ord. No. 1958, § III, 10-4-93)

~~Sec. 2.50.133. — Notice inviting informal bids.~~Contractors List for public works projects.

~~When a public project is to be performed that is subject to section 2.50.131 a notice inviting informal bids will be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with section 2.50.132, and to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors or construction trade journals may be notified at the discretion of the department soliciting bids; provided however:~~

- ~~(1) If there is no list of qualified contractors maintained by the Town for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.~~
- ~~(2) If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to that contractor or contractors. The Town shall comply with the requirements of Public Contract Code Section 22034.~~

(Ord. No. 1958, § IV, 10-4-93)

~~Sec. 2.50.134. — Award of informal bid contracts~~Notice Inviting Informal Bids for public works projects.

~~The Town Council will award informal contracts under section 2.50.131 or designate a specific Town officer to make the award on a project by project basis. Where a public project is to be performed which is subject to the provisions of this Ordinance, a notice inviting informal bids shall be circulated using one or both of the following alternatives:~~

- (1) Notices inviting informal bids may be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 2.50.133.
- (2) Notices inviting informal bids may be mailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036

of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the Department soliciting bids, provided however:

- a. If the good or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

(Ord. No. 1958, § V, 10-4-93)

Sec. 2.50.135. — Purchases to be against unencumbered funds. Award of contracts for public works projects.

Except in cases of emergency or in cases where specific authority has been first obtained from the Purchasing Agent, purchase orders will not be issued for equipment, materials or services unless there exists an unencumbered appropriation in the fund account against which such purchase is to be charged. The Town Manager is authorized to award informal contracts pursuant to this Section.

Sec. 2.50.136. — Formal bid procedure for public works projects.

Public projects of more than the amount specified in the Uniform Public Construction Cost Accounting Act shall, except as otherwise provided in this Section, be let to contract by formal bidding procedure in accordance with the applicable provisions of the Act and the Public Contract Code.

(Code 1968, § 23-8)

Sec. 2.50.140. - Formal bidding procedure for goods.

Except as otherwise provided in section 2.50.130, for public projects, purchases of equipment, materials and services of an estimated value greater than twenty five thousand dollars (\$25,000.00) the Uniform Public Construction Cost Accounting Act for public projects and Section 2.50.130, purchases for goods above an estimated value defined in the Purchasing Policy that are of standardized or uniform quality) shall be by formal bidding procedure as follows:

- (1) Notice inviting bids. Notices inviting bids shall include a general description of the articles to be purchased, shall state where bid blanks and specifications may be secured to obtain more information, where to submit bids, and the time and place for opening bids.
- (2) Published notice. Notice inviting bids shall be published by the Town Clerk at least ten (140) days before the date of opening of the bids. Notice shall be published at least twice in a newspaper of general circulation, printed and published in the Town, or if there is none, it shall be posted in at least three (3) public places in the Town.
- (3) Bulletin board. The Purchasing Agent shall also advertise pending purchases shall also be advertised by a notice posted on the public bulletin boards at the Town Hall.
- (4) Website. Notice inviting bids shall be posted to the designated area of the Town website.
- (54) Bidders' list. The Purchasing Department Agent shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list or who have requested their names to be added thereto.

- (65) Bidder's security. When deemed necessary by the ~~purchasing Department~~Purchasing Agent, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided, that a successful bidder shall forfeit the bid security upon refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been mailed, unless the Town is responsible for the delay. The ~~awarding authorityTown Council~~ may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest bidder, the amount of the lowest bidder's security being applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
- (76) Bid-opening procedure. Sealed bids shall be submitted to the Town Clerk and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.
- (87) Rejection of bids. In its discretion, the ~~awarding authorityTown Council~~ may reject any bids presented and readvertise for bids.
- (98) Award of contracts. Contracts shall be awarded ~~by the Town Council~~ to the lowest responsible bidder, except as otherwise provided herein.
- (109) Tie bids. If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the ~~awarding authorityTown Council~~ may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening.
- (110) Performance bonds. The ~~awarding authorityTown Council~~ shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Town. If ~~the Town Council requires~~a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

(Code 1968, § 23-9; Ord. No. 1958, § VI, 10-4-93; Ord. No. 2151, § B, 10-2-06)

Sec.2.50.141. -Request for Proposal (RFP) process.

- (1) The Town may utilize the Request for Proposal (RFP) method for purchase of services and will apply to the purchase of goods above an estimated value defined in the Purchasing Policy when any of the following conditions exist:
- a. Quality, capability, performance, or qualification is overriding in relation to price; or
 - b. Delivery, installation, service, maintenance, reliability, or replacement is overriding in relation to price; or
 - c. It is determined that the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussion of proposals before entering the contract.
- (2) The identity of persons responding to the Request for Proposals and the content of proposals submitted to the Town may be kept confidential during the process of negotiation and until a contract is awarded.

- (3) The format and procedures for Requests for Proposals shall be established in the Purchasing Policy.
- (4) The contract award shall be based upon the proposal determined by the Town to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in the Request for Proposals.
- (5) The Town may reject any and all proposals if such rejection is deemed to be in the best interest of the Town.
- (6) The Town may utilize various other accepted requests for procurement in place of a Request for Proposal, including a Request for Information, Request for Qualifications, or others as deemed appropriate.

Sec. 2.50.143. – Procurement of paper products.

(1) Definitions:

- a. "Paper Purchase" means all purchases by a jurisdiction of items in the following categories: (1) Paper products. (2) Printing and writing papers.
- b. "Paper Products" include but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling.
- c. "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

(2) All vendors providing paper products shall:

- a. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of nonrecycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than nonrecycled items or at a total cost of no more than ten percent of the total cost for nonrecycled items.
- b. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12.
- c. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the Town. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.

- d. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the Town is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013).
- e. Provide records to the Town's recordkeeping designee, in accordance with the Town's Recycled-Content Paper procurement policies of all Paper Products and Printing and Writing Paper purchases within thirty days of the purchase (both recycled-content and non-recycled content, if any is purchased) made by any Department or employee of the Town. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

Sec. 2.50.145. - Purchasing ~~Policy~~manual.

In order to implement the provisions of this division, a ~~Ppurchasing~~ ~~Policy~~manual shall be prepared ~~by the Purchasing Agent, which manual shall be and~~ adopted by resolution of the Town Council. No amendments to the ~~policy~~manual shall be made without Town Council approval.

(Code 1968, § 23-11)

RESOLUTION 2021-__

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
IN THE MATTER OF UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING
PROCEDURES**

WHEREAS, prior to the passage of Assembly bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code section 22000 et seq., the Uniform Public Construction Cost Accounting Act, establishes such a uniform cost accounting standard;

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Los Gatos, that the Town Council does hereby elect under Public Contract Code section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the Town of Los Gatos notify the State Controller forthwith of this election.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the ____ day of _____ 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

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: _____



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

MEETING DATE: 10/26/2021

ITEM NO: 4

DATE: October 22, 2021
TO: Council Policy Committee
FROM: Robert Schultz, Town Attorney
SUBJECT: Review and Discuss Policy Regarding the Authority of the Town Manager to Resolve Workers' Compensation Claims on Behalf of the Town of Los Gatos.

RECOMMENDATION:

Request that the Policy Committee discuss and provide direction regarding the authority of the Town Manager to allow, disallow, compromise, or settle Workers' Compensation Claims on behalf of the Town of Los Gatos.

BACKGROUND:

Workers' compensation claims are delicate matters that involve investigation and verification by our Third-Party Administrator (TPA). For all intents and purposes, a workers' compensation claim is a last resort after all other remedies have been explored. It is rare, and not recommended, that the Town Council would take any action that differs from the findings of the TPA in relation to workers compensation claims. While staff will always inform members of the Town Council about the appropriate elements of a workers' compensation claim, many of the details are confidential and protected information. For that purpose, staff is recommending that the Town Council adopt a Policy delegating authority to the Town Manager to settle disputed workers compensation claims by "Compromise & Release" (C&R) up to \$50,000 and to settle undisputed workers' Compensation Claims by "Stipulation with Request for Award" up to the Town's current self-insured retention (SIR).

DISCUSSION:

Workers' compensation claims can be resolved in three ways, all of which are legally binding. Two of the three forms of resolution leave the employer with little discretion regarding the

PREPARED BY: Robert Schultz
Town Attorney

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

DISCUSSION (continued):

payment amounts. A brief description of each of the three methods and the settlement process is included below.

Stipulation with Request for Award

A "Stipulation with Request for Award" (Stip) means that both parties agree there is no dispute as to the level of permanent disability (PD), which is determined by State law and is not negotiable. The Stipulations must be approved by a Workers' Compensation Appeals Board (WCAB) judge and payment by the employer is mandatory. Bi-weekly payments are made to the employee until the award has been completely paid out. The employer continues to pay for all future medical treatment related to the injury, even after the total amount of the PD award has been paid out so the claim can't be deemed closed. The employee can reopen the claim for "new and further" disability and receive additional temporary and permanent disability, as well as medical treatment and other benefits. Should the employee later die of the injuries, there is exposure to the employer for payment of death benefits. Although there is some discretion when resolving claims by Stipulations with Request for Award, it is generally limited to agreeing to a mid-point between two medical reports that have been rated differently.

Compromise and Release

A "Compromise and Release" (C&R) is often used to settle disputed claims and to buy out future medical and indemnity exposure when advantageous to the Town. Disputes can exist on issues of compensability, the level of permanent disability, apportionment to prior injury or other employment, periods of temporary disability as well as medical treatment. Although a C&R is the only form of settlement in the workers' compensation venue in which the employer has some discretion regarding payment amounts, the amount of PD due to the worker is always determined by State law and is not a negotiable item. A C&R buys out all future liability, including medical and indemnity exposure. Such a settlement closes out any "new and further" claims related to the injury. Unlike a resolution by Stipulations with Request for Award, in a C&R settlement the payment to the employee is made in one lump sum, rather than bi-weekly payments. The employer can close out its file and reserves, save on the cost of administering the claim, avoid additional medical payments, death benefits, and "new and further" claims.

Findings and Award

A "Findings and Award" (F&A) is a judgment issued by the Workers' Compensation Appeals Board (WCAB) Judge if the parties can't settle. Payment by the employer is mandatory and occurs until the award has been paid out. Discretion is limited to filing an appeal called a "Petition for Reconsideration" when one party disagrees with the F&A. The employee can reopen the claim for "new and further" disability, making him/her eligible for additional

temporary and permanent disability payments, as well as other statutorily required benefits. The employer continues to pay for all future medical treatment related to the injury, even after the total amount of the permanent disability award has been paid out so these claims can't be closed until the employee dies or the parties enter into a Compromise and Release. Should the employee later die of his/her injuries, the employee's dependents may also be eligible for death benefits.

Settlement Process

Claims can only be settled after an impacted employee has reached maximum medical improvement. At that time, the employee's level of permanent disability (PD) is established by a doctor within the workers' compensation system. The level of PD, which is the amount of money due to the impacted employee for the permanent disability, is determined by a process known as rating. Rating is done by the State's Disability Evaluation Unit (DEU). The rates for permanent disability are determined by State law. Unlike a settlement in a personal injury claim or other lawsuit, PD amounts are not negotiable.

Unlike liability claims, the Labor Code and the State Division of Workers' Compensation have established the requirements for acceptance of claims as well as the provision of required benefits so that employers (e.g., the Town) cannot deny claims or fail to provide benefits for claims that meet the established criteria. Should the Town refuse to settle demands that are reasonable, sanctions could be assessed against the Town by the WCAB. In addition, timelines for the issuance of payments are strictly enforced and failure to meet the timelines results in financial penalties.

Under the Workers' Compensation Act, the standard in the industry is to attempt settlement, rather than trying claims before the WCAB. Section 3202 of the Labor Code states that the Act's provisions "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." This means that courts are required to interpret workers' compensation laws with the objective of securing the maximum benefit for the injured worker which he or she can lawfully be awarded. As a result, WCAB judges rarely make findings that favor employers over employees. Expeditious settling of claims reduces the expense of litigation, investigation and medical reporting; and it eliminates the risk of sanction (monetary penalties) by a WCAB judge.

The Town contracts with LWP Claims Solution to administer (Third Party Administrators) all the Workers' Compensation Claims on behalf of the Town. Workers' Compensation Claim handling can get very complex, which is why the Town relies on subject matter experts to manage the claims process on behalf of the Town. The TPA's adjuster promotes efficiency and streamlines costs.

As a matter of practice, the Town Manager resolves workers' compensation claims by "Stipulation with Request for Award" (Stipulation), up to the Town's current self-insured retention (SIR), when the Stipulation is for mandatory permanent disability amounts that are undisputed, determined by State law and are not negotiable.

In contrast, as a matter of practice, the Town Manager resolves workers' compensation claims up to \$50,000 by compromise and release that are not mandated by the WCAB.

CONCLUSION:

Staff proposes formalizing this established practice by authorizing the Town Manager to enter into compromise and release settlement agreements up to \$50,000, in addition to that awarded by the WCAB for workers' compensation workers' compensation claims by "Stipulation with Request for Award" (Stipulation), up to the Town's current self-insured retention amount. If the Committee agrees, staff will prepare a Council Policy to document this authority and return to the Committee for recommendation to the Town Council.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There is not a fiscal impact associated with the policy.

ENVIRONMENTAL ASSESSMENT:

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