



MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
SEPTEMBER 17, 2008

7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Janz called the meeting to order at 7:08 p.m.

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

PRESENT **Jim Dobbie**
 Jerry Carlson
 Charles E. Marsala
 James R. Janz
 Kathy McKeithen

City Manager Jerry Gruber and City Attorney Marc Hynes were also present.

3. PRESENTATIONS

A. Swearing In/Oath of Office for Chief of Police Glenn Nielsen

Acting City Clerk Kathi Hamilton administered the Oath of Office for Police Chief Glenn Nielsen. Former Police Chief Richard Moore had the honor of pinning Police Chief Nielsen's badge.

B. Swearing In/Oath of Office for Police Lieutenant Michael Guerra Police Sergeant Anthony Kockler, and Communications Supervisor John Mattes

Chief of Police Glenn Nielsen introduced Police Lieutenant Michael Guerra, Police Sergeant Anthony Kockler, and Communications Supervisor John Mattes. Acting City Clerk Kathi Hamilton administered the Oath of Office and family members "pinned" the newly promoted officers.

C. Kevin McCarthy – SBWMA – RFP Operations, Facilities, and Collection

Present were Kevin McCarthy, Executive Director, South Bayside Waste Management Authority (SBWMA); Cliff Feldman, Recycling Programs Manager, SBWMA; Hilary Ganz, Facilities Operations Contract Manager, SBWMA; Brian Ponty, Finance Director, Redwood City; Ric Hutchinson, R3 Consulting; Richard Tagore-Erwin, R3 Consulting. Mr. Hutchinson, a member of the Evaluation Team, explained the Request for Proposal process which began in October 2006. Significant changes would take place such as automated weekly curbside service of solid waste, single-stream recycling, and separate organics, as well as a different fee structure. He explained the RFP process as well as the Evaluation and Selection processes and responded to Council's questions. The Selection Committee was recommending Norcal. Each member agency would need to make a decision whether to contract with Norcal. If one or more agencies did not choose Norcal, the cost would change. Each agency would have significant input to negotiating the final scope of services and contract with Norcal. Contracts needed to be completed by the middle of 2009 in order for vendors to order equipment. The contract would go into effect on January 1, 2011.

Mayor Janz stated that the applicant for Item No. 29 regarding Parker Avenue requested a continuance until January 2009. Anyone who was present and wanted to speak to the item would be allowed to address the Council. Mayor Janz announced that a Study Session regarding High-Speed Rail was scheduled for September 24, 2008, at 6 p.m., at the Pavilion in Holbrook-Palmer Park.

4. PUBLIC COMMENTS

William Grindley, Atherton, said he attended the City of Menlo Park Study Session regarding High-Speed Rail, which he found it to be deliberative and stimulating. He took exception to comments made by Quentin Kopp.

Elizabeth Lewis Atherton, spoke regarding the Historic Artifact Ordinance and noted she was a stakeholder who had been interviewed. She queried whether workshops had been scheduled. Additionally, she asked whether Council would be informing the public regarding potential refunds/overcharges of the business license tax.

Carol Flaherty, Atherton, spoke regarding a building permit for a property on Adam Way that totaled approximately \$93,000. She compared Building Department costs/fees with surrounding jurisdictions and found Atherton's fees to be much higher. The California Constitution stipulated that a regulatory fee must not exceed the sum reasonably necessary to cover the cost of the purpose sought in order to be considered as a fee rather than a guise for a tax. She cited California Government Code 66014 and California Attorney General's Opinion 92-506. She also noted a nexus study was necessary to substantiate costs. Any fees charged in excess must be returned with interest.

John Rugeiro, Atherton, noted a different comment included on the agenda under Public Comments.

John Postour requested that Item No. 28A be taken out of order.

Mayor Janz indicated Item No. 28A would be taken up in order as the items before it were short.

5. REPORT OUT OF CLOSED SESSION

City Attorney Marc Hynes reported out of a Special Closed Session held on September 16, 2008, as follows:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)

Title: City Attorney

Title: City Manager

There was no reportable action taken.

City Attorney Marc Hynes reported out of Closed Session held on September 17, 2008, as follows:

A. CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6

Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.

Employee Organization: Miscellaneous - Teamsters Local Union 856

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.
Employee Organization: Atherton Police Officers Association (APOA)**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.
Employee Organization: Management Employees**

There was no reportable action taken.

**B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Anticipated Litigation, Initiation of Litigation pursuant to Subsection (c) of Government Code Section 54956.9**

One (1) potential case

There was no reportable action taken.

C. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9

Town of Atherton vs. P.G.&E CIV 471234 Superior Court of California, County of San Mateo

Town of Atherton vs. California High-Speed Rail Authority Superior Court of California, County of Sacramento

There was no reportable action taken on either case.

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

Three (3) potential cases

There was no reportable action taken.

City Attorney Marc Hynes tendered his resignation in accordance with the agreement between the Town and Marc G. Hynes of Atkinson, Farasyn, LLP, dated August 1, 2000. He gave written 30-day notice that his last day with the Town would be Friday, October 17, 2008.

6. CITY MANAGER’S REPORT

City Manager Jerry Gruber announced a Joint meeting scheduled for September 23, 2008, at 6:00 p.m., in the Council Chambers, between the City Council, the General Plan Committee, and the Planning Commission regarding the Housing Element Update. Additionally, a Study Session was scheduled for September 24, 2008, at 6 p.m., at the Pavilion in Holbrook-Palmer Park, regarding High-Speed Rail. He introduced the new Assistant City Manager Eileen Wilkerson and Louise Ho, new Finance Director, who would start with the Town on October 7.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT (

San Mateo County Mosquito and Vector Control District - Dr. Sam Lerner

Dr. Lerner, Atherton’s representative to the San Mateo County Mosquito and Vector Control District said technicians continually worked to control mosquitoes in the Atherton Channel and salt marshes. The District was an independent special district funded by property taxes. Vector was any animal that could transmit diseases. He reported on services provided by the District and distributed a pamphlet on West Nile Virus.

CONSENT CALENDAR (Items 8-27)

Mayor Janz removed Item Nos. 15 and 26 for discussion. Council Member Marsala removed Item Nos. 11, 16, and 17. Council Member McKeithen removed Item No. 10.

MOTION – to approve the Consent Calendar as presented with the exception of Item Nos. 10, 11, 15, 16, 17, and 26, which were placed on the Regular Agenda for discussion

M/S McKeithen/Marsala

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

8. **APPROVED MINUTES OF THE SPECIAL JOINT CLOSED SESSION MEETING OF THE CITY COUNCIL AND ATHERTON RAIL COMMITTEE OF AUGUST 5, 2008, AND THE SPECIAL CLOSED SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF AUGUST 20, 2008**
9. **APPROVED BILLS AND CLAIMS FOR AUGUST IN THE AMOUNT OF \$1,193,117**
10. ~~**ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR AUGUST 2008**~~
(Removed and placed on the Regular Agenda for discussion.)
11. ~~**ADOPTION OF A RESOLUTION RATIFYING COLLECTION AND ALLOCATION OF BUILDING INSPECTION FEES**~~ *(Removed and placed on the Regular Agenda for discussion.)*
12. **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE HOLBROOK-PALMER PARK FOUNTAIN LANDSCAPE PROJECT, PROJECT NO. 08-006**

Approved the plans and specifications and authorized advertisement for bids for the Holbrook-Palmer Park Fountain Landscape Project, Project No. 08-006.
13. **APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

Approved revised Council Committee assignments made by Mayor Janz.
14. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH KIKUCHI & ASSOCIATES FOR LANDSCAPE DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK IRRIGATION MASTER PLAN PROJECT**

Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape design services for the Holbrook-Palmer Park Irrigation Master Plan Project in an amount not to exceed \$20,200, plus a 10% contingency, for a total authorization of \$22,220.
15. ~~**AUTHORIZATION TO SURVEY TOWN RESIDENTS ABOUT SECOND DWELLING UNIT, GUEST HOUSES AND INTERNAL LIVING UNITS**~~ *(Removed and placed on the Regular Agenda for discussion.)*

- ~~16. ADOPTION OF A RESOLUTION APPROVING A NEW POLICY POLICY AGAINST WORKPLACE VIOLENCE~~ *(Removed and placed on the Regular Agenda for discussion.)*

Adopt resolutions amending the City Council Rules of Procedure and the Code of Conduct and Procedures to include provisions regarding statements made regarding City Council policy.

- ~~17. ADOPTION OF RESOLUTIONS REVISING TOWN OF ATHERTON CITY COUNCIL RULES OF PROCEDURE AND TOWN OF ATHERTON CODE OF CONDUCT AND PROCEDURES~~ *(Removed and placed on the Regular Agenda for discussion.)*

18. APPROVAL OF THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, THE CITY OF EAST PALO ALTO, THE TOWN OF ATHERTON, THE COUNTY OF SAN MATEO AND THE COUNTY OF SANTA CLARA TO PROVIDE FOR A CABLE TELEVISION AND VIDEO FRANCHISING ADMINISTRATION AND ENFORCEMENT PROCESS IN LIGHT OF THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT

Approved the Amended and Restated Joint Exercise of Powers Agreement (Amended JPA) by and between the City of Palo Alto, the City of Menlo Park, the City of East Palo Alto, the Town of Atherton, the County of San Mateo and the County of Santa Clara to provide for a cable television and video franchising administration and enforcement process relating to state franchise holders under the California Digital Infrastructure and Competition Act (DIVCA). The amended JPA will serve as the substitute for the Joint Exercise of Powers Agreement, dated July 26, 1983, and the Joint Operating Agreement, dated October 13, 1983.

19. RESPONSE TO GRAND JURY RE GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENT 45 (GASB) 45 (FINANCE)

Approved the letter in response to the Grand Jury.

20. SET A DATE FOR A PUBLIC HEARING FOR AN APPEAL OF THE PLANNING COMMISSION'S DECISION REGARDING 67 MARYMONT AVENUE

Set the date for the public hearing for the City Council meeting of October 15, 2008.

21. ADOPTION OF TWO RESOLUTIONS REGARDING AB2544 ANNUITANT MEDICAL INSURANCE – MISCELLANEOUS AND MANAGEMENT GROUPS

Adopted Resolution No. 08-31, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES MEDICAL AND HOSPITAL CARE ACT ONLY WITH RESPECT TO MEMBERS OF A SPECIFIC EMPLOYEE ORGANIZATION; AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER'S

CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS; AND RESCINDING RESOLUTION 08-05 AND RESOLUTION 92-21.” Adopted Resolution No. 08-32, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES MEDICAL AND HOSPITAL CARE ACT ONLY WITH RESPECT TO MEMBERS OF A SPECIFIC EMPLOYEE ORGANIZATION; AND FIXING THE EMPLOYER’S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER’S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS; AND RESCINDING RESOLUTION 08-07.

- 22. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24**

Approved the recommendations of the Screening Committee on a process to fill those terms that have expired or have been extended and/or recruit for new members on Committees/Commissions.

- 23. ADOPT A RESOLUTION APPROVING A NO STOPPING ZONE ON ENCINAL AVENUE ALONG THE FRONTAGE OF ENCINAL SCHOOL BETWEEN MIDDLEFIELD ROAD AND THE ENCINAL SCHOOL DRIVEWAY**

Adopted Resolution No. 08-33, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON GOVERNING TRAFFIC AND PARKING ON ALONG THE FRONTAGE OF ENCINAL SCHOOL BETWEEN MIDDLEFIELD ROAD AND THE ENCINAL SCHOOL DRIVEWAY PURSUANT TO ATHERTON MUNICIPAL CODE, SECTION 10.04.010.”

- 24. UPDATE ON CITY MANAGER’S GOALS AND OBJECTIVES AS IDENTIFIED IN THE 2008/09 BUDGET**

Reviewed and accepted the update of City Manager’s goals and objectives as identified in the 2008/09 Budget.

- 25. RESOLUTION ADOPTING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 99 DEBELL DRIVE FROM A DETERMINATION BY THE PUBLIC WORKS DIRECTOR (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)**

Adopted Resolution No. 08-34, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON DENYING APPEAL OF PUBLIC WORKS DIRECTOR’S ISSUANCE OF ENCROACHMENT PERMIT FOR 99 DEBELL DRIVE, ATHERTON.”

- ~~**26. APPROVE AMENDING THE AGREEMENT WITH MENLO ATHERTON LITTLE LEAGUE TO KEEP THE FIELD BACKSTOPS IN PLACE YEAR-ROUND**~~
(Removed and placed on the Regular Agenda for discussion.)

- 27. AWARD OF A SOLE SOURCE CONTRACT TO NOR-CAL COATINGS FOR THE MISCELLANEOUS TOWNHOUSE REPAIRS PROJECT, PROJECT NO. 08-018**

Awarded the sole source contract for the Miscellaneous Townhouse Repairs Project, Project No. 08-018, to Nor-Cal Coatings for \$48,940, with a 10% construction contingency of \$4,894, for a total authorization of \$53,834; and to authorize the City Manager to sign the contract on behalf of the Town.

PUBLIC HEARINGS (Item 28A&B)

28A. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17.38 REGARDING SPECIAL EVENTS

City Attorney Marc Hynes said the Chapter 17.38, as amended, remained essentially the same except for the removal of Parades, Marches and Assemblages which were removed and placed in a new chapter. Additionally, the Non-School Event Guidelines were incorporated into Chapter 17.38.045.

Mayor Janz opened the public hearing on both Item No. 28A and 28B.

Sandra Dubinsky, Sacred Heart Schools, clarified that neighbors walking on the track or parking in the parking lot when holding events in their homes did not need a permit. Additionally, the school was not limited to the number of events held in a year.

John Postour, Menlo Park, Board Member of Menlo-Atherton Pop Warner, encouraged Council to vote against the ordinance because it remained unfair and unjust. Sporting events such as Pop Warner should be removed from the ordinance. He suggested the ordinance be redrafted since it was unworkable with youth sports.

Nick Becker, Pop Warner Football Player, said if Pop Warner was unable to use the field at Menlo-Atherton High School, he would have to go to Redwood City or Palo Alto.

Carol Flaherty, Atherton, complimented the football players on how well behaved they were.

Mel Britton, Atherton, said no one was anti kids. Initially there were concerns about the times and the length of play, amplified sound, etc. Presently, he was happy with the results, there were no complaints, and no one went to the Planning Commission to discuss the issue.

Mr. Rodriguez, Pop Warner Football, urged Council to reconsider and redraft the ordinance as it was restrictive to Pop Warner Football. Sports participation included exercise and interactions for kids, as well as learning how to solve problems. Youth athletics needed to be encouraged.

P.J. Lopez, Pop Warner Football Player, said he loved to play football, and he really liked the field at Menlo-Atherton High School.

Adam Greenlow, Pop Warner Football player, loved to play football. If he didn't play football, he would not get any exercise and would just sit around.

Marcus Grecianberg, Pop Warner Football Player, said if he did not play football, he would not have anything else to do. He was better able to concentrate on his homework after playing football.

Greg Simonian, Menlo Park, said his son played Pop Warner Football. He asked Council to consider what jurisdiction that Town had to enforce the ordinance on school grounds. He was not sure the Town had standing to enforce the ordinance. He thought Proposition G preempted the ordinance with regard to community use of Menlo-Atherton football fields. He believed applying the ordinance to organized sports was infringing on First Amendment rights. He suggested that Council needed to study the issues because the ordinance, as written, was unconstitutional and vague.

Ruben Avilar, East Palo Alto, said his son had played Pop Warner Football for six years. The ordinance would impact East Palo Alto and Menlo Park kids from participating in an organized program such as Pop Warner. He encouraged Council to rethink the ordinance.

Greg Baty, Atherton, believed the voice of the community had been heard but not listened to. The ordinance was too restrictive. There was a trickle down effect with soccer teams and Lacrosse teams because Pop Warner was playing on both Saturdays and Sundays. He reiterated treating sports as special events did not make sense. He urged Council to take youth sports out of the Special Events ordinance.

Elizabeth Lewis, Atherton, was surrounded by schools and loved to hear the kids playing tennis, softball, soccer, football, etc. She said to remember why the "founding fathers" settled here: the responsibility to educate our children and to live with dignity.

Mayor Janz closed the public hearings.

Council Member Dobbie said nobody on the Council was suggesting not playing on the fields at Menlo-Atherton High School. For the past two years, generally speaking, everything had worked well. He read an e-mail into the record that was addressed to the residents. He reiterated that the Council was totally in support of youth sports. He recommended sending the item back to the Planning Commission with the comments received that evening to perhaps redraw or change the ordinance.

Vice Mayor Carlson agreed.

Council Member Marsala said there were two points to the ordinance, indoor activities and outdoor activities. Regarding indoor activities, he suggested all the schools be allowed the same guidelines as Menlo-Atherton's Performing Arts Center, i.e., no permit was required for events under 200 people. He suggested if the item was heard at the Planning Commission that it be heard early on the agenda. He suggested allowing more flexibility to the hours on Saturdays in order to have Sundays free.

Council Member McKeithen agreed the item needed to go back to the Planning Commission and possibly the General Plan Committee and encouraged everyone to attend.

Mayor Janz clarified the intent that evening was to not make any changes. However, people clearly wanted a change and he agreed to send the item back to the Planning Commission. He encouraged everyone to attend.

MOTION – to refer Chapter 17.38 to the Planning Commission for further study and input from the affected groups

M/S Marsala/McKeithen

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

28B. INTRODUCTION OF AN ORDINANCE ADDING A NEW CHAPTER 9.06 REGARDING PARADE PERMITS;

By consensus of the Council, Item No. 28B was continued until Item No. 28A was returned to Council.

REGULAR AGENDA (Items 29-31)

29. REQUEST TO INITIATE REZONING OF PARKER AVENUE FROM R1-A TO R1-B ZONING DISTRICT (*Continued from the City Council meeting of August 20, 2008.*)

After a brief discussion and by consensus of the Council, the item was continued to January 2009.

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR AUGUST 2008 (*Removed from the Consent Calendar and placed on the Regular Agenda for discussion.*)

Council Member McKeithen said the Finance Committee asked for a comparison analysis from year to year with regard to expenditures and revenues, which was omitted from the staff report. She asked that it be reinstated. She queried the expenditure of 27% for two months in the City Council budget.

Interim Finance Director Bill Yeomans said it included annual dues and membership fees at the beginning of the fiscal year.

Council Member McKeithen said in addition to comparisons, when expenditure were out of whack, she asked that an explanation be given.

MOTION – to accept the Monthly Financial Report for August 2008

M/S McKeithen/Dobbie

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

11. ADOPTION OF A RESOLUTION RATIFYING COLLECTION AND ALLOCATION OF BUILDING INSPECTION FEES (*Removed from the Consent Calendar and placed on the Regular Agenda for discussion.*)

Council Member Marsala said in May 2000, building permit fees were increased from \$110 a square foot to \$250 a square foot, \$146,000 a year was set aside for administrative costs, and savings of \$600,000 a year were set aside for future building inspections. Additionally, funds were set aside to fund a future building for the Building Department. Council Member Marsala continued with a presentation analyzing the surplus throughout the years from 2001. He estimated approximately \$2.3 million should have been set aside as approved with Resolution No. 00-13. He wanted clarity to set aside the money in order to replace the Building Department trailers.

A discussion ensued regarding the various analyses that were used. Additionally, there was some confusion as to what Council was being asked to do that evening. City Attorney Marc Hynes clarified that Council was being asked to ratify the original allocation of \$200,000 per year to be set aside for a future facility.

Council Member McKeithen concurred. One action was to ratify what had taken place. The other was whether Council wanted to start looking at fees and the reference of the fees to the actual effect of the use of the fees which would require further research.

MOTION – to adopt the Resolution to ratify what took place in 2000; request a detailed analysis that covers all the years from 2001 to present day to determine the accuracy of allocations

M/S Dobbie/J. Carlson

Carol Flaherty, Atherton, said Council needed to look at Marin County in 2001. A Grand Jury investigation of the Building Department revealed the collection of fees in excess of costs which violated the Attorney General’s Opinion 92506. The fees had to be refunded. A reasonable fund for a “rainy day” was okay based on legitimate cost; however, those funds could not be held for a building, which was a capital project. She encouraged Council to table the item until a nexus study was performed.

Council Member McKeithen said a real study was needed to know what the actual costs were.

Council Member Dobbie withdrew the motion.

Mayor Janz believed the intent in 2000 was to set aside the funds and he did not have a problem with ratifying the resolution. He was concerned there might be a larger surplus. He wanted to know what was collected over the expenses.

MOTION – to direct the City Manager to work with the new Finance Director to perform a full cost allocation analysis of the Building Department fees from 2001 to the present; to work in conjunction with the City Attorney to determine the legality in terms of the cost allocations; and return to Council with findings and recommendations

M/S McKeithen/J.Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

- 16. ADOPTION OF A RESOLUTION APPROVING A NEW POLICY – POLICY AGAINST WORKPLACE VIOLENCE *(Removed from the Consent Calendar and placed on the Regular Agenda for discussion.)***

Council Member Marsala suggested adding verbal harassment to the Policy on Workplace Violence.

Assistant City Manager Eileen Wilkerson said staff would be bringing the Policy against Harassment and Retaliation to the Council in October that would include verbal harassment.

M/S McKeithen/Dobbie Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

- 17. ADOPTION OF RESOLUTIONS REVISING TOWN OF ATHERTON CITY COUNCIL RULES OF PROCEDURE AND TOWN OF ATHERTON CODE OF CONDUCT AND PROCEDURES *(Removed from the Consent Calendar and placed on the Regular Agenda for discussion.)***

Council Member Marsala asked for clarification regarding freedom of speech in relation to the Code of Conduct.

City Attorney Marc Hynes stated if Council wished to include requirements as to what could or could not be said, a workshop should be scheduled since First Amendment rights could become an issue.

Council Member Dobbie clarified Members of Council were free to say whatever they liked as long as they were clear they were not speaking on behalf of the Town without Council approval.

MOTION – to adopt Resolution No. 08-36, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING TOWN OF ATHERTON CODE OF CONDUCT AND PROCEDURES REGARDING STATEMENTS CONCERNING TOWN POLICY”; adopt Resolution No. 08-37, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CITY COUNCIL RULES OF PROCEDURE REGARDING STATEMENTS CONCERNING TOWN POLICY”

M/S Marsala/Dobbie Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

26. **APPROVE AMENDING THE AGREEMENT WITH MENLO-ATHERTON LITTLE LEAGUE TO KEEP THE FIELD BACKSTOPS IN PLACE YEAR-ROUND**
(Removed from the Consent Calendar and placed on the Regular Agenda for discussion.)

Mayor Janz, asked that the words “Little League’s” be removed from the insurance provision since Little League agreed to maintain liability insurance year-round for any claims due to the backstop remaining in place.

MOTION – to approve with the removal of the words, “Little League’s” from Article VI. Insurance on page 1 of the Amendment: “Little League shall maintain public liability insurance covering ~~Little League’s~~ use of the Project Area....”

M/S Janz/J.Carlson

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

15. **AUTHORIZATION TO SURVEY TOWN RESIDENTS ABOUT SECOND DWELLING UNIT, GUEST HOUSES AND INTERNAL LIVING UNITS**
(Removed from the Consent Calendar and placed on the Regular Agenda for discussion.)

Mayor Janz distributed a red-lined copy of changes he was suggesting to the survey. He believed there was a lack of parallelism between Second Dwelling Units and Guest Houses and Internal Living Units for the questions being asked. He moved the questions under Internal Living Units, skipping question two, pushing the other questions down so there was parallelism across the board. He suggested a cover letter from the Mayor advising what the purpose was. Additionally, an explanation of the difference between a second dwelling unit and guest house was needed.

Council Member McKeithen thought the first paragraph should explain that all residents were being asked to fill out the survey whether they had any of the units or not. A further explanation of occupying a second dwelling unit for up to 30 days was also needed. She thought the letter should be from the City Manager who would be answering all questions.

Council Member Dobbie agreed a cover letter was needed to explain that no one was being forced to rent out the second dwelling unit.

Deputy Town Planner Lisa Costa Sanders indicated the intent was to send the survey out as an insert with the upcoming issue of the *Athertonian*. An article in the *Athertonian* itself would serve as the cover letter.

Mayor Janz asked Council to authorize him to further “tweak” the survey.

William Grindley, Atherton, thought the survey was complicated. He queried whether asking how much was being charged was necessary. He recommended using a professional survey research group.

Deputy Town Planner Costa Sanders said the Town’s survey was modeled after another jurisdiction that experienced a high rate of return. The reason the question

regarding rent was included was to show the State the ability to use them as affordable housing units.

MOTION – to authorize Mayor Janz to work with Deputy Town Planner Lisa Costa Sanders to make revisions to the survey as discussed

J.Carlson/Dobbie

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

32. COUNCIL REPORT

- **Council Member McKeithen attended the Transportation Committee meeting where the following were discussed: 1) installation of a signal at Encinal and Middlefield; 2) consideration of various traffic options at El Camino Real and Watkins Ave. 3) discussion of possible action on the Menlo-Atherton High School Site Access and Circulation Study; 4) discussion of installing a 25 mph speed sign at 101 Isabella and determination it was not appropriate; 5) discussion of installing “No Parking” signs on a dangerous curve on Isabella; 6) discussion of the pedestrian crosswalk at Hoover and Valparaiso; and 7) discussion regarding the traffic calming survey for Fair Oaks which was not funded and a request to add \$20,000 to the budget was made. The Finance Committee discussed the Purchasing Policy.**
- **Mayor Janz said a report from the Silicon Valley Leadership Group and Solar Tech, an initiative of the Leadership Group, regarding solar energy, a renewable energy source for Bay Area cities’ commercial and residential structures would be presented at the ABAG meeting the next evening.**
- **Council Member Marsala updated Council on the Blue Ribbon Task Force meetings and passed out handouts on activities. Open House tours of Town facilities would be conducted in October. Discussion of fundraising issues would be forthcoming.**
- **Vice Mayor Carlson welcomed Louise Ho to the Town. There were many things to do. In response to Vice Mayor Carlson, Acting City Clerk Kathi Hamilton indicated recruitment notices for committees would be going out in the *Almanac*, the *Athertonian*, and on the website the next day.**
- **Council Member Dobbie said the Blue Ribbon Task Force needed to have a logical plan and hold public meetings regarding proposed Town facilities.**

33. PUBLIC COMMENTS

There were no public comments.

34. **ADJOURN**

Mayor Janz adjourned the meeting at 11:10 p.m.

Respectfully submitted,

Kathi Hamilton
Acting City Clerk