



Minutes
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
SEPTEMBER 16, 2009
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

PLEASE NOTE:

Times listed on the Agenda are an approximation and not a time certain. The Council may take up items out of order. Please arrive well in advance of the time listed for any item in which you are interested.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL** Lewis, Dobbie, Marsala, McKeithen, J. Carlson
3. **PRESENTATIONS**

Certificate of Achievement to Nicholas Caine – Atherton Resident who Swam the English Channel

Mayor Carlson presented 16-year old Sacred Heart student and Atherton resident, Nicholas Caine with a certificate of achievement for swimming the English Channel.

New Disaster Preparedness Vehicle – Presentation by Disaster Committee Representatives Doug Devivo and Paul Jemelian

The new disaster preparedness vehicle was parked in front of the Council Chambers for viewing. Devivo said this vehicle is the only one of its type on the Peninsula. It has an all agency communications ability in which they can speak to any government agency, Police Department or Fire Department on their frequency. Jemelian informed Council that the vehicle is equipped and prepared to respond to any emergency services and also has the unique ability to speak to any High School, Middle School or Elementary school in Atherton on their frequencies.

4. **PUBLIC COMMENTS**

Jon Ververloh, Atherton resident, commented on the drainage criteria adopted by Council under Ordinance 573. Ververloh says he is in the process of improving the garage of his property and resurfacing his driveway and patio but because of the drainage criteria he is forced to install a drainage system which will cost \$10,000 to design and another \$50,000 to install.

Ververloh asked Council to reconsider the maintenance agreement that goes along with the drainage requirements. He said that the agreement would require him to submit an annual report on how the system is being maintained and it allows the Town the right to change the maintenance

requirements and the functionality of the system while the property owner is required to pay for it. It allows access by Atherton officials at any time on the owner's property and it requires that the owner indemnify the Town towards any potential lawsuits that are brought to the owner because of installation. Ververloh requested that Council remove the maintenance agreement or scale it back dramatically.

Carol Flaherty, Atherton resident, concurred with Ververloh and added that the maintenance agreement is requiring property owners to attest to things that they have no knowledge of such as the impacts the 4-foot wide underground pipes have on the ground or to others. Flaherty requested Council either get rid of the maintenance agreement or revise it.

Jeff Wise, Atherton resident, asked Council to re-examine Ordinance 573 and check into whether State law has caught up to Town requirements.

5. REPORT OUT OF CLOSED SESSION

City Attorney Furth reported that Council directed her to prepare a contract for the City Manager for open session at the October Council meeting.

6. CITY MANAGER'S REPORT

City Manager Gruber said he attended the League of California Cities annual conference earlier that day and the emphasis was on finance and the looming budget crisis.

City Manager Gruber said the Senior Management team, the Parks Program Manager and the Public Works Superintendent held a strategic planning workshop that Lieutenant Mike Guerra facilitated. The meeting covered the biggest accomplishments to dates, establishing common purposes and focusing on who the Town serves and what will Atherton look like in three years. Gruber thanked the Management team for their hard work.

City Manager Gruber thanked Council for all the hard work, time and dedication they put into working with Atherton staff.

Mayor Carlson also credited Atherton citizens and their involvement and engagement with Town officials for excellent production.

Gruber said that Atherton resident Colleen Anderson voiced her concerns on safety issues on Parker Avenue at the last Council meeting. Gruber concluded that staff has followed up with a letter of compliance to the resident that was mentioned.

Mayor Carlson asked for an update on the quad gates at Fair Oaks Lane and the work that will be done on Watkins Avenue. Public Works Director Jones said the quad gates on Fair Oaks are being installed on September 28th and as soon as the project is finished they will proceed to install pedestrian gates and a pedestrian crossing connecting to the walkway that was just built with the pedestrian bridge on Watkins Avenue.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

CAROLYN WILLIAM – Selby Lane Principal

Carolyn Williams, Selby Lane School Principal, said that Selby Lane School is a Redwood City public school situated in Atherton and has seen a 30% increase (in what) since last year. Williams said staff does everything they can to ensure great education for its students. Selby School Lane strives to be good neighbors and has strict policies regarding wearing uniforms and discipline. Williams said Selby Lane School receives great support from Atherton and its Police Department. Williams said the Town arborist has held several Arbor Days and thanked staff for their work.

Council Member Marsala asked if the solar light has been installed. Williams said that two of the Selby Lane teachers wrote a grant to PG&E for a solar cell. It is an education program and a one-watt solar cell which may be able to turn on the lights in the parking lot behind the school.

Mayor Carlson thanked Carolyn Williams for attending the Council meeting and acknowledged that Williams was Atherton's nominee for the county wide diversity award a few months ago.

CONSENT CALENDAR (Items 8-23)

Council Member Lewis pulled items 18 and 19 to the regular agenda. There was a brief discussion on item 20.

- 8. APPROVAL OF AUGUST 19, 2009 MEETING MINUTES**
Recommendation: Approve August 19, 2009 meeting minutes
- 9. APPROVAL OF BILLS AND CLAIMS FOR AUGUST 2009 IN THE AMOUNT OF \$1,588,507**
Recommendation: Approve Bills and Claims in the amount of 1,588,507
- 10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED AUGUST 31, 2009**
Recommendation: Accept Monthly Financial Report
- 11. ACCEPTANCE OF TREASURER'S REPORT FOR THE FOURTH QUARTER ENDED JUNE 2009**
Report: Finance Director Louise Ho
Recommendation: Accept the Treasurer's Report for the Fourth Quarter Ended June 30, 2009
- 12. APPROVAL OF RESOLUTION 09-34 APPROVING A BANKING SERVICES AGREEMENT WITH THE WELLS FARGO BANK N.A. AND AN AMENDMENT TO THE STATE OF CALIFORNIA MERCHANT SERVICES AGREEMENT WITH WELLS FARGO MERCHANT SERVICES L.L.C. AND AUTHORIZING CERTAIN TOWN OFFICIALS TO ACT ON BEHALF OF THE TOWN IN REGARD TO BANKING SERVICES**
Report: Finance Director Louise Ho
Recommendation: Approve resolution 09-34 approving the banking services agreement with the Wells Fargo Bank and an amendment to the State of California master services agreement card payment acceptance with Wells Fargo Merchant Services, L.L.C. and authorizing certain Town officials to act on behalf of the Town in regard to banking and merchant services

- 13. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$7,244.91 FOR THE HOLBROOK-PALMER PARK SEWER IMPROVEMENT PROJECT NUMBER 08-027**
Report: Public Works Director Duncan Jones
Recommendation: Authorize recording of a notice of completion and approving contract change orders in the amount of \$7,244.91 for the Holbrook-Palmer Park Sewer Improvement Project Number 08-027
- 14. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$31,412.92 FOR THE STREET RECONSTRUCTION PHASE 5 PROJECT NUMBER 08-023**
Report: Public Works Director Duncan Jones
Recommendation: Authorize recording of a notice of completion and approving contract change orders in the amount of \$31,412.92 for the Street Reconstruction Phase 5 Project Number 08-023
- 15. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE POLHEMUS AVENUE DRAINAGE PROJECT NUMBER 08-011**
Report: Public Works Director Duncan Jones
Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Polhemus Avenue Drainage Project Number 08-011
- 16. AUTHORIZATION TO REQUEST PERMISSION FROM SAN MATEO COUNTY TO PLACE A “NO RIGHT TURN 7 AM TO 9 AM” SIGN ON MARSH ROAD AT FAIR OAKS AVENUE FOR A SIX-MONTH TRIAL PERIOD**
Report: Public Works Director Duncan Jones
Recommendation: Direct Staff to Request permission from San Mateo County to place a sign on Marsh Road at Fair Oaks Avenue prohibiting right turns during the peak period from 7-9 AM
- 17. APPROVE A CONTRACT CHANGE ORDER FOR JJ NGUYEN, INC. FOR THE HOLBROOK-PALMER WATER TOWER LAWN PROJECT (PHASE 2) NUMBER 08-026 IN THE AMOUNT OF \$6,952.00**
Report: Public Works Director Duncan Jones
Recommendation: Approve a Contract Change Order for JJ Nguyen, Inc. for Holbrook-Palmer Water Tower Lawn Project (Phase 2), project number 08-026 in the amount of \$6,952.00
- 20. APPROVAL OF AMENDMENT TO AGREEMENT WITH THE CITY OF REDWOOD CITY FOR VEHICLE MAINTENANCE AND FUEL PURCHASE**
Report: Police Chief Glenn Nielsen
Recommendation: Approve Amendment to authorize the renewal of the maintenance and fuel agreement with Redwood City for FY 09-10

Vice Mayor McKeithen questioned the difference in Police Department gas & oil change from the last fiscal year. Chief Nielsen said that the figure is an approximate number and anticipates that it will be lower.

21. **APPROVAL OF A RESOLUTION TO PARTICIPATE IN ACTERRA'S ENERGY EFFICIENCY PROGRAM FOR HIGH ENERGY HOMES, AUTHORIZE ACTERRA TO APPLY AND RECEIVE ENERGY EFFICIENCY AND CONSERVATION BLOCK (EECBG) FUNDING ON BEHALF OF THE TOWN OF ATHERTON, AND AUTHORIZE ACTERRA EXECUTIVE DIRECTOR MICHAEL CLOSSEN TO EXECUTE ALL NECESSARY AGREEMENTS TO IMPLEMENT AND CARRY OUT THE PURPOSES OF THE EECBG AWARD**

Report: Town Arborist Kathy Hughes Anderson

Recommendation: Approve Resolution 09-35 to participate in Acterra's energy efficiency program for high energy homes, and authorize Acterra to apply and receive EECBG funding on behalf of the Town of Atherton, and authorize Acterra Executive Director Michael Clossen to execute all necessary agreements to implement and carry out the purposes of the EECBG award

22. **REJECT CLAIM OF KATHRYN NICOSIA**

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Adopt Resolution 09-36 rejecting claim of Kathryn Nicosia

23. **RETURN UNTIMELY CLAIM OF JOHN P. JOHNS RECEIVED ON AUGUST 3, 2009**

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Instruct staff to return the claim of John P. Johns without action as it is untimely

MOTION by McKeithen, second by Lewis to approve Items 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22 and 23. The motion passed.

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

PUBLIC HEARINGS (24-25)

24. **ORDINANCE AMENDING AND RESTATING TITLE 17 TO THE ATHERTON MUNICIPAL CODE - A COMPREHENSIVE ZONING ORDINANCE UPDATE**

Report: Deputy Planner Lisa Costa Sanders

Recommendation: City Council continue the public hearing to the October 21, 2009 meeting

City Attorney Furth said that the City Council previously made changes and added new provisions to the recommendations made by the Planning Commission and under California law if Council proposes to make a change to any zoning regulation that was previously considered by the Planning Commission and the proposed change was not already discussed by the Planning Commission then it needs to be referred back to the Planning Commission so they can do so.

MOTION by Lewis, second by McKeithen to continue the public hearing to October 21, 2009. The motion passed.

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

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

Report: Finance Director Louise Ho

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

Carol Flaherty, Atherton resident, said that after speaking with her Attorney she has concluded that the Town can recoup all direct costs, but the only indirect cost that can be recouped is the amount directly related to the activity. Flaherty added that the Town is trying to pass along too much of the indirect overhead costs and that the schedule is flawed because of it.

Flaherty reviewed the Finance and Building Department sections of the fee schedule and gave a detailed analysis of the proposed fees associated with construction projects.

Flaherty stated that her family is in the process of building a brand new home and they have a serious issue with the cost per square foot methodology for building permit fees. Flaherty said it is not fair to use a figure such as \$350 per square foot when that is almost double what the house actually costs to build and suggested that Council find a formula that works for everyone.

Flaherty said that the fee schedule left out some very important comparisons with surrounding San Mateo cities whose cost per square foot range from \$180 to \$250.

Flaherty concluded that the charges for the utility deposit, landscape screening deposits and excavation charges are onerous and urged the Council to rethink those charges.

City Attorney Furth stated that on page 25 of the schedule there is a list of charges such as the utility deposit and the landscape screening deposit which were set by ordinance and can not be changed by a resolution and, therefore, the proposed charges in the fee schedule are incorrect.

Mayor Carlson thanked Flaherty for her attendance and comments on the master fee schedule. Carlson said he hopes to make this master fee schedule work for everyone.

Vice Mayor McKeithen said she felt that there has not been enough public comment since the process began at the beginning of the year and suggested holding a public outreach meeting before final adoption. McKeithen said that the Council is trying to evolve a schedule that is good for the Town and that accurately reflects the costs for the Town.

Council Member Dobbie concurred and added that it costs a lot to run the Town and NBS came up with the method of full cost recovery. Dobbie concluded that he hopes Town citizens would attend a meeting to listen to how NBS came up with the methodology.

Council Member Lewis said that although numerous workshops have been held she felt the need for at least one more meeting for public outreach.

Council Member Marsala said that determining a fee recovery percentage is a very political decision for a Council to make and felt that one more public outreach meeting would give residents more data to feel comfortable for the reasons the Town chooses to be at certain levels.

Council directed the City Manager to set up a public outreach meeting for October and to continue final adoption of the master fee schedule at the November Council meeting.

MOTION by McKeithen, second by Lewis to continue the Public Hearing to November 18, 2009. The motion passed.

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

REGULAR AGENDA (Items 26-27)

26. RECONSIDERATION AND APPROVAL OF AMENDMENT #1 TO THE PROFESSIONAL/CONSULTING SERVICES AGREEMENT 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 amendment #1 to the professional/consulting services agreement dated January 29, 2009, with NBS; and authorize City Manager to execute in an amount not to exceed \$14,600

Finance Director Ho said that \$12,140 of the amendment would cover travel, meetings, and additional work or comparisons requested by the Council up to the date of this meeting. Ho added that an additional \$2,460 is requested by staff for NBS to conduct on-site training.

Vice Mayor McKeithen said that although she wanted it pulled off the last agenda she now feels it should be paid because she felt that the Town is largely at fault for allowing the work to be done without asking if it would cost more money. McKeithen said she hoped that NBS would have come to staff and said that additional work they were to perform was outside the scope of services and would cost a certain amount of dollars. McKeithen concluded that NBS performed their services very well and felt that they should be paid for it.

Council Member Lewis said that the money should definitely be paid but felt that Council should be more prudent in asking a consultant to go over and above the scope of work. Lewis concluded that on-site training should not be paid for until Council agrees on the analytical model the Town will use going forward.

MOTION by Carlson, second by McKeithen to approve Exhibit A of Amendment #1 in an amount not to exceed \$12,140.00. The motion passed.

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

27. TOWN RESPONSE TO CIVIL GRAND JURY REPORT - TRASHTALK: RETHINKING WASTE MANAGEMENT RFP PROCESS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

Report: City Manager Jerome D. Gruber

Recommendation: Accept the Town's response to the Civil Grand Jury Report on Trashtalk: Rethinking Waste Management RFP Process by the South Bayside Waste Management Authority

City Manager Gruber suggested an ad-hoc Committee comprised of two Council Members can help respond to future Grand Jury reports.

Mayor Carlson informed Council that they should have received a handout which addresses his concerns with the response and offers his revised recommendations.

Vice Mayor McKeithen said that the revisions were very well done. Council concurred.

MOTION by McKeithen, second by Lewis to approve the Town's response to the Civil Grand Jury Report on Trashtalk: Rethinking Waste Management RFP Process by the South Bayside Waste Management Authority with Mayor Carlson's revisions.

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

18. APPROVAL OF AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GOLDFARB & LIPMAN FOR LEGAL ASSISTANCE ON THE HOUSING ELEMENT

Report: Deputy Town Planner Lisa Costa Sanders

Recommendation: Approve contract amendment to allow for additional services with Goldfarb & Lipman for legal assistance with the Housing Element in an amount not to exceed \$3,500

Vice Mayor McKeithen said that the Town has to be more careful and stop paying for services that were already provided.

City Manager Gruber said that he will work with staff to monitor consultants from beginning to end. Mayor Carlson said that staff should give the City Manager an early alert if the contract is getting close to using up funds.

MOTION by Carlson, second by McKeithen to approve contract amendment to allow for additional services with Goldfarb & Lipman for legal assistance with the Housing Element in an amount not to exceed \$3,500. The motion passed.

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

19. APPROVAL OF CONSULTANT SERVICES AGREEMENT WITH CRW FOR PROGRAMMING THE PROPOSED MASTER FEE SCHEDULE AND FOR INTERFACE WITH SPRINGBROOK FINANCIAL SOFTWARE IN AN AMOUNT NOT TO EXCEED \$22,475 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$24,723

Report: Building Official Mike Wasmann

Recommendation: Approve consultant services agreement with CRW for programming the proposed master fee schedule and for interface with Springbrook financial software and authorize City Manager to execute the agreement in an amount not to exceed \$22,475 plus a ten percent contingency for a total authorization of \$24,723

Council Member Lewis felt that it was too early to hire a consultant to interface with the Master Fee Schedule since it is not been adopted.

Mayor Carlson asked staff if they foresee any changes in the scope of work once the Master Fee Schedule is adopted. Building Official Wasmann said that he does not foresee any changes.

Mayor Carlson was concerned that any changes to the Master Fee Schedule between now and November might alter the specifications for the software.

Finance Director Ho stated it takes 60 days before the fees take effect after approval and that some of the work needs to be done before then. Ho recommended approving specific parts of the scope now and the rest once the Master Fee Schedule is adopted.

MOTION by McKeithen, second by Lewis to approve Section B amended to what is applicable work for the program that is needed now and the entire Section D. The motion passed.

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

28. COUNCIL REPORTS

Council gave written reports for inclusion in the Agenda packet.

Vice Mayor McKeithen added that the Library Needs Study is underway and they intend to have a contractor chosen by the end of this month. McKeithen said the Library has books on tape and electricity monitors at the Library now. Council Member Marsala said that the Environmental Program Committee was instrumental in getting the electricity monitors in the library.

29. FUTURE AGENDA ITEMS

MOTION by Carlson, second by Marsala to add discussion and review of the Town's Stormwater Treatment and Detention Maintenance Agreement to the next Council Agenda. The motion passed.

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

30. PUBLIC COMMENTS

None

31. ADJOURN

Mayor Carlson adjourned the meeting at 9:20p.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**