



**Minutes**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**MAY 20, 2009**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California  
**REGULAR MEETING**

Mayor Carlson called the meeting to order at 7:01 p.m.

**7:00 P.M. 1. PLEDGE OF ALLEGIANCE**

**7:02 P.M. 2. ROLL CALL Lewis, Dobbie, Marsala, McKeithen, J. Carlson**

**7:03 P.M. 3 PRESENTATIONS**

**Swearing in of new Sergeant Kristin Nichols**

Deputy City Clerk Theresa DellaSanta administered the Oath of Office to the new Sergeant Kristin Nichols. Sergeant Nichols daughter had the honor of pinning Sergeant Nichols' badge.

**Proclamation for Marion Oster**

Mayor Jerry Carlson read the proclamation to Marion Oster for the record and presented Oster with the signed proclamation and flowers.

**7:15 P.M. 4. PUBLIC COMMENTS *(This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the Agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the Council from acting on items not listed on the Agenda except by special action of the City Council under specified circumstances. Speakers' time is limited to three minutes.)***

Shirley Carlson, Atherton resident, representing Atherton Dames

Sue Beakley, Atherton resident, thanked Police Chief Nielsen for the meeting with her residents of Walsh Road regarding safety precautions. Beakley requested a letter from the Town of Atherton to ask San Mateo County Office of Emergency Services to provide Walsh Road residents with maps to assist with evacuation in the event of an emergency.

**7:20 P.M. 5. REPORT OUT OF CLOSED SESSION**

City Attorney Wynne Furth reported that there was no reportable action from closed session.

**7:25 P.M. 6. CITY MANAGER'S REPORT**

City Manager Gruber informed the Council that the Disaster Committee has been doing a lot of work with the Town of Atherton. Gruber discussed all of the Committee's accomplishments.

Gruber said he continues to work with the Department Manager's on goals and objectives for the fiscal year 2009/2010 budget. Gruber added that the Audit Committee reconvened last week and will meet again on June 16<sup>th</sup> to review the audits and further discuss the proposed audit.

Gruber said that the South Bay Waste Management Authority which oversees the Towns solid waste has been discussing a bond measure to support the new shoreway facility and the Board has not reached a consensus on what kind of funding would be used.

Gruber said a study session will be held on June 1<sup>st</sup> with NBS, the entity who is doing the Towns comprehensive fee study. He added that he and Finance Director Louise Ho will have a study session with Springbrook on the Towns new financial software which the Council approved as part of the mid-year budget adjustments. Gruber concluded that staff continues to work with MBIA on asset management.

Mayor Carlson asked Finance Director Ho to comment on the business refund situation.

Ho stated that Muniservices continues to process business license refund claims from the tax payers. Ho added that approximately six customers have been refunded and the process is ongoing.

Gruber stated that he has received the road impact fee study from Kimley-Horn in the last week and will review it with Public Works Director Duncan Jones and Finance Director Louise Ho.

Council Member Marsala stated that he attended the County Office of Emergency Services meeting a couple of weeks ago and there were discussions on sensors available on water flow which he plans to further review. Council Member Marsala asked whether the Town is looking at possibly adjusting the budget due to the road impact fee study and business license refunds. Gruber said he will be able to provide more information to Council after he reviews the draft road impact fee report and finalizes it.

**7:30 P.M. 7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT (Directed by Resolution No. 99-6)**

**None**

**7:30 P.M. CONSENT CALENDAR (Items 8-22)**

Council removed Items 8, 11, and 19 for brief discussion.

Council Members Lewis and Marsala stated that they have to recuse themselves for item 12 because they live within 500 feet of the property.

Council removed Items 12, 18 and 34 to vote on individually.

8. **APPROVAL OF SPECIAL CITY COUNCIL MINUTES OF MARCH 2, 2009 AND APRIL 7, 2009; REGULAR CITY COUNCIL MINUTES OF APRIL 15, 2009, AND SPECIAL CITY COUNCIL CLOSED SESSION OF MAY 12, 2009**

**Recommendation:** Approve March 2, April 7, April 15 and May 12 minutes

Mayor Carlson and Council Member Lewis gave edits to the April 7 minutes.

9. **APPROVAL OF BILLS AND CLAIMS FOR APRIL 2009 IN THE AMOUNT OF \$ 971,137**

**Recommendation:** Approve Bills and Claims in the amount of \$971,137

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE TEN MONTHS ENDED APRIL 30, 2009**

**Recommendation:** Accept Monthly Financial Report

11. **ACCEPTANCE OF TREASURER'S REPORT FOR FIRST, SECOND AND THIRD QUARTER OF FISCAL YEAR 2009**

**Report:** Director of Finance Louise Ho

**Recommendation:** Accept Treasurer's Report for First, Second and Third Quarter of Fiscal Year 2009

Lewis asked for clarification on the transfer of \$406,000 to the Building Department and whether it was done retroactively to September 2008. Finance Director Ho said yes.

13. **ADOPT A RESOLUTION APPROVING REALLOCATION OF REMAINING PROPOSITION 1B FUNDS FROM STEVICK DRIVE TO STREET RECONSTRUCTION PHASE 6 AND RECLASSIFYING STEVICK DRIVE FROM MAJOR PROJECT (OVER \$400,000) TO MINOR PROJECT (UNDER \$400,000)**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Adopt Resolution 09-13 approving reallocation of remaining Proposition 1B funds from Stevick Drive to the Street Reconstruction Phase 6 project and reclassifying Stevick Drive from major project (over \$400,000) to minor project (under \$400,000)

Vice Mayor McKeithen gave the City Attorney typographical edits to the Resolution.

14. **ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD NOTICE OF COMPLETION FOR THE EMERGENCY SEWER REPLACEMENT PROJECT AT HOLBROOK PALMER PARK**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Accept work and authorize recording of a notice of completion for the Emergency Sewer Replacement Project

**15. ADOPT A RESOLUTION APPROVING A “NO STOPPING ANY TIME” ZONE ON THE NORTH SIDE OF WALSH ROAD BETWEEN ALAMEDA DE LAS PULGAS AND THE DRIVEWAY TO 306 WALSH ROAD**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Adopt Resolution 09-14 approving a “No Stopping Any Time” zone on the North side of Walsh Road between Alameda de las Pulgas and the driveway to 306 Walsh Road (the first driveway in from Alameda de las Pulgas

**16. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$17,125.64 FOR THE 2009 SPRING PATCHING PROJECT NUMBER 08-007**

**Report:** City Manager Jerry Gruber, Director of Public Works Duncan Jones

**Recommendation:** Accept work, authorize recording of a notice of completion and approve contract change orders in the amount of \$17,125.64 for the Spring Patching Contract Project Number 08-007

**17. AWARD OF CONTRACT TO FBD VANGUARD CONSTRUCTION INC. FOR THE LAS LOMITAS SAFE ROUTE TO SCHOOL PROJECT NUMBER 08-028 IN AN AMOUNT NOT TO EXCEED \$60,126.28 PLUS A TEN PERCENT CONSTRUCTION CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$66,138.91**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Award the contract for Las Lomas Safe Route to School Project number 08-028 to FBD Vanguard Construction, Inc., the low bidder on the May 14, 2009 bids, for \$60,126.28, with a 10% construction contingency of \$6,012.63, for a total authorization of \$66,138.91; and to authorize the City Manager to sign the contract on behalf of the Town

**19. POLICE DEPARTMENT VEHICLE PURCHASE**

**Report:** Police Chief Glenn Nielsen

**Recommendation:** Authorize the purchase of one unmarked police hybrid vehicle (Toyota Camry) for a cost not to exceed \$29,150.00

Lewis thanked Police Chief Glenn Nielsen for taking her environmental suggestion and purchasing a hybrid as the Police Departments new vehicle.

**20. ADOPT THE PENINSULA PARTNERSHIP LEADERSHIP COUNCIL’S (PPLC) BILL OF RIGHTS FOR CHILDREN AND YOUTH OF SAN MATEO COUNTY**

**Report:** Police Chief Glenn Nielsen

**Recommendation:** Adopt Resolution 09-15 adopting the Peninsula Partnership Leadership Councils Bills of Rights for Children and Youth of San Mateo County

**21. REVISIONS TO MOU AMONG PENINSULA CITIES REGARDING HIGH SPEED RAIL**

**Report:** City Attorney Wynne Furth

**Recommendation:** Authorize the Mayor to sign the revised Memorandum of Understanding for the Peninsula Cities Consortium ("MOU") and authorize the Mayor to sign a further-revised initial MOU if in the opinion of the Mayor and the City Attorney the modifications are not substantive

**22. APPROVAL OF RESOLUTION FROM THE LEAGUE OF CALIFORNIA CITIES DECLARING A FISCAL HARDSHIP WILL EXIST IF ADDITIONAL LOCAL PROPERTY TAX FUNDS ARE SEIZED AND ADDITIONAL UNFUNDED MANDATES ARE ADOPTED BY THE STATE OF CALIFORNIA**

**Report:** City Manager Jerry Gruber and Finance Director Louise Ho

**Recommendation:** Adopt Resolution 09-16 Finding a Severe Fiscal Hardship Will Exist if additional local property tax funds are seized and additional unfunded mandates are adopted by the State of California

**MOTION by Lewis, second by Dobbie to approve the Consent Calendar except for Items 12, 18 and 34 and with the edits made to the April 7<sup>th</sup> minutes in Item 8. The motion passed.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

**18. AMEND THE CENTERLINE MARKING LIST TO INCLUDE A DOUBLE YELLOW CENTERLINE AND WHITE PAINTED WALKWAY CURB ON WATKINS AVENUE FROM MIDDLEFIELD ROAD TO THE CALTRAIN TRACKS**

**Report:** City Manager Jerry Gruber, Public Works Director Duncan Jones

**Recommendation:** Amend the Centerline Marking List to include a double yellow centerline and white painted walkway curb on Watkins Avenue from Middlefield Road to the Caltrain tracks

Sandy Crittendon, Atherton resident, stated that he opposed a double yellow line and white painted curb on Watkins Avenue because he rides his bicycle down Watkins Ave and feels that the road is too narrow for cars to cross over a double yellow line to pass a bicycle rider. Crittendon said he is concerned that Watkins Avenue would become more dangerous with a double yellow line.

Council Member James Dobbie stated that when this issue came up at James Avenue the residents had the same concerns.

Earl Nielson, Atherton resident, stated that he conducted his own survey around the neighborhood and his survey concluded that most residents do want the double yellow line and white painted curb because it would slow the cars down and a white line will enhance the visual to the cars. Nielson concluded that there are a lot of children and pedestrians walking around Watkins Avenue and we need to keep it safe for them.

Mayor Carlson said this recommendation came from the Transportation Committee and asked Committee members McKeithen and Lewis for there comments.

Vice Mayor McKeithen stated that Atherton resident Richard Moore prepared an extensive report on the issue and brought it to the Committee and she felt that he deserved to be listened to. McKeithen said that Moore thought the white line was necessary, however Public Works Director Duncan Jones didn't feel the white paint would last very long and the Committee felt that as an alternative reflectors could be installed for visibility of the crosswalks. McKeithen added that Public Works Director Jones is researching whether the road was wide enough to add a new line to the existing line, rather than a brand new double yellow line. McKeithen felt that this should be reviewed since the community has overwhelmingly and unanimously decided to try it.

Council Member Elizabeth Lewis said that there was a compelling show of the community on this issue and after thinking more about the issue she felt that since the General Plan says that Atherton is a rural thickly-wooded environment that we should think twice before adding more signage and lines to the roads. Council Member Lewis added that she would like to do everything she can to help protect the residents of Atherton, but would also like to make decisions to continue to beautify the Town. Council Member Lewis concluded that she would not support a double yellow line on Watkins Avenue.

Council Member Dobbie didn't feel a double yellow line would reduce speeders on Watkins Avenue and he agreed with Council Member Lewis on keeping the Town less urbanized.

Council Member Marsala stated that since the residents have so much cooperation for a double yellow line then it should be supported.

Vice Mayor McKeithen added that the desires of the residents should be favored and the solution could always be reversed if it turns out that it is not the right decision.

Denise Kupperman and Jean Shaft, Atherton residents, stated their concerns that a double yellow line on Watkins Avenue is not necessary and would not reduce speed. Both were not in favor of the double yellow line.

McKeithen asked if the issue of the double yellow line and the white painted curb could be taken up separately. Mayor Carlson stated yes.

**MOTION by McKeithen, second by Lewis to approve a white painted walkway curb on Watkins Ave from Middlefield Road to the CalTrain Tracks. The motion passed.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

**MOTION by McKeithen, second by Lewis to withdraw the recommendation of the Transportation Committee and not include a double yellow line down Watkins Avenue, second by Dobbie. The motion passed.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

**34. ADOPTION OF RESOLUTION ACCEPTING THE 2008/2009 SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND (SLESF) CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS) GRANT  
Report: Police Chief Glenn Nielsen**

**Recommendation:** Adopt a resolution accepting the recommended expenditures of the remaining balance of FY 2008-09 Supplemental Law Enforcement Services Fund (SLESF), Citizen’s Option for Public Safety (COPS) Grant in the amount of \$100,000.00 in accordance with state requirements.

Police Chief Nielsen gave a brief history of the COPS grant program and read edits to the Resolution for the record.

**MOTION by McKeithen, second by Dobbie to approve the Resolution for COPS grant with the revisions stated by Chief Nielsen. The motion passed.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

**12. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH CHRISTOPHER A. JOSEPH & ASSOCIATES FOR PREPARATION OF ENVIRONMENTAL IMPACT DOCUMENTS AND REIMBURSEMENT AGREEMENT WITH SACRED HEART SCHOOLS**

**Report:** Deputy Town Planner Lisa Costa Sanders

**Recommendation:** Approve Professional Services Agreement with Christopher A. Joseph & Associates and Reimbursement Agreement with Sacred Heart Schools and authorize the City Manager to sign the agreement on behalf of the Town

Council Members Lewis and Marsala recused themselves due to a conflict of interest. Both Marsala and Lewis live within 500 feet of Sacred Heart School.

Council Member Dobbie asked Deputy Planner Lisa Costa Sanders why staff decided to take such a small deposit from Sacred Heart. Deputy Planner Costa Sanders said it was negotiated that it would be \$20,000 up front and then increase in increments of \$50,000.

Vice Mayor McKeithen said the initial staff report given to the Council in January had a deposit of \$34,000 and asked what the reason was for reduction in the deposit. Vice Mayor McKeithen clarified that the reimbursement agreement has a termination provision that says that Sacred Heart will pay for all Town costs up to including the date of termination as set forth in the notice provision. McKeithen said the termination provision in the contract allows a 10-day notice provision. She would like this to be reviewed and corrected.

Sandy Dubinsky, Sacred Heart representative, stated that the reduction to a \$20,000 deposit was done because Sacred Heart has already made a \$16,000 deposit. Dubinsky said the provision statements should be reviewed by the Towns Attorney.

City Attorney Wynne Furth said she has talked with the Counsel for Sacred Heart and they are clear that they are to pay the costs incurred by the Town in good faith. Furth suggested that paragraph 6 of the reimbursement agreement be revised to state “10 days notice” and this would be acceptable.

Sandy Dubinsky confirmed that it would be acceptable and they will pay the costs.

**MOTION by McKeithen, second by Dobbie to approve Item 12. The motion passed.**

Ayes: 3      Nays: 0      Abstain: 0      Absent: 2 (Lewis, Marsala)

**7:40 P.M.      PUBLIC HEARINGS (Item 23)**

**23.      APPEAL OF THE DECISION OF THE PLANNING COMMISSION TO DENY A HERITAGE TREE REMOVAL PERMIT AT 54 BARRY LANE**

**Report:** Deputy Town Planner Lisa Costa Sanders

**Recommendation:** Deny the appeal and uphold the decision of the Planning Commission to deny the heritage tree removal permit

Deputy Planner Lisa Costa Sanders said that the site is located at Barry Lane and a cul-de-sac of Barry Lane and is currently under construction. She said the tree requested for removal is a heritage pine tree which is located near a cluster of pine trees at 50 Barry Lane. Costa Sanders said the Planning Commission voted at its March meeting to deny removal of the tree because it would be inconsistent with the Atherton General Plan since the tree is in good health and is not in conflict with any improvements at the site. Costa Sanders added that the Planning Commission did note that if the tree were removed they were comfortable with the replacement requirement and that those replacement trees would have an overall beneficial effect on the sight. Costa Sanders concluded that the applicant has sited that the tree is leaning and can topple at anytime and poses a safety risk. The Town's arborist has checked the tree and cited that the tree is leaning but does not pose any safety risk.

Mayor Carlson asked why the staff had originally recommended removing the tree. Deputy Planner Costa Sanders said staff relies on the Town Arborist in making the determination. She said the Arborist had spoken with the neighbor and they were in agreement with the removal because removal would benefit any adjacent trees. Costa Sanders said that the Arborist has recommended for mitigation a large number of very large crowning trees which would have long term benefits to the site and the neighborhood.

Council Member Marsala said after reviewing the Planning Commission minutes it seemed that the decision of the Commission was very tough. Costa Sanders said there was a lot of deliberation.

Sam Vinsicar, Creative Habitat who is redeveloping the property at Barry Lane, stated that the tree is an older tilting Monterey Pine and is not a beautiful Aak. He added that it has no screening value and foliage is visible at minimum 25 feet. Vinsicar said the opinion of his Arborist was that it will be a safety hazard in the near future. Vinsicar concluded that they are proposing replacing the tree with several small oak trees which would provide more screening, be more consistent, and significantly enhance the neighborhood.

Mayor Carlson asked why there was a change from the initial landscape design which planned to keep all the mature trees. Vinsicar said they never thought that pine tree would be an enhancement to the neighborhood.

Vice Mayor McKeithen clarified that the tree is a Canary Island Pine and not a Monterey Pine. Vice Mayor McKeithen said it would make a difference because Council has been told in the past that

the Monterey Pines are very susceptible to disease. Deputy Planner Costa Sanders said the designers Arborist and the Towns Arborist refer to it as a Canary Island Pine. Vice Mayor McKeithen asked if this Pine tree were to remain would other mature trees be put into the property. Vinsicar said no.

Council Member Marsala stated that if we are protecting pine trees that have a tendency to die then the ordinance should be reviewed and possibly revised.

Peter Blackwell, 50 Barry Lane, stated that he is in favor of upholding the Planning Commission decision to deny removal of the tree. He felt that taking the pine tree out would change the appearance of the cluster of pine trees. Blackwell concluded that the tree looks healthy and the Arborist has confirmed that.

Vice Mayor McKeithen said the General Plan states that tree should be preserved to the maximum during construction and wondered how much discretion the Council has to altering the intent of the General Plan.

City Attorney Wynne Furth stated that the Council has no power to alter the intent of the General Plan but does have the responsibility of deciding whether a particular action is or isn't consistent with the General Plan. Furth said Ordinance states removal shall be made unless you find it contrary to the purpose and intent of the General Plan and the Council needs to decide based on the information provided if they can make that finding.

Council Member Lewis said that after visiting the site it does show how the four pine trees have grown together and the subject pine is the dominant of the four all of which have good height. Council Member Lewis added that she didn't feel that the tree posed a danger of falling and felt that she should rely heavily on the Town Arborist recommendation to deny removal. Council Member Dobbie said that Council has a duty to protect the heritage trees and doesn't feel that if a neighbor doesn't like a tree or if a tree is leaning that it should be removed. Council Member Dobbie concluded that there needs to be a good reason for removal of a heritage tree.

Council Member Marsala stated that everyone has struggled with this issue and felt that a long term solution would be to remove this tree and replace with new trees.

**MOTION by Dobbie, second by Carlson to deny the appeal and uphold the decision of the Planning Commission to deny heritage tree removal permit because there is no good reason to remove it and it is not in line with the Atherton General Plan.**

Ayes: 3      Nays: 2 (Lewis, Marsala)      Abstain: 0      Absent:

**REGULAR AGENDA (Items 24-33)**

Council tabled items 27, 28 and 29 to the June Agenda.

~~27. ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS APPROVAL OF NORCAL WASTE INC. AS THE COLLECTION CONTRACTOR~~

~~Report: City Manager Jerry Gruber~~

**Recommendation:** Consider the Environmental Programs Committee recommendation to approve Noreal Waste Inc. as the Collection Contractor for the Town of Atherton

~~28. ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS APPROVAL OF AN APPROPRIATE SURVEY TO GAUGE RESIDENT PREFERENCES FOR SERVICE LEVELS AS THE COLLECTION CONTRACT IS NEGOTIATED~~

~~Report:~~ City Manager Jerry Gruber

~~Recommendation:~~ Consider the Environmental Programs Committees recommendation for approving an appropriate survey to gauge resident preferences for service levels as the collection contract is negotiated

~~29. ENVIRONMENTAL PROGRAMS COMMITTEE RECOMMENDS CITY COUNCIL RECONSIDER THEIR VOTE AND APPROVE BOND FINANCING FOR THE SHOREWAY FACILITY IN VIEW OF BETTER COST NUMBERS THAT ADDRESS COUNCIL'S CONCERNS~~

~~Report:~~ City Manager Jerry Gruber

~~Recommendation:~~ Consider the Environmental Programs Committee recommendation to reconsider City Council vote and approve bond financing for the Shoreway Facility

7:55 P.M. 24. **SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTION 15.32.040 OF THE ATHERTON MUNICIPAL CODE REGULATING DEPOSITS FOR ENVIRONMENTAL IMPACT REPORTS**

**Report:** City Attorney Wynne Furth

**Recommendation:** Read the Ordinance by title, Waive further reading, and adopt Ordinance amending section 15.32.040 regulating deposits for Environmental Impact Reports

**MOTION by McKeithen, second by Lewis to adopt Ordinance amending section 15.32.040 regulating deposits for Environmental Impact Reports and waive further reading. The motion passed.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

8:05 P.M. 25. **SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTION 17.16.020 OF THE ATHERTON MUNICIPAL CODE REZONING PARCEL 2 AND THE LEGACY PARCEL OF MENLO SCHOOL AND MENLO COLLEGE (50 VALPARAISO)**

**Report:** Deputy Town Planner Lisa Costa Sanders

**Recommendation:** Read the Ordinance by title, Waive further reading, and adopt Ordinance rezoning portions of Menlo School and Menlo College Property (50 Valparaiso)

Council Member Marsala recused himself because he lives within 500 feet of the property.

**MOTION by Lewis, second by Dobbie to adopt Ordinance rezoning portions of Menlo School and Menlo College Property (50 Valparaiso) and waive further reading. The motion passed.**

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

**8:15 P.M.      26.      DESIGNATE A COUNCIL MEMBER AS A REPRESENTATIVE TO MENLO PARK FIRE PROTECTION DISTRICT TO ACT AS A LIAISON**

**Report:** City Manager Jerry Gruber

**Recommendation:** Designate one Council Member to act as liaison to help develop and improve communications and form collaborative efforts with the Menlo Park Fire Protection District

City Manager Gruber stated that in an effort to continue and foster a great working relationship with the Menlo Park Fire Protection District it would be beneficial to appoint a designee to the District.

**MOTION by Carlson, second by McKeithen to approve Council Member Elizabeth Lewis as Menlo Park Fire Protection District Liaison and Council Member Charles Marsala as an alternate. The motion passed.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

**30.      RECOMMENDATION OF THE BLUE RIBBON TASK FORCE TO REQUEST PERMISSION TO USE A VALIDATED PORTION OF ATHERTON'S DONOR CITY FUNDS TOWARDS A NEW TOWN CENTER IN EXCHANGE FOR THE LIBRARY GETTING EXCLUSIVE USE OF THE VACATED COUNCIL CHAMBERS**

**Report:** City Manager Jerry Gruber

**Recommendation:** Town of Atherton to approach the San Mateo Library Joint Powers Authority (JPA) and request permission to use a validated portion Atherton's Donor City Funds towards a new town center in exchange for the Library getting exclusive use of the vacated Council Chambers

Mayor Carlson asked what the term validated portion refers to.

City Manager Gruber said the validated portion refers to the portion that is currently designated in the library fund right now. Gruber concluded that the current amount is approximately \$3.1 million.

Council Member Marsala gave a brief overhead projection presentation on the history of the library and donor funds. [A copy of the presentation is available in the City Clerks office]

Mayor Carlson asked whether it is intended for Council to make a decision on whether this is a feasible option. Council Member Marsala said that this is to review and discuss with Council and receive feedback, and that the Blue Ribbon Task Force intends to come back to Council with a finalized feasibility report.

Mayor Carlson said he reviewed the minutes of the Blue Ribbon Task Force (BRTF) minutes and felt that the Council is at a disadvantage since they haven't been able to review the report. He asked when Council will get a draft report. Council Member Marsala said the report will be finalized at the BRTF June meeting.

Mayor Carlson felt this would hinder use of the Council Chambers and Council needs to review and discuss this further.

Vice Mayor McKeithen said she is the representative for the Library Joint Powers Authority and was very upset to see this on the Agenda. Vice Mayor McKeithen read a letter of her thoughts and comments for the record. [A copy of this letter is available at the City Clerks office.]

Council Member Jim Dobbie, member of the BRTF, stated that they have continuously had discussions on whether library funds are available for any other purpose other than library expansion, and his belief was that the JPA had said the funds are for library expansion only. Dobbie said he had asked at a recent BRTF meeting for clarification on whether the library donor funds could be used and felt that his statement was misrepresented.

Council Member Elizabeth Lewis said she has no opinion but felt that the library is accumulating all of these funds and somebody needs to understand how these funds can be used for the library and enhancement of the Town. Council Member Lewis said that Marsala's presentation gave her more understanding of the history of the library and the Joint Powers Authority and she felt this item was not spitefully put on the Agenda. Council Member Lewis concluded that Council needs a clear written statement from the JPA on what those funds can be used for and how they can be used for a new Town center.

Martin Gomez, San Mateo County Library Joint Powers Authority, clarified their legal opinion for donor city funds is that "to the extent the Towns proposal is a use of donor city funds for library facility remodeling or expansion, donor city funds could not be used without the written agreement of the JPA." Gomez said this conclusion was presented to the Operations Committee and they voted to recommend to the Governing Board of the JPA to accept this recommendation. The JPA did not accept the recommendation but they did vote to further pursue other questions raised by Council Member Marsala at the time. Gomez stated that as a staff member to the JPA Board, if this recommendation were brought before the Board he would recommend that this is not a valid use of JPA funds and the new Town center is not an appropriate use of library funds. Gomez read a statement of the JPA agreement which states the proper uses of library funds.

Council Member Lewis asked if a new Town center is built to combine a new library and lecture hall then can a portion go towards development. Gomez said his opinion would be that it can as long as there is a written agreement on what part would be used specifically for library purposes.

Council Member Dobbie felt this should be tabled.

Council Member Marsala stated that the at the JPA Board meeting in February the Board directed staff to get a legal opinion on the JPA agreement and to include provisions for donor cities to be able to transfer donor city reserves for assets in a validated manner. Marsala asked Gomez if this is a true statement.

Gomez said the issue is the definition of expansion and what it would be for, and with regard to the February discussion it was determined that it would be in the best interest to not have anymore legal discussion on the JPA until new member Kathy McKeithen could come and represent Atherton's interest.

City Manager Gruber said that he has heard of two particular instances where the agreement has been reviewed by the JPA's Attorneys; Gruber said he will work with the Towns City Attorney to review the JPA agreement.

City Attorney Wynne Furth stated that it is clear that these funds are to be used for library purposes, but that it is not clear whether the Council wants to explore possible redevelopment uses.

Council Member Dobbie said an Agenda item should be brought to the Council for discussion and to allow anyone else to come and speak.

Vice Mayor McKiethen stated her feeling that the Town needs to conduct a needs study to look at the existing library and the community needs to get involved to determine what they want for the future.

Council Member Lewis said a needs study should be done once we figure out what the library funds will be used for.

Jean Shaft, Atherton resident, applauded Marsala's enthusiasm for the issue, but felt that the public has not had enough involvement in the process.

Carol Flaherty, Atherton resident, stated that it is important to be looking at all viable possibilities before making any decisions. Flaherty concluded that she would rather see her property tax money go to Town Hall then to the library.

John Davey, BRTF member, stated that if they don't receive clarification on use of donor funds soon then it will be more difficult for the BRTF to make another recommendation to the Council. Davey said it is clear that this is complex and there are a variety of legal opinions, but clarification needs to be given.

Vice Mayor McKeithen asked Davey what clarification he needs beyond the fact that if there is a part of the Town Center designated specifically for library purposes then you could presumably use some of the donor city funds.

Davey stated that it was understood that the Council Chambers would go to the library and that there would be an exchange of monies which would be used for the new Town center.

Vice Mayor McKeithen felt that decision should be up to the residents of Atherton.

Denise Kupperman, Atherton resident, stated that she understands the need for a new Town center and she also understands a need for funds for the library. Kupperman suggested looking at other individuals who may be interested in exchanging or purchasing it.

Council Member Marsala stated his feeling that this issue has been very transparent and the idea all along has been to get clarification from the JPA Board. Marsala said he hasn't been lobbying that this is going to happen and the current motion states that we would be allowed to use funds in a validated manner. Marsala concluded that he wants clarification so the BRTF can go to the JPA Board and see if they are with them or against them.

Council Member Lewis stated that she sees both Marsala and McKeithen's points and feels the first step should be to have the City Manager and City Attorney to work with the Joint Powers Authority to see what the library donor funds can be used for.

Mayor Carlson said the only way to get a clear understanding is to get the Towns legal Counsel involved. Carlson said he would like to see the draft report from the BRTF as well.

**MOTION by Lewis, second by Marsala to direct the City Manager and City Attorney to work with the San Mateo County Library Joint Powers Authority to determine explicit use of library donor funds. The motion passed.**

Ayes: 3      Nays: 2 (Dobbie, McKeithen)      Abstain: 0      Absent: 0

The recommendation to approach the San Mateo Library Joint Powers Authority (JPA) and request permission to use a validated portion of Atherton's Donor City Funds towards a new town center in exchange for the Library getting exclusive use of the vacated Council Chambers was not approved.

**9:10 P.M.      31.      ACCEPTANCE OF GASB 45 ACTUARIAL VALUATION OF POST-EMPLOYMENT HEALTHCARE PROGRAM ACCRUED OBLIGATIONS**

**Report:** Director of Finance Louise Ho

**Recommendation:** Accept and Approve the Actuarial Valuation of Post-Employment Health-Care Benefits (GASB 45) Report

A study session was held before the regular meeting to review the report.

**MOTION by Dobbie, second by McKeithen to accept and approve the Actuarial Valuation of Post-Employment Health-Care Benefits (GASB 45) Report.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

**9:20 P.M.      32.      TOWN RESPONSE TO CIVIL GRAND JURY REPORT ON SPECIAL EVENTS ORDINANCE**

**Report:** City Manager Jerry Gruber and City Attorney Wynne Furth

**Recommendation:** To Be Determined

City Attorney Wynne Furth stated that when the Grand Jury issues a report then the agency must respond in writing. City Attorney Furth reviewed the findings and recommendations with Council and decided on the following:

The Town agrees with the 11 findings set out in the report with the following additional comments or exceptions:

Finding 5: The Town has not independently verified that Pop Warner continues to operate within the conditions specified by the District's use permit.

Finding 6. The Town has not independently verified whether the other cities in the Sequoia Unified High School District ("District") regulate non-school-related uses of fields or outdoor and indoor facilities.

Finding 7. The Town does not accept in whole the finding that the District is concerned that Atherton may attempt to restrict use of the Performing Arts Center for non-school-related uses under the Ordinance. The Town and the District entered into a Settlement Agreement concerning the construction and operation of the performing arts center at Menlo-Atherton High School in 2008. The Settlement Agreement recognizes the value of the Performing Arts Center and includes a procedure for resolving further disputes on its use.

Finding 8. The Town has not independently verified that the District has taken into account the concerns of local residents by altering the terms of the Pop Warner use permit for the Menlo-Atherton High School football field to reduce noise.

Finding 9. The City Council asked that the Planning Commission further study the special events regulations in the Town's Zoning Ordinance. The Planning Commission has established a sub-committee to work on this task. The City Council is unaware that any Atherton officials have voiced a concern as to whether the sub-committee's work will be balanced. The City Council agrees that that some individuals have "voiced a concern as to whether the sub-committee's work will be balanced, given that one of the two members has been an outspoken critic of Pop Warner's use of M-A's football field outside of the Guidelines." The Town does not dispute the finding that such concerns have been voiced. However, the Town's concurrence in the finding should not be understood as concurrence in the opinion. The Town often appoints individuals with both a strong interest in civic affairs and strong points of view to its committees and commissions. This involvement can be a positive force in arriving at good outcomes.

Finding 10. The City Council is unaware of any public official advising the Grand Jury that four of the five Planning Commission members are Lindenwood residents. Four out of five Planning Commissioners were Lindenwood residents at the time the report was prepared. The Planning Commission currently includes three citizens who reside in Lindenwood and two who do not.

**The Town's response to the Grand Jury's recommendations are as follows:**

Grand Jury Recommendation 1. *The Town should recognize that the Sequoia Union High School District is also a public body that is accountable to its constituents and is responsible for regulating use of its facilities for both school and non-school use.*

The Town recognizes and respects the fact that the Sequoia Union High School District ("District") is a public body that is accountable to its constituents and responsible for regulating the use of its facilities. In addition, under Government Code Sections 53090 et. seq. the Town's zoning and building ordinances apply to school districts within its boundaries unless their governing boards vote to exempt their districts from those laws.

Grand Jury Recommendation 2. *Expressly exempt all present and future public school facilities from the Special Events Ordinance and Special Event Guidelines.*

The Town's Special Events Ordinance applies to certain non-school activities taking place on school grounds. The regulations in question are part of the Town's lawfully adopted zoning ordinance. The Grand Jury has not found the regulations to be illegal. The Town has asked its Planning Commission to study this matter further and it is doing so. When it receives the Planning Commission's report, the City Council will consider its recommendations carefully, as well as those of the Civil Grand Jury. However, it will not commit itself to any course of action except in compliance with the Government Code procedures for amending zoning codes.

Grand Jury Recommendation 3. *Allow issues related to after-hours use of private school facilities to be left to the schools and their immediate neighbors whenever possible.*

Recommendation 3 has been implemented. The Town's Special Events Ordinance provides a process through which the interests of the event organizers, attendees, and host schools are balanced with those of the neighboring residents. The Town makes every effort to ensure that the special events permitting process is consultative and believes the process has worked well.

Grand Jury Recommendation 4. *Encourage qualified citizens from all parts of the Town of Atherton to seek appointment to boards and commissions in order to ensure broader citizen representation that is more reflective of the entire Atherton community.*

Recommendation 4 has been implemented. The Town solicits applications for service on its boards and commissions from all its citizens and will continue to do so.

**MOTION by McKeithen, second by Dobbie to approve the Town's response to the Civil Grand Jury report on Special Events Ordinance.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

- 33. COLLEAGUES' MEMO: COUNCIL MEMBERS CODE OF CONDUCT AND PROTOCOLS Report:** Council Members Lewis and Marsala  
**Report:** Council Members Lewis and Marsala  
**Recommendation:** To Be Determined

City Manager Gruber reviewed the staff report and recommendations with Council. The recommendations are:

1. Direct the City Manager and City Attorney to prepare a proposed revision to our Rules of Procedure that explain the purpose and limits of the Council Reports section of our Procedures for Council review and consideration.

2. Authorize the Mayor to meet with the City Manager and City Attorney to consider what additional procedural rules would assist in making our Council discussions productive, help us live by our Code of Conduct.

Mayor Carlson said he had no problem with recommendation number 1, but felt that recommendation 2 needed to include all Council Member reviewing the Code of Conduct with the City Manager and City Attorney. Council agreed.

**MOTION by Carlson, second by Dobbie to accept both recommendations with the amendment to recommendation 2.**

Ayes: 5      Nays: 0      Abstain: 0      Absent: 0

### **35.      COUNCIL REPORTS**

Vice Mayor McKeithen stated that she attended an Audit Committee meeting in which they set up a meeting schedule, reviewed the existing audit and the scope of the proposed audit. McKeithen concluded that she attended a Transportation Committee meeting and Finance Committee meeting.

Council Member Marsala said he attended the Library JPA on behalf of Vice Mayor McKeithen, the Office of Emergency Services meeting, the Environmental Programs Committee meeting, the Blue Ribbon Task Force meeting and the League of California Cities with Governor Schwarzenegger.

Council Member Dobbie said he attended the Blue Ribbon Task Force meeting and added that from an architectural standpoint they've done a wonderful job.

Council Member Lewis said she attended the ABAG annual meeting where they discussed SB375, a Climate Action Leadership Summit in Oakland, Menlo Park Fire Protection District Budget update meeting, and the Diversity awards which was put on by the Hispanic Chamber of Commerce where Mayor Carlson gave the Selby Lane School Principal an award.

Mayor Carlson said he attended the Rail Committee meeting which continues to pursue getting the Station into better shape and continues to attend HSRA meetings and discuss the lawsuit. Carlson added that the Peninsula Consortium of Cities continues to meet every Friday morning.

### **36.      FUTURE AGENDA ITEMS**

Council Member Marsala said since the budget is being reviewed right now he suggested considering allocating the surpluses in Building Department.

**MOTION by Marsala second by Lewis to add an agenda item to the next regular City Council meeting for setting aside the surpluses in the building department out of the unrestricted reserves so that they are properly separated.**

Vice Mayor McKeithen asked if this is premature until the NBS study is received. Mayor Carlson agreed and felt that Council should have all the information before making any determinations. The motion failed.

Ayes: 2      Nays: 3 (Carlson, Dobbie, McKeithen)      Abstain: 0      Absent: 0

**37. PUBLIC COMMENTS**

None

**38. ADJOURN**

**MOTION by Carlson, second by Dobbie to adjourn the meeting. The motion passed unanimously.**

Mayor Carlson adjourned the meeting at 10:39 p.m.

**Respectfully submitted,**

---

**Theresa DellaSanta**  
**Deputy City Clerk**