



California Fair Political Practices Commission

May 8, 1987

Preston W. Hill
96 West Main Street
Post Office Box 246
Los Gatos, CA 95031

Re: Your Request for Advice
Our File No. A-87-110

Dear Mr. Hill:

You have requested advice on behalf of Los Gatos Town Councilmember Robert Hamilton, concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act")^{1/}.

QUESTIONS

1. May Mr. Hamilton participate in decisions concerning the formation of a proposed parking assessment district and an urgency interim zoning ordinance affecting the downtown area where his business is located?
2. If the "rule of legally required participation" applies to a decision, and an otherwise disqualified councilmember is selected by random means to participate in the decision, is that councilmember selected to participate in only the first vote on the decision, or is that councilmember also selected to participate in subsequent votes on the same matter?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

CONCLUSIONS

1. Mr. Hamilton may not participate in any decisions which will have a reasonably foreseeable material financial effect on any of his economic interests.

2. If the "rule of legally required participation" applies to a decision, and an otherwise disqualified councilmember is selected by random means to participate in the decision, that councilmember also is selected to participate in subsequent votes on the same matter.

FACTS

Your letter concerns our previous advice to Mary Jo Levinger, Town Attorney of Los Gatos (No. A-87-061). In that letter, we advised Ms. Levinger that Councilmember Hamilton and another councilmember, Thomas Ferrito, were required to disqualify themselves from participating in decisions concerning the formation of a proposed parking assessment district and an urgency interim zoning ordinance affecting the downtown area where their businesses are located. We also stated that if the participation of one of the disqualified councilmembers was legally required, a method of random selection could be used to determine which councilmember would participate.

You have provided additional information concerning the decisions before the town council and their effect on Mr. Hamilton. First, you have stated that there is no substantial likelihood that the town's zoning ordinance will ever be enforced to abate the use of those commercial properties in the central business district which are nonconforming as to the parking requirements of the zoning ordinance. Second, you assert that even if the ordinance were enforced, Councilmember Hamilton would not incur \$2,500 in additional expenses to relocate his business.

With regard to the likelihood of the town enforcing the ordinance, you have informed us that it is likely that the town's sales tax, business license tax, and real property tax revenues would be severely impacted if the ordinance were enforced. This would require substantial cuts in the town's operating budget. The findings made in prior actions of the council to extend the ordinance and the public statements made by the mayor and other councilmembers indicate that the ordinance will not be enforced.

With regard to Councilmember Hamilton's expenses should he be required to relocate his business, you assert that the costs to Councilmember Hamilton would not be \$2,500 or more.

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Councilmember Hamilton owns a drapery and shade shop. It is a very small shop. Councilmember Hamilton believes he would be able to move all materials, furniture and equipment in his van and station wagon without the services of a professional mover. You also assert that Councilmember Hamilton's relocation would not result in any loss of business because his business does not depend on walk-in trade. The current location of the business is not favorable to walk-in trade.

You also have informed us that Councilmember Hamilton disqualified himself from participating in the urgency interim zoning ordinance before the council on March 23, 1987. A 4/5 vote was necessary to adopt the ordinance. With two councilmembers disqualified, the participation of one of the disqualified councilmembers was necessary to continue a quorum. Councilmember Ferrito was selected to participate by means of a coin toss. The vote on the ordinance was 3 to 1, with councilmember Ferrito casting the negative vote. The council voted to reconsider the decision. The coin toss was conducted a second time. Councilmember Ferrito won, and the ordinance again failed by a 3 to 1 vote. The council continued to vote for reconsideration until Councilmember Hamilton was selected. At that point, Councilmember Hamilton voted against adoption of the ordinance.

You have questioned the validity of the Commission's Hudson Opinion, 4 FPPC Ops. 13 (No. 77-007, Feb. 7, 1978), which provides that a method of random selection is the preferred method for deciding which of two disqualified councilmembers may participate in decisions where participation of one is legally required. You also have questioned the propriety of conducting the coin toss more than once with regard to the same decision when a decision is before the council for reconsideration after its failure.

ANALYSIS

In our letter to Mary Jo Levinger (No. A-87-061), we discussed the conflict of interest provisions of the Act and the pertinent regulations. That letter is incorporated herein by reference. In this letter, we will address only the additional information and questions you have presented.

Foreseeable Effects of the Failure to Extend the Urgency Ordinance

You have asserted that there will be no reasonably foreseeable effect on the central business area in Los Gatos as a result of the failure to adopt the urgency ordinance because the on-site parking required by the town's current zoning will

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never be enforced. In the Legan Opinion, 9 FPPC Ops. 1 (No. 85-001, Aug. 20, 1985) (copy enclosed), the Commission considered, and rejected, a similar argument. Legan concerned a zoning change affecting some undeveloped property. The property owner asserted that the change in zoning would not affect the property's value because the owner did not intend to develop the property in the foreseeable future. The Commission ruled that the intent of the property owner at the time of the decision did not affect whether the effect of the zoning change on the property's value was reasonably foreseeable. The reasoning in Legan also is applicable to the situation in Los Gatos.

It is not disputed that the failure to adopt the urgency interim ordinance puts many of the properties located in the central business district in violation of the town's zoning ordinance. Whether the town council currently intends to enforce the ordinance does not affect the legality of the businesses which are operating without adequate on-site parking. You have informed us of no legal barrier which prevents the town council from enforcing the zoning ordinance. Thus, we must conclude that it is reasonably foreseeable that businesses, such as Mr. Hamilton's, in the central business district would be required to cease operating at their current locations.

With regard to the expenses Mr. Hamilton would incur if he were required to relocate his business, we believe it is appropriate to conclude they would be significant. We presume that the costs of relocation would, at a minimum, include acquisition of a new location (which could be difficult if most other business owners in the central business district also are forced to relocate), any increase in rent and prepaid rent required, removing the merchandise from the old store and transferring it to the new store, installation of Mr. Hamilton's merchandise in the new location, signs and fixtures necessary to make the new store equivalent to the old store, notifying customers of the new location, and additional advertising, telephone and other expenses incurred as a result of the change in location. If there is a substantial likelihood that these and any other moving expenses would total at least \$2,500 in a one-year period, Mr. Hamilton must disqualify himself from participating in the decision. (Regulation 18702.2(g)(2), copy enclosed.) Similarly, if Mr. Hamilton might reasonably be expected to lose \$10,000 or more in gross revenues in a year as a result of the town's zoning ordinance, he must disqualify himself. (Regulation 18702.2(g)(1).)

We are not familiar with the cost of retail space in Los Gatos or the average costs of relocating a store such as Mr. Hamilton's. It is unlikely that a store could be relocated

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without significant costs. However, if Mr. Hamilton would not be likely to incur at least \$2,500 in additional expenses if he were required to relocate his store, and would not expect his gross revenues to be affected by \$10,000 or more, the decision's effect is not material and he would not be disqualified.

Section 87101: The "Rule of Legally Required Participation."

In your letter, you question the validity of the Hudson Opinion, supra, and argue that Jeffery v. City of Salinas (1965) 232 Cal. App. 2d 29, permits Mr. Hamilton to vote on the decisions in question. As you noted in your letter, Jeffery was decided almost 10 years prior to the time that the Political Reform Act became effective. Thus, Jeffery does not interpret any provision of the Act. Jeffery concerned the creation of an assessment district, and thus dealt with facts similar to those in Los Gatos. However, the Commission has specifically rejected the reasoning in Jeffery. (Brown Opinion, 4 FPPC Ops. 19, 23-25 (No. 77-024, Feb. 7, 1978), copy enclosed.) Therefore, we need not respond to your assertion that Jeffery is a valid interpretation of Section 1090 and other conflict of interest laws. The Commission has clearly stated that Section 87101 leads to a different result than the rule enunciated in Jeffery.

You have also questioned the validity of the Hudson Opinion, insofar as it assumes that a decision can be made by a mere quorum of the council since this would require all participating councilmembers to vote in the same way for any decision to be approved. In Hudson, the Commission clearly stated that Section 87101 permits an otherwise disqualified councilmember to participate in a decision if his vote is necessary to constitute a quorum. The Commission considered arguments that all disqualified councilmembers should be permitted to participate in a decision in that situation. The Commission rejected those arguments. (Hudson, supra at p.17.) The Commission did not distinguish between decisions of legislative and non-legislative bodies, as you suggest would be appropriate in your letter. In fact, in the Brown Opinion, supra, the Commission expressly discussed the application of Hudson to a city council decision concerning formation of an assessment district. (Brown Opinion, supra at p.25.) Therefore, we conclude that the rule adopted in Hudson applies to the decisions before the Los Gatos Town Council.

You also have questioned whether the random selection procedure required in Hudson can be repeated when subsequent votes on the same decision are required due to the council's vote to reconsider its decision. This result was certainly not contemplated by the Commission when it stated in Hudson that the random selection procedure was necessary to minimize the

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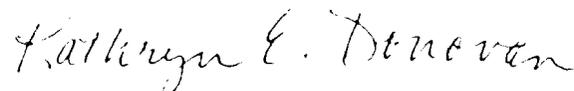
influence of bias in the decisionmaking process.^{2/} We do not render advice as to past conduct. (Regulation 18329(b)(8)(A), copy enclosed.) We have previously concluded that the random selection procedure need not be repeated with respect to a series of decisions involving the same general subject matter and the same disqualifying interests. (Hopkins Advice Letter, No. A-82-088, copy enclosed.)

In the future, it would be improper to repeat the random selection procedure with respect to the decision merely because the council has voted for reconsideration. The subject matter of the decision is unchanged, as are the disqualifying interests. Therefore, the councilmember who is selected by random means to participate in the first vote on the decision also is selected to participate in subsequent votes on the same matter.

If you have any further questions, please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

KED:km
Enclosure

^{2/} The Act does not distinguish between actual bias and the appearance of bias. In your letter, you suggested that neither Councilmember Hamilton nor Councilmember Ferrito was biased because they both voted against their financial interests. When the Act requires an official to disqualify himself from participating in a decision due to a conflict of interest, it is irrelevant that the official intends to vote against his own interests.

87-110

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APR 9 5 34 AM '87

April 7, 1987

Ms. Kathryn E. Donovan
Counsel, Legal Division
Fair Political Practices Commission
P.O. Box 897
Sacramento, California 95804-0807

Re: Request for opinion
Your file No. A-87-061

Dear Ms. Donovan:

Ms. Mary Jo Levinger, Town Attorney for the Town of Los Gatos, has provided Robert Hamilton with a copy of your March 19, 1987 opinion. Mr. Hamilton is, of course, one of the two councilmembers referred to in Ms. Levinger's request for your opinion. He has asked me to request a further opinion because the March 19 opinion did not deal with the entire fact situation and because the Town on March 23, partly in reliance on your March 19 opinion, conducted proceedings that evidently do not conform to law.

1. The Probable Existence of a Real Parking Deadline

The facts on which for your March 19 opinion is based are not all of the facts. First, there is no substantial likelihood that the Town's zoning ordinance will ever be enforced to abate the use of those commercial properties in the central business district which are nonconforming as to the parking requirements of the zoning ordinance. Any measured consideration of the matter should take into account (1) the findings contained in the first urgency interim zoning ordinance and extension (see Ordinances Nos. 1679 and 1682), (2) the proposed findings to be made in the ordinance before the council on March 23, 1987 (see attached draft unnumbered ordinance), (3) the fact that at least three councilmembers voted five times (once in April, 1986 and four times on March 23, 1987) to delay the parking conformity deadline, and (4) the fact that a substantial portion of the Town's operating budget is paid by the businesses affected by the

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zoning ordinance deadline. Considering these additional matters, it is not reasonably foreseeable that businesses are going to be shut down by the Town, notwithstanding what a reading of the zoning ordinance out of factual context might indicate.

Not only are sales taxes involved, but also business license taxes and real property taxes. Real property taxes would certainly be affected by reduction of property values resulting from a determination that business could not be conducted lawfully in downtown buildings. The total tax effect of abatement has never been studied. Overall it might amount to ten or 20 percent of the Town's tax revenue.

So far, the Council has not instructed the Town staff to do any act to enforce the part of the ordinance in question and has not publicly discussed doing so. It is the position of the Town staff that no enforcement measures, civil or criminal, are to be taken without specific direction in the form of a council motion or resolution. The present mayor, who on each occasion when the matter was before the Council voted to delay the parking compliance deadline, has been quoted in the press as saying that abatement would be an excessively harsh solution.

An easy answer to the assertion that the ordinance deadline is of no consequence in determining whether Mr. Hamilton and Mr. Ferrito are disqualified from voting in matters pertaining to the parking district would be to reply that we are not dealing in terms of probabilities, and that literal enforcement has to be assumed. However, reading your commission's March 19 opinion, which provides a sound approach to the problem, we see that the probability of economic effect is the very meat of the matter. The question is one not of what will theoretically occur, but what will be reasonably foreseeable in the real factual context.

2. The Actual Expense to Mr. Hamilton and Mr. Ferrito
if the Deadline Were to Be Enforced

Councilmember Hamilton does not agree that the cost to relocate his business would exceed \$2,500.00. His business is a very small drapery and shade shop. Because he owns a truck, a Pinto van and a station wagon, he states that he would be able to move all materials, furniture and equipment in the building without the services of a professional mover. He also questions whether the costs of moving Mr. Ferrito's law office would exceed \$2,500.00. As to both himself and Mr. Ferrito, he questions whether any loss of business would result. Neither business depends on walk-in trade, and neither is well located to attract such trade.

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3. Applicability of Jeffrey v. Salinas

At the March 23, 1987 Town Council meeting Mr. Ferrito and Mr. Hamilton, in conformity with the conclusion of the FPPC March 19 letter, did not participate in discussion of formation of the parking district. Before the meeting, Mr. Hamilton indicated to the Town Attorney that the rule stated in Jeffrey v. City of Salinas, (1965) 2332 Cal. App. 2d 29, was applicable to the situation and permitted him to vote. His focus was on footnote 5 of that case, stating that a mayor who owned property in a proposed assessment district was not precluded from voting on the formation of the district. The Town Attorney replied that the case was decided before enactment of the Political Reform Act. Ms. Levinger has since pointed out that the FPPC had considered Jeffrey in the Brown opinion (4 FPPC Ops 19 No. 77-024, Feb. 7, 1978) at pages 23-25. There, according to Ms. Levinger, the FPPC stated that Jeffrey was decided on the basis of common law in the absence of any specific statutory provision, and that the FPPC determined to follow the statutory provisions of the Political Reform Act and not earlier case law.

Mr. Hamilton's position is that before the Political Reform Act, under the provisions of Government Code sections 1090 and following, all contract-related transactions were as strictly regulated as they are now under the Political Reform Act. Therefore, Jeffrey was not decided on the basis of common law. The effect of the Political Reform Act was to initiate disclosure requirements, to add a system of definitions and limitations, to create the FPPC, and to broaden the area of legally cognizable conflicts beyond transactions where contracts were involved, but not to alter the provisions of section 1090, which have always been very strict. Jeffrey was decided when section 1090 was (as it still is) in effect. Redevelopment, parking assessment district, and similar matters are certainly contract-related under the decisional law pertaining to section 1090. Therefore, pre-1975 appellate decisions such as Jeffrey still are proper precedents for determining the present question. There appears to be no case authority on the effect of pre-1975 cases in situations such as the one presented here, and I would appreciate your including in your reply an analysis of this approach.

4. Events Which Took Place After the March 19 Opinion

On March 23 the Los Gatos Town Council met. As I have said, relying on your March 19 opinion, Councilmembers Ferrito and Hamilton refrained from debating the ordinance extension and parking district issues.

The Council continued agenda items 2, 3, and 5 (see

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attached) and opened the public hearing on item 4, the urgency interim zoning ordinance. Los Gatos has a five member council. A four-fifths vote is required to adopt an urgency ordinance. Since only three councilmembers were apparently available to vote and four were necessary to determine the matter, the Council decided to toss a coin to select either Mr. Hamilton or Mr. Ferrito to vote. Mr. Ferrito won. He voted against adoption of the urgency interim zoning ordinance. A councilmember moved for reconsideration. The motion was seconded by another councilmember. (See the attached council policy on reconsideration, Resolution No. 1987-24, Exhibit A, Town Council Agenda Procedures, Item G.) The motion passed by three votes. The coin was tossed again and Mr. Ferrito won. He voted against adoption. Another motion for reconsideration was made and passed. (Council procedures do not limit the number of times an item can be reconsidered. The council has not adopted Robert's Rules of Order.) Again, Mr. Ferrito won, voted against adoption, and a motion for reconsideration was made and passed. On the fourth toss of the coin, Mr. Hamilton won. He also voted against adoption of the ordinance. Since the zoning ordinance amortization period for businesses which do not have conforming parking has expired, at this time those commercial properties in the central business district that do not have the required amount of parking are illegal.

5. Reliance On the FPPC HUDSON Opinion

In determining to implement its version of the rule of necessity, the Town Council acted in reliance on the FPPC's Hudson opinion (4 FPPC Ops 13 (No. 77-007, Feb. 7, 1978)).

The validity of the Hudson opinion is questionable. The opinion confuses "disqualification" and "bias", and appears to be based on reasoning devised for the purpose of justifying a vote that could have been foreseen in any event to be favorable. The writer of the opinion had to have assumed in advance that all of the disqualified members would vote the same way, an assumption that is never tenable. Without that initial assumption the reasoning about "minimizing" the effect of the rule of necessity cannot lead to the conclusion. Decision of important governmental matters by lot is disfavored as a matter of public policy, and absent statutory direction decision by lot ought never to be used to determine which of two elected, equally-qualified members of the same governing board ought to vote. Ironically, the Hudson opinion was followed in Los Gatos in a situation where both of the assertedly disqualified officials voted in a manner which was the opposite of what the writer of Hudson evidently would have assumed. However, If the Hudson opinion has any validity at all, it should be restricted to its facts--situations

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where one more voting member of a nonlegislative body is required to make up a quorum.

Even if the Hudson opinion is correct, and even if it applies to the present, different fact situation, the multiple coin tosses that occurred were illegal. The three "qualified" members of the council, by repeating a procedure which would inevitably result in "qualifying" the member who had not been selected by a single coin toss, attempted to, and succeeded in, circumventing the very minimization result on which the writer of Hudson relied entirely to justify his conclusion.

The questions are:

1. Are the two councilmembers disqualified, given the tenuous fact situation with regard to the economic effect of the proceedings on them?

2. On review, is the Hudson opinion valid at all?

3. If the Hudson opinion has any validity, can it apply to discriminate in any way between two elected city councilmembers?

4. If the Hudson opinion has any validity, can it be used except to achieve a quorum where a quorum is not otherwise possible?

5. If the Hudson opinion is valid and applies in the present situation, is more than one round of coin-tossing--for the purpose of changing the result of the first toss--ever permissible?

I am of course asking these questions on Mr. Hamilton's behalf, as he has authorized me to do. I have, for the sake of brevity, and I hope clarity, cast them in the form of argument and conclusion, but they are questions, nevertheless. These matters are not minor ones: (1) whether the measure of reasonable foreseeability can be employed to reach the conclusion

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that there will be economic effect if an ordinance is enforced, but not to determine whether enforcement is a realistic probability or even rationally possible, (2) whether the effects of the rule of necessity can be "minimized" constitutionally by discriminating between two equally qualified members of a legislative body, and (3) whether lots can be drawn or coins tossed repeatedly to determine in the Political Reform Act context who is qualified to legislate.

These questions will certainly recur on April 13 when the parking district hearings resume. I understand the time problems involved, but I hope Mr. Hamilton and the Town can have a response by April 13.

Very truly yours,



Preston W. Hill

PWH:pk
w/encls.

DRAFT

March 23, 1987
Los Gatos, Ca

TOWN COUNCIL The Town Council/Parking Authority met in the Council Chambers of the Town Hall at 7:35 p.m., in an adjourned regular session.

ROLL CALL PRESENT: Eric D. Carlson, Thomas J. Ferrito, Robert L. Hamilton and Mayor Brent N. Ventura.
ABSENT: Joanne Benjamin.

Mrs. Benjamin arrived during recess at 7:45 p.m.

PLEDGE OF ALLEGIANCE Given by all in attendance.

VERBAL COMMUNICATION Mrs. Elliott, 152 Clover Way, addressed the Council and read her written protest of the action of having 2 Councilmembers stepping down from voting on certain important issues due to conflict of interest. Probably no issue comes up for vote that one or more Councilmembers have a conflict of interest of some type. Realizing there has been a ruling by the Sacramento group on this as of Friday March 21st and I would like to hear the presentation by the Council for this ruling and the ruling itself. Mayor Ventura stated the ruling from the Fair Political Practice Commission would be reported on later in the meeting.

Mayor Ventura read an opening statement outlining the procedures for this hearing re Parking Assessment District. He stated there are two public hearings to be considered and they will be heard at the same time as they deal with the same project. The legal purpose of the hearing is to receive all written protests and to hear all oral testimony presentations. Property owners in the district will have the opportunity to file formal protests with the Town Clerk until 7:50 p.m. whereby the Town Clerk will submit all protests to the Engineer for computation. Mayor Ventura then declared a 15 minute recess to allow all written protests to be filed with the Deputy Town Clerk in the lobby of the Council Chambers. Anyone wishing to withdraw a protest, already filed, may do so at any time. Any persons interested, including property owners, may file additional written protests and may make any oral protest or may make any comment or objection. Such protests and objections may be made to any aspect of the project and the Engineer's report.

Meeting reconvened at 7:55 p.m.

OPINION FROM FPPC Town Attorney Levinger, reported on the opinion from the Fair Political Practices Commission, dated March 19, 1987. This was a request for an opinion on behalf of Councilmember Ferrito and Councilmember Hamilton. The FPPC has indicated that both Councilmembers are disqualified from voting on the formation of the Parking District and on the Urgency Interim Zoning Ordinance that are on the Council agenda tonight because, their businesses are located within the proposed assessment district. With regard to the Urgency Interim Zoning Ordinance, that requires a four fifths vote, the FPPC has indicated that a legal required participation will occur by lot. One member will be chosen by lot as has been done before, in order to cast the four votes or at least have a ballot with four Councilmembers voting. Mayor Ventura stated then by this ruling, he would request Councilman Ferrito and Councilman Hamilton to step down from the podium at this time. Mr. Hamilton stated that he really believes that the FPPC opinion is improper and that Mr. Ferrito and himself should both be allowed to, not only vote, but to participate in the process. He referred to legal required participation being done by lot between the two Councilmembers and he feels this is

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ASSESSMENT
DISTRICT HEARING
(CONTINUED)

Mayor Ventura asked for a preliminary tabulation of protests. Mr. Mr. Zapf, Town Engineer, reported that staff has not had an opportunity to detail the protests and reported the sum total of percentage of land area received for protest is in excess of 47%. He recommended the protests be turned over to staff for further analysis. He also noted no more written protests may be filed but, those that have been filed may be withdrawn. Mr. Jones stated the computation is before the Town Engineer and additional written protests or written material may be filed as long as the hearing is open but they are not to be counted in the percentage computation. Mr. Carlson stated, "for a variety of reasons including the need to verify and need to check the protests we have received and because of some of the people who protested tonight may feel their concerns could be addressed, have copies of protests prepared for all Councilmembers (including the two that cannot vote as one of them may be called upon to vote) and continue this meeting". Mrs. Benjamin concurred. Mayor Ventura stated they would continue to take testimony tonight from persons who wish to speak on the issue. Randy Reedy, managing partner of 19 N. Santa Cruz Avenue, feels there is a lot of support in what Mr. Brady stated in that there are a lot of errors made with respect to individual properties. He suggested paving of lots 3 and 4 immediately; install parking meters by Christmas; monies generated by meters then could be used by the Town for further development of the Parking program. No one is saying there isn't a problem and he thinks people are objecting to the methodology. Dr. LaVeque, spoke against being included in the assessment project as he would not benefit by it. Mr. Farwell spoke on his concerns regarding promises made when the Town was developing Parking District #1. After further discussion, Mr. Carlson moved to continue this public hearing to April 13, 1987. Mrs. Benjamin seconded. Carried by a vote of three ayes. Mr. Ferrito and Mr. Hamilton abstaining. Clerk directed to prepare copies of protests for each Councilmember.

ZONE CHANGE -
LOS GATOS BLVD.
EL MONTE HILL

Mayor Ventura stated this was the time and place duly noted for public hearing to consider a change of zone from R-1:8000 and R-10 to C-1 for that area of land within the public right-of-way of Los Gatos Boulevard extending from the existing C-1 Zone boundary northerly to a line parallel to the centerline of Johnson Avenue extended. Mr. Carlson moved to continue this public hearing to April 13, 1987. Mrs. Benjamin seconded. Carried by a vote of three ayes. Mr. Ferrito and Mr. Hamilton abstaining.

PLANS RE
CONSTRUCTION
OF SURFACE
PARKING

Mayor Ventura stated this was the time and place duly noted for public hearing to consider approval of plans for the construction of surface parking lots and parking structure to be constructed on lot 3 at Grays Lane and Royce Street along the S.P. right-of-way; lot 4 (2 level) parking structure between Elm Street and Grays Lane along S.P. right-of-way; lot 9 parking lot on the east side of Park Avenue, south of W. Main Street, and lot 15, surface parking lot on the south side of East Main Street at Alpine Avenue. Mr. Carlson moved to continue this public hearing to April 13, 1987. Mrs. Benjamin seconded. Carried by a vote of three ayes. Mr. Ferrito and Mr. Hamilton abstaining.

ORDINANCE AMEND
MENT RELATING TO
DOWNTOWN PARKING
PROGRAM

Mr. Carlson moved to continued the adoption of Ordinance amending Town Zoning Ordinance, A-87-1, concerning rules for properties within a Parking Assessment District and regulations regarding public parking facilities. Mrs. Benjamin seconded. Carried by vote of three ayes. Mr. Ferrito and Mr. Hamilton abstaining.

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URGENCY INTERIM
ZONING ORDINANCE
EXTENDING ORD.
NO. 1682
(CONTINUED)

Mr. Carlson moved to make finding that there is a current and immediate threat to the public health, safety and welfare, and that the cessation of uses nonconforming as to parking pursuant to Section 3.50.050 of the Los Gatos Zoning Ordinance. Mrs. Benjamin seconded. Mayor Ventura seconded. Motion carried by vote of three ayes. Mr. Hamilton abstained and Mr. Ferrito voting no. Mr. Carlson moved to waive the reading for AN URGENCY INTERIM ZONING ORDINANCE AMENDING ORDINANCE NO. 1682 EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR USES THAT ARE NONCONFORMING AS TO PARKING.. Mrs. Benjamin seconded. Carried by vote of three ayes. Mr. Hamilton abstained and Mr. Ferrito voting no. Town Clerk read title of Ordinance.

Mr. Carlson moved for introduction of Ordinance. Mayor Ventura seconded. Motion fails on vote of three ayes. Mr. Ferrito voting no and Mr. Hamilton abstained.

Mr. Carlson moved for reconsideration. Mayor Ventura seconded. Carried by vote of three ayes. Mr. Ferrito voting no and Mr. Hamilton abstained.

Mayor Ventura directed Town Clerk to flip the coin once again. Mr. Hamilton won the toss and the right to vote on this issue. Mr. Carlson moved to make the findings as stated before. Mrs. Benjamin seconded. Carried by vote of four ayes. Mr. Ferrito abstained. Mr. Carlson moved to waive the reading of title of the Ordinance as stated before. Mrs. Benjamin seconded. Carried by vote of four ayes. Mr. Ferrito abstained. Clerk read title. Mr. Carlson moved for introduction of the Ordinance. Mrs. Benjamin seconded. Mr. Hamilton stated he could not support motion as he feels "the Town has used this long enough as a club and extended it for a year and I'd like to put us on the equal footing of the property owners and that is not to have the Ordinance over their head." Mr. Carlson and Mayor Ventura spoke on Mr. Hamilton's comments and urged his reconsideration. Mrs. Benjamin stated she agreed that there is a reason for supporting this and that is to continue to let people continue their business in a legal nonconforming manner. Mayor Ventura called for a vote and motion failed on a vote of three ayes. Mr. Ferrito abstained and Mr. Hamilton voted no.

ADJOURNMENT

Mr. Hamilton moved meeting be adjourned at 11:10 p.m.. Mrs. Benjamin seconded. Carried unanimously.

ATTEST:

Rose E. Aldag
Town Clerk

APPEAL -
DEMOLITION OF
RESIDENCE AT
229 BACHMAN AVE
(CONTINUED)

the neighborhood in putting a residential anchor and clearly establishing, by the physical structures that are build, this is residential area and not a commercial area. For those reasons, Mr Ferrito moved that Council remand this matter back to the Planning Commission on Architecture and Site Application and feels Planning Commission, as a whole, did not focus on that issue. Mrs. Benjami seconded. Carried unanimously.

BICYCLE &
PEDESTRIAN
SAFETY
IMPROVEMENTS
FOR BLOSSOM
HILL ROAD &
SHANNON ROAD

Mayor Daily stated this was the time and place duly published for public hearing to consider pedestrian safety on Blossom Hill and Shannon Road. Engineer, Ron Zapf, gave summary of project to construct safety improvements in the 1986-87 construction schedule. Also speaking on the dangerous pedestrian and bicycle safety on Blossom Hill Road and Shannon Road were Van Adams; Mark McClish; Bruce McClish; Cheryl Wimberly; Nancy Stengle; Dennis Kallenborn; Ed Strong; Mrs. Chatterjee; Mrs. Barnett; Mrs. Mallison; and Judith Moreland. Mr. Van Adams presented a petition signed by 23 residents requesting Council's consideration of said improvements. Further discussion was held on the issuance of citations for the Dodge car dealers parking their cars on the roadway on Shannon Road. Council asked for staff report from Town Engineer addressing the complaints of the people who have spoken. No one else wished to speak on this issue, Mr. Ventura moved hearing be closed. Mrs. Benjamin seconded. Carried unanimously. Mrs. Benjamin moved to approve the Blossom Hill safety project for construction, direct staff to prepare final plans and specificatio for presentation and consideration by Council in 30 days. Mr. Carlson seconded. Carried unanimously. Mrs. Benjamin moved Council and staff work with County and incorporate safety on both sides of Shannon Road from Short Road to Los Gatos Boulevard. Bik path and walkway from Blossom Hill School to Atwood Court. Mr. Ventura seconded. Carried unanimously. Mayor Daily and Mrs. Benjamin to meet with Susanne Wilson to discuss this issue and interested residents should also write Board of Supervisors requesting their cooperation to remedying this dangerous roadway situation. Council also directed staff to contact Dodge dealership re parking of vehicles along side of Shannon Road near the intersection.

APPEAL -
VARIANCE 47
BROADWAY
(PISORS)

Mayor Daily stated this was the time and place duly noted for public hearing to consider the appeal of Planning Commission denia of Variance Application V-85-5, requesting permission to construct an accessory structure at a height greater than that permitted by the development standards of the R-1D zone. Property located at 4 Broadway (George & Dawn Pisors). This item had been continued from February 18, 1986. Letter from George Pisors requesting this item be removed from the agenda, due to submittal of revised plans whic would eliminate the need for a variance for the remodeling of a garage. Mrs. Benjamin moved request for withdrawal of the appeal be granted. Mr. Carlson seconded. Carried by a vote of four ayes. Mr. Ferrito abstained.

ORDINANCE -
EXTENSION OF
NONCONFORMING
STATUS -
PROPERTY IN
ROUTE 85

Mayor Daily stated this was the time and place duly published for public hearing to consider the extension of Ordinance No. 1678 entitled, AN URGENCY INTERIM ZONING ORDINANCE EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR NONCONFORMING USES LOCATED ON PROPERTIES THAT ARE TO BE ACQUIRED BY THE STATE OF CALIFORNIA FOR ROUTE 85. Some discussion was held. There was no one from the audience wishing to speak on this issue. Mr. Ventura moved public hearing be closed. Mrs. Benjamin seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Mr. Ventura moved to waive the

April 7, 1986
Los Gatos, Ca

NONCONFORMING STATUS - PROPERTY IN ROUTE 85 (cont) Carried by a vote of four ayes. Mr. Ferrito abstained due to his being a tenant in a building which is within the proposed Parking Assessment District. Any assessment that is proposed will be passed onto him as a tenant, and under State Law it is questionable as to whether he could participate in any decision relating to said district. Clerk read title. Mr. Ventura moved that Council make finding that the findings as stated in Section 1 of the Ordinance are consistent with the General Plan. Mrs. Benjamin seconded. Carried by vote of four ayes. Mr. Ferrito abstained. Mr. Ventura moved for introduction of proposed Ordinance. Mrs. Benjamin seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Mr. Ventura moved for adoption of Ordinance No. 1681 entitled, URGENCY INTERIM ZONING ORDINANCE EXTENDING ORDINANCE NO. 1678 EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR NONCONFORMING USES LOCATED ON PROPERTIES THAT ARE TO BE ACQUIRED BY THE STATE OF CALIFORNIA FOR ROUTE 85. Mrs. Benjamin seconded. Carried by a vote of four ayes. Mr. Ferrito abstained.

EXTENDING CONFORMING STATUS PARKING ORDINANCE 1679 Mayor Daily stated this was the time and place duly noted to consider the extension of Ordinance No. 1679 entitled, AN URGENCY INTERIM ZONING ORDINANCE EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR USES THAT ARE NONCONFORMING AS TO PARKING. Mr. Bowman gave summary report on the extension of said Ordinance. Mr. Van Houten, representing the Parking Commission, stated the Parking Commission is very pleased with what Council has done regarding the nonconforming uses, due to parking issues, and wanted to reassure Council that the parking program is progressing well and they are getting a good response from people that have been contacted, regarding the Parking Assessment District. No one else from the audience wished to speak on this issue. Mr. Ventura moved public hearing be closed. Mrs. Benjamin seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Mr. Ventura moved to waive the reading for AN URGENCY INTERIM ORDINANCE NO. 1679 EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR USES THAT ARE NONCONFORMING AS TO PARKING. Mr. Carlson seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Clerk read title. Mrs. Benjamin moved Council make finding that the findings in Section 1 of proposed ordinance are consistent with the General Plan. Mr. Ventura seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Mrs. Benjamin moved for introduction of proposed ordinance. Mr. Ventura seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Mrs. Benjamin moved for adoption of Ordinance No. 1682 entitled, AN URGENCY INTERIM ZONING ORDINANCE EXTENDING ORDINANCE NO. 1679 EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR USES THAT ARE NONCONFORMING AS TO PARKING. Mr. Ventura seconded. Carried by a vote of four ayes. Mr. Ferrito abstained. Mr. Ferrito stated his reason for abstaining in voting on the nonconforming uses Ordinance is due to his being a tenant in a building which is within the proposed Parking Assessment District. Any assessment that is proposed will be passed onto him, as a tenant, and under State Law it is questionable as to whether he could participate in any decision relating to said district.

APPEAL - 269 LOS GATOS BOULEVARD - SECONDARY UNITS Mayor Daily stated this was the time and place duly published for public hearing to consider an appeal of the Town of Los Gatos Building Official's decision concerning code correction required for approval of a secondary unit at 269 Los Gatos Boulevard (J. Wilson).

Mayor Ventura directed the Town Clerk to flip the coin again. Mr. Ferrito won the toss once again and the right to vote on this issue. Mr. Carlson moved the findings. Mrs. Benjamin seconded. Carried by a vote of three ayes. Mr. Ferrito voted no and Mr. Hamilton abstained. Mr. Carlson moved to waive the reading for AN URGENCY INTERIM ZONING ORDINANCE AMENDING ORDINANCE NO. 1682 EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE FOR USES THAT ARE NONCONFORMING AS TO PARKING. Mrs. Benjamin seconded. Carried ~~unanimously~~ ~~---The-Town-Clerk-read-the-~~ by a vote of four ayes. Mr. Hamilton abstained. The Town Clerk read the title of the Ordinance. Mr. Carlson moved to introduce ~~the~~ the ORDinance. Mayor Ventura seconded. ~~Failed~~ Failed by a vote of three ayes. Mr. Ferrito vote no and Mr. Hamilton was absent.

Campbell · Los Gatos · Monte Sereno · Saratoga · West San Jose

Extra

San Jose Mercury News

Wednesday, April 1, 1987 3

Los Gatos won't extend parking exceptions

By Jose Stell
Mercury News Staff Writer

More than half of the stores and offices in downtown Los Gatos are now considered to be illegal because they do not provide enough on-site parking as the result of action last week by the Town Council.

The council failed to muster the four votes needed to approve an extension of a special zoning ordinance that would have allowed the parking deficiencies.

The vote was 3-1 in favor of extending the ordinance, one vote shy of granting the

needed approval. Council members Bob Hamilton and Tom Ferrito, who have been barred from voting on matters concerning the ordinance and other parking issues because of a possible conflict of interest, individually were seated by the toss of a coin to make up the fourth vote. Each voted against the extension.

They have been barred from voting by a ruling of the Fair Political Practices Commission but were allowed to vote under regulations stipulating special circumstances.

What the council's action means is the

town could force those businesses deemed illegal to cease operating because they cannot provide adequate parking.

It is not likely that the Town Council will order the businesses to shut down, though, because the town still is attempting to set up a parking assessment district designed to solve the downtown parking problem, Town Attorney Mary Jo Levinger said.

The number of businesses that fall in this group can only be estimated, but Town Planning Director Lee Bowman said

See ORDINANCE, Page 2

LOS VALOS COUNCIL vote means most stores are illegal

ORDINANCE, from Page 1

it is "well over 50 percent of the 600 to 700 businesses in the heart of the downtown."

Mayor Brent Ventura said after the meeting, "I can assure you that I would not favor any such abatement proceedings (shutting down businesses). Right now, we have put the business community very much behind the eight ball. Basically, they have a very dark cloud hanging over them."

Ventura added, "I do not believe the town will on its own volition instigate any abatement proceedings."

He said, however, that the town would be vulnerable to lawsuits by allowing the businesses to continue operating illegally.

"Someone from a residential neighborhood adjacent to one of the businesses, for instance, could sue the town over a nuisance ques-

tion (at the business site). A judge could say 'Well, you have a town law on the books, why aren't you doing your lawful duty in enforcing it in regards to those businesses?'"

Ventura also said the town right now cannot approve any plans for changes or improvements on any of the businesses. "So, in essence, you almost have a moratorium downtown."

Businesses like Ferrari of Los Gates, he said, with which the town had reached tentative agreement to allow to continue operating, is now considered to be illegal because of its parking deficiency.

"Our settlement was based on giving them the zoning they needed. Now, we can't uphold our end of the bargain because of this vote," he said.

The zoning ordinance was first enacted in 1966 and generously gave downtown businesses 20

years to comply with parking standards. The council last year extended the ordinance for 12 months in hopes that the town during that time would have its parking assessment district in place. The district would include the businesses.

Creation of the district will provide a means to pay for some 600 new parking spaces downtown, alleviating parking problems for the businesses.

Both Hamilton and Ferrito had comments about their participation in the parking vote, especially in regards to the coin toss determining selection of members.

"The FPPC opinion is improper," Hamilton said. "We are not property owners, and we should be allowed to participate in voting and deliberations leading up to it." He added, "This is truly government by chance."

The council agreed on a coin toss. Ferrito won and was seated, but voted "no" on the motion to extend the urgency ordinance, causing it to fail 3-1. "With a 47 percent showing of protest," Ferrito explained, "I cannot support the motion."

A motion to reconsider passed 3-1. A coin was tossed, Ferrito won again, remained seated and voted "no," the urgency ordinance failing

on the same 3-1 vote.

Levinger determined that there is no policy limitation on the number of times a motion to reconsider might be made, so a third coin toss was called for. Ferrito won it again, with the same results: The urgency ordinance failed 3-1.

On the fourth try, Hamilton won the coin toss and was seated.

Hamilton prefaced the vote by announcing he would not support extension of the urgency ordinance. "We've used it (ordinance) long enough as a club," he said. "We should not hang the ordinance

around their (assessment district participants) necks."

Hamilton voted "no" and the urgency ordinance failed 3-1.

Entreaties by fellow council members to resolve the dilemma failed to persuade Hamilton to switch his vote.

RESOLUTION NO. 1987-24

ESTABLISHING COUNCIL AGENDA FORMAT AND RULES

- WHEREAS, The New Brown Act(Assembly Bill)2674 was adopted by the Assembly effective January 1, 1987; and
- WHEREAS, On December 15, 1986 the Council adopted Resolution No. 1986-183 amending the Council Format to meet the requirements of the Brown Act; and
- WHEREAS, The Council Agenda Rules have not been confirmed by Council since 1982,

THEREFORE BE IT RESOLVED, the Council Agenda Format and Rules are established as indicated in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of March, 1987 by the following vote.

AYES: COUNCIL MEMBERS Joanne Benjamin, Eric D. Carlson, Thomas J. Ferrito, Robert L. Hamilton, and Mayor Brent N. Ventura

NOES: COUNCIL MEMBERS None

ABSTAIN: COUNCIL MEMBERS None

ABSENT: COUNCIL MEMBERS None

SIGNED: *Brent N. Ventura*
MAYOR OF THE TOWN OF LOS GATOS

ATTEST:

Rose E. Adams
CLERK OF THE TOWN OF LOS GATOS

EXHIBIT A
TOWN COUNCIL AGENDA PROCEDURES

A. ORDER OF THE AGENDA

CLOSED SESSION
INTERVIEWS
MEETING CALLED TO ORDER
ROLL CALL
PLEDGE OF ALLEGIANCE
APPOINTMENTS
PRESENTATIONS
CLOSED SESSION REPORT
APPROVAL OF AGENDA
BID AWARDS
CONSENT CALENDAR
VERBAL COMMUNICATIONS
PUBLIC HEARINGS
TOWN CLERK
TOWN TREASURER
TOWN ATTORNEY
TOWN MANAGER
COMMISSION AND COMMITTEES
COUNCIL REPORTS
ADJOURNMENT (NO LATER THAN MIDNIGHT WITHOUT VOTE)

B. CLOSED SESSION REPORTS

Reports on actions taken in Closed Session will be made immediately after the Pledge of Allegiance.

C. CONSENT CALENDAR

Items may be removed from the consent calendar only by a member of the Town Council. Items removed from the consent calendar shall be considered for discussion and action after the section of the agenda entitled "OFFICE OF THE TOWN MANAGER".

D. VERBAL COMMUNICATIONS

Presentations shall be limited to five (5) minutes per subject. All items that require Council action will be referred to staff for review and recommendation at a subsequent meeting (AB 2674-Brown Act Amendment).

E. ADJOURNMENT

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

F. AGENDA SCHEDULE PREPARATION SCHEDULE

Friday, 10 days prior to meeting

All agenda reports due to Town Manager

Wednesday, NOON, prior to meeting

Cut-off for placement of items on agenda by members of the public

F. AGENDA SCHEDULE PREPARATION SCHEDULE (continued)

Wednesday, 5:00 p.m., prior to meeting

Cut-off for placement of items on the agenda by members of Town Council

Thursday, prior to meeting

Written agenda is finalized and printed. Agenda packets distributed to Town Council members

G. RECONSIDERATION OF ITEMS

No item acted upon by the Town Council will be reconsidered by the Council within ninety (90) days of the Council action unless the item is requested for reconsideration by a member of the Town Council. A motion for reconsideration can only be made at the meeting of the original Council action or at the meeting immediately following the original action.

H. MOTIONS BY THE CHAIR

The Chairperson of the meeting may make or second motions.

I. PREPARATION OF THE AGENDA

The agenda is prepared by staff and the Town Clerk for the Mayor's approval. In this manner the Mayor determines the agenda.

RESOLUTION NO. 1987-24

ESTABLISHING COUNCIL AGENDA FORMAT AND RULES

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PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of March, 1987 by the following vote.

AYES: COUNCIL MEMBERS Joanne Benjamin, Eric D. Carlson, Thomas J. Ferrito, Robert L. Hamilton, and Mayor Brent N. Ventura

NOES: COUNCIL MEMBERS None

ABSTAIN: COUNCIL MEMBERS None

ABSENT: COUNCIL MEMBERS None

SIGNED: 
MAYOR OF THE TOWN OF LOS GATOS

ATTEST:


CLERK OF THE TOWN OF LOS GATOS

EXHIBIT A
TOWN COUNCIL AGENDA PROCEDURES

A. ORDER OF THE AGENDA

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INTERVIEWS
MEETING CALLED TO ORDER
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F. AGENDA SCHEDULE PREPARATION SCHEDULE (continued)

Wednesday, 5:00 p.m., prior to meeting

Cut-off for placement of items on the agenda by members of Town Council

Thursday, prior to meeting

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H. MOTIONS BY THE CHAIR

The Chairperson of the meeting may make or second motions.

I. PREPARATION OF THE AGENDA

The agenda is prepared by staff and the Town Clerk for the Mayor's approval. In this manner the Mayor determines the agenda.

TOWN OF LOS GATOS
Council Agenda Report

DATE: MARCH 17, 1987
TO: MAYOR AND TOWN COUNCIL
FROM: DEBORAH SWARTFAGER, TOWN MANAGER 
SUBJECT: PUBLIC HEARING TO CONSIDER AMENDING AN URGENCY INTERIM ZONING ORDINANCE TO EXTEND THE DURATION OF NONCONFORMING STATUS AS LISTED IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE; CONSIDERING THE USES OF PROPERTIES LOCATED IN THE CENTRAL BUSINESS DISTRICT WHICH ARE NONCONFORMING AS TO PARKING. (Continued from March, 16, 1987)

RECOMMENDATION:

1. Hold the public hearing and receive public testimony;
2. Make the finding that there is a current and immediate threat to the public health, safety and welfare, and that the cessation of uses nonconforming as to parking pursuant to Section 3.50.050 of the Los Gatos Zoning Ordinance would result in a threat to the public health, safety and welfare.
3. Waive the reading and introduce and adopt the Draft Urgency Interim Zoning Ordinance. (NOTE: A four-fifths vote is required.)

EXHIBITS:

(Previously submitted)

1. Staff report dated Feb. 13, 1987 for Town Council agenda of Feb. 23, 1987.
2. Draft Town Council Minutes of Feb. 23, 1987 meeting.

DISCUSSION:

The Council heard this matter on Feb. 23, 1987 and continued it to the March 16, 1987 meeting for further consideration. On March 16, 1987 the Town Council continued this matter since the FPPC opinion regarding eligibility of Councilmembers Ferrito and Hamilton to vote had not been received.

PREPARED BY: LEE E. BOWMAN 
Planning Director

imb

PLN01:TC 3/23 #5

cc: Regular Distribution

Reviewed by: _____

TOWN COUNCIL ACTION DIRECTED TO: _____

ACTION OF COUNCIL: _____

COMMENTS:

AN URGENCY INTERIM ZONING ORDINANCE AMENDING ORDINANCE NO. 1682
EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED
IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE
FOR USES THAT ARE NONCONFORMING AS TO PARKING

THE TOWN COUNCIL OF LOS GATOS HEREBY ORDAINS:

SECTION I.

Pursuant to Government Code Section 65858(c), the Council hereby finds that there is a current and immediate threat to the public health, safety, and welfare, and that the cessation of uses nonconforming as to parking pursuant to Section 3.50.050 of the Los Gatos Zoning Ordinance would result in a threat to public health, safety and welfare, as follows:

- a. The Parking Commission has recommended an Assessment District as part of a Parking Program and part of the implementation of the Parking Program requires a study by the Planning Commission to consider amendments to the General Plan, Downtown Specific Plan and Zoning Ordinance. It is considered premature to require compliance with the parking requirements established in Section 3.41.020 and 3.41.030 until such time as the Planning Commission has considered the Assessment District and the aforementioned amendments.
- b. The Downtown Specific Plan specifies solutions to parking in the Downtown Area, however the Parking Program that is recommended by the Parking Commission does not address the impacts outside the Central Business District. Therefore, the Planning Commission and the Parking Commission needs to assess the parking problems outside the Central Business District and an analysis of the parking problems should be completed prior to the cessation of uses nonconforming as to parking as required pursuant to Section 3.50.050(4).

- c. A reduction in tax receipts would occur due to increased vacancies which would create a fiscal impact to the Town resulting in a decrease in Town services. Delapidated store fronts as well as derelict buildings will contribute to increase vacancy rates and decrease property values. The majority of uses nonconforming as to parking are located in the Downtown Area which is a major focal point of the community and contains many buildings that have been designated as historic landmarks.

- d. It is therefore necessary to amend Ordinance No. 1682 an Urgency Interim Zoning Ordinance to extend the date uses in the Central Business District which are nonconforming as to parking must cease pursuant to Section 3.50.050(4) from March 23, 1986 to March 3, 1988. The extension is intended to provide the Planning Commission and Town Council with an opportunity to consider the formation of an Assessment District, to review amendments to the General Plan, Downtown Specific Plan and Zoning Ordinance and to assess Town wide parking problems. Uses that are nonconforming as to parking which are located outside the Central Business District shall also have until March 3, 1988 to cease operation as set forth in Ordinance No. 1682.

SECTION II.

Notwithstanding Section 3.50.050(4), all those uses nonconforming as to parking pursuant to Section 3.41.020 and 3.41.030 and were required to comply with Section 3.50.050(4) by March 23, 1986, shall have until March 3, 1988 to vacate, cease or conform with said Section.

In addition, all Zoning Approvals which are conditioned to expire on March 23, 1986 unless the property is brought into compliance with the parking requirements, shall be allowed until March 3, 1988.

SECTION III.

This ordinance shall take effect immediately and shall be of no further force and effect after March 3, 1988.

SECTION IV.

Within 15 days after this ordinance is adopted, the Town Clerk shall cause it to be published once in a newspaper of general circulation and circulated in the Town.

This ordinance was introduced and adopted by the following vote as an urgency interim zoning ordinance of the Town of Los Gatos at a regular meeting of the Town Council on _____, 1987.

AYES: COUNCILMEMBERS _____

NOES: COUNCILMEMBERS _____

ABSTAIN: COUNCILMEMBERS _____

ABSENT: COUNCILMEMBERS _____

SIGNED: _____

MAYOR OF THE TOWN OF LOS GATOS

ATTEST:

Clerk of the Town of Los Gatos

ZONIN:Urg. Ord.

ORDINANCE NO. 1682

APR 29 1986
TOWN OF LOS GATOS
PLANNING DEPARTMENT

AN URGENCY INTERIM ZONING ORDINANCE EXTENDING ORDINANCE NO. 1679
EXTENDING THE DURATION OF NONCONFORMING STATUS AS LISTED
IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE
FOR USES THAT ARE NONCONFORMING AS TO PARKING

THE TOWN COUNCIL OF LOS GATOS HEREBY ORDAINS:

SECTION 1.

Pursuant to Government Code Section 65858(c), the Council hereby finds that there is a current and immediate threat to the public health, safety, and welfare, and that the cessation of uses nonconforming as to parking pursuant to Section 3.50.050 of the Los Gatos Zoning Ordinance would result in a threat to public health, safety and welfare, as follows:

- a. The Parking Commission has recommended an Assessment District as part of a Parking Program and part of the implementation of the Parking Program requires a study by the Planning Commission to consider amendments to the General Plan, Downtown Specific Plan and Zoning Ordinance. It is considered premature to require compliance with the parking requirements established in Section 3.41.020 and 3.41.030 until such time as the Planning Commission has considered the Assessment District and the aforementioned amendments.
- b. The Downtown Specific Plan specifies solutions to parking in the Downtown Area, however the Parking Program that is recommended by the Parking Commission does not address the impacts outside the Central Business District. Therefore, the Planning Commission and the Parking Commission needs to assess the parking problems outside the Central Business District and an analysis of the parking problems should be completed prior to the cessation of uses nonconforming as to parking as required pursuant to Section 3.50.050(4).

EXHIBIT 7

SECTION II.

Notwithstanding Section 3.50.050(4), all those uses nonconforming as to parking pursuant to Section 3.47.020 and 3.47.030 and were required to comply with Section 3.50.050(4) by March 23, 1986:

a. Properties within the Central Business District shall have until March 23, 1987, to vacate, cease or conform with said Section.

b. Properties outside the Central Business District shall have until March 3, 1988, to vacate, cease or conform with said Section.

In addition, all Zoning Approvals which are conditioned to expire on March 23, 1986 unless the property is brought into compliance with the parking requirements, shall be allowed until March 23, 1987 to comply with such parking requirements if the property is located within the Central Business District or March 3, 1988 if the property is located outside the Central Business District.

SECTION III.

This ordinance shall take effect immediately and shall be of no further force and effect after March 3, 1988.

ORDINANCE NO. 1679

AN URGENCY INTERIM ZONING ORDINANCE EXTENDING
THE DURATION OF NONCONFORMING STATUS AS LISTED
IN SECTION 3.50.050 OF THE LOS GATOS ZONING ORDINANCE
FOR USES THAT ARE NONCONFORMING AS TO PARKING

THE TOWN COUNCIL OF LOS GATOS HEREBY ORDAINS:

SECTION I.

Pursuant to Government Code Section 65858(c), the Council hereby finds that there is a current and immediate threat to the public health, safety, and welfare, and that the cessation of uses nonconforming as to parking pursuant to Section 3.50.050 of the Los Gatos Zoning Ordinance would result in a threat to public health, safety and welfare, as follows:

- a. The Parking Commission has recommended an Assessment District as part of a Parking Program and part of the implementation of the Parking Program requires a study by the Planning Commission to consider amendments to the General Plan, Downtown Specific Plan and Zoning Ordinance. It is considered premature to require compliance with the parking requirements established in Section 3.41.020 and 3.41.030 until such time as the Planning Commission has considered the Assessment District and the aforementioned amendments.
- b. The Downtown Specific Plan specifies solutions to parking in the Downtown Area, however the Parking Program that is recommended by the Parking Commission does not address the impacts outside the Central Business District. Therefore, the Planning Commission and the Parking Commission needs to assess the parking problems outside the Central Business District and an analysis of the parking problems should be completed prior to the cessation of uses nonconforming as to parking as required pursuant to Section 3.50.050(4).

- c. A reduction in tax receipts would occur due to increased vacancies which would create a fiscal impact to the Town resulting in a decrease in Town services. Delapidated store fronts as well as derelict buildings will contribute to increase vacancy rates and decrease property values. The majority of uses nonconforming as to parking are located in the Downtown Area which is a major focal point of the community and contains many buildings that have been designated as historic landmarks.
- d. It is therefore necessary to adopt an urgency interim zoning ordinance that will extend the date uses in the Central Business District which are nonconforming as to parking must cease pursuant to Section 3.50.050(4) from March 23, 1986 to March 23, 1987. The one year extension is intended to provide the Planning Commission with an opportunity to consider the formation of an Assessment District, to review amendments to the General Plan, Downtown Specific Plan and Zoning Ordinance and to assess parking problems outside the Central Business District.
- e. It is therefore necessary to adopt an urgency interim zoning ordinance that will extend the date uses outside the Central Business District which are nonconforming as to parking must cease pursuant to Section 3.50.050(4) from March 23, 1986 to March 23, 1988. The two year extension is intended to provide the Planning Commission and Parking Commission with an opportunity to assess parking problems outside the Central Business District and to review amendments to the General Plan, Downtown Specific Plan and Zoning Ordinance.

SECTION II.

Notwithstanding Section 3.50.050(4), all those uses nonconforming as to parking pursuant to Section 3.41.020 and 3.41.030 and were required to comply with Section 3.50.050(4) by March 23, 1986:

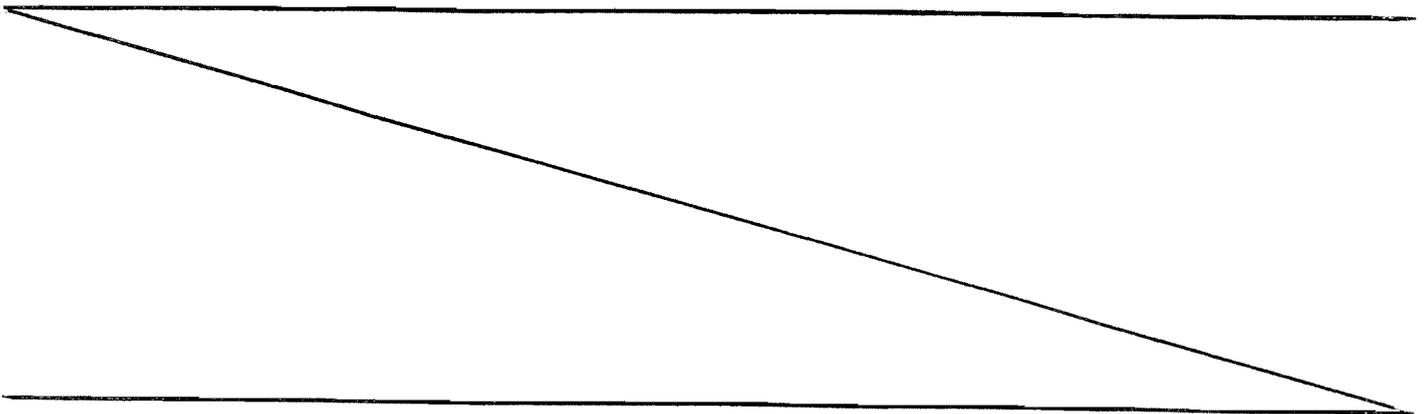
a. Properties with the Central Business District shall have until March 23, 1987, to vacate, cease or conform with said Section.

b. Properties outside the Central Business District shall have until March 23, 1988, to vacate, cease or conform with said Section.

In addition, all Zoning approvals which are conditioned to expire on March 23, 1986 unless the property is brought into compliance with the parking requirements, shall be allowed until March 23, 1987 to comply with such parking requirements.

SECTION III.

This ordinance shall take effect immediately and shall be of no further force and effect 45 days after adoption.



SECTION IV.

Within 15 days after this ordinance is adopted, the Town Clerk shall cause it to be published once in a newspaper of general circulation and circulated in the Town.

This ordinance was adopted by the following vote as an urgency interim zoning ordinance of the Town of Los Gatos at a regular meeting of the Town Council on March 3rd, 1986.

AYES: COUNCILMEMBERS Joanne Benjamin, Eric D. Carlson, Brent N. Ventura, and Mayor Terrence J. Daily

NOES: COUNCILMEMBERS None

ABSTAIN: COUNCILMEMBERS Thomas J. Ferrito

ABSENT: COUNCILMEMBERS None

SIGNED: Terrence J. Daily
MAYOR OF THE TOWN OF LOS GATOS

ATTEST:

Rene E. Alday
Clerk of the Town of Los Gatos

VIOL.(NONCONPRKG)



California Fair Political Practices Commission

April 13, 1987

Preston W. Hill
Attorney at Law
P.O. Box 246
Los Gatos, CA 95031

Re: 87-110

Dear Mr. Hill:

Your letter requesting advice under the Political Reform Act was received on April 9, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh
cc: Robert Hamilton