



Minutes
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
JANUARY 20, 2010
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

Mayor McKeithen called the meeting to order at 7:07 p.m.

1. **PLEDGE OF ALLEGIANCE**

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

3 **PRESENTATIONS**

LEAGUE OF CALIFORNIA CITIES PRESENTATION AND INTRODUCTION
Chuck Page

Item not taken up as a representative was not present.

4. **PUBLIC COMMENTS**

Jonathan Buckheit, Atherton resident, said he had a court hearing in San Mateo County on January 12th in which the judge ruled in his favor. Buckheit concluded by asking City Manager Gruber and Police Chief Guerra to forward the issue of Police Department tampering to the Federal Bureau of Investigations or the State Attorney General.

Carol Flaherty, Atherton resident, said the encroachment permit in the Public Works fees is too high and should be changed. Flaherty said she would file a protest

Melinda Tevis, Atherton resident, encouraged Council and residents to go to the Almanac and research old newspaper articles which had a lot of interesting stories about the Police Department and Management.

Colleen Anderson, Atherton resident, said that she would like a response back from the City with more information on the \$230,000 settlement with a retired Police Officer.

Council Member Elizabeth Lewis spoke under public comment and informed the public that a meeting will be held at Selby Lane School on January 26th at 6pm to discuss whether a cell phone tower should go behind the school.

5. REPORT OUT OF CLOSED SESSION

Atherton resident Melinda Tevis spoke under public comment.

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Subsection (a) of Government Code Section 54956):

John P. Johns v. the Town of Atherton, San Mateo County Superior Court Case No. CIV 479972

City Attorney Wynne Furth that there is no reportable action from Item A of Closed Session.

B. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION (Subsection (b) of Government Code Section 54956.9):

One (1) potential case:

Jonathan B. Buckheit v. Tony Dennis, Dean DeVlugt, The Town of Atherton, The County of San Mateo, and Does 1-500, inclusive - U.S. District Court for the Northern District of California, San Francisco Division, Case No. CV 09-5000

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Subsection (B) of Government Code Section 54956.9): One potential case:

California Tort Claim by Silvester M. Rabic, as Domestic Trustee on Behalf of the J.B.B Trust

City Attorney Furth stated that Items B and C from Closed Session have been continued until after the regular meeting.

6. CITY MANAGER’S REPORT

Nothing further to add to written report.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

None

Motion by Mayor McKeithen, second by Dobbie that Item 32 be taken up right away. The motion passed unanimously.

32. FUTURE AGENDA ITEMS

Mayor McKeithen requested that an item be added to the Agenda to rename the Council Communications Ad-hoc Committee to the Town Communications Committee subject to the Brown Act with formal citizen membership in order to allow broader range of communications.

Council Member Marsala expressed that he was in favor.

MOTION by McKeithen, second by Marsala to add reorganizing the Council Communication Committee to Town communication committee subject to the Brown Act to the February Agenda. The motion passed unanimously.

MOTION by Marsala, second by Lewis to add future agenda items to earlier in the Agenda. The motion passed unanimously.

CONSENT CALENDAR (Items 8-21)

Council Member Lewis requested edits to Item 8, and removal of Items 12 and Item 20.

8. APPROVAL OF DECEMBER 16, 2009 MEETING MINUTES

Recommendation: Approve December 16, 2009 Meeting Minutes

Council Member Lewis questioned what the result is if a candidate was selected and nobody opposed under selection of Mayor and Vice Mayor. City Attorney Furth said the Council rules of procedures states that a majority of a quorum present represents a motion passed.

9. APPROVAL OF BILLS AND CLAIMS FOR DECEMBER 2009 IN THE AMOUNT OF \$1,484,201

Recommendation: Approve Bills and Claims in the amount of \$1,484,201

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

Recommendation: Accept Monthly Financial Report

11. RESCIND RESOLUTION 09-35 AND APPROVE RESOLUTION 10-01, A REVISED RESOLUTION TO INCLUDE INSERTION OF STATEMENT THAT THE COLLABORATIVE WORK TO BE UNDERTAKEN IN ACTERRA'S RESIDENTIAL HOME ENERGY AUDITING PROGRAM IS NOT A "PROJECT" AS DEFINED BY CEQA AND CHANGE THE DOLLAR AMOUNT IN THE RESOLUTION FROM \$39, 939 TO \$39,940

Report: Town Arborist Kathy Hughes Anderson

Recommendation: To rescind Resolution 09-35 and approve Resolution 10-01 to include a statement that the collaborative work to be undertaken by Acterra is "not a project" as defined by the California Environmental Quality Act (CEQA), and correct the dollar amount for Atherton's EECBG allocation from \$39,939 to \$39,940

12. ROAD IMPACT FEE REPORT FOR FY 2008-2009 (AB 1600 STATE REPORTING REQUIREMENT)

Report: Public Works Director Duncan Jones

Recommendation: Approve the Road Impact Fee Report for FY 2008-2009

Council Member Lewis questioned whether there should be further discussion since the Road Impact Fee is a sensitive subject.

Mayor McKeithen said this is only a technical reporting requirement.

City Attorney Furth said it is ok to act on this item now and refer back to it later.

MOTION by Lewis, second by Carlson to move Item 12 back to consent. The motion passed unanimously.

13. APPROVE A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF MENLO PARK FOR PARTICIPATION IN AN AMOUNT UP TO \$126,667 IN THE COST OF INSTALLING A TRAFFIC SIGNAL ON MIDDLEFIELD ROAD AT ENCINAL AVENUE

Report: Public Works Director Duncan Jones

- Recommendation:** Approve a Memorandum of Understanding (MOU) with the City of Menlo Park (City) for City participation in an amount up to \$126,667 in the cost of installing a traffic signal on Middlefield Road at Encinal Avenue and authorize the Mayor to execute the MOU
- 14. DONATION OF PUBLIC WORKS 1986 CASE LOADER/BACKHOE TO MENLO PARK FIRE PROTECTION DISTRICT**
Report: Public Works Director Duncan Jones
Recommendation: Approve donation of 1986 Case loader/backhoe to Menlo Park Fire Protection District (MPFPD) for use at their rescue training center to aid them in maintaining the roadway
- 15. APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR TRAFFIC ENGINEERING SERVICES FOR THE FAIR OAKS LANE TRAFFIC STUDY, IN AN AMOUNT NOT TO EXCEED \$2,950**
Report: Public Works Director Duncan Jones
Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement Amendment with Kimley-Horn and Associates, Inc to provide traffic engineering services for the Fair Oaks Lane Traffic Study in an amount not exceed \$2,950
- 16. ACCEPTANCE OF THE FINAL PARCEL MAP AT 64 MOULTON DRIVE**
Report: Deputy Planner Lisa Costa Sanders
Recommendation: Determine that the Parcel Map is in conformity with the approved Tentative Parcel Map, the requirements of Title 16 (Subdivisions) of the Atherton Municipal Code and the California Subdivision Map Act and approve the Parcel Map
- 17. ADOPT RESOLUTION 10-02 AUTHORIZING AN ADJUSTMENT IN MUNICIPAL CODE & VEHICLE CODE PARKING FINES**
Report: Police Chief Mike Guerra
Recommendation: Adopt resolution 10-02 authorizing an \$8.00 increase to the bail amount for Municipal Code parking violations, and a 10% increase to the bail amount for Vehicle Code parking violations
- 18. PROCLAMATION DECLARING FEBRUARY 2010 AS BOY SCOUTS OF AMERICA 100TH ANNIVERSARY CELEBRATION.**
Recommendation: Approve Proclamation Declaring February 2010 as Boy Scouts of America 100th Anniversary Celebration
- 19. APPROVE HOLBROOK-PALMER PARK TENNIS PROFESSIONAL AGREEMENT AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT**
Report: Assistant City Manager Eileen Wilkerson
Recommendation: Approve the Holbrook-Palmer Park Tennis Professional Agreement and Authorize the City Manager to execute the Agreement
- 20. APPROVAL OF CITY COUNCIL COMMITTEE ASSIGNMENTS**
Recommendation: Approve Council Committee assignments made by Mayor Kathy McKeithen

Council Member Lewis said she has been involved in the Finance Committee as an alternate in 2009 and suggested that she be moved from the alternate to a Committee member.

Mayor McKeithen said she appointed Vice Mayor Dobbie to give him greater familiarity in case he is selected as Mayor in 2011.

Council Member Lewis questioned whether the Blue Ribbon Task Force (BRTF) had been disbanded.

Council Member Marsala said the BRTF was created to put together a report on the economic and feasibility of a new town center and the BRTF completed that and should be considered disbanded. City Manager Gruber reiterated this.

Council Member Dobbie said that if somehow the Town obtains \$20 million the BRTF would need to be reinstated.

Mayor McKeithen said there is no reason to not keep the BRTF in case something in the report needs to be resurrected.

Council Member Marsala said he supports Council Member Lewis for the Finance Committee because she campaigned about Town finances and added that he believes having a Finance Committee with different views would benefit the Council.

Item 20 was moved to the end of the Agenda after Item 30.

21. DESIGNATE APRIL 18, 2010 AS COMMUNITY CLEAN-UP DAY FOR HOLBROOK-PALMER PARK IN CONJUNCTION WITH NATIONAL EARTH DAY CEREMONIES

Report: City Manager Jerry Gruber

Recommendation: Designate April 18, 2010 as a Community Clean-up day for Holbrook-Palmer Park in conjunction with National Earth Day ceremonies. Furthermore, City Council utilize this event to officially dedicate the new Conwell walking bridge and the water tower landscaping additions to the park

MOTION by McKeithen, second by Marsala to approve the consent calendar except for item 20. The motion passed.

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

PUBLIC HEARINGS (22)

22. ADOPT RESOLUTION 10-03 TO APPROVE MASTER FEE SCHEDULE SETTING BUILDING DEPARTMENT FEES FOR TOWN SERVICES

Report: Building Official Mike Wasmann

Recommendation: Conduct a Public Hearing and Adopt resolution 10-03 approving Master Fee Schedule for building fees for Town services

Mayor McKeithen said that the encroachment fees will be brought to Council in February under Public Works fees.

Building Official Mike Wasmann presented the building fees portion of the Master Fee Schedule.

Wasmann said that since findings of the historical building reconciliation was brought to Council in December nearly all the building fees are proposed to remain at current levels except the following decreases: plan review fees for projects of \$5,001 or greater and permitted value of construction, heritage tree removal and the excavation permit.

Wasmann said non-substantive changes were made to the Public Works fees to add staff time for grading and drainage. Wasmann concluded that the fiscal impact based on the reductions is approximately \$36,000.

MOTION by Dobbie, second by Lewis to adopt resolution 10-03 approving Master Fee Schedule for building fees for Town services. The motion passed.

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

Council Member Lewis said she called Menlo Park about their encroachment permit and they said it was \$400 for a minor permit and \$700 for a major permit plus 3% of cost of the encroachment. Mayor McKeithen asked NBS to discuss the Menlo Park fees with Council Member Lewis to see if it is something Atherton should consider.

REGULAR AGENDA (Items 23-30)

23. ADOPT REOLUTION 10-04 APPROVING MID-YEAR BUDGET ADJUSTMENTS FOR FISCAL YEAR 2009-2010

Report: Finance Director Louise Ho

Recommendation: Adopt Resolution 10-04 Approving the Mid-Year Budget Adjustments for FY 2009-10

City Manager Jerry Gruber informed Council that he would like to review the adjustments agreed to at the January 12th mid-year budget adjustment workshop.

Finance Director Louise Ho gave a PowerPoint presentation on the mid-year budget adjustments. [A copy of the presentation is available in the City Clerks office.]

Ho reviewed the revenues and expenditures budget at mid-year and the projection for the remainder of the year. Ho added that the general fund revenue change from the approved fiscal year 2009/10 budget is \$190,831 and staff is projecting a deficiency of General Fund revenues over expenditures by \$541,319. Ho concluded that to close the general fund budget shortfall, staff recommends use of general fund reserve (fund balance) of \$150,204 and the Building Department operating reserve of \$391,116.

Vice Mayor Dobbie asked if in the property tax and related revenues regarding ERAF funds whether Ho believes this is a one-time revenue or is it something the Town can count on next year.

Ho said for now she would look at it as one-time revenue because not all Cities and Counties receive ERAF.

Council Member Lewis asked clarification on whether the Proposition 1A loan to the State will be refunded 100%. City Manager Gruber confirmed and said staff was very proactive in the application process and were able to get ahead of it.

Council Member Marsala said he remembers seeing the ERAF revenue for the last four to five years and it grows each year and wondered if the money should be considered in smaller amounts as it winds its way down.

Council Member Carlson asked if there are any vacant positions under the no salary savings line item. Assistant City Manager Eileen Wilkerson said the difference is the salary of a employee that was anticipated to retire.

Vice Mayor Dobbie said Council must look at having expenditures equal to revenues and if that means major cuts then it should be recognized.

Council Member Marsala said most of the last eight years the Town has been running a deficit but it has been masked by the Building Department surpluses being in the general fund which was transferred back to the building fund and changes now have to be gradual by analyzing all expenditures to see where to move in a pattern so the Town does become revenue neutral.

Mayor McKeithen asked if there is a reason why the Town needs a Police Lieutenant or can the position remain vacant for a period of time. Police Chief Guerra said that traditionally Atherton has had one Chief and two Executive Officers and when the efficiency reorganization was done the Executive Officer position was cut to one. Guerra added that there is an operational need to have two management positions in the Police Department and that the Chief and Lieutenant function as intermediary for personnel issues, personnel processes and legal issues with the Chief having ultimate authority over the Department and final recommendation to bring to Council.

Council Member Carlson said he'd like to discuss the duties of the Lieutenant position. City Manager Gruber added that interviews are set to take place for the position and he would be reluctant to give up the position.

Mayor McKeithen said the mid-year budget workshop went well and showed some figures that Council wanted to see but after the meeting she reviewed the cost allocation plan further and wanted to make sure the plan was in fact done correctly and to better understand the plan.

Vice Mayor Dobbie said overhead should be allocated by finding out which services are being used that are paid for by overhead. Dobbie added that the public should be shown a good, logical reason for why each Department has certain overhead fees.

Council Member Marsala said Council has spent numerous hours debating the cost allocation plan and came to an agreement and did not see a reason to revisit the plan.

Council Member Lewis said NBS felt comfortable in their analysis of the Building Department to bring the building fund down and dip into the reserve. Lewis added that the cost allocation plan has been discussed at length and she is comfortable with it.

Mayor McKeithen said she would be willing to adopt the entire mid-year budget with the stipulation that staff reviews the NBS study regarding costs that should not be directly allocated to the Building Department and the correct numbers to be used.

Carol Flaherty, Atherton resident, said she agrees with Mayor McKeithen and Vice Mayor Dobbie and that staff needs to review the cost allocation plan further. Flaherty added that the fundamental problem is the retirement benefits offered in the Town and that a Police Lieutenant is not needed. the Town can not pay for the service then they should not get the service. Flaherty concluded that the Town shouldn't operate at a deficit.

Mayor McKeithen asked Finance Director Ho what action needs to be taken by Council. Ho said staff is recommending that Council approve resolution using the two reserves to close the gap in the mid-year budget for fiscal year 2009/10.

MOTION by Lewis, second by Carlson to adopt Resolution 10-04 approving the Mid-Year Budget Adjustments for FY 2009-10.

MOTION by McKeithen, second by Carlson to amend the motion to add directing staff to revisit the methodology of the cost allocation plan in particular the \$153,300 for Building and if it needs to be adjusted to do so with the intent to apply it to next years budget.

Council Member Lewis clarified that the 153,300 that is being added to the Building Department shortfall is not something that is new, it has been done since 2001 as a Building Department overhead cost allocation which was taken from the Building Department and moved to general fund.

Council Member Marsala said he would like to see two separate motions because he supports what Mayor McKeithen is requesting and would like to see it applied to next year's budget.

Mayor McKeithen said Council needs to first vote on the original motion and the motion to amend.

Mayor McKeithen called for a vote on the motion to amend (KM/JC) adding direction to staff to revisit the methodology of the cost allocation plan in particular the \$153,300 for Building and if it needs to be adjusted to do so with the intent to apply it to next years budget:

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

The motion to amend passed.

Mayor McKeithen called for vote on the original motion (EL/JC) to adopt Resolution 10-04 approving the Mid-Year Budget Adjustments for FY 2009-10 with the amendment to add directing staff to revisit the methodology of the cost allocation plan in particular the \$153,300 for building and if it needs to be adjusted to do so with the intent to apply it to next years budget.

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

The motion failed because Atherton's Fund Balance Policy (adopted in August of 2009) requires a 4/5 vote to use reserves.

24. CONSIDER REFUSE AND RECYCLING COLLECTION RATES AND PROVIDE DIRECTION FOR PUBLIC REVIEW PROCESS

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Review the attached collection rate options and provide direction to Staff to advertise the rate increase following scenario #3b

Deputy Planner Lisa Costa Sanders informed Council that pursuant to the Uniform Franchise Agreement for Collection Services (“Collection Agreement”) with Allied, the Atherton City Council is required to adopt collection rates to cover the cost of waste management services provided by Allied to Atherton residents. Atherton has not increased its refuse and recycling rates since 2002, when rates were increased by 14%. Atherton’s collection revenue subsequently exceeded Allied’s expenses for a number of years, which resulted in accumulation of a positive balancing account with Allied. In 2009 the balancing account was fully expended and there is an estimated shortfall of \$388,000. HF&H estimates that a rate increase is necessary during 2010 due to increased operating expenses and increased disposal costs. Costa Sanders concluded that Council can choose to do a two year process with smaller rate increases.

Vice Mayor Dobbie said when this is made public it needs to be made clear what was paid in the past and what will be paid in the future because this is a significant increase. Dobbie added that there should be a stipulation for people who are incapable of bringing their full containers to the front curb and they should not be penalized for not being able to.

Costa Sanders said there is a provision for people who are physically incapable of bringing their containers to the curb.

Council Member Lewis said she was surprised at the increase and wondered why staff waited until there was a deficit to raise the fees.

Council Member Carlson asked if this is to be given 45 days notice of public hearing.

City Attorney Furth said staff is recommending this charge be treated as a property related fee under proposition 218 which is a several step process including mailing a notice to all Towns residents. Furth said people have the option to protest and if a majority protest is received then the fee does not increase.

Council Member Marsala said that although the percentage increase seems high the dollar amount is not.

Council Member Carlson asked why the dollar amounts are so much lower in Burlingame, Foster City and Hillsborough.

Rick Simon, HF&H representative, said each member agency has different variables and the SBWMA agreement with Allied allows for actual cost reallocated on a number of different levels either general administrative costs based on number of customers or route costs. Simon concluded that the most significant variable is the size of the commercial base in the member agency. Atherton has none.

Furth said that when Council sets the fee they should keep in mind that the fee needs to be reasonable and fair across the board and to allocate the charges so they don’t overcharge anyone.

Council Member Dobbie asked if he only had his green waste picked up would he still be charged.

Evan Boyd, Allied Waste, said that for Allied to provide green waste service you must have minimal garbage level service.

Council Member Carlson asked what the methodology is for charging member agencies.

Rick Simon, HF&H, said Allied collects from a number of different agencies and some non-franchised jurisdictions. The number of vehicles, drivers, personnel, and all labor related costs to provide the service are allocated to the member agencies and the non-franchised agencies based on the time spent on each route in each community.

Carol Flaherty, Atherton resident, questioned how a credit is factored in for the trash that is into the landfill which turns into methane gas and is sold to PG&E.

Simon said that under a separate disposal agreement, on a per tonnage basis we are paying for solid waste that is disposable for each member agency up to Ox Mountain which is Allied's landfill.

Boyd said the SBWMA is given a discounted rate because of the disposal agreement. Mayor McKeithen wanted to know if they still make a profit. Boyd said the plant is operated by Ameresco who sells the gas to the Cities of Palo Alto and Alameda. Ameresco gets the profit from the energy that is sold and Allied Waste gets some royalty benefit for having the Ameresco plant on their property.

Mayor McKeithen requested that staff find out how much profit Ameresco gets from the side agreement.

MOTION by Marsala, second by McKeithen to advertise the rate increase following scenario #3b. The motion passed.

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

25. ADOPT RESOLUTION 10-05 APPROVING ADMINISTRATIVE CITATION PROGRAM

Report: City Manager Jerome D. Gruber

Recommendation: Adopt Resolution 10-05 and waive the first reading of the administrative citation ordinance and adopt it in its current form.

Bob Cushing, Code Enforcement, said the City Attorney's office, together with the Town's Code Enforcement Officer, suggested that an Administrative Citation Program would be a good step towards strengthening the Town's code enforcement program. The Town already has a nuisance abatement ordinance, but its procedures are complex; an Administrative Citation Ordinance would provide a more streamlined process while still preserving and protecting residents' due process rights.

Cushing added that the proposed Administrative Citation Ordinance is comprehensive and intended to address violations of the Town's municipal code, other Town ordinances, applicable state codes, conditions on entitlements, and land use approvals without a criminal prosecution and arrest.

Cushing concluded that the main components of a citation are to issue and impose the fine. The individual then has an opportunity for a hearing, a hardship waiver and a right to appeal. The Town can then pursue any and all legal and equitable remedies to collect unpaid fines imposed pursuant to the ordinance.

Council Member Dobbie said a lot of residents leave their green waste containers on the curb for too many days and asked if there is any way to stop it.

Cushing said he has had success in several sections in Atherton with information in the Athertonian and making every attempt to contact the individual, either in person or by mail, to make sure the problem does not persist.

MOTION by McKeithen, second by Dobbie to Adopt Resolution 10-05 adding chapter 1.21 to the Atherton municipal code establishing administrative citations for violations of the Atherton municipal code, related state codes and conditions on entitlements and waive the first reading of the Administrative Citation Ordinance and adopt it in its current form. The motion passed.

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

26. CONSIDERATION OF STATE MODEL WATER EFFICIENT LANDSCAPE ORDINANCE, BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (BAWSCA) WATER CONSERVATION IN LANDSCAPING ORDINANCE, OR REVISIONS TO CHAPTER 15.48 OF THE ATHERTON MUNICIPAL CODE

Report: Town Arborist Kathy Hughes Anderson

Recommendation: Provide direction to staff in consideration of the enactment of the Water Conservation in Landscaping Act (Assembly Bill 1881). Staff further recommends that the City Council forward the matter to the General Plan Committee for a recommendation

Town Arborist Kathy Hughes Anderson stated that the State Water Conservation in Landscaping Act of 2006 was signed into law in September 2006. The Act required the State Department of Water Resources (DWR) to prepare an updated Model Water Efficient Landscape Ordinance (MWELo) which was released in September 2009. The MWELo is in effect for all cities, counties and water purveyors on January 1, 2010, unless they have adopted a different ordinance that is at least effective as the MWELo. Local agencies must notify DWR which ordinance they have adopted by January 31, 2010.

Hughes Anderson recommends that the City Council forward the matter to the General Plan Committee for a recommendation. Furthermore, BAWSCA has drafted a letter for cities to send to the DWR before January 31, 2010, stating that we are in the process of writing our own ordinance.

Council Member Carlson requested that clear and concise legal requirements be written out for the General Plan committee when they review the ordinance. Carlson concluded that the public should have ample time to review and comment on this item.

MOTION by McKeithen, second by Dobbie to direct staff to send a letter to the Department of Water Resources and send forward the matter to the General Plan Committee for a recommendation to Council. The motion passed.

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

City Attorney Furth stated that the Town is currently operating under the State Model Water Efficiency Ordinance and to the extent that the Town issues permits that are subject to it the ordinance will need to be implemented.

Vice Mayor McKeithen directed staff to notify any landscape architects, construction developers and anyone else who may be affected by this of the General Plan Committee meeting.

27. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) COMMENTS ON DRAFT ATHERTON HOUSING ELEMENT

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Provide direction to Staff on how to proceed with responding to the HCD comments on the Draft Atherton Housing Element Update

Deputy Planner Costa Sanders informed Council that the draft Housing Element report was sent to the State for review in late October. Costa Sanders said that in late December the State Housing and Community Development Committee requested further analyses in response to the comments.

Costa Sanders concluded that staff is recommending that Planning Commissioners Phil Lively and Paul Quinlan work with the Planning Department on the additional analyses before bringing it back to Council for approval.

MOTION by Dobbie, second by McKeithen to direct staff to work with Planning Commissioners Phil Lively and Paul Quinlan to review the comments and submit to Council for final review and approval. The motion passed.

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

MOTION by Lewis, second by Carlson to amend the motion to add that the meetings between staff and Planning Commissioners Lively and Quinlan be held under the Brown Act. The motion passed.

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

28. ADDITIONAL REFUNDS OF ROAD IMPACT FEE-STATUS UPDATE

Report: City Manager Jerry Gruber

Recommendation: To Be Determined

City Attorney Furth said that at its Strategic Planning Workshop on January 11th, the City Council received a proposed plan to refund road impact fees that were paid before September 18, 2009. Furth stated that one of the legal doctrines is the statute to challenge the fees is ninety days to file a protest and 180 days to file a lawsuit from the notice of deadline. The Town did not begin giving a notice until January 2007.

Furth clarified the equitable doctrines of estoppel and laches. The essence of estoppel is that the person to be estopped (here, the Town) has caused another (here, a Town resident) to act in a way that such person would not otherwise have acted, which resulted in an injury. Assuming for the moment that no other statute of limitations is applicable, the complementary doctrine of laches

would be raised by the Town for claims that pre-date 2007. To prevail on a defense of laches, the Town would have to show that the resident unreasonably delayed in bringing an action, and that such delay prejudiced the Town.

Council Member Lewis said the Town knew since at least back to the spring of 2008 that there was something wrong with the road impact fee. Lewis added that the proposal from Jeff Wise was very thoughtful and they took into consideration the Town's finances.

Mayor McKeithen said she had come up with a proposal of her own which would refund customers from September 20, 2006 (date of off-haul fee repealed) to January 3, 2007 (date Town started giving ninety day protest notice) and from January 3, 2007 to September 18, 2009 refund those persons who protested the fee within 90 days and to those persons who, despite not filing a written protest of their fee on a timely basis or any written protest at all, gave notice to the Town of their specific objections during this period and were informed that an adjustment would be made.

Council Member Marsala said he felt the 40% increase in 2007 was illegal and the fee increase should be addressed. Marsala concluded that he would support Mayor McKeithen's proposal with the addition of refunds for July 2007 through September 18, 2009 of the 40% increase in fees to all that paid the road impact fee.

Carol Flaherty, Atherton resident, said her family was willing to pay \$125,000 per year to sue the Town over this issue. Flaherty said it is distressing to hear a debate over whether a refund is owed or not. Flaherty concluded that the Town should refund everything from August 2008 through August 2009 and from July 1, 2006 to July 31, 2008 only those that have equitable doctrine that applies.

Council Member Dobbie said he understands the legal implications of the road impact fee but does not see anything ethically wrong with the fee.

Jeff Wise, Atherton resident, read a letter for the record written by Atherton resident Steve Ackley.

David McAdoo, Menlo School, said he and the rest of the School appreciate consideration of the fee refund. McAdoo added that he has a fiduciary responsibility to refund the donors who donated money and he is willing to work with Council on a solution.

Council concurred to direct staff to review the proposals proposed by Mayor McKeithen, Council Member Marsala, and Atherton residents Jeff Wise and Carol Flaherty and cost each of them out.

29. DIRECTION ON FORMATION OF FINANCIAL COMMITTEE FOR NEW TOWN CENTER

Report: City Manager Jerry Gruber

Recommendation: Give direction to City Manager on composition, goals and objectives, and Council expectations for a standing ad-hoc committee for a new Town Center

Mayor McKeithen said Council Members Carlson and Lewis expressed interest in sitting on the Committee during the strategic planning workshop.

Council Member Marsala expressed his interest in still wanting to be involved in the vision for a new town center.

Mayor McKeithen suggested keeping the Blue Ribbon Task Force so Council Member Marsala and Dobbie can have joint, publicly noticed meetings with the Financial Committee for a new town center.

Council concurred. Council directed staff to bring the guidelines and memberships back at the February Agenda for approval.

30. EXPANSION OF THE FINANCE COMMITTEE

Recommendation: Consideration of expansion of the Finance Committee

Council Member Lewis made a motion to expand the Finance Committee to allow one or more members of the public to sit on the Finance Committee.

Council Member Marsala was in favor of expanding the Committee.

Mayor McKeithen said the Finance Committee makes recommendations to the Council and to the extent it make suggestions to the Council it has a right and an obligation to review these matters along with the Finance Director and make recommendations to the entire City Council at which time public has an opportunity for input.

Vice Mayor Dobbie agreed. Dobbie added that residents can certainly attend the Finance Committee meetings. Dobbie concluded that the larger the Committee the harder it is to get things done and he would not support expansion of the Finance Committee.

Council Member Carlson said Council makes final decisions on finance matters. Carlson suggested testing the idea with a member of the Audit Committee for the remainder of this fiscal year to see how it works out.

Council Member Lewis said other cities in San Mateo County have Finance Committees with open representation and felt very strongly that there should be a resident on the Committee for open government and transparency.

Council Member Marsala stated that Council may have got off track since originally the Finance Committee was formed to allow the Council to make recommendations of items for the Finance Committee to study and report back. Marsala suggested only authorizing Council to make recommendations to the Finance Committee in order to reduce the use of staff time and follow Town procedures.

Council Member Carlson said the Town needs to get more citizen engagement in Town finances and cost and revenue issues. Carlson added that there are many Town residents who would be great resources to the Finance Committee. Carlson suggested bringing this back to a future Agenda to research the role of the Finance Committee and the rest of the Town Committees.

Mayor McKeithen said if Council decides to put residents on the Finance Committee they should be qualified and there should be more than just one resident.

Council Member Lewis said she would really like to see three residents on the Finance Committee.

Mayor McKeithen directed staff to look at other cities Finance Committee and how many members they have and guidelines for citizen membership.

Jeff Wise, Atherton resident, said there is tremendous expertise among Town residents and suggested that Council take advantage of it.

Carol Flaherty, Atherton resident, said Council should review the Finance Committee minutes from several years ago because it looks like for a lot of those years that the Finance members had an agenda. Flaherty said it would be well served to have a resident on the Committee.

MOTION by McKeithen, second by Lewis to table the item to the February 17, 2010 Council meeting to consider adding 3 citizen members and review the qualifications of the members. The motion passed.

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

Item 20 was continued from earlier in the Agenda.

20. APPROVAL OF CITY COUNCIL COMMITTEE ASSIGNMENTS

Recommendation: Approve Council Committee assignments made by Mayor Kathy McKeithen

Council concurred to keep the Blue Ribbon Task Force to allow holding joint meetings with the New Town Center Finance Options Committee in order to work together on options for the new town center.

Vice Mayor Dobbie gave his seat on the General Plan to Council Member Marsala. Council Member Marsala accepted.

Council Member Carlson will remain the C/CAG representative and Council Member Lewis will remain the representative for the 2020 Gateway Committee.

Council agreed to the changes.

31. COUNCIL REPORTS

Nothing further to add to written reports.

33. PUBLIC COMMENTS

Carol Flaherty, Atherton resident, thanked the Council for listening and understanding and hearing the residents concerns. Flaherty said Council is beginning to handle concerns very well together.

William Grindley, Atherton resident, said he is proud to be a part of this community and recognized all of the community members who went to Sacramento and represented themselves in a professional manner over the last week at the High Speed Rail meetings.

34. ADJOURN

MOTION by McKeithen, second by Lewis to adjourn the meeting. The motion passed unanimously.

Mayor McKeithen adjourned the meeting at 11:35 p.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk