



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

December 15, 2004

6:00 P.M.

Meeting Room
Town Administrative Offices

91 Ashfield Road
Atherton, California

Special Meeting

6:00 P.M. ROLL CALL Janz, Marsala, Carlson, McKeithen, Conwell

6:02 P.M. PUBLIC COMMENTS

6:05 P.M. CLOSED SESSION

**6:05 P.M. A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED
LITIGATION
Initiation of litigation pursuant to Government Code Section 54956.9(c):
1 potential case**

**B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED
LITIGATION
Significant exposure to litigation pursuant to Government Code Section
54956.9 (b)
2 potential cases**

**6:30 P.M. C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED
LITIGATION
Significant exposure to litigation pursuant to Government Code Section
54956.9(b):
1 potential case**

RECONVENE TO OPEN SESSION

Report of action taken.

ADJOURN



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
December 15, 2004

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

- 7:00 P.M. 1. **PLEDGE OF ALLEGIANCE**
- 7:03 P.M. 2. **ROLL CALL** Janz, Marsala, Carlson, McKeithen, Conwell
- 7:05 P.M. 3. **PRESENTATIONS**
- A. Presentation to Outgoing Mayor Kathy McKeithen
B. Certificate of Appreciation to Outgoing Arts Committee Member
Florentina Mazzone
- 7:15 P.M. 4. **COUNCIL REPORTS**
- 7:25 P.M. 5. **PUBLIC COMMENTS** (only for items which are not on the agenda –
limit of three minutes per person)
- 7:35 P.M. 6. **STAFF REPORTS**
- 7:40 P.M. 7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed
by Resolution Nos. 99-6 and 02-31)
- Atherton Tree Committee
- 7:45 P.M. **CONSENT CALENDAR** (Items 8-11)
8. **APPROVAL OF MINUTES OF REGULAR MEETING OF
NOVEMBER 17, 2004**

9. **APPROVAL OF BILLS AND CLAIMS FOR NOVEMBER 2004 IN THE AMOUNT OF \$841,260**
10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR NOVEMBER 2004**
11. **ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD NOTICE OF COMPLETION FOR THE TOWN CAPE SEAL PROJECT NO. 04-003**

Recommendation: Accept work and authorize recordation of a Notice of Completion for the Town Cape Seal Project No. 04-003.

7:50 P.M. PUBLIC HEARING

12. **AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE CHAPTER 17.36.050 REGULATING ACCESSORY STRUCTURE SETBACK REQUIREMENTS AND CHAPTER 17.36.055 REGULATING WINDOW OPENINGS ON ACCESSORY STRUCTURES**

Recommendation: Open public hearing. Hear testimony. Close public hearing. After consideration, introduce an ordinance regulating window openings on accessory structures, and waive further reading.

8:15 P.M. REGULAR AGENDA (Items 13 - 19)

- 8:15 P.M. 13. **RESOLUTION DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION AND SPECIAL MUNICIPAL ELECTION HELD ON NOVEMBER 2, 2004**

Recommendation: Adopt Resolution declaring the results of the General Municipal and Special Municipal Election held on November 2, 2004.

- 8:25 P.M. 14. **INDUCTION OF REELECTED COUNCIL MEMBERS JANZ AND MCKEITHEN – OATHS OF OFFICE**

Recommendation: City Clerk to administer Oaths of Office to reelected Council Members James R. Janz and Kathy McKeithen.

- 8:30 P.M. 15. **CITY COUNCIL REORGANIZATION – SELECTION OF MAYOR AND VICE MAYOR**

Recommendation: Hold nominations and vote on the Offices of Mayor and Vice Mayor.

8:40 P.M. 16. DISCUSSION AND CONSIDERATION – POSSIBLE AMENDMENTS TO BUSINESS TAX ORDINANCE TO BE SUBMITTED TO VOTERS AT THE SPECIAL MUNICIPAL ELECTION CALLED FOR MARCH 8, 2005

Recommendation:

- a. Discuss and consider an amendment to the business license tax proposal to the voters at the Special Election called for March 8, 2005, amending the Ordinance calling the election, to provide for a tax on persons conducting the business of real estate sales with respect to property located within the Town of Atherton.**
- b. Motion to introduce, read by title only, waive further reading, and adopt an Ordinance Amending Ordinance No. 552 Revising Sections 5.12.140, 5.12.150 And 5.12.160 of the Atherton Municipal Code Relating to the Business License Tax. (Roll call vote)**
- c. Adopt Resolution filing an Amendment to Ordinance No. 552 Calling a Special Municipal Election for Amendments to the Atherton Business License Tax**

9:20 P.M. 17. DISCUSSION AND CONSIDERATION – APPROVAL OF WRITTEN BALLOT ARGUMENT IN FAVOR OF MARCH 8, 2005 SPECIAL ELECTION BALLOT MEASURE REGARDING AN AMENDMENT TO THE BUSINESS LICENSE TAX ORDINANCE

Recommendation: Review and approve Argument in Favor of Ballot Measure, to be signed by all Council Members and submitted to City Clerk by December 17, 2004 deadline.

9:35 P.M. 18. DISCUSSION AND CONSIDERATION – SELECTION OF DATES FOR COMMUNITY INFORMATIONAL MEETINGS (SPECIAL COUNCIL MEETINGS) REGARDING THE MARCH 8, 2005 SPECIAL ELECTION

Recommendation: Discuss and select dates for holding community informational meetings regarding the March 8, 2005 Special Election.

9:45 P.M. 19. ACCEPTANCE OF STATUS REPORT BY CITY MANAGER OF ANNUAL REVIEW OF LITTLE LEAGUE COMPLIANCE WITH PARK LICENSE AGREEMENT AND USE OF THE BALL FIELD IN HOLBROOK-PALMER PARK

Recommendation:

- a. Accept status report from the City Manager regarding compliance by the Little League to the terms of the “License Agreement” between the Town of Atherton and the Menlo-Atherton Little League.**
- b. Receive input from City Council regarding the Little League’s compliance with the agreement and mitigation measures.**
- c. Direct the City Manager to meet with the President of the Little League to ensure compliance with the attached agreement and conduct an annual review.**

10:00 P.M. 20. PUBLIC COMMENTS

10:15 P.M. 21. ADJOURNMENT

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

☞ Please contact the City Clerk’s Office at 650.752.0529 with any questions

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk’s Office at (650) 752-0529. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



Draft MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
November 17, 2004
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor McKeithen called the meeting to order at 7:01 p.m.

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL

PRESENT: James R. Janz
Charles Marsala
Alan B. Carlson
Kathy McKeithen
William R. Conwell

City Manager Jim Robinson and City Attorney Marc Hynes were also present.

Mayor McKeithen announced that Item No. 7 would be taken out of order due to a prior commitment of the presenter.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Sandy Levison of the Atherton Crime Prevention Task Force presented an overview of the group's activities.

3. PRESENTATIONS

A. Annual Red Ribbon Week Presentation

Police Chief Bob Brennan and Police Reserve Officer Bruce Potts presented awards to the Annual D.A.R.E. Red Ribbon Week poster contest winners from local elementary schools.

B. America Recycles Week Proclamation

Mayor McKeithen read the America Recycles Week Proclamation.

4. COUNCIL REPORTS

- Council Member Janz reported on a recent Housing Endowment and Trust Board meeting regarding a notice of funds availability to solicit developer applications for affordable housing. He further reported that the Caltrain Corridor Subcommittee discussed the furtherance of establishing a “quiet zone” in Atherton and what that would entail. He reported that the Caltrain Corridor Subcommittee recommended that the free parking program at the Atherton Train Station be expanded to allow overnight parking in order to further encourage train ridership from the station, and that this item was on tonight’s agenda for Council action.
- Council Member Marsala announced that Proposition 1A passed, which was sponsored by the League of California Cities. The Library Board met and the Town of Portola Valley is rebuilding their civic center and considering funding for their new library. He further stated that he was at a party in the Town and the police showed up four times due to noise complaints and the police handled the matter professionally.
- Council Member Carlson did not have a report.
- Vice Mayor Conwell reported on the Annual Criminal Justice Council Awards Dinner, which was well received. Measure A was discussed at the C/CAG meeting. He further reported that the Criminal Justice Council heard from a man who was a felon who reported on his experience with being allowed to vote in elections, and stated that more needed to be done in relation to re-integrating convicted felons back into society.
- Mayor McKeithen did not have a report.

5. PUBLIC COMMENTS

John Rugeiro, Atherton, remarked on the election outcome of the parcel tax.

6. STAFF REPORTS

- City Attorney Marc Hynes had requested the presence of a taxation attorney, Mr. Hutton, at tonight’s meeting but he was not able to attend.

CONSENT CALENDAR (Items 8-16)

City Manager Robinson noted a correction to Item No. 16 on the Consent Calendar, in the Recommendation on the Agenda, the appointment is to the General Plan Committee, not the Arts Committee.

Mayor McKeithen stated that regarding Item No. 14, train riders utilizing the overnight parking should let the Police Department know how long they will be parking their cars in the train station lot, in order that their cars will not be considered abandoned vehicles.

MOTION – to approve the Consent Calendar as presented with the correction to Item No. 16.

M/S Conwell/Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

8. APPROVED MINUTES OF SPECIAL AND REGULAR MEETINGS OF OCTOBER 20, 2004

9. APPROVED BILLS AND CLAIMS FOR OCTOBER 2004 IN THE AMOUNT OF \$1,263,724

10. ACCEPTED MONTHLY FINANCIAL REPORT FOR OCTOBER 2004

11. ACCEPTED QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED SEPTEMBER 30, 2004

12. HELD SECOND READING AND ADOPTED ORDINANCE NO. 551 RATIFYING, IN PART, ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION DISTRICT PERTAINING TO FIRE SPRINKLER SYSTEM REQUIREMENTS

Adopted Town of Atherton Ordinance No. 551 ratifying, in part, Ordinance No. 29 of the Menlo Park Fire Protection District pertaining to Fire Sprinkler System Requirements

13. ADOPTED RESOLUTION NOS. 04-23 AND 04-24 AUTHORIZING APPLICATION FOR ROBERTI-Z'BERG-HARRIS URBANIZED AREA NEED BASIS PROGRAM GRANTS TO REHABILITATE THE HOLBROOK-PALMER PARK CARRIAGE HOUSE RESTROOMS, KITCHEN AND SECOND FLOOR AND TO RECONSTRUCT THE HOLBROOK-PALMER PARK TENNIS COURTS AND COMMITTING THE REQUIRED THIRTY PERCENT LOCAL MATCH

Adopted Resolution Nos. 04-23 and 04-24 authorizing staff to submit applications for Roberti-Z'berg-Harris Urbanized Area Need Basis (RZH) program grants to rehabilitate the Holbrook-Palmer Park Carriage House restrooms, kitchen and second floor and to reconstruct the Holbrook-Palmer Park tennis courts and committing the required thirty percent (30%) local match.

14. APPROVED RECOMMENDATION FROM THE CALTRAIN CORRIDOR SUBCOMMITTEE TO ALLOW OVERNIGHT PARKING AT THE ATHERTON TRAIN STATION

Approved recommendation from the Caltrain Corridor Subcommittee to allow overnight parking at the Atherton train station to accommodate riders utilizing

Caltrain service to San Francisco and San Jose International Airports as part of the free parking promotion at the station previously approved on a trial basis by the City Council.

15. APPROVED RECORDATION AND REMOVAL OF THE OLD GAZEBO IN HOLBROOK-PALMER PARK

Accepted recommendation of the Park and Recreation Commission and authorized Park staff to record by digital photography and remove the old gazebo in Holbrook-Palmer Park.

16. GENERAL PLAN COMMITTEE APPOINTMENT

Approved the recommendation of the Screening Committee to appoint a resident, Todd Beardsley, to the General Plan Committee.

REGULAR AGENDA

17. CONSIDERATION OF REQUEST FOR DRAINAGE IMPROVEMENTS AT 401 FLETCHER DRIVE

Dr. Frank Novak, resident and property owner 401 Fletcher Drive, stated that due to drainage issues in his area, three of his olive trees are being damaged. He stated that he makes olive oil from these trees, and he requested the Town's assistance with addressing the drainage problems on his property.

Council Members asked questions of Dr. Novak and staff regarding options to address this issue.

With respect to city liability, City Attorney Marc Hynes responded that the city only would have liability as a result of water being directed there from a city facility, or from development approved by the city without having the water handled on site, and that the flows appear to be historic.

Dr. Novak inquired as to how he had authority to have work done on the public right-of-way.

Public Works Director Jones responded that he could apply for an encroachment permit.

MOTION – to waive the fee for an encroachment permit to allow Dr. Novak to have the drainage work done himself.

M/S Marsala/McKeithen

Ayes: 2 Noes: 3 (Janz, Carlson, Conwell)

Absent: 0 Abstain: 0

The motion failed.

Council Member Carlson stated that the Town has no legal liability for this problem, and that waiving the fee would set a poor precedent. He further stated that the Town was in an era of fiscal uncertainty and that waiving the fee was not a good use of city resources.

Bill Johnson, a neighboring resident, stated that the amount of runoff has tripled since new developments took place in their neighborhood and that he lost three oak trees.

Mayor McKeithen stated that she and Council Member Janz would welcome a meeting with Dr. Novak and Mr. Johnston on this issue, and that Building Official Mike Hood would also be invited to meet with them.

Council Member Carlson stated that when there is a new development, all of the new run-off water from the site is supposed to be handled on the property, and there may be a legal remedy for Mr. Novak with respect to the uphill properties.

18. CONSIDERATION OF FINANCE COMMITTEE RECOMMENDATIONS REGARDING REVENUE ENHANCEMENT OPTIONS – DISCUSSION AND POSSIBLE ACTION REGARDING SPECIAL MUNICIPAL ELECTION

Finance Director John Johns presented the staff report and presented four options to the City Council for revenue enhancement, each of which would require a vote of the residents: a renewal of the parcel tax; a special assessment for public safety; a utility users' tax; and adopting a gross receipts-based business license tax for the real estate and construction industries. He stated that after an analysis of the options, that staff believed that adopting a gross receipts-based business license tax for the real estate and construction industries was the most viable option.

Council Member Janz stated that there is inequity in every type of tax, and that a utility users' tax has a higher degree of equity. He stated that any tax should not be used to indicate approval of a City Council's performance, and that the parcel tax failed in part because it was not marketed enough. He stated his support for an amendment to the business license tax.

Council Member Marsala stated that the Town is in uncharted waters without a survey of the residents. He also stated that he was concerned about getting information out in the Winter season, and that a June ballot may be worth considering. He is in favor of going ahead with amending the business license tax, but feels that it will be a difficult sell.

Council Member Carlson stated that he would comment on the issue after Public Comments.

Vice Mayor Conwell stated that he was not in favor of re-submitting the Parcel Tax to the voters. He is more in favor of a tax on real estate commissions since the commissions generated in this town are very large sums.

Comments from the public were taken next.

Jan Simonds, Atherton, stated that she would be more in favor of a combination of taxes, such as a smaller parcel tax and the real estate tax, as to not burden any one group.

Sam Goodman, Atherton, queried as to whether Vice Mayor Conwell was talking about real estate commissions. Vice Mayor Conwell responded that he was discussing commissions.

Jack Ringham, Atherton, stated that he was in favor of taxing real estate commissions, and that a tax to the voters needs a publicity campaign.

Mike Barsotti, Atherton, asked why the proposed tax is being called a business license tax and asked how it would be administered.

City Attorney Hynes stated that the business to be taxed is the title insurance company.

Jerry Carlson, Atherton, stated that the ACIL was shocked by the election outcome and that they would be in favor of a future parcel tax.

Todd Beardsley, Atherton, stated that he was in favor of taxing real estate commissions.

Jack Ringham, Atherton, further stated that we need a campaign to get a tax passed.

Council Member Janz stated that the tax would most likely fall on the buyers.

Council Member Marsala stated that a commission tax would open us up to challenges, and that he would like a survey of the residents.

Council Member Carlson stated that this is the culmination of an ongoing search for a solution to the city's budget issues, and that a majority of the residents want to maintain the services that we enjoy. The business license tax amendment is a long-term solution and it was based on a bare bones budget. He further stated that this would be a maximum tax to be assessed.

Vice Mayor Conwell stated that in relation to taxing real estate commissions, the voters might appreciate that the people who make the money pay the tax.

Mayor McKeithen stated that she supports the business license tax amendment. She stated that the real estate and construction industries gain because of the type of community that Atherton maintains. She does not want the Town to be held hostage to the parcel tax every four years.

At 9:35 p.m., Mayor McKeithen called for a recess, and reconvened the meeting at 9:44 p.m.

19. DISCUSSION AND CONSIDERATION OF A SPECIAL MUNICIPAL ELECTION ON MARCH 8, 2005 (ORDINANCE NO. 552, RESOLUTION NOS. 04-25 AND 04-26)

Assistant to the City Manager/Acting City Clerk Linda Kelly presented the staff report and explained that should the Council wish to pursue a Special Election to submit to the voters an amendment to the business license tax ordinance on March 8, 2005, the following actions would be required:

- 1. Motion adopting a Resolution Declaring a Fiscal Emergency**
- 2. Motion to introduce, read by title only, waive further reading, and adopt an Ordinance Calling an Election to Submit to the Voters an Ordinance Amending Sections 5.12.150, 5.12.160 5.12.080 and 5.12.140 of the Atherton Municipal Code Relating to the Business License Tax**
- 3. Motion adopting of a Resolution setting priorities for filing written arguments regarding a City Measure and directing the City Attorney to prepare an impartial analysis**

MOTION – Adopt a Resolution Declaring a Fiscal Emergency (Resolution No. 04-25), as amended, with the eighth “Whereas” clause amended to read as follows:

**“WHEREAS, Article XIII, Section C(2) of the California Constitution provides that a general tax may be considered at a special election under circumstances where the regular legislative body has determined that an emergency exists.”
(Underlined word added)**

M/S Conwell/Marsala

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor McKeithen read into the record the title of the proposed ordinance.

AN ORDINANCE OF THE TOWN OF ATHERTON CALLING AN ELECTION TO SUBMIT TO THE VOTERS AN ORDINANCE AMENDING SECTIONS 5.12.080, 5.12.140, 5.12.150 AND 5.12.160 OF THE ATHERTON MUNICIPAL CODE RELATING TO THE BUSINESS LICENSE TAX (ORDINANCE NO. 552)

Council Members requested several amendments to the Ordinance.

City Attorney Hynes was requested to read the amendments into the record, which he did as follows:

Under Section 2 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), “5.12.140” should be inserted before “Delinquent tax—penalty.”

Section 3 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), the first line is to be amended to read “SECTION 3. Section

5.12.150 of the Atherton Municipal Code is hereby deleted in its entirety and replaced with a new section to read:"

Section 3 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), the "A." before the first sentence which begins with "Persons or firms conducting..." is to be deleted.

Section 3 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), the word "firms" after "Grounds keeping and landscaping" is to be deleted, and the following should be added after the list of businesses in Category I: "Other businesses not otherwise identified within this Section 5.12.150."

The existing Section 4 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) should be deleted and the remainder of the Sections are to be renumbered.

The existing Section 5 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) becomes Section 4, and the first line is to be amended to read "SECTION 4. Section 5.12.160 of the Atherton Municipal Code is hereby deleted in its entirety and replaced with a new section to read:"

In the new Section 4, the "A." in the paragraph after "Tax Designated" is to be deleted. "3. Category III" of this same section is to be amended to read: ".53 percent of the face value of each title insurance policy issued by Category III businesses insuring the title of real property located within the Town (to be a charge payable by the transferor and/or transferee to be remitted by the title insurance or escrow company within five days after collection thereof by the title insurance or escrow company)."

The existing Section 6 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) should be deleted and the remainder of the Sections are to be renumbered.

The existing Section 7 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) is to be renumbered as Section 5.

The existing Section 8 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) is to be renumbered as Section 6.

The Condensed Statement of the Measure in Section 4 of the Ordinance Calling the Election is to be amended to read: "Shall the Atherton Business License Tax Ordinance be amended to enact increases to the existing business license tax and revise the taxed business categories in order to raise monies for general purposes such as, but not limited to, public safety services and capital improvement projects that otherwise would be reduced due to the loss of other local tax revenues?"

MOTION – to introduce, read by title only, waive further reading, and adopt an Ordinance Calling an Election to Submit to the Voters an Ordinance Amending Sections 5.12.150, 5.12.160 5.12.080 and 5.12.140 of the Atherton Municipal Code Relating to the Business License Tax, as amended with the changes as stated by the City Attorney (Ordinance No. 552).

M/S McKeithen/Carlson

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Regarding the proposed Resolution setting priorities for filing written arguments regarding a City Measure and directing the City Attorney to prepare an impartial analysis, Council Members Carlson and Marsala will work together to write an argument in favor of the measure to be presented to the Council at the next Regular Council meeting for approval by all the Council.

MOTION – Adopt a Resolution setting priorities for filing Written Arguments regarding a City Measure and directing the City Attorney to prepare an impartial analysis, as amended to (1) authorize all of the Members of the City Council to author and sign the argument in favor of the measure, and (2) including the amended question to the voters to read in conformance with the amended question as stated in the Ordinance Calling the Election, as follows:

“Shall the Atherton Business License Tax Ordinance be amended to enact increases to the existing business license tax and revise the taxed business categories in order to raise monies for general purposes such as, but not limited to, public safety services and capital improvement projects that otherwise would be reduced due to the loss of other local tax revenues?”

(Resolution No. 04-26)

M/S McKeithen/Carlson

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor McKeithen stated that the Town needed to set up public meetings to discuss the measure in order to inform the residents. The first meeting should be in January. She suggested that the publication of the Athertonian be delayed in order to inform residents about the January meeting and other meetings to be scheduled.

20. PUBLIC COMMENTS

Bob Jenkins, Atherton, stated that the ACIL could assist in advocating for the measure.

21. ADJOURNMENT

Mayor McKeithen adjourned the meeting at 10:17 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk

TOWN OF ATHERTON

November 2004

Payroll Checks	5154 - 5230	\$ 28,686
Electronic Transfers		303,911
A/P Checks	18872 - 19030	508,663
	TOTAL	\$841,260

I, James H. Robinson, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 5154 - 5230 (payroll) and 18872 - 19030 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$841,260; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers 5154 - 5230 (payroll) and 18872 - 19030 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$841,260; are true and correct, and are authorized for payment.

Kathy McKeithen
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	585,760
105	Tennis Fund	49
201	Special Parcel Tax	184,717
210	Road Construction Impact Fees	7,630
211	Park Grants Fund	805
213	Library Special Revenue Fund	2,980
401	General Capital Projects	5,790
402	Storm Drainage	2,963
610	Equipment Operations	46,774
611	Computer Maint. & Replacement	1,200
612	Administrative Services	2,571
715	Evans Estate	21
	TOTAL	841,260



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF DECEMBER 15, 2004

SUBJECT: MONTHLY FINANCIAL REPORT, NOVEMBER, 2004

RECOMMENDATION:

Receive the Monthly Financial Report for November 2004.

INTRODUCTION:

The attached schedules show revenues and expenditures and fund balance for all funds as of November 30th, 2004.

HIGHLIGHTS

General Fund expenditures for the five months ended November 30th, 2004, have amounted to \$2,951,529 or 37% of the \$8,046,585 budgeted for the fiscal year. For the five months ended November 30th, 2004, General Fund revenues amounted to \$1,626,007 or 20% of the \$7,985,565 estimated for the year.

By comparison, General Fund expenditures amounted to 40% of budgeted expenditures for the two months ended November 30th, 2003. Additionally, General Fund revenues amounted to 22% of estimated revenues for the five months ending November 30th, 2003.

FISCAL IMPACT:

None

Prepared by:

Approved by:

John P. Johns
Finance Director

James H. Robinson
City Manager

TOWN OF ATHERTON
Revenue Summary
For the Month ended November 30th, 2004

Fund	Revenue Source	2003-04 Estimate	Current Period Revenues	Year to Date Revenues	% Received
	Property Tax	\$ 3,060,517	148,191	\$ 404,739	13%
	Sales and Use Tax	169,906	8,000	45,521	27%
	Other Taxes	893,010	7,257	106,691	12%
	Licenses & Permits	1,606,949	124,047	715,188	45%
	Fines & Forfeitures	50,000	751	9,925	20%
	Revenue from Other Agencies	144,500	38,629	128,568	89%
	Charges for Services	354,622	1,176	128,131	36%
	Investment & Rental Income	401,900	-	67,158	17%
	Other Revenues	3,000	-	20,086	670%
	Total General Fund Revenues	6,684,404	328,051	1,626,007	24%
	Interfund (Operating) Transfers In	1,301,161	-	-	0%
101	General Fund Total	7,985,565	328,051	1,626,007	20%
	Special Revenue Funds:				
105	Tennis	7,010	-	775	11%
201	Special Parcel Tax	1,858,000	-	-	0%
202	Transportation	178,500	30,032	103,066	58%
203	Street Improvement (Gas Tax)	147,000	24,515	75,524	51%
209	Law Enforcement	100,000	-	-	0%
210	Road Construction Impact Fees	400,000	45,950	201,240	50%
211	State Park Grants Fund	220,000	-	54,400	0%
213	Library	200,000	-	14,219	7%
	Total	3,110,510	100,497	449,224	14%
	Capital Project Funds:				
401	Capital Improvement	-	-	-	
402	Storm Drainage	-	-	-	
403	Channel Drainage District	48,530	2,096	8,538	18%
404	Park Playground Improvement	2,205	-	-	0%
405	Middlefield Road Grants	-	-	-	
406	Facilities Construction	-	-	-	
	Total	50,735	2,096	8,538	17%
	Internal Service Funds:				
610	Vehicle Replacement	66,000	-	-	
611	Information Technology	98,661	-	-	0%
612	Administrative Services	285,815	-	-	0%
614	Workers Compensation Insurance	-	-	-	
	Total	450,476	-	-	0%
	Trust and Agency Funds:				
715	Evans Creative Design	45,150	-	2,510	6%
	Total	45,150	-	2,510	6%
	Total Revenues	11,642,436	430,644	2,086,279	18%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended November 30th, 2004

Fund	Description Department	2004-05 Budget	Current Period Expenditures	Year to Date Expenditures	% Spent
101	General Fund				
	11 City Council	\$ 20,204	\$ 3,134	6,846	34%
	12 City Manager	509,226	38,374	211,243	41%
	16 City Attorney	176,228	10,783	50,311	29%
	18 Finance	456,797	25,311	168,672	37%
	25 Building	975,249	72,134	281,199	29%
	40 Police	4,002,909	322,296	1,569,682	39%
	50 Public Works	1,805,972	136,179	663,576	37%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>8,046,585</u>	<u>608,211</u>	<u>2,951,529</u>	<u>37%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	General Fund Total	<u>\$ 8,046,585</u>	<u>\$ 608,211</u>	<u>\$ 2,951,529</u>	<u>37%</u>
Special Revenue Funds:					
105	Tennis	-	401	4,333	
201	Special Parcel Tax	2,591,910	184,717	595,046	23%
202	Transportation	211,120	-	-	0%
203	Street Improvement (Gas Tax)	147,000	-	33,961	23%
209	Law Enforcement	100,000	9,899	55,576	56%
210	Road Impact Fees	400,000	7,500	7,500	2%
211	State Park Grants	80,000	805	6,747	8%
213	Library Fund	49,870	4,555	12,237	25%
	Total	<u>3,579,900</u>	<u>207,877</u>	<u>715,400</u>	<u>20%</u>
Capital Project Funds:					
401	Capital Improvement	367,902	4,793	47,928	13%
402	Storm Drainage	21,394	2,963	2,963	14%
403	Channel Drainage District	48,530	-	1,284	3%
404	Park Playground Fund	-	-	-	
405	Middlefield Road Grants	-	-	-	
406	Facilities Construction	-	997	997	
	Total	<u>437,826</u>	<u>8,753</u>	<u>53,172</u>	<u>12%</u>
Internal Service Funds:					
610	Vehicle Replacement	98,853	56,774	56,774	57%
611	Information Technology	104,625	1,200	9,435	9%
612	Administrative Services	285,815	11,959	167,571	59%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>489,293</u>	<u>69,933</u>	<u>233,780</u>	<u>48%</u>
Trust and Agency Funds:					
715	Evans Creative Design	43,287	306	4,959	11%
	Total	<u>43,287</u>	<u>306</u>	<u>5,265</u>	<u>12%</u>
	Total Expenditures	<u>12,596,891</u>	<u>895,080</u>	<u>3,959,146</u>	<u>31%</u>

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2004-05
As of November 30th, 2004

Fund	Description	Beginning Fund Balance July 1, 2004	Revenues to Date	Transfers to Date	Expenditures To Date	Ending Fund Balance to Date
101	General Fund	6,060,452	1,626,007	-	2,951,529	4,734,930
	Special Revenue Funds:					
105	Tennis	11,867	775		4,333	8,309
201	Special Municipal Tax	963,223	-		595,046	368,177
202	Transportation	145,636	103,066		-	248,702
203	Street Improvement (Gas Tax)	45,050	75,524		33,961	86,613
209	Law Enforcement	12,174	-		55,576	(43,402)
210	Road Construction Impact Fees	632,420	201,240		7,500	826,160
211	State Park Grants	(5,663)	54,400		6,747	41,990
213	Library Special Revenue Fund	1,075,913	14,219		12,237	1,077,895
	Sub Total	<u>2,880,620</u>	<u>449,224</u>	-	<u>715,400</u>	<u>2,614,444</u>
	Capital Projects Funds:					
401	Capital Improvement	302,895	-		47,928	254,967
402	Storm Drainage	48,225	-		2,963	45,262
403	Channel Drainage District	404,424	8,538		1,284	411,678
404	Park Playground Improvement	1,309	-		-	1,309
405	Middlefield Road Grants	1,514	-		-	1,514
406	Facilities Construction	65,382	-		997	64,385
	Sub Total	<u>823,749</u>	<u>8,538</u>	-	<u>53,172</u>	<u>779,115</u>
	Internal Service Fund					
610	Vehicle Replacement	449,451	-		56,774	392,677
611	Information Technology	106,856	-		9,435	97,421
612	Administrative Services	122,618	-		167,571	(44,953)
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	<u>689,796</u>	-	-	<u>233,780</u>	<u>456,016</u>
	Trust and Agency Funds					
715	Evans Creative Design	117,129	2,510		4,959	114,680
	Sub Total	<u>117,129</u>	<u>2,510</u>	-	<u>4,959</u>	<u>114,680</u>
	Grand Total	<u>\$ 10,571,746</u>	<u>\$ 2,086,279</u>	<u>\$ -</u>	<u>\$ 3,958,840</u>	<u>\$ 8,699,185</u>



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF DECEMBER 15, 2004

SUBJECT: ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD NOTICE OF COMPLETION FOR THE TOWN CAPE SEAL PROJECT #04-003.

RECOMMENDATION

Accept work and authorize recordation of a notice of completion for the Town Cape Seal Project #04-003.

INTRODUCTION

The Council awarded a contract in October 2004 to Graham Contractors, Inc. for the Cape Sealing of various streets. The authorized contract amount was \$69,678.50. There have been no authorized contract change orders. Work under the contract has been completed.

ANALYSIS

The original contract price was for \$69,678.50. The following streets were sealed:

<u>Street</u>	<u>From</u>	<u>To</u>	<u>Area (Sf)</u>
Mt. Vernon	Fair Oaks	End	18,040
Britton Ave.	S/O Isabella	W/O Emilie	20,881
Karen Wy	Alameda	End	5,400
Stevenson Ln	Atherton Av	End	14,920
Moulton Dr.	Glenwood Av	End	15,143

<u>Street</u>	<u>From</u>	<u>To</u>	<u>Area (Sf)</u>
Coughlan Ln	Selby Ln	End	6,973
Polhemus Av	Polhemus	End	6,440
Burns Av	E/O McCormick	N/O Watkins	34,540
McCormick Ln	Burns	Watkins	14,300
Kilroy Wy	Polhemus	End	10,820
Fair Oaks Ln	Fair Oaks	End	3,654
	TOTAL		151,111 SQ FT

The final cost for all work totaled \$69,678.50.

FISCAL IMPACT

Funding for this project in the amount of \$69,678.50 is included in the FY 04/05 budget. The cost of this segment of work is the exact amount of the budget estimate.

CONCLUSION:

It is appropriate for the Council to accept the work and authorize recording a Notice of Completion at this time.

Respectfully submitted:

Reviewed/Approved:

Duncan L. Jones, P.E.
Public Works Director

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: FOR THE MEETING OF DECEMBER 15, 2004

SUBJECT: CONSIDER THE REQUEST TO AMEND SECTION 17.36.050(D) and 17.36.055(B) OF THE ATHERTON MUNICIPAL CODE RELATING TO ACCESSORY STRUCTURE SETBACK REQUIREMENTS

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and adopt the attached Ordinance based on the following finding for the reasons outlined in this staff report:

1. The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

INTRODUCTION

The General Plan Committee reviewed the request of Todd Beardsley, as referred by the City Council, to amend section 17.36.050(D) of the Atherton Municipal Code to allow accessory structures to be located ten feet from the rear property line when they abut certain streets and a Town boundary.

The Planning Commission reviewed the proposed ordinance amendment at their December 8, 2004 meeting and recommends the City Council adopt the ordinance as attached.

ANALYSIS

As detailed in the attached chart, approximately 60 Atherton properties meet the criteria of having both front and rear property lines along a street and adjacent to a Town boundary. As noted in the "town boundary" description column, the Town boundary varies from along the rear property line to the centerline of street. Of these 60 properties, 59 also meet the requirement of being along the streets recommended by Mr. Beardsley.

Currently, Atherton Municipal Code section 17.36.050(D) states “On lots with both front and rear property lines abutting a street, accessory structures shall not be located within thirty feet of the rear property line”. On lots that do not have a rear property line abutting a street, accessory structures are allowed to be located ten feet from the rear property line. Mr. Beardsley notes in his letter that section 17.36.150(B) allows for the construction of an eight foot tall fence along certain streets where a six foot tall fence is the standard maximum fence height.

Mr. Beardsley recommends that section 17.36.050(D) be modified to allow accessory structures to be located within ten feet of a rear property line when the lot adjoins any of the following streets; El Camino Real, Marsh Road, Middlefield Road, Valpariso Road, Alameda de las Pulgas and Bay Road.

The General Plan Committee reviewed this request and has recommended that Atherton Municipal Code section 17.36.050(D) be amended to allow accessory structures to be located ten feet from the rear property line when such lots are adjacent to a Town Boundary. The City Attorney reviewed this wording as recommended that the word “adjacent” be replaced with “contiguous” to more precisely define the location of the Town Boundary. Staff interprets this wording to allow properties where the Town boundary is at their rear property line or at the centerline of the public right-of-way to qualify for this provision. This wording replacement would not allow the one property at Walsh Road to qualify as the Town boundary is located across the public right-of-way.

Staff recommends that section 17.36.050(D) be amended to read as follows:

“D. On lots with both front and rear property lines abutting a street, accessory structures shall not be located within thirty feet of the rear property line, except when such rear property line is contiguous to a Town boundary, in which case the minimum setback shall be ten feet from the rear property line.”

This proposed change would allow accessory structures to be located 10’ from the rear property line when the lot is contiguous to a Town boundary. The Committee did not see the need to further limit the provision to the streets identified by Mr. Beardsly based on their review of the eligible properties (list attached).

The General Plan Committee expressed concern with having windows or skylights be visible from adjacent properties and wished to further limited the location in which a window could be placed. The Committee recommended eliminating the provision in the section 17.36.055(B) that allowed skylights “where the entire interior of the building is open to the roof.”

The General Plan Committee recommends that Atherton Municipal Code section 17.36.055(B) be amended to read as follows:

“B. No window openings or skylights in the roof facing an exterior side or rear property line shall be located over nine feet above ground level.”

The proposed Ordinance Amendment has been reviewed by the City Attorney.

CONCLUSION:

It is Planning Staff’s professional opinion that the proposed Ordinance Amendment is consistent with the General Plan.

ALTERNATIVES:

The Council could modify the Ordinance.

FISCAL IMPACT:

Costs associated with the implementation of the ordinance will be borne by applicants.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15305, Class 5 which permits minor alterations in land use limitations which do not result in any changes in land use or density.

FORMAL MOTION:

I move that the City Council adopt the Ordinance amending Atherton Municipal Code sections 17.36.050(D) and 17.36.055(B) based on the finding listed in the staff report.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

1. Draft Ordinance
2. List of properties with front and rear frontage on a street and adjacent to a Town boundary
3. Letter of Request from Todd Beardsley dated April 29, 2004
4. Atherton Municipal Code Section 17.36.050 and 17.36.150

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING SECTION 17.36.050 AND 17.36.055 OF THE ATHERTON MUNICIPAL
CODE REGULATING SETBACK REQUIREMENTS FOR ACCESSORY
STRUCTURES LOCATED WITHIN THE TOWN OF ATHERTON

The City Council of the Town of Atherton does ordain as follows:

SECTION 1: Section 17.36.050 (D) is hereby amended to read as follows:

“D. On lots with both front and rear property lines abutting a street, accessory structures shall not be located within thirty feet of the rear property line, except when such rear property line is contiguous to a Town boundary, in which case the minimum setback shall be ten feet from the rear property line.”

SECTION 2: Section 17.36.055 (B) is hereby amended to read as follows:

“B. No window openings or skylights in the roof facing an exterior side or rear property line shall be located over nine feet above ground level.”

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions on this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not effect the validity of the remaining parts of this Ordinance.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this 15th day of December, 2004.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the ___ day of _____, 2005, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Kathy McKeithen, Mayor
Town of Atherton

ATTEST:

APPROVED AS TO FORM:

Linda Kelly, Acting City Clerk

TOWN OF ATHERTON

List of Properties with front and rear yards facing a street and adjacent to a Town boundary

# of properties	Address	Rear yard Description	Town boundary
1	321 Walsh Road	rear yard at Camino al Lago	Across Camino al Lago
3	94, 97 & 98 Cebalo	Rear yard at El Camino	Centerline of El Camino
8	25-99 Gresham Lane	Rear yard at El Camino	Centerline of El Camino
3	1-45 Nora Way	Rear yard at El Camino	Centerline of El Camino
20	222-392 Greenoaks	Rear yard at Bay Road	At rear property line
10	41-99 Irving	Rear yard at Marsh Road	Centerline or Marsh road for a portion (5 lots) and rear property line for a portion (5 lots)
1	198 James	Rear yard at Bay Road	Rear property line
4	49-97 Douglass	Rear yard at Valparaiso	Centerline of Valparaiso
10	19-99 Victoria Drive	Rear yard at El Camino Real	Centerline of El Camino Real

Approximately 60 properties meet the criteria of having both front yard and rear property lines along a street and adjacent to a Town boundary. As noted in the “town boundary” description, the Town boundary varies from on the rear property line, to centerline of street.



Town of Atherton

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

**FROM: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/
ACTING CITY CLERK**

DATE: FOR THE MEETING OF DECEMBER 15, 2004

**SUBJECT: RESOLUTION DECLARING THE RESULTS OF THE GENERAL
MUNICIPAL ELECTION AND SPECIAL MUNICIPAL ELECTION HELD
NOVEMBER 2, 2004**

RECOMMENDATION

Adopt a resolution declaring the results of the General Municipal Election and Special Municipal Election held November 2, 2004.

BACKGROUND

The Town of Atherton held a General Municipal Election for two Members of the City Council and a Special Municipal Election for one measure, Measure "O," on Tuesday, November 2, 2004. As allowed by the California Elections Code, these elections were consolidated with the Presidential General Election and conducted by the County of San Mateo. There were two candidates for two offices to be elected for Members of the City Council. The Town could not cancel the election for Members of the City Council since the California Elections Code does not allow cancellation of an election for city offices if a city measure appears on the same ballot covering the same city jurisdiction.

Pursuant to California Elections Code Sections 10262(b) and 10263(b), the City Council is required to meet no later than December 17, 2004 to receive the canvass of the votes and declare the results of the election.

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager

Attachments

RESOLUTION NO. 04-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON, CALIFORNIA, DECLARING THE RESULTS OF
THE GENERAL MUNICIPAL AND SPECIAL MUNICIPAL
ELECTION HELD ON NOVEMBER 2, 2004**

WHEREAS, a General Municipal and Special Municipal Election (consolidated) was held within the Town of Atherton on Tuesday, November 2, 2004; and

WHEREAS, the conduct of said election was duly delegated to the Chief Elections Officer of the County of San Mateo; and

WHEREAS, the Chief Elections Officer has now certified the results of said election, and said results are truly reflected in the Certificates of the Chief Elections Officer dated November 30, 2004, full, true and correct copies of which are attached hereto and by this reference incorporated herein.

NOW, THEREFORE, the City Council of the Town of Atherton, California, does resolve, declare, determine and order as follows:

Section 1. The total number of ballots cast in the precincts was 4,366.

Section 2. The names of persons voted for at the election for Member of the City Council were as follows:

James R. Janz
Kathy McKeithen

Section 3. The measure voted upon at the election was as follows:

Measure O

“Shall an ordinance entitled ‘An Ordinance of the Town of Atherton Authorizing the Levy of a Special Tax for Municipal Services and Capital Improvements and for the Expenditure of Funds Derived from such Tax,’ and numbered 550 be adopted?”

Yes _____ No _____

Section 4. The number of votes cast at each precinct and the number of votes cast in the Town for each of the persons above named for the office for which the persons were candidates, and for and against the measure, were as listed in the attached certificates of the Chief Elections Officer.

Section 5. The City Council does declare and determine that: James R. Janz was elected as Member of the City Council for the full term of four years; Kathy McKeithen was elected as Member of the City Council for the full term of four years; and as a result of the election, Measure

O did not receive the necessary two-thirds (2/3rds) “yes” votes of the ballots cast in the election, which was required for passage, and thus the measure did not carry and shall not be deemed adopted and ratified.

Section 6. The City Clerk shall enter on the records of the City Council of the Town a statement of the result of the election showing: (1) the total number of ballots cast in the Town; (2) the names of the persons voted for; (3) the measure voted upon; (4) the office which each person was voted for; (5) the number of votes given at each precinct to each person, and for and against the measure; (6) the total number of votes given to each person, and for and against each measure.

Section 7. The Chief Elections Official shall immediately deliver to each of the persons so elected a Certificate of Election. The City Clerk shall administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the Office of the City Clerk. Each of the persons so elected shall be inducted in to the respective office to which he or she has been elected.

* * * * *

I hereby certify that the foregoing Resolution No. 04- was duly and regularly passed and adopted by the City Council of the Town of Atherton at a Regular meeting thereof held on this ___th day of _____ 2004, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Kathy McKeithen, Mayor
Town of Atherton

ATTEST:

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney



Town of Atherton

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

**FROM: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/
ACTING CITY CLERK**

DATE: FOR THE MEETING OF DECEMBER 15, 2004

**SUBJECT: INDUCTION OF REELECTED COUNCIL MEMBERS JANZ AND
MCKEITHEN – OATHS OF OFFICE**

RECOMMENDATION

The City Clerk is to administer Oaths of Office to reelected Council Members James R. Janz and Kathy McKeithen.

BACKGROUND

Subsequent to the City Council adopting the results of the Special and General Municipal Election, it is appropriate for the City Clerk to administer the Oath of Office to reelected Council Members James R. Janz and Kathy McKeithen, as required by the California State Constitution.

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager



Town of Atherton

**TO: HONORABLE MAYOR AND CITY COUNCIL
 JAMES H. ROBINSON, CITY MANAGER**

**FROM: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/
 ACTING CITY CLERK**

DATE: FOR THE MEETING OF DECEMBER 15, 2004

**SUBJECT: CITY COUNCIL REORGANIZATION – SELECTION OF MAYOR AND
 VICE MAYOR**

RECOMMENDATION

Hold nominations and vote on the Offices of Mayor and Vice Mayor.

BACKGROUND

Chapter 2.04 of the Atherton Municipal Code requires the City Council to meet at least annually to choose one of its members as Mayor and one of its members as Vice Mayor. The term of office of the Mayor and Vice Mayor shall be one year. No member shall serve as Mayor or Vice Mayor for consecutive terms.

In recent years, the selection of the Mayor and Vice Mayor has taken place at the regular December Council meeting.

The City Clerk will take nominations and conduct the election for Mayor and Vice Mayor.

Prepared by:

Approved by:

Linda Kelly
 Assistant to the City Manager/
 Acting City Clerk

James H. Robinson
 City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER

FROM: Marc G. Hynes, City Attorney

DATE: FOR THE MEETING OF DECEMBER 15, 2004

SUBJECT: POSSIBLE AMENDMENTS TO BUSINESS LICENSE TAX ORDINANCE

RECOMMENDATION: Consider Business License Tax Proposal to voters which taxes real estate commissions.

BACKGROUND: Following the actions of the City Council on November 17, 2004, I sent a copy of the proposed revisions to the Atherton Business License Tax to Mr. William T. Hutton of the firm of Coblenz, Patch, Duffy & Bass, LLP. Mr. Hutton has previously assisted the Town in connection with matters involving questions on taxation.

ANALYSIS: Mr. Hutton has recommended that a more appropriate business license tax charge related to monies being made by persons in Town in connection with real estate transactions should be a charge on real estate broker and/or agent commissions. Mr. Hutton believes that there are significant issues regarding the jurisdiction of the Town over title insurance companies. Unlike real estate professionals, title insurance companies are not availing themselves of any particular benefits and protections of the Town, one of the requirements to impose the business license tax. Mr. Hutton says the jurisdictional problem can be seen in Section 5.04.070 of the Hillsborough Ordinance which appears to set out a non-exclusive test for developing taxable incidents. A copy is attached as Exhibit A. Mr. Hutton also notes that the Hillsborough business license tax ordinance limits its reach over title companies including only those with offices in San Mateo County. Finally, Mr. Hutton advises that specification of real estate commissions as the object of the tax will reduce the risk of a challenge to these amendments as a "disguised real property transfer tax" prohibited by state law.(Govt. Code § 53725).

SUBJECT: Possible Amendments to Business License Tax Ordinance, Page 2

I attach as Exhibit B Mr. Hutton's letter to me and proposed revisions to the business license tax ordinance. Should the Council desire to adopt these amendments, I have prepared a draft of an ordinance which would amend Ordinance No. 552. It is attached as Exhibit C.

A further issue involving title insurance involves refinancing situations. Title insurance policies are issued on these occasions,. As presently written, the business license tax requirements would apply.

FISCAL IMPACT: Unknown.

Prepared by:

Marc G. Hynes
City Attorney

Attachments:

- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D
- Exhibit E

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING ORDINANCE NO. 552 BY REVISING SECTIONS 5.12.140, 5.12.150 AND
5.12.160 OF THE ATHERTON MUNICIPAL CODE RELATING TO THE
BUSINESS LICENSE TAX**

WHEREAS, The City Council has previously approved Ordinance No. 552 calling a Special Municipal Election to be held on Tuesday, March 8, 2005, making a declaration of a fiscal emergency, and proposing the amendment of Sections 5.12.080, 5.12.140, 5, 12.150 and 5.12.160 of the Atherton Municipal Code relating to the Business License Tax, and

WHEREAS, the City Council desires to revise Section 3 of Ordinance No. 552 as it proposes amendments to Sections 5.12.140, 5.12.150 and 5.12 160 of the Atherton Municipal Code;.

NOW, THEREFORE, The City Council of the Town of Atherton does ordain as follows:

SECTION 1:

Section 3 of Ordinance 552 is hereby amended by deleting in its entirety Sections 2, 3, and 4 of An Ordinance of the Town of Atherton, California, amending Sections 5.12.080, 5.12.140, 5.12.150 and 5.12.160 of the Atherton Municipal Code relating to the Business License Tax and replacing them with new Sections 2, 3, and 4 to read as follows:

"SECTION 2:

Section 5.12.140 of the Atherton Municipal Code is hereby amended to read:

"5.12.140 Delinquent Tax – Penalty.

For Category I enterprises, failure to pay a license tax when due will result in a penalty assessment of \$250.

For Category II and III enterprises, failure to pay a license tax when due will result in a penalty which shall accrue at the rate of ten percent of the license tax per month after the due date thereof, provided that the amount of such penalty to be added shall in no event exceed one hundred percent of the amount of the license tax due annually.

"SECTION 3: Section 5.12.150. Business license categories.

"A. Any person or firm conducting business within the Town shall pay a business license tax according to the tax rate specified in this section for that type of business. Tax rates are determined with respect to the following categories:

1. Category I. Persons or firms performing services that are not subject to the issuance of a building permit, but not including licensed real estate brokerage firms or individual licensed real estate agents, brokers, and salespersons. This category shall include, but shall not be limited to, the following:

Contractors performing residential maintenance and repairs that are not subject to the issuance of a building permit

Alarm installers

Private patrol

Grounds keeping and landscaping

Swimming pools

Delivery vehicles

Other businesses not otherwise identified within this Section 5.12.150

2. Category II. Persons or firms performing residential construction and renovation activities subject to the issuance of a building permit by the Atherton Building Department.

3. Category III. Persons or firms conducting real estate sales, agency, and brokerage activities, including (i) licensed real estate brokerage firms, and (ii) individual licensed real estate brokers unless included among the listed personnel of a licensed real estate brokerage firm which has paid the tax attributable to such individual's services under this Category III.

"SECTION 4. Section 5.12.160 Tax designated

Except as otherwise provided, the license tax for persons and firms conducting business, supplying services, or delivering goods in the Town shall be as follows:

1. Category I: Two hundred fifty dollars (\$250.00).

2. Category II: One and twenty-three one hundredths percent (1.23%) of the [gross receipts attributable to permitted construction activity performed by the person or firm], OR [value of permitted construction activity performed by the person or firm], as determined by the Atherton Building Department.

3. Category III: Upon the transfer of any real property located within the Town, as to which the person or firm is entitled to compensation as a broker, agent, or salesperson, fifty-three one-hundredths percent (0.53%) of the value of such property. For purposes of this paragraph 3, "value" shall mean the gross selling price of the transferred property without reduction to reflect any existing encumbrance on the property (whether assumed or taken subject to by the transferee), and without reduction to reflect any selling expenses. In the case of an exchange of properties, "value" shall mean the gross exchange value

of the transferred property, as ordinarily established by contract between the transferor and transferee. The tax hereunder shall be due and payable at the close of escrow.

SECTION 2 Except as amended by this Ordinance, all provisions of Ordinance No. 552 adopted November 17, 2004, shall continue to remain in effect.

SECTION 3: SEVERABILITY. If any provision of this ordinance of the application thereof to any person or circumstances is held invalid such invalidity shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall become effective immediately upon its passage and approval.

I hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the Town of Atherton held on the 15th day of December, 2004, by the following vote:

AYES:	COUNCILMEMBERS	_____
NOES:	COUNCILMEMBERS	_____
ABSTAIN:	COUNCILMEMBERS	_____
ABSENT:	COUNCILMEMBERS	_____

Mayor, Town of Atherton

ATTEST:

Linda Kelly
Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes
City Attorney

ORDINANCE NO. 552
AN ORDINANCE OF THE TOWN OF ATHERTON
CALLING AN ELECTION TO SUBMIT TO THE VOTERS
AN ORDINANCE AMENDING SECTIONS 5.12.080, 5.12.140, 5.12.150
AND 5.12.160 OF THE ATHERTON MUNICIPAL CODE RELATING TO THE
BUSINESS LICENSE TAX

The City Council of the Town of Atherton does ordain as follows:

SECTION 1. ELECTION CALLED. The City Council of the Town of Atherton hereby submits the following ordinance to the voters of the Town of Atherton at a Special Municipal Election to be held on Tuesday, March 8, 2005.

SECTION 2. DECLARATION OF FISCAL EMERGENCY. Whereas, Town of Atherton Resolution No. 04-25 declared a fiscal emergency by a unanimous vote of the Council, necessitating the placing of this ordinance before the voters.

SECTION 3. FULL TEXT OF MEASURE. The complete text of the proposed ordinance shall be:

“AN ORDINANCE OF THE TOWN OF ATHERTON, CALIFORNIA, AMENDING
SECTIONS 5.12.080, 5.12.140, 5.12.150 AND 5.12.160 OF THE ATHERTON MUNICIPAL
CODE RELATING TO THE BUSINESS LICENSE TAX

The people of the Town of Atherton do ordain as follows:

SECTION 1: Section 5.12.080 of the Atherton Municipal Code is hereby amended to read:

5.12.080 Tax due and payable when.

A. Business license fees for all Category I enterprises as defined in Section 5.12.150 will be due and payable on July 1st of each year and will become delinquent on July 31st of that year.

B. Business license fees for Category II enterprises as defined in Section 5.12.150 will be due and payable upon acceptance of a building permit application.

C. Business license fees for Category III enterprises as defined in Section 5.12.150 will be due and payable upon close of escrow.

SECTION 2. Section 5.12.140 of the Atherton Municipal Code is hereby amended to read:

5.12.140 Delinquent tax—Penalty.

For Category I enterprises, failure to pay a license tax when due will result in a penalty assessment of \$250.

SECTION 3. Section 5.12.150 of the Atherton Municipal Code is hereby deleted in its entirety and replaced with a new section to read:

5.12.150 Business license categories.

Persons or firms conducting business within the town shall pay a business license tax according to the tax rate specified for that type of business. Tax rates are based on the following categories:

1. Category I: Persons or firms with two or more employees doing business as:

Contractors performing residential maintenance and repairs that are not subject to the issuance of a building permit

Alarm installers

Private patrol

Grounds keeping and landscaping

Swimming pools

Delivery vehicles

Other businesses not otherwise identified within this Section 5.12.150

2. Category II: Persons or firms performing residential construction and renovation activities that are subject to the issuance of a building permit by the Atherton Building Department.

3. Category III: Real Estate Title Insurance Companies issuing title insurance policies on real property located within the geographic boundaries of the Town of Atherton.

SECTION 4. Section 5.12.160 of the Atherton Municipal Code is hereby deleted in its entirety and replaced with a new section to read:

5.12.160 Tax Designated

Except as otherwise provided, the license tax for those in business, conducting business, supplying services, or delivering goods within the town shall be as follows:

1. Category I: Two-hundred fifty dollars.

2. Category II: 1.23 percent of the permitted value of construction activity performed by the contractor as determined by the Town Building Department.

3. Category III: .53 percent of the face value of each title insurance policy issued by Category III businesses insuring the title of real property located within the Town (to be a

charge payable by the transferor and/or transferee to be remitted by the title insurance or escrow company within five days after collection thereof by the title insurance or escrow company).

SECTION 5. SEVERABILITY. If any provision of this ordinance of the application thereof to any person or circumstances is held invalid such invalidity shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6. EFFECTIVE DATE - AMENDMENT OR REPEAL. The authorization to levy a tax under this ordinance shall commence with the Fiscal Year 2005-2006, beginning July 1, 2005 and shall continue thereafter until amended or repealed. This ordinance or any provision thereof may only be amended or repealed by approval of a majority of the voters voting on the measure at any initiative or referendum election.

This ordinance shall be adopted if approved as an initiative measure by a majority of the voters voting at a Special Municipal Election to be held on Tuesday, March 8, 2005, and go into effect ten (10) days after the City Council has, by resolution, declared that such initiative measure was approved by a majority of the voters voting thereon.”

SECTION 4. CONDENSED STATEMENT OF MEASURE. The manner in which the proposed measure shall appear on the ballot shall be:

“Shall the Atherton Business License Tax Ordinance be amended to enact increases to the existing business license tax and revise the taxed business categories in order to raise monies for general purposes such as, but not limited to, public safety services and capital improvement projects that otherwise would be reduced due to the loss of other local tax revenues?”

Yes _____ No _____

SECTION 5. PUBLICATION. This ordinance shall be posted in at least three public places within the Town of Atherton, and shall become effective immediately upon its passage and approval. The City Clerk is authorized and directed to give notice of election in accordance with Chapter 2 (commencing with section 12100) of Division 12 of the California Elections Code.

SECTION 6. CONSOLIDATION. Due to the economics involved, the public interest would best be served by consolidating such Special Election with any other elections to be held on Tuesday, March 8, 2005 and by contracting with the County of San Mateo for election services. The Town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to consolidate said Special Election with any other election to be held on March 8, 2005. The City Manager is hereby authorized and directed to enter into a contract with the Chief Elections Official of the County of San Mateo for the purpose of providing election services in connection with said Special Election.

SECTION 7. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid such invalidity shall not affect any other provision or application, and to this end the provisions of the ordinance are declared to be severable.

SECTION 8. EFFECTIVE DATE. This ordinance calling an election shall become effective immediately upon its adoption by the City Council of the Town of Atherton.

* * * * *
* * * * *

I hereby certify that the foregoing ordinance was adopted at a regular meeting of the City Council of the Town of Atherton held on November 17, 2004, by the following roll call vote:

AYES: 5 Councilmembers: Janz, Marsala, Carlson, McKeithen, Conwell
NOES: 0 Councilmembers: None
ABSTAIN: 0 Councilmembers: None
ABSENT: 0 Councilmembers: None

/s/ Kathy McKeithen

Kathy McKeithen, Mayor
Town of Atherton

ATTEST:

/s/ Linda Kelly

Linda Kelly
Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes
City Attorney

RESOLUTION 04-___

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING FILING OF AMENDMENT TO ORDINANCE NO. 552 CALLING ELECTION FOR AMENDMENTS TO ATHERTON BUSINESS LICENSE TAX

WHEREAS, The City Council has called an election for March 8, 2005, in Ordinance No. 552 incorporated here by this reference; and

WHEREAS, the City Council has determined that the fiscal needs of the Town will best be served by amending certain provisions of the business license tax ordinance all as described in the ordinance approved by the City Council at a regular meeting on December 15, 2004;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the Town of Atherton hereby resolves:

1. Ordinance No. 552 as amended by Ordinance adopted December 15, 2004, shall be forwarded to the Elections Official for filing in accordance with Elections Code section 9605.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the _____ day of December, 2004, by the following vote:

*AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:*

, Mayor
TOWN OF ATHERTON

ATTEST:

Linda Kelly
Acting City Clerk

Approved as to form:

/s/ Marc G. Hynes

Marc G. Hynes
City Attorney



Town of Atherton

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

**FROM: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/
ACTING CITY CLERK**

DATE: FOR THE MEETING OF DECEMBER 15, 2004

**SUBJECT: DISCUSSION AND CONSIDERATION - APPROVAL OF WRITTEN
BALLOT ARGUMENT IN FAVOR OF MARCH 8, 2005 SPECIAL
ELECTION MEASURE REGARDING AN AMENDMENT TO THE
BUSINESS LICENSE TAX ORDINANCE**

RECOMMENDATION

Discuss, consider and approve a written argument in favor of the Special Election Measure, pursuant to Resolution No. 04-26, adopted on November 17, 2004, which authorized the City Council to file a written argument in favor of the measure.

BACKGROUND

Through its adoption of Resolution No. 04-26 at the meeting of November 17, 2004, the City Council exercised its right under California Election Code Section 9282 to authorize all Members of the City Council to sign a written ballot argument in favor of the March 8, 2005 Special Election ballot measure. At the November City Council meeting, it was decided that Council Members Carlson and Marsala would work together to write an argument to be presented to the Council at the next Regular Council meeting for approval by the Council as a whole.

Per State law, the argument shall not exceed 300 words. The word count standards used are attached for reference. The final date for filing a ballot argument is 5:00 p.m. on Friday, December 17, 2004.

If the Council wishes to submit the argument in favor, it would be in order at this time to:

1. Discuss the draft argument (attached) and decide upon the final wording at this meeting;
and

2. Sign both the argument and the Form of Statement to be Filed by Author of Argument (form attached). The names/signatures/titles on the argument should be written in the order the Council wishes them to appear in the sample ballot (i.e. Mayor first, then Vice Mayor, etc.).

Arguments may be changed or withdrawn by their proponents through December 17, 2004 at 5:00 p.m. However, due to the fact that the City Council is signing the argument as a whole, and is subject to the Ralph M. Brown Act when making collective decisions, it is recommended that any changes to the argument take place at the present meeting, which has been posted and notice in accordance with State law.

With respect to rebuttal arguments, if any person or association submits an argument against the measure, copies of argument against the measure will be sent to the person or persons filing the argument in favor of the measure (the Members of the City Council). The City Council may then prepare and submit a rebuttal argument not to exceed 250 words. Likewise, upon receipt of the argument in favor of the measure, a copy shall be sent to the person or persons filing the argument against the measure who may submit a rebuttal argument not to exceed 250 words. The rebuttal argument period is December 18, 2004, to December 27, 2004. The final date to submit a rebuttal argument to the City Clerk is 5:00 p.m., Monday, December 27, 2004.

Please note that there is no regular City Council meeting which falls during the rebuttal argument period. Thus, if an argument is filed against the measure, which the City Council wishes to rebut, a **special meeting** would need to be called during the period of December 18, 2004, to December 27, 2004 (be mindful of the Christmas holiday). A Special Meeting would be required in order to meet the Ralph M. Brown Act noticing requirements if the Council acts as a body to decide to approve and sign a rebuttal argument.

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager

Attachments: Draft Argument Submitted by Council Members Carlson and Marsala
Resolution No. 04-26
Form of Statement to be Filed by Author of Argument
California Elections Code 2004 – Counting of Words

Argument in Favor of Measure _____

While a majority of residents supported continuation of the parcel tax last November, it failed to obtain the two-thirds vote necessary for passage. Consequently, Atherton faces a cumulative \$3.5 million budget deficit by 2009, the elimination of nearly all its financial reserves, and further staff reductions placing in jeopardy the continued existence of our police department.

Required by increasing costs and the shift of more local property taxes to the state, Atherton has made \$1.1 million in budget cuts since February 2003. In the most recent agreement with employees, no salary increases were given. Nonetheless, the Town has further reduced and consolidated staff, including police, and outsourced work. The Town has less employees today than at any other time in recent years. Further reductions to make up for the loss of parcel tax revenues will result in the elimination of essential, including police, services.

It is a misconception that Atherton has no business within its borders. The Town has an estimated \$160 million construction industry with about \$250 million in real estate sales annually. Under Atherton's current business license ordinance, those who conduct business in these industries have paid little to do so while the Town's residents have provided the tax base to create a community in which these businesses have financially flourished.

Other cities have adopted business license ordinances similar to the proposed amendment to Atherton's Business License Tax Ordinance. Atherton must turn away from the uncertainty of a parcel tax that every four years has taken the Town to the brink of financial disaster. It's time to move to a new plan, indexed to inflation, that will provide sustainable revenues supporting essential Town services. By a majority vote for this Ordinance, the City Council urges Atherton residents to secure their Town's financial future. Vote Yes.

Mayor, Town of Atherton

Vice Mayor, Town of Atherton

Council Member, Town of Atherton

Council Member, Town of Atherton

Council Member, Town of Atherton

Resolution No. 04-26

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON, CALIFORNIA, SETTING PRIORITIES FOR FILING
WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND
DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL
ANALYSIS**

WHEREAS, a Special Municipal Election is to be held in the Town of Atherton, California, on March 8, 2004, at which there will be submitted to the voters the following measure:

“Shall the Atherton Business License Tax Ordinance be amended to enact increases to the existing business license tax and revise the taxed business categories in order to raise monies for general purposes such as, but not limited to, public safety services and capital improvement projects that otherwise would be reduced due to the loss of other local tax revenues?”

Yes _____ No _____

NOW, THEREFORE, the City Council of the Town of Atherton, California, does resolve, declare, determine and order as follows:

1. That the City Council authorizes all Members of the City Council to file a written argument in favor of the City measure as specified above, accompanied by the printed name(s) and signature(s) of the person(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk, which is set for December 17, 2004.
2. That the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, unless the organization or salaries of the office of the City Attorney are affected. The City Attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the City Attorney, the City Clerk shall prepare the impartial analysis. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments (December 17, 2004).
3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 17th day of November, 2004, by the following vote:

<i>AYES:</i>	<i>5</i>	<i>COUNCILMEMBERS:</i>	<i>Janz, Marsala, Carlson, McKeithen, Conwell</i>
<i>NOES:</i>	<i>0</i>	<i>COUNCILMEMBERS:</i>	<i>None</i>
<i>ABSENT:</i>	<i>0</i>	<i>COUNCILMEMBERS:</i>	<i>None</i>
<i>ABSTAIN:</i>	<i>0</i>	<i>COUNCILMEMBERS:</i>	<i>None</i>

/s/ Kathy McKeithen

Kathy McKeithen, Mayor
Town of Atherton

ATTEST:

/s/ Linda Kelly

Linda Kelly
Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes

Marc Hynes
City Attorney

Authoring Ballot Arguments

According to Elections Code Section 9282, the City Council must determine whether it wishes to exercise its rights to author and sign ballot arguments regarding the measure. The argument for or against a ballot measure shall not exceed 300 words. **The final date for filing a direct argument is 5:00 p.m. on Friday, December 17, 2004.**

With respect to Rebuttal Arguments, if any person submits arguments against a City measure, and an argument has been filed in favor of a City measure, copies of argument against the City measure will immediately be sent to the person or persons filing the argument in favor of the City measure. The person or persons filing the arguments in favor of a City measure may prepare and submit a rebuttal argument not to exceed 250 words. Upon receipt of the proponent's direct argument in favor of the measure, a copy shall be sent to the person or persons filing the argument against the City measure who may submit a rebuttal argument not to exceed 250 words. The rebuttal argument period is December 18, 2004, to December 27, 2004. **The final date to submit a rebuttal argument to the City Clerk is 5:00 p.m., Monday, December 27, 2004.**

For your information, below is the Form of Statement to be Filed by Author of Argument.

**FORM OF STATEMENT TO BE FILED BY
AUTHOR OF ARGUMENT**

All arguments concerning measures filed pursuant to Division 9, Chapter 3 (beginning with § 9200) of the Elections Code shall be accompanied by the following form statement **to be signed** by each proponent, and by each author, if different, of the argument:

The undersigned proponent (s) or author(s) of the (primary/rebuttal) argument (in favor of/against) Measure _____ at the Special Municipal Election for the Town of Atherton to be held on March 8, 2005, hereby state that the argument is true and correct to the best of (his/her/their) knowledge and belief.

Sign Name	Print Name	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

All Authors must print his/her name and sign this form (EC 9600)

AND

Print his/her name and sign the Argument itself (EC 9283)

AND

Print his/her name and sign the Rebuttal Argument itself (EC 9285)

Further, pursuant to Election Code § 9219, printed arguments submitted to the voters shall be titled either "Argument In Favor Of Measure ___" or "Argument Against Measure ___".

Likewise, printed rebuttal arguments submitted pursuant to Election Code §§ 9220 and 9285 shall be titled either "Rebuttal To Argument In Favor Of Measure ___" or "Rebuttal to Argument Against Measure ___".

California Elections Code 2004

COUNTING OF WORDS

Chapter 1. General Provisions

9. Counting of words.
 - (a) Counting of words, for purposes of this code, shall be as follows:
 - (1) Punctuation is not counted.
 - (2) Each word shall be counted as one word except as specified in this section.
 - (3) All geographical names shall be considered as one word; for example, "City and County of San Francisco" shall be counted as one word.
 - (4) Each abbreviation for a word, phrase, or expression shall be counted as one word.
 - (5) Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.
 - (6) Dates consisting of a combination of words and digits shall be counted as two words. Dates consisting only of a combination of digits shall be counted as one word.
 - (7) Any number consisting of a digit or digits shall be considered as one word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one word whereas "one hundred" shall be counted as two words. "100" shall be counted as one word.
 - (8) Telephone numbers shall be counted as one word.
 - (9) Internet web site addresses shall be counted as one word.
 - (b). This section shall not apply to counting words for ballot designations under Section 13107.
(Amended by Stats. 1994, c 920, Section 2.)



Town of Atherton

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

**FROM: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/
ACTING CITY CLERK**

DATE: FOR THE MEETING OF DECEMBER 15, 2004

**SUBJECT: DISCUSSION AND CONSIDERATION – SELECTION OF DATES FOR
COMMUNITY INFORMATIONAL MEETINGS (SPECIAL COUNCIL
MEETINGS) REGARDING THE MARCH 8, 2005 SPECIAL ELECTION**

RECOMMENDATION

Discuss and select dates for holding community informational meetings regarding the March 8, 2005 Special Election.

BACKGROUND

At its meeting of November 17, 2004, the City Council adopted Ordinance No. 552 calling a Special Municipal Election for Tuesday, March 8, 2005, for the purpose of submitting to the voters one measure to amend the business license tax ordinance. The Mayor requested that community meetings be set up starting in January 2005 in order to inform the residents about the measure. These “town hall” style meetings will be for the purpose of information and discussing the measure, not advocacy on behalf of the Town of Atherton.

It is suggested that Council Members check their calendars for any conflicts and select those dates which are preferable.

Following is a list of available dates, times and locations.

Potential Dates, Times and Locations for Community Meetings

Date	Pavilion Availability	Chamber Availability
Thurs., January 6	Any time after 6:00 p.m.	Any time
Sat., January 8	Any time	Any time
Mon., January 10	Any time	Any time
Tues., January 18	After 6:00 p.m.	Any time
Sat., January 22	Any time	Any time
Mon., January 24	Any time	Any time
Tues., January 25	Not available	Any time
Sat., January 29	Not available	Any time
Mon., January 31	Any time	Any time
Tues., February 1	Any time	Any time
Sat., February 5	Any time	Any time
Mon., February 7	After 5:00 p.m. only	Any time
Tues., February 8	Any time	Any time
Thurs., February 10	Any time	Any time
Sat., February 12	Any time	Any time
Mon., February 14	Any time	Any time
Tues., February 15	Any time	Any time
Thurs., February 17	Any time	Any time
Fri., February 18	Any time	Any time
Sat., February 19	Any time	Any time
Tues., February 22	Any time	Any time
Wed., February 23	Any time	Any time
Fri., February 25	Any time	Any time
Tues., March 1	Not available	Any time
Thurs., March 3	Not available	Any time
Sat., March 5	Any time	Any time

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF DECEMBER 15, 2004

SUBJECT: ACCEPTANCE OF STATUS REPORT BY CITY MANAGER OF ANNUAL REVIEW OF LITTLE LEAGUE COMPLIANCE WITH PARK LICENSE AGREEMENT

RECOMMENDATION:

1.) Accept status report from the City Manager regarding compliance by the Little League to the terms of the "License Agreement" between the Town of Atherton and the Menlo-Atherton Little League. 2.) Receive input from City Council regarding the Little League's compliance with the agreement and mitigation measures. 3.) Direct the City Manager to meet with the President of the Little League to ensure compliance with the attached agreement and conduct an annual review.

BACKGROUND:

In August of 2000 the Town of Atherton entered into a license agreement with the Menlo-Atherton Little League Inc. The intent of the agreement was to grant a license to the Little League to permit the construction and operation of a Little League ball field on a portion of the Holbrook-Palmer Park during a period of late February through June. The agreement also provided for reimbursement of certain maintenance costs, restrictions for hours and days of use, contributions for restroom facilities, and restrictions on outfield fencing and the removal of the backstop fencing and players seating area at the end of the Season.

The agreement also provided that the City Manager and Little League would conduct an annual review of use and operation of the Park improvements to ensure that the Little League was in compliance. It also provided that, prior to this meeting, the City Manager would seek input from both the City Council and Park and Recreation Commission on compliance with the agreement.

The City Manager met with the Park and Recreation Commission on September 1, 2004 to solicit comments on compliance with the agreement and mitigation measures adopted for the project.

The City Manager also contacted all City departments regarding issues of noise, parking, conflicts with other park activities, compliance with the License agreement and mitigation measures, etc. to determine if any complaints were filed in relation to the use of the field by the Little League. The City Manager spoke this past week with Dave Crowder, Little League President, and did not receive any complaints or concerns about their use of the field. It was also noted that the Town did not receive any complaints about the use of the field area following the prescribed Little League season.

CONCLUSION:

As noted above, it would appear that the Menlo-Atherton Little League has complied with all of the terms of the license agreement for the Holbrook-Palmer Park Little League Baseball Field, with the Town of Atherton, subject to review and comment by the City Council. In addition, the Little League has paid the Town's invoice for additional costs related to mowing, fertilizing, watering and sprinkler repair in the amount of \$3,084.07, and provided the necessary insurance for use of the field during the 2004 season.