



**TOWN OF LOS GATOS
SPECIAL MEETING OF THE TOWN COUNCIL AGENDA
DECEMBER 17, 2019
110 EAST MAIN STREET
LOS GATOS, CA**

*Marcia Jensen, Mayor
Barbara Spector, Vice Mayor
Steve Leonardis, Council Member
Rob Rennie, Council Member
Marico Sayoc, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please complete a “speaker’s card” located on the back of the chamber benches and return it to the Clerk Administrator. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.losgatosca.gov/Councilvideos***

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
SPECIAL MEETING OF THE TOWN COUNCIL AGENDA
DECEMBER 17, 2019
5:00 PM**

MEETING CALLED TO ORDER

ROLL CALL

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 Mayor, 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.)*

1. Provide Direction on Filling a Vacant Council Position Pursuant to Government Code Section 36512

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

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review in the Town Council Chambers.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/17/2019

ITEM NO: 1

DATE: December 10, 2019
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Provide Direction on Filling a Vacant Council Position Pursuant to Government Code Section 36512

RECOMMENDATION:

Receive information about options for filling a vacant Council seat and provide policy direction to staff for filling the seat vacated by Council Member Leonardis.

BACKGROUND:

Effective December 20, 2019, Steve Leonardis resigned his position as a Councilmember. Due to his resignation, the Council is being asked to decide how to fill the remainder of his elected term, which expires in December of 2022.

Government Code Section 36512 sets forth the requirements relating to filling vacancies for an elective office. Subdivision (b) of that section provides two options that the Town can utilize to fill a vacancy in an elective office within 60 days from the commencement of the vacancy: 1) fill the vacancy by appointment; or 2) call a special election to fill the vacancy.

As a result, City Council must address the issue of filling the vacancy and is obligated to act within 60 days from the commencement of the vacancy. It therefore has until February 19, 2020 to choose to either make an appointment or call a special election.

PREPARED BY: Robert Schultz
Town Attorney

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

DISCUSSION:

Option 1 - Appoint a successor until December 2020:

Town Council may, within 60 days of the vacancy, make an appointment to fill the vacancy. If the Council fills the vacancy by appointment, the duration of the appointment is determined by when the vacancy occurs. Government Code Section 36512 states that If the vacancy occurs in the first half of the term of office and at least 130 days prior to the next general election, then the appointed person shall hold office until the next general municipal election. If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

Because the vacancy is occurring within the first half of Mr. Leonardis' term and at least 130 days prior to the next general election, the person appointed to fill the vacancy would hold office until the next general municipal election, which is November 3, 2020. At that time, the appointed person, should they desire to continue in office, would have to run for office to retain the seat through the remainder of the term, which will end December 2022.

There is no legal requirement that the Council use any particular method of appointment. The Council does not, for example, have any obligation to appoint someone who ran in the last election and got the 4th highest votes. It is common in such situations for the Council to notice the vacancy and invite applications. If the Council opts for interviews, it must be done at a public meeting, although the meeting can be held at any time. In addition, the appointment must be made in public. This is not a permitted closed session discussion or decision.

Should the Council wish to appoint an applicant to fill the vacancy, staff would advertise the vacancy and provide an application form similar to our Committee/Commission Application. Staff has drafted a sample for consideration (Attachment 1). Additionally, since residents seeking Town Council election typically submit a candidate statement, Council could also require applicants to provide a statement, not to exceed 400 words, stating their qualifications and why they are the best applicant to appoint to the vacant seat. All of these questions or documents are to assist both the Town Council and the general public learn as much as possible about a potential appointee given the short time frame. These questions and documents are suggestions and the final application for appointment will be based on Town Council direction.

Council could interview all applicants, or based on the number of applications, each Council member could select whom they would like to interview and submit those names to the Town Manager. The Town Clerk will coordinate the interviews. In addition, it is recommended that set lists of questions are established for all applicants to answer. Each Council member would submit two or three questions to be used in the interview process. Should the City Council

DISCUSSION (continued):

choose this option, and want to fill the position as soon as possible, staff would recommend the following timetable.

| <u>Action</u> | <u>Proposed Date</u> |
|--|-------------------------------|
| Open Application Period | December 20, 2019 |
| Close Application Period | January 17, 2020 |
| Council review period | January 17 – January 23, 2020 |
| Interview questions to City Manager | January 24, 2020 |
| Candidate Interviews – Special Meeting | January 28, 2020 |
| Seating of new Council Member | February 4, 2020 |

Option 2 – Call a Special Election to elect a successor for the remainder of the term

Town Council may choose to call a special election to fill the vacant City Council seat by adopting a resolution calling the special election (Elections Code Section 12001) within 60 days of the vacancy. Government Code Section 36512(b)(1) states “If the council calls a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.” A recent amendment to State Government Code sets forth those dates that are deemed a “regularly established election date” and the next such date is Tuesday, November 3, 2020. If the Council chooses option 2, then the Council position would remain open and the Council would proceed until November 2020 with only four Councilmembers.

Having only four Councilmembers can become problematic when a two to two (2-2) vote amounts to “no action” on the nature and status of the item being voted upon. In addition, given the wording of a particular local ordinance and state laws governing certain subject matters, a “no action” outcome by the Council could actually result in an action being taken. Provided below are examples of “no action” unintentionally resulting in action.

- For example, if the item before the Council involved an appeal of a decision which would otherwise be final in the absence of the appeal, a two to two (2-2) vote would have the effect of denying whatever action the applicant or proponent of the item was requesting.
- For example, a rezoning which is an ordinance and must be adopted by three votes, or a general plan amendment, which requires three votes, could not be adopted.
- For example, it is important to remember the potential danger that a two to two (2-2) vote will result in a project being “deemed approved” under the automatic approval provisions of the Permit Streamlining Act or Subdivision Map Act.
- For example, if the Planning Commission makes recommendations but does not have authority to make a final decision on a tentative map, a two to two (2-2) vote by the

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SUBJECT: Direction on Filling the Vacant Council Position

DATE: December 10, 2019

DISCUSSION (continued):

Council on a tentative map could result in the map being deemed approved, even if the Planning Commission had recommended denial and if the Council takes no further action within specified time limits. (Gov. Code § 66452.2.)

CONCLUSION:

Staff needs Council to provide direction on the process it wants to use to fill the vacancy. If Council does select to appoint, the appointment must be completed by February 19, 2020 to be within 60 days of Councilmember Leonardis resignation.

Attachment:

1. Application for Town Council

TOWN OF LOS GATOS

APPLICATION FOR TOWN COUNCIL APPOINTMENT TO FILL VACANCY

Contact: Clerk Department
110 East Main Street, Los Gatos, CA 95030
(408) 354-6834 or Clerk@LosGatosCA.gov

General eligibility requirements: A registered voter and resident of the incorporated limits of the Town of Los Gatos at time of application, and never been convicted of a felony.

Critical Dates

Opening Date: Friday, December 20, 2019 at 12:00 pm
Closing Date: Friday, January 17, 2020 at 4:00 pm
Tentative Town Council Review: Tuesday, January 28, 2020 at 7:00 pm

APPLICATIONS MUST BE PRINTED, SIGNED, AND DELIVERED TO THE TOWN CLERK BY:

FRIDAY, JANUARY 17, 2020 AT 4:00 PM

Term of Office & Position Type: The council seat currently vacant commenced in November 2018, the term of office will begin upon appointment and continue until the next general election in November 2020.

Town Council: The Town of Los Gatos is a general law city with a council-manager system of government. The five Town Council members are elected for overlapping four-year terms with elections held in November of even-numbered years.

IMPORTANT NOTICES

Please note that all information provided on the application becomes a public record after it is officially filed. All appointed applicants are required to file the Fair Political Practices Commission (FPPC) Statements of Economic Interest (Form 700), which are also a public record. Applicants appointed to the Town Council are also required to complete Ethics Training AB 1234 every two years.

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ATTACHMENT 1

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Contact: Clerk Department
110 East Main Street, Los Gatos, CA 95030
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**Note: Only the text that shows in the boxes is visible.
Please do not go beyond the borders of the boxes.**

First Name Last Name

Street Address City Zip

Cell Phone Work Phone Home Phone

Email Employer

Job Title How long have you lived in Los Gatos?

Are you a Registered Voter in the Town of Los Gatos? Yes No

Are you a resident of the Town of Los Gatos? Yes No

Have you ever been convicted of a felony? Yes No

Please list all previously held elected or appointed governmental positions. Include the Position/Office held and the associated dates.

(e.g. Mayor, City of San Jose, 1990-1994)

Please list any civic charitable organizations you have belonged to. Include the Position/Office held and the associated dates.

(e.g. Coach, Little League, 1982-1989)

Please list any schools that you have attended or are currently attending. Include your major subject area and/or grade level. (e.g. *San Jose State University, BA in History*)

A large, empty rectangular box with a thin black border, intended for the applicant to list their educational institutions, including the major subject area and/or grade level.

Please list your current employer and title, as well as any former relevant employment history that you believe best qualifies you for this appointment.

A large, empty rectangular box with a thin black border, intended for the applicant to list their current and former employers, titles, and relevant employment history.

Describe why you want to serve on the Los Gatos Town Council and what strengths you would bring to the Council.

A large, empty rectangular box with a thin black border, occupying the right half of the page. It is intended for the respondent to write their answer to the question on the left.

What are the three highest priorities and/or issues you believe the Town needs to address? How would you address these issues?

The **application deadline is 4:00 p.m. FRIDAY, JANUARY 17, 2020** . Applications received after the deadline will not be considered.

Interviews will be held Tuesday, January 28, 2020 at 7:00 pm. All applicants are required to be interviewed to be considered for appointment as a Council Member.

ELIGIBILITY CERTIFICATION

By signing below, I _____, certify that the information is true and correct to the best of my knowledge.

Signature: _____

Date: _____

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THE INTERVIEW PROCESS, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834.