



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

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

REGULAR MEETING

Mayor Janz called the meeting to order at 7:05 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.

Mayor Janz moved Item Nos. 23 and 24A & 24B forward to be heard under Section 3, Presentations, between Item Nos. C and D. City Manager Jerry Gruber removed Item No. 25 from the agenda.

3 PRESENTATIONS

- A. Rebecca Elliot, California League of Cities – Presentation to Council Member Charles Marsala

Rebecca Elliot, California Leagues of Cities, recognized Council Member Charles Marsala for completing two of the three levels of the Mayor and Council Member Academy. Council Member Marsala was one of only five council members in the State who was recognized for his participation in the academy, a voluntary program providing an avenue for mayors and council members to enhance their effectiveness as elected officials. Ms. Elliot presented Council Member Marsala with a plaque of completion. Council Member Marsala noted participation in the League had been a great experience and the training was invaluable.

B. Swearing In of New Police Officer Steve Marshall

Police Chief Glenn Nielsen introduced new Police Officer Steve Marshall, an experienced police officer formerly with the City of Union City and the City of Menlo Park. Acting City Clerk Kathi Hamilton administered the Oath of Office.

C. Introduction of Building Inspector Joe Aiello and the Promotion of Kevin Cittidini to Senior Building Inspector

Building Official Mike Wasmann introduced new Building Inspector/Plan Checker Joe Aiello who grew up in the Bay Area and went to school in Chico. One of his previous jobs was in San Francisco where he worked as a steeple jack, a high elevation construction specialist working on towers bridges and high-rise buildings. He comes to the Town having worked as a dwelling and a certified commercial building inspector formerly from the City of Sacramento, the Town of Live Oak, and the Yuba County.

Building Official Mike Wasmann introduced newly promoted Senior Building Inspector Kevin Cittidini who grew up on the Peninsula, graduated from California State University of Chico, and worked in the Lake Tahoe area as an engineer. He came to the Town of Atherton in 1998 as a temporary building inspector/plan reviewer, eventually landing the full-time position. His promotion would bring the Building Department to another level.

23. ADOPTION OF A RESOLUTION DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 4, 2008 (Moved forward from the Regular Agenda.)

MOTION – to adopt Resolution No. 08- “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 4, 2008”

M/S Carlson/Marsala

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

24A. INDUCTION OF REELECTED COUNCIL MEMBER KATHY MCKEITHEN AND NEWLY ELECTED COUNCIL MEMBER ELIZABETH LEWIS – OATHS OF OFFICE

Acting City Clerk Kathi Hamilton administered the Oath of Office to Council Members Kathy McKeithen and Elizabeth Lewis.

Pat Dobbie, Atherton, wished the newly inducted Council Members well. She was excited about the new team and new City Manager and the prospects for the Town.

24B. CITY COUNCIL REORGANIZATION – SELECTION OF MAYOR AND VICE MAYOR

Acting City Clerk Kathi Hamilton opened the nominations for the Office of Mayor.

and State Senator Joe Simitian detailing his accomplishments and the many hours of dedicated service to the Town.

Council Member Marsala presented a Resolution from the County Board of Supervisors to Mayor James R. Janz. The Resolution recognized Mayor Janz' 20 years of service to the Town by serving on the General Plan Committee, the Planning Commission, and the City Council. Additionally, the Resolution acknowledged Mayor Janz' commitment to and leadership regarding train service in and through Atherton. Council Member Marsala presented Mayor Janz his very own train station and a baby bullet train that he could make stop in Atherton each and every time. He thanked Mayor Janz for his longtime service.

Jack Ringham, Atherton, read a lighthearted poem he composed that mentioned members of the Council, the City Attorney, the City Manager, and Chief Nielsen. The majority of the poem was dedicated to Mayor Janz and his many accomplishments.

Former Mayor and Council Member Alan Carlson offered his congratulations to Council Member McKeithen on her reelection and Council Member Lewis on her election to the Council, as well as newly sworn in Mayor Jerry Carlson. He noted that the 18 years of dedicated public service and contributions of Mayor and Council Member Jim Janz would continue to linger long after his retirement from Council. He thanked him for his service.

Mayor Jerry Carlson presented Mayor Janz with a Mayor's plaque in recognition and appreciation of his year serving as Mayor.

Mayor Janz thanked staff and the City Manager. He thanked the previous and current Council Members and, especially, Mayor Carlson for his invaluable role as confidant and advisor during the past year. He offered three pieces of advice for the City Council: 1) Honor the role of presiding officer, practice civility in discussions, focus on the issues, and be respectful of others' time; 2) Once a decision is made, stand by it and support it whether you were favor of it or not; 3) Rely on the staff to carry out your directions; do not micromanage; your job is to set policy not to manage the Town. He thanked his family for its support. He thanked the public for giving him the opportunity to serve on the Council for eight years, and he believed there was no higher calling than public service.

PUBLIC COMMENTS

Valerie Gardner, Atherton, noted and thanked Mayor Janz for his contributions to the environment. She said 2009 brought new hope to the national political stage and new hope to Atherton. She urged Council to consider evaluating how much time and energy was spent on Town issues based upon the significance of those issues to survival. Dormers might be important but would not matter if, as a community, there was no water. There was a 60% chance of failure of the water system. Levels of carbon dioxide in the atmosphere were above the range recommended by scientists to stay below. Action was necessary to reduce carbon

within the Town. She hoped the Council, as wise and caring individuals, would recognize the urgency of the environmental crisis and take serious steps to reduce the Town's carbon footprint by accelerating the process for stricter green building standards.

MaryAn Ackley, Atherton, spoke in her professional capacity as the CPA for the Pacific Peninsula Group. She said a refund request was filed with the Town on October 21, 2008, for the business license fees that were overcharged on construction projects where the Pacific Peninsula Group was the general contractor for the period from 2003 to October 1, 2008. At the time the refund was filed, she spoke with Finance Director Louise Ho who indicated a special consultant would be hired to take a look at the issue. She understood the issue was potentially addressed in the Closed Session that took place earlier that evening. She requested the status of the refund request. To date, she calculated overcharges in the amount of \$149,876. She hoped a resolution from the Town would be expeditious as she was sure other taxpayers and homeowners who had been over assessed on the fee would also like to hear in the near future.

5. REPORT OUT OF CLOSED SESSION

City Attorney Marc Hynes reported out of Closed Session that the following action was taken on one item under:

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

Four (4) potential cases

There was action taken on one of the four potential cases as follows:

The Atherton Municipal Code authorizes the collection of a Business License Tax up to the amount of \$250 each year per general contractor and \$150 each year per subcontractor. The Town was collecting only one time, at the issuance of a building permit, business license taxes based on a percentage formula which, in some cases, increased the amount of tax paid by some contractors; this requires a refund. Under the Town's claim ordinance, refunds are to be made for a period of one year back from the time a claim is made. The City Council would be able to seek under-collected or underpaid taxes for as far back as three years. However, the City Council decided to authorize claims for refunds for payments of the business license tax from December 2006 through December 2008, and the City Council will not be going back for the three-year period of under-collection which would otherwise be available. The Town has retained the firm of MuniServices that will work with the Building Department to determine the amount of refunds. The Building Department will collect fees in accordance with the Atherton Municipal Code described above (\$250 for general contractors and \$150 for subcontractors each year) as soon as possible. Refunds will be offset by the annual amounts of \$250 per general contractor and \$150 per subcontractor and those subcontractors must be identified by the claimant. The claimant must also be the same person as paid the business

license tax. A Form 1099 will be issued to the claimant at the time of payment of any refund.

There was no reportable action taken on three other potential cases.

B. 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.

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

There was no reportable action taken.

6. CITY MANAGER’S REPORT

City Manager Jerry Gruber distributed a memo regarding the need for Study Sessions on the following topics: 1) Discuss, Modify, or Reaffirm the Five Goals and Objectives of the City Council. 2) Discuss the SBWMA, the Norcal Contract, the bond financing, and the San Carlos Agreement. Jesus Nava, Finance Director of Burlingame, would be available for a presentation to consider other options. 3) Discussion of Implementation of Performance Based Measures. 4) Discuss hiring a consulting firm to conduct an Atherton residents’ survey regarding the upcoming Parcel Tax of Utility User Tax. 5) Discuss hiring an investment advisory service to manage the Town’s assets. 6) Discuss Council’s expectations of the City Manager with regard to Council Members’ requests, special projects, communications, weekly meetings, agenda items, policy implementation, teamwork, and the Code of Conduct. He recommended holding a Study Session in February regarding the overall finances, budget process, etc. He suggested continuing this format as his report each month to bring important issues to the Council. He encouraged each Council Member to spend an hour each week meeting with him.

11. ROAD IMPACT FEE REPORT FOR FY 2007-2008 (AB 1600)

Approved the Road Impact Fee Report for FY 2007-2008.

**12. ADOPTION OF A RESOLUTION APPROVING TOWN POLICY – 1.5
ADMINISTRATION OF PERSONNEL RECORDS**

Adopted Resolution No. 08-55, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO APPROVE TOWN POLICY – 1.5 ADMINISTRATION OF PERSONNEL RECORDS”

~~**13. ADOPTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE FREIGHT CHECKERS, CLERICAL EMPLOYEES AND HELPERS, LOCAL UNION NO. 856 (TEAMSTERS REPRESENTING MISCELLANEOUS TOWN EMPLOYEES) AND THE TOWN OF ATHERTON FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2009 (Continued to the City Council meeting of January 21, 2009.)**~~

~~**Recommendation: Adopt the MOU for the period of July 1, 2008 through June 30, 2009.**~~

~~**14. ADOPTION OF A RESOLUTION ADOPTING SALARIES AND BENEFITS FOR MANAGEMENT STAFF FOR FISCAL YEAR 2008-09 THROUGH June 30, 2009 (Continued to the City Council meeting of January 21, 2009.)**~~

~~**Recommendation: Adopt a resolution adopting salaries and benefits for Management Staff for Fiscal Years 2008-09 through June 30, 2009.**~~

15. ADOPTION OF A RESOLUTION RATIFYING FUNDS IDENTIFIED IN RESOLUTION NO. 00-13 TO BE TRANSFERRED FROM THE GENERAL FUND TO THE BUILDING DEPARTMENT’S FUND FOR A REPLACEMENT BUILDING

Adopted Resolution No. 08-53, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RATIFYING THE TRANSFER OF FUNDS IDENTIFIED IN RESOLUTION NO. 00-13 FROM THE GENERAL FUND TO A DESIGNATED FUND FOR BUILDING REPLACEMENT.”

16. CONSIDERATION AND ADOPTION OF A RESOLUTION REGARDING TRENCHING THE RIGHT-OF-WAY FOR HIGH-SPEED RAIL THROUGH ATHERTON

Adopted Resolution No. 08-54, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REGARDING MITIGATION OF HIGH-SPEED RAIL BY TUNNELING/TRENCHING THE RIGHT-OF-WAY FOR HIGH-SPEED RAIL THROUGH THE TOWN OF ATHERTON”

17. CITY MANAGER'S SECOND QUARTER UPDATE ON GOALS AND OBJECTIVES AS IDENTIFIED IN THE 2008/2009 BUDGET

Reviewed and accepted the City Manager's update of Goals and Objectives as identified in the 2008/09 Budget.

18. CONSIDERATION OF ADDITIONAL FUNDING FOR ATHERTON DISASTER PREPAREDNESS

1) Re-appropriated \$ 16,650.00 for disaster preparedness from the fund balance that was not spent but was budgeted as part of the 2007/2008 fiscal year budget; 2) Appropriated an additional \$ 23,350.00 as part of the mid- year budget adjustment for disaster preparedness; and 3) Purchasing disaster preparedness equipment and supplies will abide by the Town of Atherton's purchasing policy.

19. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH THE CROSBY GROUP FOR TIER II SEISMIC EVALUATION SERVICES FOR THE ATHERTON LIBRARY PROJECT

Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with The Crosby Group to provide Tier II Seismic Evaluation services for the Atherton Library Project in an amount not exceed \$19,500, plus a 10% contingency, for a total authorization of \$21,450.

~~**20. APPROVE CONSTRUCTION OF A RIGHT-TURN LANE ON ALEJANDRA AVENUE AT EL CAMINO REAL**~~ (Removed and placed on the Regular Agenda for discussion.)

~~**Recommendation: Approve construction of a right-turn lane on Alejandra Avenue at El Camino Real.**~~

21. AMEND THE CENTERLINE MARKING LIST TO INCLUDE A RIGHT TURN LANE ON WATKINS AVENUE AT MIDDLEFIELD ROAD

Amended the Centerline Marking List to include striping for left- and right-turn lanes on Watkins Avenue at the Middlefield Road intersection.

22. APPROVAL OF THE RAILROAD CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN THE PENINSULA CORRIDOR JOINT POWERS BOARD AND THE TOWN OF ATHERTON FOR THE GRADE CROSSING UPGRADES PROJECTS AT FAIR OAKS LANE AND WATKINS AVENUE

Approved the Railroad Construction and Maintenance Agreement between the Peninsula Corridor Joint Powers Board (JPB) and the Town of Atherton for the Grade Crossing Upgrades Projects at Fair Oaks Lane and Watkins Avenue.

PUBLIC HEARINGS (None)

REGULAR AGENDA (Items 23-26)

~~23. ADOPTION OF A RESOLUTION DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 4, 2008 (Moved forward under Presentations for action.)~~

~~24A. INDUCTION OF REELECTED COUNCIL MEMBER KATHY MCKEITHEN AND NEWLY ELECTED COUNCIL MEMBER ELIZABETH LEWIS OATHS OF OFFICE (Moved forward under Presentations for action.)~~

~~24B. CITY COUNCIL REORGANIZATION SELECTION OF MAYOR AND VICE MAYOR (Moved forward under Presentations for action.)~~

25. REORGANIZATION OF THE ADMINISTRATION OFFICE AND FINANCE DEPARTMENT

Recommendation: The City Council approves the City Manager's request for the following: 1) Eliminate the 0.5 FTE City Clerk position; 2) Assign responsibility for the City Clerk duties to the Assistant City Manager; 3) Add 1.0 FTE Deputy City Clerk position per attached Job Description; 4) Eliminate the 1.0 FTE Assistant Finance Director positions; 5) Add 1.0 FTE Accountant position per attached Job Description; 6) Increase the Finance Assistant position from 0.50 FTE to 0.60 FTE; 7) Layoff 0.25 FTE Office Assistant position due to lack of work at that level; 7) Approve new funds totaling \$ 21,938.00 to the City Manager's Department budget.

The City Manager removed the item from the agenda.

26. APPROVAL OF THE SILICON VALLEY COMMUNITY FOUNDATION TO RECEIVE FUNDS FOR THE NEW TOWN FACILITY

City Manager Jerry Gruber presented the staff report. Direction was given to the City Manager to contact Silicon Valley Community Foundation to receive funds for a new Town Facility. An Advised Fund Agreement was included in Council's packet. Council was being asked to consider: 1) Appropriating \$10,000 to the 406 fund as seed money for the new facility, 2) Entering into an Advised Fund Agreement with the Silicon Valley Community Foundation; 3) Selecting at least two individuals as the fundraising arm of the Blue Ribbon Task Force who would be responsible for the following areas as outlined in the Advised Fund Agreement: A. Fund Advisor; B. Establishing Donors; C. Primary Contact. City Manager Gruber was willing to act as the primary contact until one was appointed.

Council Member Dobbie reiterated that the Blue Ribbon Task Force (BRTF) should not be involved in fundraising. People needed to be selected for the fundraising component, and someone had volunteered to be chairman.

Council Member Marsala noted that the Silicon Valley Community Foundation (SVCF) was a good program. The BRTF was never intended to be the fundraising arm.

Vice Mayor McKeithen had several questions regarding the investment terms and conditions. She noted the only donations that would be accepted without specific approval were cash and marketable securities. She asked whether any residents in Portola Valley gave donations other than cash and marketable securities.

Council Member Marsala said donations were cash and marketable securities only. A discussion ensued regarding the SVCF investment risks and whether there were any recent return/losses in the last six months, grant disbursement provision, etc.

Council Member Lewis noted her corporation had a charitable fund with SVCF. She believed SVCF was a very reputable and responsible organization.

Council Members Marsala and Lewis were in favor of moving forward with the item.

Council Member Dobbie was in favor of moving forward.

MOTION – to enter to an Advised Agreement with the SVCF and appropriating \$10,000 to the 406 fund as seed money for a new facility subject to the City Manager meeting with the SVCF to provide answers to pertinent questions

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

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR FIVE MONTHS ENDED NOVEMBER 30, 2008

Vice Mayor McKeithen had questions regarding the Finance Report, e.g., why Council Supplies were already 216% of a \$600 budget?

City Manager Gruber said communications with the Council required the distribution of many documents. One of the internal controls being put into place was to consolidate office supply purchasing in one place.

Vice Mayor McKeithen asked for clarification on the City Clerk Contract Services, which was 142.6% of the budgeted amount.

Finance Director Louise Ho explained the total was a combination of the City Manager, Assistant City Manager, Finance Department, and the City Clerk's Department and included unanticipated costs.

Vice Mayor McKeithen noted there was no fee in the budget regarding weddings and park use fees.

Finance Director Ho clarified a fee was not originally setup in the budget. There was acknowledgement that weddings should be broken out into a separate program; however, a budget adjustment had not been made. The adjustments would be made at the mid-year budget review.

Vice Mayor McKeithen noted the City Attorney and legal services contract services were at 62.9% for a five month period.

City Attorney Marc Hynes clarified any Council Member who voted in favor of the original motion could make a motion to reconsider an item.

MOTION – to reconsider and remove Item Nos. 13 and 14, to be returned in January on the Consent Agenda, in order for the public to review and comment on the items

M/S McKeithen/Dobbie

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

27. COUNCIL REPORTS

- Council Member Lewis did not have a report.
- Council Member Dobbie said the Blue Ribbon Task Force had another presentation that was poorly attended. He and Council Member Marsala were considering how to get more public input. A resident volunteered to provide a website that would be informative and contain pictures and materials. He agreed with Council Member Lewis that a comprehensive e-mail list and asked staff to look into the legalities of using e-mail addresses.
- Council Member Marsala thanked Andrea Gemmet for her story in the *Almanac* after the first presentation. A display was put up in the post office offering residents to take the tour, etc. The Environmental Programs Committee met and agreed to put \$1000 of its budget into the film festival put on by the Media Center in Palo Alto, which was a middle school and high school competition regarding environmental consciousness. He asked that the Council consider the tennis courts next year. He said Resolution No. 00-13 also said that \$150,000 a year would be put into building inspection. He believed Council needed to resolve the issue, along with attaining the \$300,000,000 needed for the Building Department's share of a new facility.
- Vice Mayor McKeithen said the Finance Committee met and discussed the investment portfolio, a capital asset policy, a purchasing policy, the parcel tax, a utility user tax, the General Fund balance, and unfunded PERS liability, etc. She attended the San Francisco Airport Community Roundtable meeting and the Peninsula Congestion Relief Alliance meeting.
- Mayor Carlson echoed Mayor Janz' comments regarding a good Town staff team. He was looking forward to working with staff to accomplish goals for the Town. He toured the waste facilities in San Carlos. The County was closed to making a decision in selecting a garbage collector. Burlingame was considering pulling out of the Joint Powers Board. The Grand Jury was looking at the process as it was a \$500 million contract. He was pleased about the upcoming study sessions since gaining consensus among staff and Council regarding goals and objectives was important. He asked that the selection sheets for appointment to Council Committees be distributed. Additionally, Council needed to determine the future/role of the Steering Committee.

28. PUBLIC COMMENTS

Carol Flaherty, Atherton, had comments on Item No. 11. She was very concerned that the discussion that evening did not indicate there was a plan for a road impact study. Two months prior, she filed for a refund of road impact fees and had not received any communication from the Town. She was extremely concerned to find out that \$700,000 of road impact fees had been earmarked for a drainage study of Ridgeview. She emphasized that road impact fees could not be used for drainage issues. Road impact fees should be used for road construction for the damaged caused by a construction project on that part of the road. Fees could not be used for all the general road maintenance in Town and it most definitely could not be used for drainage.

29. ADJOURN

Mayor Carlson adjourned the meeting at 9:25

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**