



**TOWN OF LOS GATOS  
COUNCIL POLICY COMMITTEE AGENDA  
SEPTEMBER 26, 2023  
110 EAST MAIN STREET  
TOWN COUNCIL CHAMBERS  
LOS GATOS, CA  
5:00 PM**

*Rob Moore, Council Member  
Matthew Hudes, Council Member*

This meeting will be held in-person at the Town Council Chambers at 110 E. Main Street. Members of the public may only provide public comments for the agenda item in-person.

**PARTICIPATION IN THE PUBLIC PROCESS**

The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you are interested in providing oral comments during the meeting, you must attend in-person and complete a "speaker's card" located on the back of the chamber benches and return it to the staff. If you wish to speak to an item on the agenda, please list the item number. The time allocated to speakers may change to better facilitate the Board meeting. You are welcome to submit written comments via email to [Clerk@LosGatosCA.Gov](mailto:Clerk@LosGatosCA.Gov).

Public Comment During the Meeting:

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 Town meeting.

Speakers at public meetings will be asked to provide their full name and to state whether they are a resident of the Town of Los Gatos. This information is optional and not required.

Deadlines for Public Comment and Presentations are as follows:

If you are unable to participate in person, you may email [Clerk@LosGatosCA.Gov](mailto:Clerk@LosGatosCA.Gov) with the subject line "Public Comment Item #-\_" (insert the item number relevant to your comment). Persons wishing to submit written comments to be included in the materials provided to Board must provide the comments as follows:

For inclusion in the regular packet: by 11:00 a.m. the Friday before the Committee meeting

For inclusion in an Addendum: by 11:00 a.m. the Monday or Tuesday before the Committee meeting

For inclusion in a Desk Item: by 11:00 a.m. on the day of the Committee meeting

Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email to [Clerk@LosGatosCA.Gov](mailto:Clerk@LosGatosCA.Gov) to the by 3:00 p.m. the day of the meeting.

## MEETING CALL TO ORDER

### ROLL CALL

**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 2 of this agenda. If an item is removed, the Chair has the sole discretion to determine when the item will be heard.)*

- [1.](#) Approve Minutes of the August 22, 2023 Council Policy Committee Meeting.

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

**OTHER BUSINESS** *(Up to three minutes may be allotted to each speaker on any of the following items.)*

- [2.](#) Review Policies for Commission, Board, Committee, and Council Recusal.

### ADJOURNMENT

***IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT 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]***



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

MEETING DATE: 09/26/2023

ITEM NO: 1

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**DRAFT  
Minutes of the Town Council Policy Committee Meeting  
August 22, 2023**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, August 22, 2023, at 5:00 p.m.

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

**ROLL CALL**

Members Present: Rob Moore, Matthew Hudes

Staff Present: Gabrielle Whelan, Town Attorney; Katy Nomura, Assistant Town Manager; Wendy Wood, Town Clerk; Holly Young; Senior Management Analyst.

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

**1. Approve Minutes of the June 27, 2023 Council Policy Committee Meeting.**

Opened public comment.

None.

Closed Public Comment.

**MOTION:** Motion by Vice Chair/Council Member Hudes to approve the minutes of the June 27, 2023 Council Policy Committee meeting. **Seconded** by Chair/Council Member Moore.

**VOTE:** Motion passed by a unanimous vote.

**VERBAL COMMUNICATIONS**

Opened public comment.

None.

Closed Public Comment.

## **OTHER BUSINESS**

### **2. Review Policy Committee 2023 Work Plan Items.**

Holly Young, Senior Management Analyst, presented the staff report.

Opened public comment.

None.

Closed Public Comment.

The Committee received the report and provided direction, prioritizing the following four Work Plan items the Committee requested staff bring forward for consideration during the remaining four meetings of 2023:

- Consider an Emergency Procurement Policy.
- Review Policies for Commission, Board, Committee, and Council Recusal.
- Evaluate the Remote Participation Provisions for Boards, Committees, and Commissions as Contained in the Agenda Format and Rules Policy.
- Define the Core Services the Town Provides.

### **3. Discuss and Direct Potential Modifications to the Policy Committee's Enabling Resolution.**

Gabrielle Whelan, Town Attorney, presented the staff report.

Opened public comment.

None.

Closed public comment.

The Committee received the report and unanimously agreed to forward a recommendation to the Town Council to consider modifications to the Enabling Resolution as follows (deletions are shown in ~~strike through text~~ and additions are shown in *red italicized* text):

WHEREAS, the ~~duties of the Committee shall be~~ *is available* to report to, consult with, and provide recommendations to the Town Council on all matters relating to Council Policies, ~~Town Code~~, and other policy documents of the Town *excluding land use policies that are considered by the Planning Commission*. The Committee shall forward recommendations to the full Council for discussion and final action, and as appropriate refer items to the appropriate Town Board, Committee, or Commission.

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SUBJECT: Draft Minutes of the Council Policy Committee Meeting of August 22, 2023

DATE: September 26, 2023

**ADJOURNMENT**

The meeting adjourned at 5:48 p.m.

This is to certify that the foregoing is a true  
and correct copy of the minutes of the  
August 23, 2023 meeting as approved by the  
Town Council Policy Committee.

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Holly Young, Senior Management Analyst



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

MEETING DATE: 09/26/2023

ITEM NO: 2

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DATE: September 12, 2023  
TO: Council Policy Committee  
FROM: Laurel Prevetti, Town Manager  
SUBJECT: Review Policies for Commission, Board, Committee, and Council Recusal

**RECOMMENDATION:**

Review policies for Commission, Board, Committee, and Council recusal.

**BACKGROUND:**

At the beginning of 2023, the Council Policy Committee added a review of policies for Commission, Board, Committee, and Council recusal to its work plan for 2023.

At the August 22, 2023 Policy Committee meeting, the Committee requested that staff bring this item forward for consideration during one of the remaining meetings of 2023.

**DISCUSSION:**

The Town of Los Gatos does not have a policy that is specific to Town Commission, Board, Committee, and Council recusal; rather, the Town follows state laws requiring recusal from governmental decisions. Town Attorney Gabrielle Whelan has prepared a memorandum in Attachment 1 that details the State law guidelines.

**CONCLUSION:**

Staff looks forward to the Committee's discussion.

**COORDINATION:**

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

**PREPARED BY:** Holly Young  
Senior Management Analyst

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

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SUBJECT: Commission, Board, Committee, and Council Recusal

DATE: September 12, 2023

FISCAL IMPACT:

There is no associated fiscal impact.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Attachment 1 – Recusal Memo



**TOWN OF LOS GATOS**  
**OFFICE OF THE TOWN ATTORNEY**

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**MEMORANDUM**

**To:** Policy Committee  
**From:** Gabrielle Whelan, Town Attorney  
**cc:** Laurel Prevetti, Town Manager  
**Date:** September 8, 2023  
**Subject:** Guidance Regarding Recusals from Board, Commission, and Town Council Decisions

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**BACKGROUND:**

The Policy Committee has requested a discussion of policies requiring recusal from Board, Commission, and Town Council decisions. This memorandum outlines the state laws requiring recusal from governmental decisions, which fall into the following categories: state Political Reform Act, Government Code Section 1090, and common law bias.

**ANALYSIS:**

**Political Reform Act**

Government Code Section 87100 of the Political Reform Act (the "Act") prohibits a public official from making, participating in making, or attempting to use the official's position to influence a governmental decision in which the official knows or has reason to know that the official has a financial interest. Government Code Section 87103 provides that an official has a "financial interest" within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's interests as identified and distinguishable from the decision's effect on the public generally.

Government Code Section 87103 identifies the financial interests which may give rise to a disqualifying conflict of interest under the Act:

- 1) A business entity in which the official has a direct or indirect investment worth \$2000 or more or in which the official is a director, officer, partner, trustee, employee, or holds any position of management;
- 2) Real property in which the official has an interest worth \$2000 or more;
- 3) A source of income totaling \$500 or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made;



- 4) A giver of a gift or gifts totaling \$500 or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made;
- 5) The official's personal finances and those of "immediate family," defined in Section 82029 as the spouse and dependent children.

#### SB 1439 Amendment to the Political Reform Act

SB 1439 provides that:

- 1) Local officials will be prohibited from taking part in licensing, permitting, and other use entitlement proceedings involving a party or participant who has contributed more than \$250 to the official within the 12 months prior to the proceeding.
- 2) Local elected officials will be prohibited from receiving a contribution exceeding \$250 from a party or participant in a licensing, permitting, or other use entitlement proceeding during the time the matter is pending before the local agency and for 12 months after the final decision is made in the matter.

As a result, Planning Commissioners and Councilmembers should recuse themselves from any decisions involving a party or participant from whom they have received a contribution of \$250 or more in the 12 months prior to the decision. After decisions have been made, Councilmembers will be prohibited from receiving contributions from parties or participants in those proceedings for 12 months following the decision. SB 1439 does not apply to votes cast during 2022, but applies to decisions made as of January 1, 2023 and after. Once a contribution has been received, there are limited "cure" provisions authorizing return of the contribution so that an official can participate in a vote. Those "cure" provisions are complex so I recommend that those situations be handled on a case by case basis.

#### Exceptions

Under the "public generally" exception, if a decision's financial effect on an official's financial interest is indistinguishable from the decision's effect on the public generally, the official is not disqualified from taking part in the decision. (Gov. Code Section 87103; FPPC Regulation 18703.) This is a complicated analysis so Town Councilmembers and Commissioners should consult with the Town Attorney so the analysis can be completed to determine to learn if the exception applies to a specific situation.

Under the "legally required" exception, Section 87100 does not prevent an official from making or participating in the making of a decision to the extent the official's participation is legally required for the action or decision to be made. However, the existence of a tied vote will not make a disqualified official's participation legally required.

## Disqualification Requirements

A disqualified official must: identify the potential conflict of interest and the financial interest at issue; recuse from voting, discussing, or attempting to influence the matter; and leave the room until after the matter is concluded.<sup>1</sup> This occurs prior to consideration of the agenda item.

## Government Code Section 1090

Government Code Section 1090 precludes a public body from voting on a contract in which any of its members has a financial interest. Since the Town Council is the only legislative body that approves contracts in the Town, this rule applies in practice to the Town Council. As a general rule, the Town Council cannot vote on a contract in which any one Councilmember has a financial interest. Violation of this rule results in the contract being voided. It can also result in criminal, civil, and administrative penalties.

## Section 1090 Exceptions

### “Remote Interest” Exception

Government Code Section 1091 sets forth what will constitute a “remote interest” in a contract. If a Councilmember has only a “remote interest” in a contract, the full Council including the Councilmember with the “remote interest” can vote on the contract so long as the fact of that interest is disclosed. The most common “remote interest” is a position as an officer or employee of a “non-profit” that will be contracting with the agency.

### “Non-Interest” Exception

Government Code Section 1091.5 sets forth what will constitute a “non-interest” in a contract. If a Councilmember has only a “non-interest,” the full Council including the Councilmember with the “non-interest” can vote on the contract. The most common “non-interest” will be when the Council is voting on a contract for public services in which the services are provided to the Town as a whole and there is no special benefit for any Councilmember. Another common “non-interest” will be when the Council is voting on a contract with a tax-exempt “non-profit” which has the primary purpose of supporting a Town function.

### “Rule of Necessity”

In limited cases, the “Rule of Necessity” applies to allow the making of a contract that Section 1090 would otherwise prohibit. The “rule of necessity” applies when public policy concerns authorize the making of the contract to ensure that essential government functions are performed.

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<sup>1</sup> If the official’s financial interest is his or her primary residence, the official may remain in the room.

### Common Law Bias

Quasi-judicial decisions (decisions in which findings are made based on the evidence) of a governmental body can be challenged on the grounds of common law bias. Examples of quasi-judicial decisions are votes on architecture and site review applications, conditional use permits, and variances. Common law bias relies on Due Process principles to allege that a governmental body did not provide a fair hearing. Potential plaintiffs can argue that they did not receive a “fair hearing” as required by Due Process because a decision-maker had made up his or her mind prior to the hearing. Facts supporting such an argument would be that the decision-maker had publicly stated how he or she was planning to vote prior to the hearing or had authored an article for or against a project prior to the hearing.

Therefore, recusal from quasi-judicial decisions is recommended when a public official has previously stated how he or she is planning to vote.

### CONCLUSION:

The Policy Committee is welcome to discuss the information contained in this memorandum and ask questions. Once the Committee has completed its review, this memorandum will be updated accordingly and shared with the Town Council and all Town Boards, Commissions, and Committees.