



MINUTES
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

Mayor McKeithen called the meeting to order at 7:03 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.

3. **PRESENTATIONS**

A. Presentation to Outgoing Mayor Kathy McKeithen

Vice Mayor Conwell presented Mayor McKeithen with a plaque to commemorate her year of service as Mayor of the Town of Atherton. Mayor McKeithen accepted the plaque and stated that it was her pleasure to serve as the Mayor.

B. Certificate of Appreciation to Outgoing Arts Committee Member Florentina Mazzone

Ms. Mazzone was not present to receive the certificate. The certificate will be mailed to her.

4. COUNCIL REPORTS

- Council Member Janz announced that the Housing Endowment and Regional Trust of San Mateo County issued its first call for proposals for projects.
- Council Member Marsala stated that he attended the Park Foundation and Atherton Dames Christmas luncheon and an issue discussed was park grants. He stated that public pension plans had become an issue of interest throughout the state. He also thanked Mayor McKeithen for her service as Mayor.
- Council Member Carlson did not have a report.
- Mayor McKeithen stated that as a result of the last Council meeting, she reported on a meeting with a resident on drainage issues. The Town is waiting to see if there will be funding for this project.
- Vice Mayor Conwell reported on the San Francisco Airport Roundtable meeting where a new A380 aircraft was discussed, which will be the largest passenger aircraft and will bring about a new era of aviation. He reported on a possible closure of the Key Market (DeHoff Enterprises) on 5th and El Camino Real, which has been impacted by day workers who congregate at that corner. Mr. Conwell contacted the County on this issue and reported that a location on Middlefield will be created for the day workers.

5. PUBLIC COMMENTS

- Jean Schaaf, Atherton, stated that the decline in business at Key Market was due to the day workers soliciting business, and stated that she had a petition to submit to the Board of Supervisors which addresses this issue.
- Mayor McKeithen read a letter from an 8-year-old, who wants more sidewalks in Atherton.

6. STAFF REPORTS

- City Attorney Hynes stated that during the closed session, one item was added to the Special Meeting Agenda by unanimous vote as threatened litigation pursuant to Government Code Section 54956.9(b)(3)(C), in relation to written correspondence received from D. Kent Westerberg threatening litigation in conjunction with the proposed business license tax amendment. He reported the following actions from the Special Meeting (closed session):

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

Action: Directed City Attorney to file litigation. Written information will be available upon the filing of the complaint.

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

2 potential cases

Action: Direction was given to the City Attorney.

**C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section
54956.9(b):**

1 potential case

Action: Direction was given to the City Attorney.

The closed session meeting ended at 7:00 p.m. With respect to the add-on item described above, City Attorney Hynes reported that the meeting ended at 7:00 p.m., with the possibility of continuing the closed session during the present Regular City Council Meeting.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Denise Kupperman of the Atherton Tree Committee presented an update of the group's activities. She announced a seminar on Friday, February 4, 2005 at Holbrook-Palmer Park on tree preservation guidelines for architects, landscapers and construction firms. She also announced a winter pruning workshop on January 29, 2005.

CONSENT CALENDAR (Items 8-11)

MOTION – to approve the Consent Calendar as presented.

M/S Conwell/Marsala

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

- 8. APPROVED MINUTES OF REGULAR MEETING OF NOVEMBER 17, 2004
- 9. APPROVED BILLS AND CLAIMS FOR NOVEMBER 2004 IN THE AMOUNT OF \$841,260
- 10. ACCEPTED MONTHLY FINANCIAL REPORT FOR NOVEMBER 2004
- 11. ACCEPTED WORK AND AUTHORIZED RECORDATION OF NOTICE OF COMPLETION FOR THE TOWN CAPE SEAL PROJECT NO. 04-003

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

The number of votes given at each precinct to each person and for and against each measure:

| Precinct | Ballots Cast | Janz | McKeithen | Measure O - Yes | Measure O - No |
|-----------------|---------------------|-------------|------------------|------------------------|-----------------------|
| 3001 | 506 | 330 | 337 | 260 | 186 |
| 3002 | 493 | 326 | 323 | 261 | 162 |
| 3003 | 564 | 376 | 366 | 275 | 228 |
| 3004 | 852 | 518 | 527 | 365 | 344 |
| 3005 | 552 | 294 | 309 | 236 | 175 |
| 3006 | 483 | 287 | 279 | 253 | 166 |
| 3007 | 457 | 292 | 307 | 240 | 165 |
| 3009 | 556 | 375 | 385 | 284 | 200 |

The number of votes given in the city to each person and for and against each measure:

| Precinct | Ballots Cast | Janz | McKeithen | Measure O - Yes | Measure O - No |
|-----------------|---------------------|--------------|------------------|------------------------|-----------------------|
| TOTAL | 4,366 | 2,798 | 2,833 | 2,174 | 1,626 |

RESOLUTION NO. 04-27

**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. 04-27 was duly and regularly passed and adopted by the City Council of the Town of Atherton at a Regular meeting thereof held on this 15th day of December 2004, by the following vote:

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

/s/ Kathy McKeithen

Council Member Janz moved to close nominations. Council Member Conwell seconded the motion.

MOTION – Council Member Marsala to serve as Vice Mayor.

M/S McKeithen/Carlson

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

Council Member Marsala was elected to the Office of Vice Mayor.

Acting City Clerk Kelly turned the meeting over to Mayor Conwell.

Item No. 19 was taken out of order due to the need to recess to close session regarding Item No. 16 and the emergency item added to the Special Meeting (closed session).

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

City Manager Robinson presented the staff report.

Council Members questioned the need to remove the backstop during off-seasons.

The following was approved by unanimous consent:

- a. Accepted 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. Received input from City Council regarding the Little League’s compliance with the agreement and mitigation measures.**
- c. Directed the City Manager to meet with the President of the Little League to ensure compliance with the attached agreement and conduct an annual review.**
- d. Directed staff to work with the Little League to approach the Park and Recreation Commission and the Holbrook-Palmer Park Foundation regarding leaving the backstop up during off-seasons.**

At 7:45 p.m., the City Council recessed to Closed Session for further discussion of threatened litigation pursuant to Government Code Section 54956.9(b)(3)(C) as set out in the letter from attorney D. Kent Westerberg in conjunction with the proposed business license tax amendment. The meeting was reconvened at 8:43 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

City Attorney Marc Hynes presented the staff report. William Hutton, an attorney who is an expert in municipal taxation, was present for questions regarding this item.

The following individuals spoke from the audience:

**Natalie Cardenas, Government Affairs Director, Silicon Valley Association of Realtors
John Ruggiero, Atherton
Marion Oster, Atherton
San Goodman, Atherton
Bob Huber, Atherton
Susan Tilling, Realtor
Tom Odad, Atherton
Bob Jenkins, Atherton
Jim Nicholas, Atherton
Amanda Miller, Atherton
Dick Collin, Realtor, Menlo Park
George Mozingo, San Mateo County Association of Realtors
David Barker, Atherton
JoAnne Holder, Atherton
Jerry Carlson, Atherton
Any McGuin, San Mateo County Board of Realtors
Denver Lowe, Burlingame
Sharon Lawson, Realtor
Verna Davis, Menlo Park
Richard Calhoun, Santa Clara
Sunny Diquial, Palo Alto
Pat Briscoe, Atherton**

At 9:35 p.m., the City Council recessed to Closed Session for further discussion of threatened litigation pursuant to Government Code Section 54956.9(b)(3)(C) as set out in the letter from attorney D. Kent Westerberg in conjunction with the proposed business license tax amendment. The meeting was reconvened a 10:05 p.m.

City Attorney Hynes read the following resolution into the record.

RESOLUTION 04-28

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
WITHDRAWING ORDINANCE NO. 552 CALLING AN ELECTION FOR
AMENDMENTS TO THE ATHERTON BUSINESS LICENSE TAX**

WHEREAS, on November 17, 2004, the City Council called an election for March 8, 2005, in Ordinance No. 552; and

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.

This item was withdrawn from the agenda.

(19. Item No. 19 was taken out of order and considered earlier in the meeting.)

20. PUBLIC COMMENTS – None.

21. ADJOURNMENT

Mayor Conwell adjourned the meeting at 10:15 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk