

**TOWN OF LOS GATOS
MEASURE A**

Shall the measure proposing an ordinance replacing the Town's current Finance Committee and Sales Tax Oversight Committee with a Finance Commission that would advise the Town Council on financial, budgetary and investment matters, including but not limited to, the Annual Budget, the Comprehensive Annual Financial Report, capital expenditures, sales tax revenue and expenditures, and other recommendations as the Town Council directs, be adopted?

**YES
NO**

**TOWN ATTORNEY'S IMPARTIAL ANALYSIS OF
MEASURE A**

Voter approval of Measure "A" would amend the Los Gatos Town Code to disband both the Council Finance Committee and Sales Tax Oversight Committee and establish instead a Finance Commission consisting of seven (7) members—five (5) voting citizen members and two (2) nonvoting Council Members, (one of which would be either the Mayor or Vice Mayor), with each Council Member appointing one Citizen Appointee for a four (4) year term.

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

Voter approval of Measure "A" would create a new Finance Commission that would serve in an advisory capacity to the Town Council and increase their duties and responsibilities in regard to the review of Town finances, including but not limited to: the Annual Budget, the Comprehensive Annual Financial Report, capital expenditures, the revenue and expenditure of Measure G Sales Tax, and making recommendations about the Town's financial budgetary and investment matters and operations related thereto to the Town Council and any other Town department, agency, committee, commission or other body as the Town Council directs.

A "yes" vote on Measure "A" will disband both the Council Finance Committee and Sales Tax Oversight Committee and establish a Finance Commission as set forth above.

A "no" vote on Measure "A" will not disband both the Council Finance Committee and Sales Tax Oversight Committee and will not establish a Finance Commission as set forth above.

Measure "A" will be approved if it receives a simple majority of "Yes" votes.

Robert Schultz
Town Attorney

COMPLETE TEXT OF MEASURE A

LOS GATOS TOWN FINANCE COMMISSION INITIATIVE

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

Section 1. Title.

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

Section 2. Findings and Declarations.

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

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

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

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

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

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

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

Section 3. Amendment to the Los Gatos Town Code.

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

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

Division 3.—Finance Commission.

Sec. 2.50.200.—Finance Commission established.

- (a) The Finance Commission shall be established to serve in an advisory capacity to the Town Council by reviewing Town finances, including but not limited to the annual budget, Comprehensive Annual Financial Report, and capital expenditures, and making recommendations about the Town's financial, budgetary and investment matters and operations related thereto to the Town Council and any other Town department, agency, committee, commission or other body as the Town Council directs.

COMPLETE TEXT OF MEASURE A-Continued

- (b) The Council Finance Committee is disbanded.
- (c) The Sales Tax Oversight Committee established by section 25.60.140 of the Town Code is disbanded and all powers and duties of that Committee are transferred to the Finance Commission.

Sec. 2.50.205.—Composition, appointment, terms.

- (a) The Finance Commission shall consist of five (5) voting citizen members ("Citizen Appointees") and two (2) non-voting Council Liaisons.
- (b) Council Liaisons.
 - (1) The Town Council shall appoint two Town Council members as non-voting Council Liaisons.
 - (2) The Council Liaisons shall serve on the Finance Commission until replaced by the Town Council but shall not serve beyond their terms on the Town Council.
 - (3) One Council Liaison shall be the Mayor or Vice-Mayor of the Town.
- (c) Citizen Appointees.
 - (1) Except with respect to initial appointments as provided for in section 2.50.205(c)(5), each member of the Town Council shall appoint one Citizen Appointee, upon expiration of terms described in section 2.50.205(c)(4).
 - (2) Citizen Appointees must be residents and registered voters of the Town.
 - (3) No member of the Town Council may serve as a Citizen Appointee.
 - (4) Citizen Appointees shall serve four-year terms, which shall expire on a staggered basis such that every year one term shall expire, except that once every four years, two terms shall expire. The term of each Citizen Appointee shall commence on the first day of January (or as soon as practicable after the effective date of this Division for initial Citizen Appointees), and shall expire on the thirty-first day of the fourth successive December.
 - (5) As soon as practicable after the effective date of this Division, the initial appointment of the first Citizen Appointees shall be carried out as follows: Town Council members shall draw lots to determine the order of expiration for the terms of the first five Citizen Appointees such that one Citizen Appointee's term shall expire each year for four years after the effective date of this Division, and one additional Citizen Appointee's term shall expire in the fourth year after the effective date of this Division. Following the expiration of each of the first five Citizen Appointees' terms, a Citizen Appointee shall be appointed to serve a four-year term.

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- (6) Citizen Appointees must be certified public accountants, chartered financial analysts, or have a business, finance, economics or accounting degree, and must have at least five years of experience in at least one of the following:
 - (A) Financial experience in a corporate, business, or government setting;
 - (B) Principal or officer at a financial auditing firm;
 - (C) Investment banking; or
 - (D) Finance or budget management.
- (7) Should a Citizen Appointee resign or otherwise leave office prior to the end of his or her term, the appointing Town Council member for that Citizen Appointee shall, as soon as practicable, appoint a new Citizen Appointee to serve the remainder of the term.
- (d) Section 2.40.030 of the Town Code shall not apply to the Finance Commission.
- (e) Administrative support for the Finance Commission shall be provided by the Town Manager, the Director of Finance and by other Town staff as necessary.

Sec. 2.50.210.—Meetings and Records.

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

Sec. 2.50.215.—Chair.

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

Sec. 2.50.220.—Quorum.

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

Sec. 2.50.225.—Duties.

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(a) The Finance Commission shall:

- (1) Serve as an on-going, substantive and expert advisory body to the Town and Town Council so that the Town and Town Council can make informed decisions about the Town's financial, budgetary and investment matters and operations related thereto.
- (2) Review the Town Manager's annual proposed budget prepared in accordance with section 2.30.295(6) of the Town Code, and provide written comments and recommendations to the Town Council.
 - (A) The Finance Commission's comments and recommendations shall include a recommendation about whether the Town Council should approve or disapprove the proposed budget. The Finance Commission may make a recommendation of approval of the budget conditional upon the Town Council's acceptance of one or more of the Finance Commission's recommendations.
 - (B) The Town Manager must provide a proposed budget to the Finance Commission at least twenty (20) business days before the first meeting at which the proposed budget is considered by the Town Council.
- (3) Review the Town Manager's draft Comprehensive Annual Financial Report (CAFR) for the preceding fiscal year, and provide written comments and recommendations to the Town Manager.
 - (A) The Town Manager shall respond in writing to the Finance Commission providing his or her rationale for accepting or rejecting each of the Finance Commission's comments and recommendations prior to presenting the CAFR to the Town Council for formal consideration.
 - (B) The Town Manager may not present the CAFR to the Town Council for formal consideration unless or until he or she considers and responds in writing to all of the Finance Commission's comments and recommendations.
- (4) Review the Director of Finance's summary of the Town's financial report required by section 53891 of the California Government Code and prepared in accordance with section 2.50.010(c) of the Town Code, and provide written comments and recommendations to the Director of Finance prior to the publishing of the summary of the report.
- (5) Review the financial policies and procedures manual developed in accordance with section 2.50.010(f) of the Town Code, and provide written comments and recommendations to the Director of Finance.
- (6) Prior to the Town's expenditure of any revenues from the tax authorized by sections 25.60.010 et seq. of the Town Code, review the proposed expenditures and advise the

COMPLETE TEXT OF MEASURE A-Continued

Town Council on whether such expenditures meet the Town Council's objectives for that tax:

- (A) Maintaining and enhancing neighborhood police patrols and local crime prevention programs;
 - (B) Improving traffic flow to reduce congestion;
 - (C) Repairing potholes and maintaining the Town's streets, roads, and sidewalks; and
 - (D) Maintaining the Town's long-term financial stability.
 - (7) Issue an annual public report of the expenditures and appropriations of sales tax revenues approved by the Town Council during each fiscal year.
 - (8) Make recommendations to the Town Council about policies and programs:
 - (A) To maximize the Town's revenues consistent with existing taxation structures and inter-governmental funding opportunities;
 - (B) To maximize fee generation consistent with market rate charges for Town-provided services and market rate fees for utilization of Town-owned assets;
 - (C) To minimize the City's cost to provide core services and required activities, consistent with the desired service level for residents and other internal and external customers;
 - (D) To set funding goals for reserves, and review on-going progress related thereto;
 - (E) To assess the risk associated with the structure and documentation of any proposed debt financing;
 - (F) To fund the Town's long-term compensation and benefit program liabilities in the most responsible and cost-effective way; and
 - (G) To monitor investment performance, and make recommendations related to the Town's investment policy and performance.
 - (9) Provide written comments and recommendations regarding the selection of auditors for the CAFR.
 - (10) Participate in pre-audit meetings with auditors, provided that the Finance Commission shall not participate in those portions of any meetings which pertain to confidential employment or attorney-client privileged matters.
 - (11) Review and monitor any events or issues which may affect the financial status of the Town.
- (b) The duties of the Finance Commission shall not be altered, abridged or abrogated in any way by any body except by a vote of the majority of the voters of the Town.

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- (c) The Town Council shall make changes to the budgetary and all other Town processes and calendars as necessary to allow for consideration of the comments and recommendations of the Finance Commission outlined herein.

Sec. 2.50.230.—Conflicting Provisions.

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

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

Sec. 25.60.140.—Citizens' oversight and annual audit.

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

Section 4. Earliest Possible Election.

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

Section 5. Severability.

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

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

Section 6. Competing Initiatives/Measures.

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

Section 7. Effective Date.

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

Section 8. Liberal Construction.

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

Section 9. Legal Defense.

The People of Los Gatos desire that this measure, if approved by a simple majority of voters and thereafter challenged in court, be defended by the Town of Los Gatos. The People of Los Gatos, by approving this measure by a simple majority of voters, hereby declare that the proponent(s) of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the Town fails to defend this measure, or the Town fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponent(s) or the voters the Town of Los Gatos shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People of Los Gatos, and the Town of Los Gatos shall indemnify the proponent(s) for reasonable expenses and other losses incurred by the proponent(s), as agent(s), in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the Town to perform the defense itself.

ARGUMENT IN FAVOR OF MEASURE A

Do you believe the Los Gatos Town Council could benefit from expert financial and operating advice provided by five highly qualified town residents with significant private sector experience?

If your answer is "Yes" then join us in voting Yes on A.

Total net government spending by the Town increased by 72% between 2015-2019. Do you feel like the services you receive from the Town are 72% better than they were 5 years ago?

We need to pass this measure to improve our financial oversight and get our fiscal house in order.

Most elected officials are not financial experts nor do they have a financial background. Measure A will let highly qualified Los Gatos residents with extensive professional experience in business, economics, or finance lend their expertise in an unpaid advisory role to the Town Council.

The existing Finance Committee charter prohibits advising on the Town's annual budget and excludes citizen appointees from voting. It needs to be replaced.

Measure A takes the best practices of other cities in California that have a history of strong fiscal management, by creating a volunteer Finance Commission that will provide important guidance to the Town Council in its budgetary decisions, fiscal policies, and fiscal priorities.

Los Gatos has a deep reservoir of experienced talent. These individuals will bring new and innovative thinking to increase effectiveness and transparency. Whether or not their advice is acted upon, remains the Council's decision.

This measure does not take away any legal authority from the Town Council, which is accountable to voters regarding budget and fiscal decisions. The proposed measure simply increases the number of qualified residents who provide advice to the council in making those important decisions... and without any additional cost to taxpayers.

Please vote Yes on Measure A to help protect the future fiscal stability of Los Gatos.

Phillip Koen
Chairman-Stack Infrastructure

Richard Van Hoesen
Chief Financial Officer Onpharma Company

Jak Van Nada
Retired Chief Executive Officer Golden State Services

Sandy Decker
Former Mayor & Councilmember

Colleen Wilcox
Former Supt. of Schools Santa Clara County

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE A

Giving a **new bureaucracy** of **unaccountable** Commissioners **unprecedented power** is a bad response to a nonexistent problem.

Private sector experts already participate. Since 2017 a Finance Committee with community representatives with the qualifications touted by proponents has existed.

The Town's **fiscal house is in great order.** Through elected Councilmembers, fulltime professional staff, a Finance Committee, and valuable "nonexpert" citizens' input, the Town—

- maintains a **"Triple A" credit rating**;
- consistently adopts **balanced budgets**;
- thoughtfully **addresses unfunded pension liabilities**;
- uses practices best described as **conservative**; and
- **balances competing policy interests** in determining how our tax dollars are spent.

Expenditures **didn't rise 72%** over the years as cherry-picked by the Yes-side—who identified **not a single misspent cent**. Why? **Oversight already exists.**

This is a **power grab by a privileged few at the expense of the rest of us, Town residents.** The unremovable Commissioners can commandeer Town staff, force changes to the elected Council's plans, and delay critical finance functions—including certain spending for essential government services. Elevating the "private sector expertise" perspective over all others is unwarranted.

In 2018, four of the five signers of the yes argument unsuccessfully urged defeat of a modest sales tax increase that, in our opinion, proved instrumental to the Town's COVID-19 response. **"Private sector expertise" isn't perfect.**

Come 2021, the undersigned won't be involved in Town government. With no personal stake, we studied Measure A, know its history, and strongly believe **it will needlessly disrupt excellent Town government.**

Please **VOTE NO.**

Marcia Jensen
Member, Town Council 2012-2020; Mayor 2014-15, 2019-20

Leo Cunningham
LGHS '78, Harvard Law '85, Independent Voter

ARGUMENT AGAINST MEASURE A

The Town Finance Commission initiative is unnecessary and bad government. Please vote against it.

The proposed Commission would be **formed in the dark**, not elected by you. Shockingly, individual councilmembers would each name one Commissioner with no transparency as to why and without further approval of the full Council. The initiative omits critical appointment safeguards. It requires **NO PUBLIC**---

- application;
- vetting of qualifications--or disqualifications;
- interview; or
- debate about suitability.

That's bad government inviting cronyism and corruption.

Commission members would be appointed for **four years** with **accountability to no one**; the initiative inexplicably exempts the proposed Commission from the provision that allows removal of Commissioners by three-fifths of the Town Council.

The initiative exalts the **wrong expertise**. Government finance and corporate finance are different. Corporate executives are obligated to seek profits for shareholders. Our Town's stakeholders aren't after financial returns. Town policy must reflect the diversity of our stakeholders' interests and never be profit-driven, or as the initiative puts it "to maximize fee generation."

The proposed Commission **would not be merely advisory**; it could have a pocket veto effect over expenditure of the Los Gatos Sales Tax. The initiative is worded to make Commission review of proposed expenditures of that tax a prerequisite to such expenditures; withholding that review would prevent the expenditures.

The initiative **creates a bloated bureaucracy** that could hijack the professional mission of the award-winning Town finance team. It would establish requirements for written reports and unnecessary counter reports wasting time and effort. Nimble responses to emergencies like pandemics, wildfires, earthquakes, or the completely unexpected could be thwarted by the new layer of unaccountable bureaucrats.

Los Gatos has excellent financial management and already taps the wealth of experience of its residents for financial matters. No initiative is needed to accomplish either.

The undersigned authors of the argument against ballot Measure A (the Town Finance Commission Initiative) at the general municipal election for the Town of Los Gatos to be held on November 3, 2020 hereby state that such argument is true and correct to the best of their knowledge and belief.

Marcia Jensen
Registered voter

Leo P. Cunningham
Registered voter

REBUTTAL TO ARGUMENT AGAINST MEASURE A

The two opponents of Measure A are employing baseless fearmongering to argue against a common-sense, advisory-only Finance Commission that will increase transparency and promote fiscal responsibility.

What's the downside to receiving expert financial advice regarding the annual budget or funding pensions from an advisory board of qualified Los Gatos residents? We don't see one.

Consider this:

The Commission will have no ability whatsoever to halt or delay funding for emergency response. And why would they want to? The Commission will include five Los Gatos residents with a vested interest in the health and safety of our town. Implying anything to the contrary is a cheap scare tactic.

Most elected officials are not financial experts. Couldn't our town benefit from the expert advice of highly-qualified residents with extensive backgrounds in business, economics and finance? Los Gatos still owes more than \$60 million in unfunded pension liabilities as of June 2019, up 48% from 2015. Maybe it's time for some expert financial advice.

Measure A does not supplant the Council's decision-making power. It simply offers the Council access to financial expertise should they need it.

The Commission will operate in public meetings. Members of the public can attend. Plus, all binding financial decisions will still be left to the Council, which ultimately is accountable to voters.

Don't be misled by the outlandish and bogus claims of the two sole naysayers. Los Gatos deserves smart, transparent and responsible fiscal management. Vote Yes on Measure A.

Sandy Decker
Former Mayor and Councilmember

Colleen Wilcox
Former Superintendent of Schools Santa Clara Co.

Rick Van Hoesen
Chief Financial Officer-Onpharma Co

Phillip Koen
Chairman-Stack Infrastructure

Jak Van Nada
Retired Chief Executive Officer Golden State Services