



**Minutes**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**AUGUST 19, 2009**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California  
**REGULAR MEETING**

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

1. **PLEDGE OF ALLEGIANCE**

2. **ROLL CALL**      Lewis, Dobbie, Marsala, McKeithen, J. Carlson

Council Member Jim Dobbie was excused.

3. **PRESENTATIONS**

Mayor Carlson presented a certificate of appreciation to Dr. Sam Goodman for his service on the Town's Audit Committee.

4. **PUBLIC COMMENTS**

Colleen Anderson, Atherton resident, voiced her concerns on safety issues for children on Parker Avenue.

Denise Kupperman, Atherton resident, announced that the annual "Swing in the Park" a Holbrook-Palmer Park and Atherton Dames fundraiser will be held on September 13<sup>th</sup>.

5. **REPORT OUT OF CLOSED SESSION**

City Attorney Wynne Furth reported that there was no reportable action from Closed Session.

6. **CITY MANAGER'S REPORT**

City Manager Jerry Gruber informed Council that he went to Parker Ave to discuss and request voluntary compliance with neighbors on parking and safety issues and concerns.

Gruber informed Council that Congresswoman Anna Eshoo will hold a Town Hall meeting in Menlo Park to discuss High Speed Rail on August 26<sup>th</sup>.

Gruber stated that he and Police Chief Nielsen attended a meeting at Atherton resident Zach Whitman's home for Selby Lane homeowners.

Gruber informed Council that the new siren on Walsh Road was installed and tested the previous Friday. Mayor Carlson, Council Member Lewis and Police Chief Nielsen were in attendance for the ceremony.

Gruber concluded that the Encinal traffic light and crosswalk still need to go to the Menlo Park City Council in September.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

None

**CONSENT CALENDAR** (Items 8-27)

Council Member Marsala removed Item 21.

Vice Mayor McKeithen removed Item 18.

Council Member Lewis removed items 16, 19, 20, and 25. Lewis had questions on Item 11 and 12.

Mayor Carlson removed Item 24.

8. **APPROVAL OF JULY 15, 2009, JULY 28, 2009, SPECIAL MEETING AUGUST 3, 2009, SPECIAL AND AUGUST 10, 2009, SPECIAL MEETING MINUTES**

**Recommendation:** Approve July 15, 2009, July 28, 2009 Special meeting, August 3, 2009 Special meeting and August 10, 2009 meeting minutes

9. **APPROVAL OF BILLS AND CLAIMS FOR JUNE 2009 IN THE AMOUNT OF \$1,068,256**

**Recommendation:** Approve Bills and Claims in the amount of \$1,068,256

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED JULY 31, 2009**

**Recommendation:** Accept Monthly Financial Report

11. **RESOLUTION 09-26 ESTABLISHING A FUND BALANCE POLICY FOR THE GENERAL FUND**

**Report:** Finance Director Louise Ho

**Recommendation:** Approve Resolution 09-26 authorizing the establishment of a fund balance policy for the General Fund.

Council Member Lewis made edits to the Fund Balance Policy. Staff took note and will make the change.

12. **ADOPTION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH CALTRANS FOR**

**FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) PROGRAM FUNDING FOR THE ATHERTON AVENUE REHABILITATION PROJECT**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Adopt Resolution 09-27 authorizing the City Manager to execute agreements with Caltrans for Federal American Recovery and Reinvestment Act of 2009 (ARRA) Program funding for the Atherton Avenue Rehabilitation Project

Council Member Lewis made edits to the Resolution. Staff took note and will make the change

**13. ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$7,183.50 FOR HOLBROOK-PALMER PARK MAIN LAWN FOUNTAIN PROJECT NUMBER 08-006**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Accept work and Authorize recording of a notice of completion and approving contract change orders in the amount of \$7,183.50 for the Holbrook-Palmer Park Main Lawn Fountain Project Number 08-006

**14. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE HOLBROOK-PALMER PARK MASTER IRRIGATION PLAN UPGRADES AND SECOND PARK WELL PROJECT NUMBER 09-006**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Approve the plans and specifications and authorize advertisement for bids for the Holbrook-Palmer Park Master Irrigation Plan Upgrades and Second Park Well Project, Project No. 09-006

**15. RESOLUTION REJECTING CLAIM OF ANTHONY NICOSIA**

**Report:** Assistant City Manager Eileen Wilkerson

**Recommendation:** Approve Resolution 09-28 rejecting claim of Anthony Nicosia

**21. AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY HORN FOR ROAD IMPACT FEE STUDY**

**Report:** Public Works Director Duncan Jones

Item 21 was tabled to the next Council meeting.

**22. APPROVAL OF ADDENDUM TO SPRINGBROOK SOFTWARE LICENSE AGREEMENT, SPRINGBROOK SOFTWARE MAINTENANCE AGREEMENT; AND AUTHORIZE CITY MANAGER TO EXECUTE THE ADDENDUM**

**Report:** Director of Finance Louise Ho

**Recommendation:** Approve the addendum to Springbrook Software License Agreement, Springbrook Software Maintenance Agreement in an amount not

to exceed \$14,025 plus a 20% contingency for a total of \$16,830; and authorize City Manager to execute addendum

**23. POLICE DEPARTMENT VEHICLE PURCHASE**

**Report:** Police Chief Glenn Nielsen

**Recommendation:** Authorize the purchase of an unmarked police hybrid vehicle (Toyota Camry) for a cost not to exceed \$28,500.00 and the purchase of one Ford Crown Victoria patrol car not to exceed \$25,094.00

**26. CONSIDERATION OF DESIGNATING THE PARK AND RECREATION COMMISSION AND THE HOLBROOK-PALMER PARK FOUNDATION AS COORDINATING PARTNERS OF A COMMUNITY VOLUNTEERS PARK MAINTENANCE ASSISTANCE PROGRAM WITH SUPPORT AND DIRECTION FROM THE CITY MANAGER AND STAFF**

**Report:** City Manager Jerome D. Gruber

**Recommendation:** Approve Designation of the Park and Recreations Commission and the Holbrook-Palmer Park Foundation as coordinating partners of a community volunteers park maintenance assistance program with support and direction from the City Manager and staff

**27. ADOPTION OF A RESOLUTION APPROVING THE ISSUANCE OF REVENUE OBLIGATIONS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY FOR IMPROVEMENTS TO THE SHOREWAY RECYCLING AND DISPOSAL CENTER**

**Report:** City Manager Jerome D. Gruber

**Recommendation:** Adopt resolution 09-33 approving the South Bayside Waste Management Authority (SBMWA) issuance of bonds in the maximum amount of \$56,500,000 to fund improvements to the Shoreway Recycling and Disposal Center

**MOTION by McKeithen, second by Lewis to approve Items 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 26 and 27. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

City Manager Gruber recommended to Council that Item 21 and 29 be tabled to the next regular Council meeting.

**REGULAR AGENDA (28)**

**28. FISCAL YEAR 2007-08 BASIC FINANCIAL STATEMENTS AND INDEPENDENT AUDITOR'S REPORT**

**Report:** Finance Director Louise Ho

**Recommendation:** Accept FY 2007-08 Basic Financial Statements and Independent Auditors' Report prepared by Caporicci & Larson

Steve Larson, Caporicci & Larson, gave Council a brief presentation and thanked them for allowing Caporicci & Larson to work on the Towns last 8 audits. Larson concluded that the Town had seven clean audits.

**MOTION by McKeithen, second by Carlson to accept FY 2007-08 Basic Financial Statements and Independent Auditors' Report prepared by Caporicci & Larson.**

Council Member Lewis said she would abstain since she was not a member of the Council during the FY2007-08.

Ayes: 3      Nays: 0      Abstain: 1 (Lewis)      Absent: 0

**PUBLIC HEARINGS (29-30)**

**29. ADOPT RESOLUTION 09-32 TO APPROVE MASTER FEE SCHEDULE SETTING MISCELLANEOUS FEES FOR TOWN SERVICES**

**Report:** City Manager Jerome D. Gruber

**Recommendation:** Conduct a Public Hearing and Adopt resolution 09-32 approving Master Fee Schedule for miscellaneous fees for Town services

Council tabled this item to September 16, 2009.

**30. ORDINANCE ADOPTING TITLE 17 TO THE ATHERTON MUNICIPAL CODE - A COMPREHENSIVE ZONING ORDINANCE UPDATE**

**Report:** Deputy Planner Lisa Costa Sanders

**Recommendation:** Conduct a public hearing and introduce the attached Zoning Code Update Ordinance based on the following finding for the reasons outlined in the staff report

Lisa Costa Sanders, Deputy Town Planner said that PMC conducted the draft update of the zoning code. Costa Sanders said the Planning Commission has done a very comprehensive and thorough review of the zoning code.

Costa Sanders said provisions were added to include minor accessory structures in the front yard, to allow small bay windows and light wells in the side and rear yard setbacks for the R1B district only, and to eliminate the exception review process.

Costa Sanders said staff does not support the provisions for new lighting which will require all exterior lighting over 10-feet above grade on main buildings and lighting associated with entry gates to be shielded or down lit because the requirement is over-restrictive and would create a large number of non-conforming situations as most of the existing exterior lighting on main buildings is not shielded or down lit. Costa Sanders concluded that staff is not supportive of the provision to allow for interior fences up to a height of 8-feet because Building code exempts fences 6 feet in height or less from requiring a building permit.

Costa Sanders said that through the Housing Element requirements staff is looking at updating the second dwelling unit ordinance with one change which is to increase the size from 600 square feet to 1200 square feet. This section would be updated later on in the process.

Vice Mayor Kathy McKeithen voiced concerns that 20-foot setbacks for smaller properties are too large and would reduce the available property for other uses. McKeithen supported allowing interior fences up to 8 feet if all property owners agreed to it.

Council Member Elizabeth Lewis said that this has been a very long process and thanked Costa Sanders for her work. Lewis was concerned whether the public had been given sufficient time to review the document. Lewis added that she feels the provision for the shielded and down lit lights will allow for a tremendous amount of non-conformity.

Council Member Charles Marsala thanked staff for their work. Marsala referred to floor area calculations on basement heights and asked if the heights can be more lenient like the Town of Woodside who measures to the ceiling of the basement and not to the beginning of the first floor.

Costa Sanders said staff had concerns with the point of measurement being at the bottom of the ceiling because the ceiling can be modified. She concluded that a higher limitation was not discussed because people meet the objective criteria when she tells them it absolutely can not be more than 24 inches.

Marsala said that he supports staff's position on the lighting issues and thinks it is too restrictive. Marsala asked if a home has slope issues do they qualify for a variance. Costa Sanders said there needs to be something unique about the property that prohibits them the ability to construct reasonable home improvements that their neighbor(s) could construct. She concluded that each unique situation is dependent upon whether the Planning Commission would grant a variance for a basement on a slope property.

City Attorney Furth said that the State law on variances is very restrictive and there is no local freedom to change the standards.

William Grindley, Planning Commissioner, said that the lighting issued was discussed repeatedly and the conclusion is a compromise. Grindley thanked City Attorney Furth for all of her help.

Paul Quinlan, Planning Commissioner, said he raised the issue that he felt 20-foot setbacks are too big for small lots. Quinlan said the majority of the Planning Commission felt that in order to be off the street when you open your gate that a 20-foot setback would suffice. Quinlan said the lighting issues are relatively complicated and the provisions are very restrictive. He felt these provisions would create non-compliance. Quinlan concluded that 8-foot fences on small lots would have a negative visual impact.

Council Member Lewis said that privacy issues can be resolved with landscape screening rather than raising the gate height.

Quinlan stated that on page 1-32 in subsection C.2., the Planning Commission added that "this subsection does not apply to interior alterations." Quinlan felt the same thing should be added to subsection C.3.

Colleen Anderson, Atherton resident, expressed her support in keeping the lighting as is on the larger properties and granting smaller setbacks for smaller lots.

McKeithen asked what the current down lit lighting requirements are for. Costa Sanders said the current requirements are for accessory structures and second dwelling units only. McKeithen asked what the intent on setbacks for smaller properties was. Costa Sanders said there is no difference for smaller properties and the reason for 20-foot setbacks was to get the car off the roadway when entering through their gates. Costa Sanders said smaller setbacks for smaller lots were discussed at the Planning Commission but there was no consensus.

Public Works Director Duncan Jones said he feels that in most cases it is a good idea to have the setbacks to get the car off the road, but felt that there can be exceptions and provisions for particular situations.

Lewis questioned how many feet are required from the edge of the pavement to the property line. Jones said it depends on the site and that there are some smaller streets where there is only 6 feet from the edge of the pavement to the property line. The code on what you can build is nothing over 5 inches on the first 3 feet and nothing over 36 inches on the next three feet with no obstructions, logs, curbs or right-of-ways and the entry key pads and mailboxes are supposed to be 6 feet back from the edge of the pavement.

Marsala questioned if a property owner had a damaged gate would they have to re-design a new one for conformity. Costa Sanders said repair and maintenance is ok, but if they demolish the gate and replace it then it would need to follow the current setback requirements.

Jeff Wise, Atherton resident, said that this has been a long and interesting process and staff has worked very hard on this. Wise said the earlier stage outreach meetings brought several residents out and then that dwindled. Wise suggested that the Town have an outreach email which would include a list of people who are interested in certain Atherton issues. Wise stated that a shielded light means the lights needs to come out horizontally which would require an opaque tube to make the light shine down and he questioned whether that fits the architectural style of homes in Atherton. Wise concluded that the Council should hold off on the lighting provision and that he is supportive of a 6-foot limit for fences because it is exempt by State law.

Mayor Carlson asked if Wise had any comments on the gate setbacks for smaller lots. Wise said he feels the smaller lots clearly have different circumstances and a 20-foot setback on a smaller lot would be very difficult to deal with.

**MOTION by McKeithen, second by Carlson, to waive further reading, introduce the ordinance adopting the comprehensive zoning code update and continue the public hearing to the next regularly scheduled meeting and remove the provision that requires 20-foot setbacks for entry gates, remove new lighting provision that would require lighting to be down lit and shielded on main buildings and entry gates, remove the provision to allow 8-foot interior fences and add the R1B zoning parameter that allow bay windows and basement light well projections into R1A zones for lots with an area of less than 10,000 square feet. In addition, refer the issue of 20 foot setbacks for entry gates particularly with regard to R1B zoning to the Planning Commission for further review on probabilities such as a threshold square footage, possibly lessening the setback for smaller lots and consideration. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**REGULAR AGENDA, CONTINUED (Items 31-34)**

**31. AWARD OF CONTRACT TO THE LEW EDWARDS GROUP FOR PROFESSIONAL PUBLIC INFORMATION CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED**

**Report:** City Manager Jerome D. Gruber

**Recommendation:** Approve a professional services agreement with The Lew for professional public information consulting services related to public education of services, policy, and programs provided by the Town and that the City Council authorize the City Manager to execute an agreement in the amount not to exceed \$15,500.00

City Manager Gruber informed Council that he and Mayor Carlson interviewed candidates and discussed the amount of information that can be disseminated to the public without actually advocating.

City Attorney Furth stated that informational mailings must provide facts only and Cities must be very careful in distinguishing education versus advocacy. Furth said the best rule is to use your normal means of communication for educational material. She added that the City of Salinas went to the Supreme Court who ruled that it is proper to use your normal means of communication and to have information available when someone comes in for it.

Mayor Carlson stated that staff should dedicate the next Athertonian to providing facts about the parcel tax.

Gruber said he felt that working with the various Town community groups staff can provide the same information as the consultant would. Gruber added that staff has already met with the Disaster Preparedness Group and provided them with information on how the parcel tax money was spent in the past and the level of services that are currently being provided to Town residents from its parcel tax revenue.

Council Member Marsala felt that there is a fine line between advocacy and education and its better to be safe then risking the criticism of advocating. He supported hiring an outside consultant.

Council Member Lewis stated that hiring an outside consultant is an indication of promoting the parcel tax. She added that this money is not in the budget and she does not support it.

Council discussed and voiced their concerns over the recent ruling in Vargas v. Salina.

**ACTION: Council concurred not to approve a professional services agreement with The Lew Edwards Group for professional public information consulting services and to abandon the project entirely.**

**32. THE SAN MATEO COUNTY LIBRARY SYSTEM JOINT POWERS AGREEMENT AND "DONOR FUNDS" ATTRIBUTABLE TO THE TOWN OF ATHERTON**

**Report:** City Manager Jerome D. Gruber

**Recommendation:** Receive and file this report and provide any further direction to Staff

City Manager Gruber stated that this is an item that was previously requested by Council.

City Attorney Furth said she would like to thank the San Mateo County public library members and Council for helping gather the information.

Furth said the Town has a significant balance of donor city funds and Council wanted to know the lawful purpose for which the funds could be expended and the decision-making procedure that applies.

Furth said that after the passage of Proposition 13 the San Mateo County library no longer had power to increase its tax rate so the Cities that use that library system and the County formed a joint powers agreement and supplemented the funding of libraries under an arrangement where the tax revenue is used to provide library services including books and librarians. The Cities and County contributed by providing the library buildings.

Furth added that a second provision was later added citing that some jurisdictions collect more revenue than what is actually spent on the library services so an agreement was made that excess funds can be spent by the Library JPA after consultation with the jurisdiction. Furth said that in 2004 the JPA was rewritten to say that the excess funds now referred to as Donor City Funds can only be used with the agreement of City Council and the Library JPA Board. The donor city funds could only be spent on library services. Furth concluded that expansion, repair or maintenance of the library building is clearly within the scope of the agreement.

Furth stated that she spoke with John Shupe, legal counsel for the Library JPA Board, to discuss whether Donor City Funds can be used to purchase Town-owned property for conversion to library use. Shupe concluded that with consent of the Council and the Library JPA, Atherton donor city funds could lawfully be spent to acquire land and/or buildings for library purposes, but not property that the Town already owns. Furth added that nothing in state law bars a library district from buying land from another government agency, including a city within the district. However, that land would belong to, or be leased by, the library district; under state law, cities and town within a district have no obligation to provide library buildings.

Furth concluded that the 1999 and 2004 JPA agreements together, it seems that an implied term of the Library JPA is that Atherton agreed to provide the existing library building for library operations. Donor City Funds can be used to keep that building in shape, to remodel it, and to expand the library program, either in that building or elsewhere. Remodels and expansions are listed as permitted capital expenditures, but not the substitution of library-tax funded facilities for Town-donated facilities.

Council member Lewis stated that Council has been trying for some time to find out what is the best way to use Donor City Funds in a legal manner and thanked City Manager Gruber and City Attorney Furth for the information.

Council Member Marsala asked if the JPA can be modified. Furth said it can be amended with consent of 2/3 of its members. Marsala said that the Library JPA legal counsel stated that there was no specific authority for the conclusion on how to use the funds. Furth said there is no definitive answer and they are all on a case-by-case basis.

Marsala said that in February he made a motion at the Library JPA meeting to get legal opinion to include provisions for donor cities to be able to transfer Donor City Fund reserves for assets in a validated manner and questioned if this is a way of modifying the agreement. Furth said that nobody made a proposal to modify the JPA and a modification is not needed if the funds are being used to expand.

Marsala concluded that the JPA agreement is ambiguous and the City Council should discuss and have policy recommendations and guidelines for the JPA representative so Council are all on the same page. Mayor Carlson said that Council could meet and discuss this once the needs assessment is completed.

**MOTION by Marsala, second by Lewis, to receive and file this report and provide any further direction to Staff. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**33. TOWN RESPONSE TO CIVIL GRAND JURY REPORT ON REVERSING THE UPWARD TRAJECTORY OF EMPLOYEE COSTS IN THE CITIES OF SAN MATEO COUNTY**

**Report:** Assistant City Manager Eileen Wilkerson

**Recommendation:** Accept the Town's response to the Civil Grand Jury regarding reversing the upward trajectory of employee costs in the cities of San Mateo County

Council Member Lewis conveyed one typographical edit to the letter. Staff took note and will make the change. Mayor Carlson said Council needs to do a lot more by getting involved and feels the upward trajectory of employee costs is a serious problem.

**MOTION by McKeithen, second by Carlson, to Accept the Town's response to the Civil Grand Jury regarding reversing the upward trajectory of employee costs in the cities of San Mateo County. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**34. DISCUSSION AND POSSIBLE ACTION FOR COUNCIL TO ASSIGN A SUB-COMMITTEE OR OTHER MECHANISM TO DEAL WITH TOWN FACILITIES OUTSIDE OF THE TOWN**

**Report:** Council Member Charles Marsala

**Recommendation:** To Be Determined

Council Member Marsala said that from 2004 through 2008 he served on the Town Facilities Committee which had jurisdiction of all Town facilities but later removed the Park, Council Chambers, Administration Building and the Library. Marsala said an oversight Committee would help determine what could be done with the storage PODs at the Park, needs for room and space in the Council Chambers, and consideration for the structure of the library.

Mayor Carlson concluded that an oversight committee may be needed in the future when Council decides specific ?charter? for each issue.

Vice Mayor McKeithen added that the Friends of the Library has met and discussed the needs assessment and how the funds should be used for the library. McKeithen said she had no objection to Council discussing this but felt that it should be done once the needs assessment and seismic study are completed and once the community has given their input.

Council Member Lewis felt that an oversight committee as a main conduit to oversee the committees who control separate Town facilities is a good idea.

**MOTION by Marsala, second by Lewis, to assign a sub-committee of the Council to review seismic concerns for the Council Chambers, the storage PODs at the Park pavilion, and to stay in touch with the Friends of the Library as they progress through the needs assessment. The motion failed.**

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

**16. RESOLUTION 09-29 TO ADOPT STATEMENT OF INVESTMENT POLICY FOR FISCAL YEAR 2009-2010**

**Report:** Finance Director Louise Ho

**Recommendation:** Adopt Resolution 09-29 to approve the Statement of Investment Policy for Fiscal Year 2009-2010

Council Member Lewis asked who receives the investments on a day-to-day basis and are the development and internal control procedures being practiced and followed. Lewis concluded her support for expanding the Finance Committee to include Atherton residents.

Finance Director Louise Ho said that any financial investments for approval go to her for review and then she discusses it with the City Manager for recommendation to the Finance Committee for approval. Ho concluded that monthly statements will be sent to Council.

Vice Mayor McKeithen suggested that the entire City Council and the public be invited to attend the next Finance Committee.

City Manager Gruber suggested that MBIA attend Council meetings on a quarterly basis to present and update the Council on current investments.

**MOTION by McKeithen, second by Lewis, to adopt Resolution 09-29 to approve the Statement of Investment Policy for Fiscal Year 2009-2010. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**17. APPROVAL OF AMENDMENT NO. 2 TO THE CONSULTANT SERVICES AGREEMENT DATED JANUARY 29, 2009, BETWEEN MUNISERVICES, LLC AND THE TOWN OF ATHERTON FOR BUSINESS LICENSE TAX MANAGEMENT AND ADMINISTRATION**

**Report:** Finance Director Louise Ho

**Recommendation:** Approve Amendment No. 2 to the consultant services agreement dated January 29, 2009, with MuniServices LLC; and authorize the City Manager to execute the amendment

**MOTION by Carlson, second by McKeithen, to approve Amendment No. 2 to the consultant services agreement dated January 29, 2009, with MuniServices LLC; and authorize the City Manager to execute the amendment. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**18. APPROVAL OF THE REQUEST FOR AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT DATED JANUARY 29, 2009, BETWEEN NBS AND THE TOWN OF ATHERTON FOR COST ALLOCATION PLAN, FULL COST RECOVERY STAFF HOURLY RATES, AND COMPREHENSIVE FEE STUDY**

**Report:** Finance Director Louise Ho

**Recommendation:** Approve the request from NBS to amend the consultant services agreement dated January 29, 2009, Exhibit B Fee Schedule, and authorize City Manager to execute in an amount not to exceed \$14,600

Vice Mayor McKeithen said she would not support approving an increase for work that has already been completed. McKeithen said in the original Agreement, Exhibit A states that they will provide all the services in Exhibit A and no where in the scope or Agreement did it state that the Consultant will attend a certain amount of meetings. She added that the Town has already approved an amendment during mid-year budget review. McKeithen concluded that if there are any costs for future services she would support that.

Council Member Lewis asked if the review of the building fees from fiscal year 2001 to 2009 has done. Finance Director Louise Ho said Council requested the additional scope of work for NBS to review the Building Department fees and it was approved during the mid-year budget review. Ho concluded that the current amendment is for the additional and extra meetings that NBS has had to prepare for and attend in regard to the Towns Master Fee Schedule.

Council Member Marsala said NBS wants approval for payment over what Council has budgeted for. He questioned whether Council has any potential legal liabilities if they did not approve payment. City Attorney Furth said that Agreement cited nothing about a specific number of meetings the consultant was to attend.

McKeithen felt that since NBS requested the first amendment for the additional scope of work before completing the work that they should have done the same with the extra meeting attendance and since they did not she felt Council was led to believe that it was included.

**ACTION: Council concurred not to approve the request from NBS and to continue the item to the next regular Council meeting for additional information.**

**19. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH CROSBY GROUP TO PERFORM A PROBABLE MAXIMUM LOSS (PML) AND RISK ANALYSIS FOR COUNCIL CHAMBERS AND LIBRARY**

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

**Recommendation:** Approve a Professional Services Agreement with Crosby Group to perform a Probable Maximum Loss and Risk Analysis for the Atherton Council Chambers and Library and authorize City Manager to execute in an amount not to exceed \$14,000

Council Member Lewis asked if the scope of work in this Agreement is not already included in the seismic studies already completed.

City Manager Gruber said that the seismic study will not give all the information needed and that there are four studies that need to be completed and the results of this final report is what Staff will provide to Council, the library JPA and Friends of the Library for review and consideration. Gruber concluded that this report includes a geotechnical analysis.

**MOTION by McKeithen, second by Marsala to Approve a Professional Services Agreement with Crosby Group to perform a Probable Maximum Loss and Risk Analysis for the Atherton Council Chambers and Library and authorize City Manager to execute in an amount not to exceed \$14,000. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**20. RESOLUTION FOR DESIGNATION OF VOTING DELEGATES AND ALTERNATES – League of California Cities Annual Conference – September 16-18, 2009**

**Report:** City Manager Jerome D. Gruber

**Recommendation:** Adopt Resolution 09-30 Designating voting delegate and alternate to the League of California Cities Annual Conference

**MOTION by Marsala, second by Carlson, to designate Mayor Carlson as the voting delegate and Council Member Marsala at the voting alternate. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**24. RECOMMENDATION FROM ENVIRONMENTAL PROGRAMS COMMITTEE FOR THE CITY COUNCIL TO ENDORSE AB1404: GLOBAL WARMING COMPLIANCE OFFSETS & AIR QUALITY IN CALIFORNIA**

**Report:** City Manager Jerry Gruber, Building Official Mike Wasmann

**Recommendation:** Council endorse the passage of AB1404: Global Warming Compliance Offsets & Air Quality in California by adopting Resolution 09-31 supporting AB 1404 and sending a letter of support to the Union of Concerned Scientists and the California Senate signed by the Mayor

Mayor Carlson voiced his concerns that the endorsement letter was written by a lobbyist group with a political agenda. Carlson said he would support writing a short letter in his own words.

**MOTION by Marsala, second by Lewis, for Mayor Carlson to write his own short letter of endorsement for support of AB1404. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**25. APPROVE A CONTRACT CHANGE ORDER FOR G. BORTOLOTTO & CO, INC. FOR THE STREET RECONSTRUCTION PHASE 6 PROJECT NUMBER 08-025 IN THE AMOUNT OF \$54,176.22**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Approve a Contract Change Order for G. Bortolotto and Co., Inc. for Street Reconstruction Phase 6 Project, project number 08-025 in the amount of \$54,176.22

Council Member Lewis questioned why the road has deteriorated so much and asked if any of this money is coming from the American Road Recovery Act Fund (ARRA). Public Works Director Jones said the money is coming from the ARRA fund and the reason for the deterioration is that the road was built over 40 years ago and roads only have a life expectancy of 20 years.

**MOTION by Lewis, second by McKeithen, to Approve a Contract Change Order for G. Bortolotto and Co., Inc. for Street Reconstruction Phase 6 Project, project number 08-025 in the amount of \$54,176.22. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**35. COUNCIL REPORTS**

Council Member Lewis attended a ribbon cutting ceremony for the Walsh Road siren, Planning Commission meeting and the Environmental Programs Committee meeting. Lewis suggested that Council put a summary of their reports in writing and submit it to the City Clerk to include in the packets.

Council Member McKeithen attended Friends of the Library meeting and a Rail Committee meeting.

Council Member Marsala attended an Environmental Programs Committee meeting, legal ad-hoc committee meeting, Blue Ribbon Task Force meeting and a Menlo Park circus club horse show.

Mayor Carlson attended a San Mateo County Employee Relations Committee meeting in which they reviewed and collected data on compensation for employees in the County. Carlson attended Peninsula Cities Consortium (PCC) meetings and a Rail Committee meeting.

**36. FUTURE AGENDA ITEMS**

**MOTION by Carlson, second by McKeithen, to request that an item be added to the September Agenda for discussion and possible action to assign representatives to an oversight committee to oversee SBWMA Board of Directors including their duties and responsibilities. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**MOTION by Marsala, second by Lewis, to direct the Parks and Recreation Commission to review the POD situation at the Park and report back to Council.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 0

**10:20 P.M. 37. PUBLIC COMMENTS**

**10:30 P.M. 38. ADJOURN**

Mayor Carlson adjourned the meeting at 10:36 p.m.

**Respectfully submitted,**

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**Theresa DellaSanta  
Deputy City Clerk**