



**Minutes
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT**

July 16, 2003

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Janz called the meeting to order at 7:07 p.m.

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

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

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

- 3. PRESENTATIONS**

A. Presentation by P.G.& E.

Alan Fisher, Project Manager, gave a presentation on the Rule 20 Utility Undergrounding process. Stephanie Isaacson, Public Affairs Representative, was also present.

- 4. COUNCIL REPORTS**

- Council Member Conwell reported that he attended the Criminal Justice Commission meeting today. The Commission addressed budget issues and established grant recipients for the upcoming year. He also attended the San Francisco Airport Roundtable meeting and reported that the number of complaints made regarding aircraft noise may have been reported incorrectly in the past because of telephone problems.**

- Mayor Janz reported that he will attend the Peninsula Division League of Cities meeting July 24 and the San Mateo County Council of Cities meeting July 25. He announced that he plans to write a letter to Caltrain regarding complaints that construction work on the tracks is being conducted on weekend nights.
- Council Member Carlson stated this month's Transportation Committee and Atherton Channel Drainage District Subcommittee meetings were canceled.
- Council Member Marsala attended the Library Joint Powers Authority meeting. The JPA is working on resolving administration issues between the County and the cities. He reported that the General Plan Committee met July 2 and reviewed ordinances from other cities related to construction site parking. He also announced that the Holbrook-Palmer Park Foundation and Atherton Dames are planning an 80th anniversary celebration for the Town on September 12 at Holbrook-Palmer Park.
- Vice Mayor McKeithen reported that the General Plan Committee looked at Los Altos Hills and Portola Valley construction ordinances. The Committee plans to conduct further review of ordinances regulating construction site parking and code enforcement. The next meeting will be September 10. The Vice Mayor also reported that she received a call from a resident regarding landscape screening for the retaining wall at 85 Orchard Hills. She asked that an item be agendaized for the September Council meeting for discussion of the landscape screening requirements at this address. Council Member Carlson asked the City Attorney to inform the Council of the rights of the Town with respect to non-written representation made to the Council that has not been complied with.

5. PUBLIC COMMENTS

Mayor Janz announced that in an effort to limit the length of Council meetings he would begin enforcement of the 3 minute speaker rule.

The following members of the audience spoke:

Mary Chen

Paul Baynton, representing the property owner at 85 Orchard Hills

John Sisson

6. STAFF REPORTS

- City Manager Jim Robinson reported that the City Council received a revised summary list of bills and claims for the month of June. Supplemental staff reports were also provided for the tennis courts bid results and the Elena Avenue Box Culvert bid results. He also asked that the Council add an urgency item to the agenda for adoption of a resolution implementing fees for funding the FY 2003-04 Countywide National Pollution Discharge Elimination System (NPDES) General Program. The

request was received on Monday, July 14, and the adopted resolution must be submitted to the County by August 5.

The City Manager also stated that Menlo Park Fire Protection District asked that the issue regarding fire sprinkler requirements be delayed. It will appear before the Council at the September meeting. He asked Mayor Janz and Council Member Marsala to contact him regarding the scheduled August 6 Waste Reduction Committee meeting.

MOTION – to add an urgency item to the agenda regarding adoption of a resolution imposing charges for funding the Fiscal Year 2003-04 Countywide NPDES General Program.

M/S Janz/McKeithen

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

- **City Attorney Marc Hynes reported out of the Closed Session held at 6:00 p.m. as follows:**

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION pursuant to subdivision (c) of Section 54956.9: Three potential cases.

Direction was given to the City Attorney.

**B. LIABILITY CLAIMS - pursuant to Government Code Section 54956.95
Claimant: Steve Snider
Agency claimed against: Town of Atherton**

Direction was given to the City Attorney.

**C. CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6
Agency Negotiator: James H. Robinson, City Manager
Employee Organization: Teamsters Local Union 856 Non-management Miscellaneous Employees**

No reportable action.

The City Attorney stated that he will present a report at the September meeting regarding the process for changing from a general law city to a charter city, and the possibility of increasing the real property transfer tax.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Crime Prevention Task Force member, Sharon Turner, presented a report on the current Task Force activities.

CONSENT CALENDAR

Council Member Conwell asked for clarification regarding the tennis fund expenditures on the monthly financial report. He also announced Park and Recreation Commission appointee, Etta Mae Bauer, and Arts Committee appointee, Marguerette Paponis, and expressed appreciation for their volunteerism.

Vice Mayor McKeithen asked that Item 15 be removed from the Consent Agenda.

MOTION – to approve the Consent Agenda with the exception of Item 15, and with the revised bills and claims list, and with a correction to the agreement in Item 11, changing the number of payments on Page 2, Section 2B of the agreement with the City of Palo Alto, to four instead of three.

M/S McKeithen/Marsala

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

- 8. APPROVED MINUTES OF SPECIAL COUNCIL MEETING OF JUNE 16, 2003 AND SPECIAL AND REGULAR COUNCIL MEETINGS OF JUNE 18, 2003**
- 9. APPROVED REVISED BILLS AND CLAIMS LIST FOR JUNE 2003 IN THE AMOUNT OF \$958,768**
- 10. ACCEPTED MONTHLY FINANCIAL REPORT FOR JUNE 2003**
- 11. APPROVED AMENDMENT TO AGREEMENT FOR INFORMATION TECHNOLOGY SERVICES BETWEEN THE TOWN OF ATHERTON AND THE CITY OF PALO ALTO FOR FISCAL YEAR 2003-04**

Approved Amendment No. 1 to the agreement between the Town of Atherton and the City of Palo Alto for Information Technology Services for the period of July 1, 2003 through June 30, 2004, with a correction to Page 2, Section 2B of the agreement, changing the number of payments to four instead of three.

- 12. APPROVED PLANS AND SPECIFICATIONS FOR PUBLIC WORKS CORPORATION YARD REMODEL, AUTHORIZED STAFF TO ACCEPT THE LOWEST RESPONSIBLE BID WITHIN THE BUDGET ESTIMATE, AND AUTHORIZED MAYOR TO EXECUTE CONTRACT**

Approved the plans and specifications for the Public Works Street Corporation Yard Remodel Project, Project No. 03-007, and authorized staff to award the contract to the

lowest responsible bidder if the bids received for the base project or the alternative are equal to or below the project budget, and authorized the Mayor to execute said contract.

13. ADOPTED ORDINANCE NO. 542 CONFORMING THE TOWN'S FEE SCHEDULE RELATED TO ANIMAL CONTROL TO THE COUNTY OF SAN MATEO'S RECOMMENDED FEE SCHEDULE

Adopted Ordinance No. 542 amending Section 6.04.240A of the Atherton Municipal Code pertaining to animal control fees and charges.

14. APPROVED APPOINTMENT OF DAMES REPRESENTATIVE TO PARK AND RECREATION COMMISSION AND APPOINTMENT OF MEMBER TO ARTS COMMITTEE

Accepted the recommendation of the City Council Screening Committee to appoint Etta Mae Bauer to the Park and Recreation Commission as the Dames representative for a two year term, and Marguerette Paponis to the Arts Committee for an indefinite term.

15. APPROVAL OF INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF ATHERTON AND KCL ASSOCIATES, INC. FOR BUILDING INSPECTION SERVICES FOR FISCAL YEAR 2003-04

Removed from Consent Agenda and placed at end of Regular Agenda.

16. APPROVED TOW COMPANY CONTRACT

Approved a contract with Ed's Tow & Cradle for addition to the Atherton Police Department Tow Rotation List.

17. APPROVED LETTERS IN RESPONSE TO CIVIL GRAND JURY REQUESTS

Approved letters prepared by the City Manager and Police Chief in response to San Mateo County 2002-03 Civil Grand Jury requests related to bicycle safety, handling of forensic evidence, and warrant enforcement.

PUBLIC HEARINGS

18. PUBLIC HEARING - ADOPTION OF A RESOLUTION ESTABLISHING A SPECIAL TAX FOR MUNICIPAL SERVICES FOR THE FISCAL YEAR 2003-2004

Finance Director John Johns presented the staff report for this item. Ordinance No. 520 requires that each fiscal year, during the four year Special Tax for Municipal Services, the City Council adopt a resolution setting the rate for the Special Tax. The amount of the tax is determined following adoption of the annual budget.

The Fiscal Year 2003-04 Budget was approved by Council on June 18 and includes estimated parcel tax revenues of \$1,770,000, an increase of \$200,000 over the 2002-03 Budget estimate. The FY 2003-04 Budget assumes that the maximum amount of the parcel tax will be assessed for each parcel. In his staff report, Finance Director Johns explained that the City Council has designated the additional parcel tax revenue to be utilized to increase the Town's financial reserves. The increase in reserves is necessary to plan for increasing pension and employee benefits costs, and to plan for the possible loss of State Vehicle License funds. An intermediate range financial plan for Fiscal Years 2004-05 to Fiscal Year 2006-07 was included in the staff report.

Mayor Janz opened the public hearing at 8:23 p.m. There were no comments. The public hearing was closed.

The Council expressed concerns that cities will continue to be faced with difficulties in balancing their budgets. The Council emphasized the fact that the Town will need to continue to be vigilant in adhering to the budget.

Staff was asked to work with the Finance Committee on development of a fiscal plan which would include recommendations for current fees and services. Staff will return to the Council with recommendations at mid year.

City Manager Jim Robinson brought several issues to the Council's attention regarding the assessment of the parcel tax on certain parcels in Town. The Finance Director stated that the Town will be collecting on those parcels classified as utility easements. In addition, the County Assessor has advised the Finance Director that there are dwelling units located at Menlo School subject to the parcel tax. Pat Pannell, Chief Financial Officer for Menlo School, spoke regarding the assessment of the dwelling units located at the School. It was determined that as there is no provision in the ordinance for exempting properties from the parcel tax, all parcels subject to the tax should be assessed.

MOTION – to adopt Resolution No. 03-14 establishing a Special Tax for Municipal Services for the Fiscal Year 2003-04 as set forth in Ordinance No. 520.

M/S McKeithen/Carlson

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

**19. PUBLIC HEARING - INTRODUCTION OF AN ORDINANCE AMENDING
ATHERTON MUNICIPAL CODE SECTION 17 REGULATING ACCESSORY
STRUCTURES - SECOND DWELLING UNITS**

Deputy Town Planner Lisa Costa Sanders presented the staff report for this item. Under new State law, cities must consider all applications for second dwelling units ministerially, without the requirement of discretionary review and a hearing. The intent of the law is to streamline the process for approving second units. Cities may no

longer attach conditions to the approval. Atherton Municipal Code currently requires a Conditional Use Permit for accessory structures for human habitation. The General Plan Committee, at their June 4, 2003 meeting, reviewed the proposed changes to the requirements for second dwelling units. The Planning Commission reviewed the proposed ordinance at their June 25, 2003 meeting and recommended the City Council adopt the ordinance amending the Code to comply with the new State law.

Mayor Janz opened the public hearing at 9:07 p.m. There were no comments.
The public hearing was closed.

MOTION – to introduce an ordinance for adoption amending Title 17 of the Atherton Municipal Code regulating second dwelling units within the Town of Atherton, correcting Section 2, (refer to Section 17.24.030), remove “for human habitation” from Section 4, and Section 5; and waive further reading.

M/S Janz/McKeithen

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

Mayor Janz called a recess at 9:15 p.m.
The Council reconvened at 9:22 p.m.

REGULAR AGENDA

20. REPORT FROM BKF ENGINEERS, H.T. HARVEY & ASSOCIATES, AND TOWN ARBORIST ON UPPER ATHERTON CHANNEL REPAIR PROJECT

Public Works Director Duncan Jones introduced Max Busnardo, a restoration ecologist with H.T. Harvey and Associates, who gave a presentation on the design study for stability improvements to the Upper Atherton Channel.

BKF Engineers and H.T. Harvey & Associates presented the recommended project and the re-vegetation concept to the Atherton Channel Drainage Subcommittee on April 28, 2003. Revisions to the project program were made when an endangered species (red-legged frog) was found at the project site. The consultants provided the revisions to the Subcommittee on June 2, 2003. The staff report to the Council also included a report from Town Arborist Kathy Hughes Anderson on possible impacts the proposed stability improvements may have on trees located along the Channel.

Mr. Busnardo outlined the steps necessary prior to making improvements to the upper channel. Certain environmental approvals are required including permits from the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the Regional Water Quality Control Board, and the California Department of Fish and Game.

Item No. 22 was taken out of order.

22. CONSIDERATION OF APPROVAL OF AWARD OF CONTRACT FOR TENNIS COURTS RESTORATION PROJECT

Public Works Director Duncan Jones presented the staff report for this item. Approval of the plans and specifications for this project came before the City Council at the June 18, 2003 meeting. At that time, the Council voted to appropriate \$290,000 in the Capital Improvement Program Budget for the Tennis Court Restoration Project with the understanding that the final decision on the specific improvements would be made by the Council when the bids were received. Council further voted to direct staff to prepare the specifications to allow for modification of the scope of work if the Council so desired.

A supplemental staff report reflecting bid results was provided to the Council. Two bids were received on July 14, 2003.

The Mayor asked for public comments. The following members of the audience spoke:

David Fowler, Menlo Park

Craig Nimitz, Atherton

Bruce Evans, Atherton

Rod Boghosian, Atherton, (representing a recently formed committee of tennis players)

Kay O'Neil, Menlo Park

John Sisson, Atherton

Rachel Croft, Atherton

Cat Westover, Park and Recreation Commission, stated that the consensus of the Park and Recreation Commission at their last meeting was to review the project and reconsider the funding if the bids came in over \$180,000.

Council Member Carlson expressed his concerns that the Tennis Courts Improvement Project was not at the top of the list of priority projects the Council had established earlier in the year. He suggested that the Council send the project back to the Park and Recreation Commission to work on development of a fundraising plan.

Council Member Conwell expressed concerns with the minimal number of people that the Tennis Courts Improvements would serve. Mayor Janz and Council Member Conwell both agreed that the project should be returned to the Park and Recreation Commission for consideration of the bid results, with recommendations for the project and funding to be brought back to the Council.

Vice Mayor McKeithen expressed her concerns with asking Town residents to subsidize the improvements to the courts when the Town is looking for additional revenues for operations. She suggested that the tennis pro's contract should be reviewed to determine if the agreement is beneficial to the Town. She was opposed to creating any long-term debt by implementing a sinking fund for the project.

Council Member Marsala stated that the Town should do something now to resolve the courts' safety issues. His concern was that cities need recreation and that the Town should not wait on this project. Council Member Marsala supported Park and Recreation Commission's unanimous motions that \$180,000 of the \$550,000 collected from the sales of tennis keys be spent to restore the tennis courts with additional funds to be raised by the Tennis Committee.

MOTION – to return the capital project for the Tennis Courts Restoration to the Park and Recreation Commission for reevaluation of its scope, and direct the Commission to return to the Council with suggestions for developing a private funding plan for the project, and to review membership and fee issues.

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

21. DISCUSSION AND POSSIBLE ACTION – INTRODUCTION OF AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 15.32 REGARDING ENVIRONMENTAL REVIEW

Deputy Town Planner Lisa Costa Sanders presented the staff report for this item. The California Environmental Quality Act (CEQA) allows jurisdictions to establish a threshold of significance in determining the significance of environmental effects. Staff has recommended that the Council adopt an ordinance establishing a threshold of significance in order to clarify the environmental review process for the removal of heritage trees. The Planning Commission, at their June 25, 2003 meeting, reviewed the proposed ordinance and recommended it to the City Council for adoption.

Town Arborist Kathy Hughes Anderson was present and confirmed that there are mitigation requirements for the removal of dead or dangerous trees in the Municipal Code. The Code states that dead or dangerous trees are handled ministerially. The proposed ordinance includes language stating that dead or dangerous heritage trees may be considered categorically exempt from CEQA.

Council Member Marsala left the podium at 11:28 p.m.

MOTION – to introduce an ordinance for adoption amending Atherton Municipal Code Section 15.32 regarding the environmental review process for removal of heritage trees, and waive further reading.

M/S Conwell/Janz Ayes: 4 Noes: 0 Absent: 1 (Marsala) Abstain: 0

Council Member Marsala returned to the podium at 11:36 p.m.

**23. CONSIDERATION OF AWARD OF CONTRACT FOR ELENA AVENUE –
ATHERTON CHANNEL BOX CULVERT REPLACEMENT, PROJECT NO. 03-006**

Public Works Director Duncan Jones presented the staff report for this item. A supplemental staff report was presented to the Council stating bid results for the project. The adopted Capital Improvement Program includes funds for designing and constructing enlarged replacements for existing box culverts at the Elena Avenue and Barry Lane street crossings of the Atherton Channel. The Town has obtained permits from the Army Corps of Engineers and the U.S. Fish and Wildlife Service for this project. The Barry Lane box culvert is scheduled to be replaced next year.

This project was previously bid on June 28, 2003, but due to a technical error, the project had to be rebid on July 15, 2003.

MOTION – to award the contract for the Elena Avenue Atherton Channel Box Culvert Replacement Project, Project No. 03-005, to Bianchi Construction in the amount of \$185,602.50, authorize the Mayor to execute the contract, and reject all bids received on June 28, 2003.

M/S Janz/McKeithen

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

24. ADOPTION OF AN URGENCY ORDINANCE AMENDING ORDINANCE NO. 538 - PURCHASING PROCEDURES

Finance Director John Johns presented the staff report for this item. The City Council, at their November 20, 2002 regular meeting, adopted an ordinance amending Atherton Municipal Code Section 3.16 related to purchasing procedures. The ordinance increased the limit for purchases requiring the issuance of a purchase order from \$250 to \$750, and set a sunset provision of six months for the ordinance. Staff was directed to report back to the Council on the effectiveness of the revised purchasing procedures after the six month period.

Staff had recommended amending the purchasing ordinance because purchases less than \$750 constitute a small fraction of the total dollar value of expenditures and increasing the threshold would better enable the Finance Department to comply with Section 3.16 within its existing staffing constraints.

The Finance Director reported that the Finance Department, in January of 2003, implemented an on-line purchasing and requisitioning system. Although the Finance Department has performed an analysis of vendor payments and purchases for a six month period, the Finance Director recommended that a comparison be made for an entire fiscal year to determine if the on-line purchasing system has resulted in compliance with the purchasing ordinance. Discussion ensued.

Council Member Marsala left the meeting at 12:00 a.m.

MOTION – to adopt Urgency Ordinance No. 543 amending Ordinance No. 538 to continue in effect existing procedures for informal competitive bid and small purchases under Chapter 3.16 of the Atherton Municipal Code, waive further reading, and direct staff to report back on the effectiveness of the Finance Department’s implementation of its on-line purchasing and requisitioning system in August 2004.

M/S McKeithen/Carlson

Ayes: 4 Noes: Absent: 1(Marsala) Abstain: 0

25. URGENCY ITEM – ADOPTION OF A RESOLUTION RECOMMENDING THAT THE SAN MATEO COUNTY FLOOD CONTROL DISTRICT IMPOSE CHARGES FOR FUNDING THE 2003-04 COUNTYWIDE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PROGRAM

This item was added to the agenda as an urgency item because it was received after the agenda was published. The City Manager stated that each year the Town is required to adopt a resolution requesting the County to collect fees for funding the Countywide National Pollution Discharge Elimination System General Program. The fees are based on individual parcels and will increase to \$6.0074 for a single family parcel for Fiscal Year 2003/04.

Motion – to approve Resolution No. 03-15, requesting that the San Mateo County Flood Control District impose basic and additional charges for funding the expanded scope of work for the 2003/04 Countywide National Pollution Discharge Elimination System (NPDES) General Program.

M/S Janz/McKeithen

Ayes: 4 Noes: Absent: 1(Marsala) Abstain: 0

26. (FORMERLY ITEM 15 WHICH WAS REMOVED FROM THE CONSENT AGENDA) - APPROVAL OF INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF ATHERTON AND KCL ASSOCIATES, INC. FOR BUILDING INSPECTION SERVICES FOR FISCAL YEAR 2003-04

Vice Mayor McKeithen asked that this item be removed from the Consent Agenda.

The Town Building Department has been utilizing the services of KCL Associates, Inc. for building inspection on a month to month basis, payable by invoice. In order to formalize the relationship with the contractor and to limit the Town’s liability exposure, the City Attorney in consultation with the Town’s labor relations counsel, has drafted an independent contractor agreement.

Senior Building Inspector Mike Wasmann was present to answer Council’s questions regarding the Town’s current relationship with KCL Associates, Inc. City Attorney Marc Hynes confirmed that Ms. T.C. Beier, President of the company, is an independent contractor but is given immunity coverage by the Town’s errors and omissions insurance

under this agreement. No other benefits are provided. Vice Mayor McKeithen proposed changing the effective date of the agreement to July 1, 2003, removing the word “the” from “the services” under Section 1, and capitalizing “Town” in Section 6.

MOTION - to approve the Independent Contractor Agreement between the Town of Atherton and KCL Associates, Inc. for Building Inspection Services for Fiscal Year 2003/04 with the following modifications: Under Section 3, change the effective date of the agreement to July 1, 2003, and correct typos as noted.

M/S Janz/Conwell

Ayes: 4 Noes: Absent: 1(Marsala) Abstain: 0

27. DISCUSSION AND POSSIBLE ACTION – CANCELLATION OF REGULAR AUGUST CITY COUNCIL MEETING

City Manager Jim Robinson stated in the staff report that the City Council has traditionally cancelled the August regular City Council meeting. The next regularly scheduled meeting would be September 17, 2003. Items were placed on the July 16 agenda in anticipation of the cancellation of the August meeting.

MOTION – to cancel the August 20, 2003 regular City Council meeting.

M/S Carlson/Janz

Ayes: 4 Noes: 0 Absent: 1(Marsala) Abstain: 0

28. PUBLIC COMMENTS

City Manager Jim Robinson stated that since the Council would not be meeting for sixty days (until September 17), staff will send out a preliminary agenda for the September meeting.

Vice Mayor McKeithen requested that the City Manager look into complaints she has received regarding the Building Department permit process.

29. ADJOURNMENT

The meeting adjourned at 12:20 a.m.

Respectfully submitted,

Sharon Barker, City Clerk