



**Minutes**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**March 19, 2003**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
**94 Ashfield Road**  
**Atherton, California**

**REGULAR MEETING**

**Mayor Janz called the meeting to order at 7:00 p.m.**

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL**

**PRESENT:**

**Kathy McKeithen**  
**Charles E. Marsala**  
**Alan B. Carlson**  
**James R. Janz**  
**William R. Conwell**

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

- 3. PRESENTATIONS**

**A. Mayor Janz presented a Certificate of Appreciation to Shirley Carlson for her past service as Chair of the Atherton Tree Committee. Town Arborist Kathy Hughes Anderson thanked Shirley for her efforts and service on behalf of the Tree Committee.**

- 4. COUNCIL REPORTS**

- Council Member Conwell reported on the Criminal Justice Commission annual retreat he attended. The Commission prepared their program for next year. He also attended the City/County Association of Governments meeting. The San Francisco Airport Roundtable met and received reports that noise complaints are down substantially.**

- Vice Mayor McKeithen reported on the Atherton Transportation Sub-committee meeting she attended on February 24. The Sub-committee prioritized issues related to Emilie Avenue. The Sub-committee will recommend that a professional traffic survey be considered when the effects of the new light at University are determined. The Town will conduct preliminary traffic counts until that time. The Atherton Channel District Sub-committee met March 10 for a walk of the Channel. Representatives from the Water Quality Control Board and the Army Corps of Engineers, and the engineering consultants were in attendance. The Sub-committee will address issues identified during the walk at a future meeting. The formal meeting scheduled after the walk was canceled because of time constraints.
- Council Member Marsala reported that several applications have been received for openings on Town commissions and committees. Applications are still needed for the General Plan Committee. In late April Council Member Marsala will attend the second part of the League of Cities Council Members Institute in Sacramento. He reported that the Arts Committee will hold the second annual “Jazz in the Meadow” event on June 15. The Library JPA met this month and will not be hiring a consultant as previously reported. Council Member Marsala stated that P.G. & E. has a new, more aggressive tree trimming policy for Atherton because of the recent storms. He asked to have P.G. & E. make a presentation at a future Council meeting regarding the change in policy. He reported on recent funding changes for cities under consideration by the State Legislature.
- Council Member Carlson chaired the Transportation Sub-committee meeting on February 24 where action on an agenda item regarding the appointment of resident advisors was not taken. He apologized for not allowing a member of the public to speak on the issue, and read a letter he sent to the resident. He stated that the item will be on the April 8 Transportation Sub-committee agenda. A related item is on tonight’s agenda.
- Mayor Janz stated that he would like staff to ask a P.G.&E. representative to come and talk to the Council about recent power outages as well as the new tree trimming policy. He announced the current vacancies on the Planning Commission, General Plan Committee, Park and Recreation Committee, Audit Committee and Arts Committee, and stated that applications will be accepted until 5:00 p.m. on Friday, March 28. The Waste Reduction Committee met on February 24. The Town has expanded its recycling program, and is now taking household batteries. BFI is planning on expanding the recycling program to include a full time facility. Mayor Janz attended the February 28 Council of Cities meeting, where a program for a countywide JPA to provide affordable housing was proposed. On March 5, he attended a Peninsula Corridor Study policy committee meeting. The purpose of the group is to shape the parameters of a study that will be done on the Highway 101 corridor between Woodside Road and Highway 85 in Mountain View. An ABAG meeting is scheduled for tomorrow night, March 20, where the future of ABAG and the Metropolitan Transportation Commission will be discussed.

## 5. PUBLIC COMMENTS

Marion Oster, Atherton Heritage Association, spoke on the history of Almedral Avenue.  
Jerry Carlson, 95 Mount Vernon Lane, spoke on Selby Lane School.

## 6. STAFF REPORTS

- City Manager Jim Robinson announced that the Community Calendar is now live on the Town website. Assistant to the City Manager, Linda Kelly, may be contacted for information or to place an item on the calendar.
- A helicopter landing sponsored by the D.A.R.E. program is being planned at Selby Lane and Encinal Schools. Area residents will be notified.
- The City Manager reported that he met with the California Water Service General Manager to discuss options for providing water to residents in the event of an emergency. It was suggested that the Council invite the General Manager to a future meeting to discuss options with the Council.
- The Council received a packet from the Bay Area Air Quality Management District with information on adopting an ordinance to restrict fireplace emissions. The Council asked that the issue be referred to the General Plan Committee.
- Public Works Director Cliff Temps updated the Council on the Middlefield Road project. He also gave an update on repair work that was done on the Atherton Channel behind 346 Walsh Road. The Town does not have an easement, but did some minor work to stabilize the bank in light of the heavy storm forecast. The property owner is completing the repair.
- In response to Vice Mayor McKeithen's questions on obtaining discounts for office supplies and contracting for tree maintenance, the City Manager stated that staff is working on both items. Staff will report back on the amount the Town spends per year on car washing. The City Manager also reported that the Park and Recreation Commission had recognized Denise Kupperman for her donation of trees to the Park.
- City Attorney Marc Hynes asked the Council to approve the addition of two items to the Closed Session Agenda. The Closed Session was scheduled to the end of the regular meeting. These items were received after the final agenda was posted.

**MOTION – to add two items to the Closed Session agenda at the end of the meeting:**

1. Pending Litigation under Government Code Section 54956.9(a) Chaput and McTaggart vs. the Town of Atherton.
2. Pending Litigation under Government Code Section 54956.9(a) Teamsters Council 856 vs. the Town of Atherton.

M/S Conwell/McKeithen

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

## 7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

**Joan Sanders, representing the Friends of the Atherton Library, reported on current Library activities.**

## **CONSENT CALENDAR**

**Mayor Janz asked that Items 11 and 15 be removed from the Consent Agenda.**

**MOTION – to approve the Consent Agenda with the exception of Items 11 and 15, which are to be placed at the end of the Regular Agenda.**

**M/S McKeithen/Conwell**

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

**8. APPROVED MINUTES OF SPECIAL AND REGULAR COUNCIL MEETINGS OF FEBRUARY 19, 2003**

**9. APPROVED BILLS AND CLAIMS FOR FEBRUARY 2003 IN THE AMOUNT OF \$589,021**

**10. ACCEPTED MONTHLY FINANCIAL REPORT FOR FEBRUARY 2003**

**12. AWARDED CONTRACTS FOR 2003 STREET RECONSTRUCTION PROJECT AND STOCKBRIDGE AVENUE PATCH AND OVERLAY**

**Awarded the contracts for 2003 Street Reconstruction, Project 03-001, to Granite Rock Company DBA Pavex Construction Division for \$431,701.05, and for Stockbridge Avenue Patch and Overlay, Project 03-002, to G. Bortolotto & Company, Inc. for \$197,197.97.**

**13. APPROVED PLANS AND SPECIFICATIONS FOR HOLBROOK-PALMER PARK PARKING LOT PATCHING AND SEALING PROJECT, PROJECT 03-003, AND ATHERTON AVENUE RECONSTRUCTION, PROJECT 03-004**

**14. APPROVED AMENDMENT TO AGREEMENT WITH CAPORICCI AND LARSON FOR AUDIT SERVICES**

**Approved an amendment to the agreement for auditing services with Caporicci & Larson, extending the term of the contract for Fiscal Years 2002-03 and 2003-04.**

## **PUBLIC HEARINGS**

**16. PUBLIC HEARING – ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTIONS 17.36.195 AND 17.08.070 REGULATING RETAINING WALLS AND BUILDING HEIGHT**

Deputy Town Planner Lisa Costa Sanders presented the staff report for this item. This item was addressed by the General Plan Committee, as directed by the City Council, following an appeal of the Building Official to grant a permit for an eleven foot tall retaining wall with a three foot tall guard rail. The Planning Commission then reviewed the current ordinance and recommended that the City Council consider an amendment limiting retaining walls to a maximum height of six feet of solid wall construction with a maximum three-foot high safety fence on top.

Mayor Janz opened the Public Hearing at 8:09 p.m. There were no comments. The public hearing was closed.

Council Member McKeithen asked that the word “non-opaque” be omitted from Section 1. Discussion was held on whether decorative roof elements, such as weathervanes, should be subject to the height limit.

**MOTION** – to introduce an ordinance for adoption amending Municipal Code Section 17.36.195, adding a height requirement for retaining walls, and amending Municipal Code Section 17.08.070 adding a requirement that continuous decorative roof elements must be included in the maximum building height, based on the findings and for the reasons in the staff report, deleting the words “non-opaque and” in the last sentence of Section 1, and adding the word “Continuous” to the beginning of the last sentence in Section 2. Further reading is waived.

M/S Conwell/McKeithen

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

**17. PUBLIC HEARING – ESTABLISHMENT OF NO STOPPING ZONES ON EMILIE AVENUE, AT ST. JOSEPH’S SCHOOL**

**ADOPTION OF A RESOLUTION FINDING AND DECLARING THAT ORDINANCES AND RESOLUTIONS ADOPTED PURSUANT TO THE STATE OF CALIFORNIA VEHICLE CODE SHALL APPLY TO EMILIE AVENUE BETWEEN VALPARAISO AVENUE AND PARK LANE**

Council Member Marsala announced that he would recuse himself at this time because his property may be affected by a Council decision on this item. He left the Council dais.

Public Works Director Cliff Temps presented the staff report. The Transportation Committee, at their February 24 meeting, voted to recommend to the Council that no stopping zones be created on both sides of Emilie Avenue, between Valparaiso Avenue and Park Lane, and continuing on the northwest side of Emilie. They recommended that the area in front of the St. Joseph’s School office be exempted from the no stopping restriction. Mr. Temps explained that the status of the Emilie Avenue right-of-way is not clear. Staff recommended adopting the first resolution in order to enact enforceable parking restrictions. The school has indicated that they are willing to grant the Town a

quit claim deed easement, but their Board does not meet for some time. The resolution states that if the Town receives the easement, the resolution will become null and void.

Mayor Janz opened the public hearing at 8:19 p.m. There were no public comments. The public hearing was closed.

Discussion ensued. Vice Mayor McKeithen and Mayor Janz asked for certain changes to be made to the language in the proposed resolution.

**MOTION – to adopt Resolution No. 03-03 finding and declaring that ordinances and resolutions adopted pursuant to the State of California Vehicle Code shall apply to Emilie Avenue between Valparaiso Avenue and Park Lane, with the following changes: in Paragraph 2, include the words “to the Town of Atherton” after the word “Corporation”, add the words “for a roadway easement” after “...recordation of a quit claim deed”, and remove the words at the top of Page 2.**

M/S Janz/McKeithen      Ayes: 4   Noes: 0   Absent: 0   Abstain: 1(Marsala – recused)

#### **ADOPTION OF A RESOLUTION ESTABLISHING NO STOPPING ZONES ON EMILIE AVENUE**

This resolution would enact the parking restrictions and become effective as soon as the no stopping signs are installed. Vice Mayor McKeithen asked for clarification of the proposed no stopping zone areas. The Council discussed the effects of placing no parking zones as well as no stopping zones on Emilie Avenue.

Charles Marsala, 33 Emilie Avenue, speaking from the audience, commented on the proposed resolution.

Margarette Paponis, 96 MacBain Avenue, spoke from the audience.

**MOTION – Adopt Resolution No. 03-04, changing the title to include “No Parking”, implementing no parking on the southwest side of Emilie Avenue, from MacBain Avenue to Park Lane, between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday, and changing Park Avenue to MacBain Avenue in the fourth paragraph.**

M/S Carlson/McKeithen      Ayes: 4   Noes: 0   Absent: 0   Abstain: 1(Marsala – recused)

After the vote was taken, Council Member Marsala returned to his seat at the dais.

#### **REGULAR AGENDA**

**18. CONSIDER INTRODUCTION OF AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 12.06 REGULATING ENCROACHMENTS FOR ENTRANCE GATES WITHIN THE TOWN OF ATHERTON**

Deputy Town Planner Lisa Costa Sanders presented the staff report for this item. The General Plan Committee, at the direction of the City Council, reviewed the current encroachment ordinance and recommended amending it to allow for the construction of new entrance gates in Town. Upon adoption of the ordinance, the three existing entrance gates to the Lindenwood neighborhood would also be in compliance with the Municipal Code.

Mayor Janz indicated that the first sentence under Section 1 should be modified. He also stated that Code Sections 12.06.060 and 12.06.090 should be changed to reflect that the City Manager shall issue encroachment permits except for those permits issued under the proposed Code Section 12.06.100(H).

**MOTION – to introduce for adoption an ordinance amending Section 12.06 of the Atherton Municipal Code regulating encroachments within the public right-of-way within the Town of Atherton, with changes as follows: add “Encroachment permits may be issued for ...” to the beginning of the first sentence under Section 12.06.100(H) of the proposed ordinance, and modify Code Sections 12.06.060 and 12.06.090 to indicate that there is an exception to permits issued under Code Section 12.06.100(H); and waive further reading.**

M/S Janz/McKeithen

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

Council Member Carlson requested that staff provide copies of adopted resolutions and ordinances to the Council as part of the minutes. It was agreed that copies of adopted ordinances and resolutions, and other items involving Council action, will be provided to the Council with each agenda packet, but not as part of the minutes. This request was extended to the Planning Commission as well, to allow the members to view final action items.

**19. DISCUSSION AND POSSIBLE ACTION – CONSIDER WATER TOWER PROJECT**

Holbrook-Palmer Recreation Park Foundation President Vit Eckersdorf and Atherton Dames President Nancy Greenbach presented a report on the fundraising efforts by the groups to restore the interior of the Water Tower for historical purposes. City Manager Jim Robinson stated that this item has appeared before the Park and Recreation Commission and will come back to the Council when final plans are submitted.

**MOTION – to support the efforts of the Holbrook-Palmer Recreation Park Foundation and Atherton Dames to raise funds to restore the interior of the Water Tower.**

**20. DISCUSSION AND POSSIBLE ACTION ON THE ADOPTED CITY COUNCIL POLICY OF RESIDENT PARTICIPATION/ADVISORY STATUS TO CITY COUNCIL SUB-COMMITTEES**

City Manager Jim Robinson reported that in April, 2002, the City Council adopted a policy to allow for non-voting citizen members to be appointed to City Council sub-committees by the Council Members serving on those sub-committees. The current policy does not provide a process for selecting resident advisors if the Council Members serving on the sub-committee cannot concur on those to be appointed. The City Manager noted that the City Council Rules of Procedure should be amended to reflect the policy.

Council Member Conwell expressed concerns with allowing individual members of Council sub-committees to appoint resident advisors. He stated that he subscribes to the practice of leaving appointments to the Screening Committee.

John Ruggeiro, Stockbridge Avenue, spoke regarding the February 24<sup>th</sup> Transportation Committee meeting.

Virginia Ruggeiro, Stockbridge Avenue, and Jean Schaaf, Stockbridge Avenue, also spoke.

The Council agreed that the item on the agenda only covers what action the Council will take if agreement cannot be made at the sub-committee level. The individual appointments will be scheduled for the next Transportation Committee meeting.

**MOTION – to amend the policy of appointing resident advisors to City Council sub-committees as follows: the selection of citizen advisors shall be referred to the entire City Council if there is not a consensus among the Council Members on the sub-committee regarding an appointment.**

**21. APPROVAL OF REVISIONS TO BUSINESS LICENSING PROCEDURES**

Finance Director John Johns presented the staff report for this item. The Finance Department conducted a review of the business license ordinance and the procedures used to collect business license taxes. It was determined that 84 percent of the businesses subject to the ordinance fall within the contractor and subcontractor categories. In order to ensure that general contractors and their sub-contractors are adhering to the requirements of the business license ordinance, the Finance Department recommends changing the procedures to require general contractors to obtain business licenses for their sub-contractors.

**Discussion ensued regarding the methodology used to obtain revenues under the Business License ordinance.**

**City Attorney Marc Hynes stated that any change in the method of collecting the Business License tax would not be subject to Proposition 218.**

**MOTION – to adopt the revisions to the Town Business Licensing procedures as proposed by staff, to be returned to the City Council at the end of one year for a report and possible amendment.**

**AMENDED MOTION – to eliminate the \$3,750 maximum business license fee and continue to assess such business license fees based upon the expected volume of subcontractors employed by General Contractors (5 sub-contractors for every \$500,000 of permitted value of construction projects).**

**M/S Carlson/Janz**

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

**Jerry Carlson, Audit Committee, suggested continuing to gather information from other cities and possibly putting it to a vote at some time in the future.**

**22. ADOPTION OF A RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE TOWN OF ATHERTON**

**Finance Director John Johns presented the staff report for this item. Council Resolution No. 02-29, adopted in Fiscal Year 2002-03, included a provision to allow miscellaneous employees to purchase PERS service credit for time served in the United States armed forces. In order to implement this provision, an amendment to the contract between PERS and the Town is required. A resolution of intention to approve the contract amendment is required to be adopted by the City Council.**

**MOTION - approve Resolution No. 03-05, a resolution of intention to approve an amendment to the contract between the Board of Administration of the California Public Employees' Retirement System and the City Council of the Town of Atherton to provide Section 21024 (Military Service Credit as Public Service) for local miscellaneous employees.**

**M/S McKeithen/Carlson**

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

**23. INTRODUCTION OF AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE TOWN OF ATHERTON**



**11. APPROVAL OF AGREEMENT WITH BROWNING FERRIS INDUSTRIES (BFI) FOR STREET SWEEPING SERVICES**

**Public Works Director Cliff Temps presented this item. Mayor Janz asked that this item be removed from the Consent Agenda because of his concerns with street sweeping occurring on Saturday. It was noted that sweeping would not be done every Saturday. Vice Mayor McKeithen asked that sweeping on Saturday begin at 10:00 a.m. instead of 9:00 a.m. The Council asked for a notice to be put in the next Athertonian regarding the sweeping.**

**MOTION – to approve the agreement with BFI to provide street sweeping services, with the cost of sweeping to be treated as an Operating Cost pursuant to the Franchise Agreement with BFI, and with an amendment to the contract to reflect that sweeping on Saturdays be done between the hours of 10:00 a.m. and 4:00 p.m.**

**M/S Janz/Conwell**

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

**15. APPROVAL OF AGREEMENT WITH LIEBERT CASSIDY WHITMORE FOR LABOR RELATIONS SERVICES (CONTINUED FROM FEBRUARY 19, 2003 COUNCIL MEETING)**

**Mayor Janz asked that this item be removed from the Consent Agenda. He asked for clarification of the consortium agreement the Town has with Liebert Cassidy Whitmore. Assistant to the City Manager Linda Kelly explained that the consortium agreement allows the Town to make general calls for legal services related to employee relations and the consortium is covered under a separate agreement which comes up for renewal in July. Staff was asked to pursue having two attorneys from the firm named in the agreement.**

**This item was continued to the April meeting.**

**26. PUBLIC COMMENTS**

**There were no public comments.**

**27. ADJOURNMENT**

**The meeting adjourned to Closed Session at 11:10 p.m. to the Conference Room in the Town Administrative Offices at 91 Ashfield Road.**

**The City Council reconvened to Open Session at 11:50 p.m.**

**The following action was taken:**

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Significant exposure to litigation pursuant to Government Code Section 54956.9 (b)(1)(A): Two potential cases.**

**Directions were given to Legal Counsel.**

- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Significant exposure to litigation pursuant to Government Code Section 54956.9 (c) One potential case.**

**No action was taken.**

- C. LIABILITY CLAIM – pursuant to Government Code Section 54956.95  
Claimant: Richard LemMon  
Agency Claimed Against: Town of Atherton**

**The City Council unanimously voted to deny the claim.**

**The following items, received after the agenda was published, were added to the Closed Session agenda by a unanimous vote of the Council:**

- D. CONFERENCE WITH LEGAL COUNSEL – EXISING LITIGATION pursuant to Government Code Section 54956.9(a).  
Stephen Chaput v. Town of Atherton  
Patrick McTaggart v. Town of Atherton**

**Directions were given to the City Attorney.**

- E. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION pursuant to Government Code Section 54956.9(a).  
Teamsters Local Union No. 856 v. City of Atherton**

**The City Council, by unanimous vote, authorized the City Attorney to represent the Town in this matter.**

**5. ADJOURN**

**The meeting adjourned at 11:55 p.m.**

**Respectfully submitted,**

**Sharon Barker**  
**City Clerk**