



AGENDA
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
MARCH 17, 2010
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

Mayor McKeithen called the meeting to order at 7:02 p.m.

1. **PLEDGE OF ALLEGIANCE**

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

3. **PRESENTATIONS**

OATH OF OFFICE – Officer Rick Enberg

Deputy City Clerk Della Santa administered the oath of office to Officer Rick Enberg. Enberg was pinned by his son Nick.

PROCLAMATIONS – Former Arts Committee Members Jean Schaaf and Samira Nawas-Plesman

Mayor McKeithen read proclamations for Arts Committee Members Jean Schaaf and Samira Nawas-Plesman into the record.

EAGLE SCOUT PROJECT – Tyler Estkowski

Tyler Estkowski gave a Power Point presentation on his Holbrook-Palmer Park Par-Course renovation project which helped him reach Eagle Scout status. He thanked Council and staff for allowing the opportunity.

GENERAL INFORMATION REGARDING POTENTIAL CHANGES TO BUSINESS LICENSE ORDINANCE

– Presented by Joshua Davis and Tony Unger of MuniServices

Muniservices representatives Joshua Davis and Tony Unger presented Council with information on a potential business tax classification and tax rate structure. A business tax approach was recommended in three separate phases. Davis reviewed the estimated implementation process.

Council requested and concurred that Muniservices should come back to the April meeting with a scope of work.

4. PUBLIC COMMENTS

Shirley Carlson, Atherton resident encouraged Council and residents to attend the Annual Easter egg hunt on Saturday, April 3rd at Holbrook-Palmer Park and the Beautification Day in the Park on Sunday, April 18th.

Jon Buckheit, Atherton resident, stated that he was falsely arrested in October 2008 and an Atherton Police Officer testified that the police report involving his case was falsified. Buckheit questioned where the outrage from Council is.

Mike McPherson, Atherton resident, questioned the criteria Council used to decide how far back to refund road impact fees.

Michael Stogner, San Carlos resident, stated he is a victim's advocate; and since an Atherton Police Officer committed a felony he felt Council Members should individually contact the District Attorney's office.

5. REPORT OUT OF CLOSED SESSION

A. CONFERENCE WITH LABOR NEGOTIATOR – Labor negotiations pursuant to Government Code Section 54957.6

Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.

Employee Organization: Management Employees

B. 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

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Subsection (B) of Government Code Section 54956.9): Number of potential cases: Two (2)

D. 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

**E. 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 Wynne Furth said there was no reportable action from Closed Session.

6. CITY MANAGER’S REPORT

City Manager Gruber said he attended a League of California Cities conference in which a big topic of discussion was support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010 which is a combined effort of California cities to stop Sacramento from borrowing local government money. Gruber concluded that a resolution is on tonight’s Consent Agenda for approval of support. Council Member Marsala said the League helped pass Proposition 1A with efforts like this.

Council Member Carlson requested more updates on the South Bay Waste Management Authority meetings. Gruber said he will include updates in his reports.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT - None

CONSENT CALENDAR (Items 8-27)

Council Member Lewis removed Item 19.

Council Member Carlson removed Items 22 and 24.

Vice Mayor Dobbie removed Items 21 and 27.

Mayor McKeithen removed Items 8 and 23.

8. APPROVAL OF FEBRUARY 17, 2010 MEETING MINUTES

Recommendation: Approve February 17, 2010 Meeting Minutes

9. APPROVAL OF BILLS AND CLAIMS FOR FEBRUARY 2010 IN THE AMOUNT OF \$853,152

Recommendation: Approve Bills and Claims in the amount of \$853,152

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE EIGHT MONTHS ENDED FEBRUARY 2010

Recommendation: Accept Monthly Financial Report

11. APPROVAL FOR THE FINANCE DIRECTOR TO ATTEND THE 2010 SPRINGBROOK SOFTWARE CONFERENCE

Report: Finance Director Louise Ho

Recommendation: Approve the Finance Director to attend the Springbrook Software Conference in Portland, Oregon, in May 2010

12. APPROVAL OF FIRST AMENDMENTS TO PROFESSIONAL SERVICES AGREEMENT WITH CHRISTOPHER A. JOSEPH & ASSOCIATES FOR

PREPARATION OF ENVIRONMENTAL IMPACT DOCUMENTS AND REIMBURSEMENT AGREEMENT WITH SACRED HEART SCHOOLS

Report: Town Planner Neal J. Martin

Recommendation: Approve the first amendment to the Agreement for Professional Services by and between the Town of Atherton and Christopher A. Joseph & Associates and the first amendment to the Reimbursement Agreement by and between the Town of Atherton and Sacred Heart Schools

13. CONDITIONAL EXCEPTION TO ALLOW A LOT LINE ADJUSTMENT TO MERGE TWO PROPERTIES 69/75 CATALPA

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Planning Staff recommends that City Council conduct the hearing and approve the Conditional Exception to allow the merger of the lots at 69 Catalpa Drive and 75 Catalpa Drive

14. APPROVE PARTICIPATION THROUGH THE TOWN'S CABLE JOINT POWERS AGREEMENT TO BROADCAST DESIGNATED PUBLIC EVENTS AS A PUBLIC EDUCATION GOVERNMENT (PEG) PROGRAMMING SITE USING "STUDIO IN A BOX"

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Approve Town participation through the Town's Cable Joint Powers Agreement to broadcast designated public events as a Public Education Government (PEG) programming site using "Studio in a Box" Authorize the City Manager to designate "public events" to be broadcast

15. APPROVAL OF CONTRIBUTION OF PARTIES OF THE JOINT POWERS AGREEMENT ESTABLISHING THE SAN MATEO COUNTY NARCOTICS TASK FORCE

Report: Police Chief Mike Guerra

Recommendation: Approve Atherton's FY 2009-10 contribution to the San Mateo County Narcotics Task Force in the amount of \$25,454

16. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE PARK BRIDGE LANDSCAPING PROJECT, PROJECT NUMBER 09-027

Report: Public Works Director Duncan Jones

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Park Bridge Landscaping Project, Project No. 09-027

17. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE ENCINAL TRAFFIC SIGNAL PROJECT NUMBER 08-015

Report: Public Works Director Duncan Jones

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Encinal Traffic Signal Project, Project No. 08-015

18. RECOMMENDATION BY TOWN CENTER TASK FORCE FOR APPROVAL TO PUBLISH REQUEST FOR STATEMENT OF QUALIFICATIONS FOR DESIGN OF A NEW TOWN CENTER

Report: City Manager Jerry Gruber

Recommendation: Approval to publish request for statement of qualifications for design of a new Town Center

20. APPROVAL OF RESOLUTION 10-15 OF THE CITY COUNCIL OF THE TOWN OF ATHERTON IN SUPPORT OF THE LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010

Report: City Manager Jerry Gruber

Recommendation: Adopt Resolution 10-15 in support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010

25. UPDATE ON BUSINESS LICENSE REFUND

Report: Finance Director Louise Ho

Recommendation: Receive update on the business license refund authorized by the City Council on December 17, 2008

26. RECONSTITUTE THE TOWN CENTER TASK FORCE, APPROVE APPOINTMENTS OF TOWN CENTER TASK FORCE MEMBERS AND GUIDELINES AND MEMBERSHIPS

Report: City Manager Jerry Gruber

Recommendation: Approve Reconstitution and Guidelines of Town Center Task Force and Appoint recommended Town Center Task Force members and designate terms for members

MOTION by Dobbie, second by Marsala to approve items 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 25, and 26. The motion passed.

AYES: 5 NAYS: 0

Vice Mayor Dobbie stated that he abstained from Item 8.

PUBLIC HEARINGS (28)

28. APPROVAL OF REFUSE AND RECYCLING COLLECTION RATES

Report: Deputy Town Planner Lisa Costa Sanders

Recommendation: Hold a public hearing, determine whether a majority protest has been received, and if there is no majority protest, introduce Ordinance 584 increasing refuse and recycling rates effective March 19, 2010. A two-thirds vote is required.

Vice Mayor Dobbie suggested refining the language that says the backyard surcharge would not apply to households where physical disabilities prevent the customer from making use of curbside service.

Council Member Lewis said the Environmental Programs Committee discussed the garbage rate increases at several meetings and was disappointed with the increase at first, but when you realize the services included the increase becomes more palpable.

Council Member Marsala said that although the percentage amount seems like a large increase the dollar amount itself is not.

James Devoy, Atherton resident, said the backyard service charge is not clear on who will be charged and suggested only charging the \$20 surcharge to those who request the service.

Mayor McKeithen said it needs to be very clear regarding who will be charged the backyard pick up service.

City Attorney Furth clarified that in Ordinance 584 the effective date under section 2 should read March 18, 2010.

MOTION by Lewis, second by Marsala to introduce Ordinance 584 increasing refuse and recycling rates effective March 18, 2010. The motion passed.

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

REGULAR AGENDA (Items 29-39)

29. PROPOSED CHANGES TO DRAFT ATHERTON HOUSING ELEMENT 2007-14 UPDATE IN RESPONSE TO CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) COMMENTS

Report: Town Planner Neal J. Martin

Recommendation: Review the “*Draft No. 2 - Proposed Changes to Atherton 2007-14 Housing Element in Response to HCD Review Letter 12/24/09*”. Provide direction to Staff to make any additional changes and direct Staff to forward the “*Draft Proposed Changes*” to the California Department of Housing and Community Development (HCD) for review and comment

Town Planner Neal Martin stated that the Housing and Community Development (HCD) provided comments on the draft Atherton Housing Element 2007-14 Update by letter dated December 24, 2009 with 15 comments. One of HCD’s comments in Section C.1. is that State law requires local programs designed to address a shortfall of adequate sites for lower income households to permit owner-occupied and rental multifamily housing “by right”. Atherton proposes to use planned multifamily student and faculty housing at Menlo School and Menlo College to satisfy a substantial portion of its lower income housing requirement. Currently zoning regulations require a conditional use permit (CUP) for multifamily uses on the school campuses. In order to comply with State law staff recommends changing the CUP requirement to a Planning Commission review process which focuses on location, size, proximity to heritage trees and environmental aspects of the project but shall not result in the denial of the use. The Planning Commission review would occur at a noticed public hearing.

Council thanked the Planning Commission and Planning Department for all their work on the draft Housing Element 2001-14 update.

MOTION by Carlson, second by Dobbie to forward the “*Draft Proposed Changes*” to the California Department of Housing and Community Development (HCD) for review and comment with staff recommendation of option 2 to change the conditional use permit requirement to a Planning Commission review process which focuses on location, size, proximity to heritage trees and environmental aspects of the project but shall not result in the denial of the use. The motion passed.

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

30. DISCUSSION OF CIVILIAN POLICE OVERSIGHT

Report: Police Chief Mike Guerra

Recommendation: To Be Determined

Police Chief Mike Guerra stated that the purpose of this item is to consider the idea of a civilian police oversight committee and further discussions. Guerra presented Council with different models for an oversight committee.

Vice Mayor Dobbie said he is not in favor of any police advisory board. Dobbie said an advisory board should not be created because residents are upset with the process in which the Police Chief was selected. Dobbie concluded that Chief Guerra is well qualified and suggested waiting at least one year before even considering any oversight.

Council Member Carlson said he has not heard any compelling reasons for an oversight committee.

Council Member Lewis said Chief Guerra has only been on the job for three months and felt Council needs to give him a chance before putting oversight over on department. Lewis said Palo Alto is geographically the closest city to Atherton with an oversight committee and felt that Atherton could not compare because Palo Alto has approximately 63,000 residents.

Chief Guerra said he envisions an advisory board comprised of members of the community, the schools and neighborhood associations to be used as a “sounding board.” Guerra visualized an advisory board that helps establish how situations could have been handled better, rather than having a formal investigative committee. Guerra concluded that communities who have oversight tailor the committees to fit needs for their specific community.

Mayor McKeithen felt it was imperative that Council consider a citizens review board because first, the community needs to know that virtually the entire parcel tax supports the police department, and second, several large, recent litigation matters involved the Police Department, and third, because Police Department complaints should be reviewed outside of the department. McKeithen felt there are a lot of issues Council does not know about and the Town has been in jeopardy for several years.

Jon Buckheit, Atherton resident, said he agrees with everything Mayor McKeithen has said and felt that fundamentally a crisis is not a prerequisite for having civilian oversight of the police department. Buckheit concluded that he has created a police oversight Power Point presentation for anyone who is interested in viewing it.

Mark Peterson Perez, Palo Alto, said police officers have sweeping constitutional powers and when a citizen is violated there needs to be transparency and accountability. Perez said he is in favor of civilian oversight committee.

John Rugeiro, Atherton resident, said the Police Chief can be involved and responsible in a major incident as has happened in Atherton in the past. A former Police Chief was arrested, investigated and prosecuted for police misconduct. Rugeiro discussed his law enforcement background and said he would be most suited to sit on the oversight committee and is willing to do so.

Colleen Anderson, Atherton resident, said it is an amazing “win-win” for an oversight committee. Anderson suggested testing it to see if it works and hopefully it will help deter lawsuits.

Michael Stogner suggested that Council really pay close attention to what has already happened in Atherton in the past. Stogner concluded that if Council can not make tough decisions to identify the officer who caused harm to Mr. Buckheit then the State Attorney Generals office should be contacted.

City Manager Jerry Gruber read an email in opposition of the oversight committee from Betsy Glikbarg.

Mayor McKeithen felt that it was appropriate to hold a public forum style workshop to look into this in further detail.

Council Member Marsala said there was an incident with a police officer which he felt was in the newspaper too soon and it was alarming to him because he felt it could be a liability to the Town. Marsala said it would take a lot of time and devotion for an oversight committee and each member would need to be trained. Marsala was in favor of delaying any oversight committee until Chief Guerra has spent at least a year in his position.

Mayor McKeithen said all the Council Members have mentioned issues they were not aware of and felt that to follow the rule of transparency a public study session should be held in order to uphold the philosophy Council Members were all elected for.

Council Member Lewis said the Town has a new Chief and Administration and the issue of police oversight has been whipped into a frenzy by an issue that happened over a year ago under a different regime. Lewis said the Town has budget issues, high speed rail issues and other concerns that need to bring the Town together rather than undermining the morale of the Town’s Police Department. Lewis concluded that she is in favor of giving the new Administration a chance to settle the legal issues without an oversight committee.

Vice Mayor Dobbie said that although Chief Guerra has been with the Atherton Police Department for more then twenty years he has never been in charge before and the Town needs to recognize that being in charge it is not the same as being a member of the Department.

Council Member Carlson said Council has made mistakes in the past, but the idea of having a formal process of allowing an oversight committee to be involved in management practices will complicate the accountability aspect. Carlson concluded by encouraging residents to come forward with their concerns and for Chief Guerra to continue holding public forums with the citizens of Atherton.

Council Member Marsala complimented Betsy Glikbarg for organizing crime prevention and neighborhood meeting efforts over the last decade.

Mayor McKeithen said it seems that Council has not heard any compelling arguments but it seems that Council is not even allowing the opportunity for residents to present their issues. McKeithen said Council is absolutely kidding itself by saying residents can go to the Chief or City Manager because there have been incidents involving past Police Chiefs and nothing was done until it was brought to Council.

MOTION by Carlson, second by Lewis to table a civilian oversight committee indefinitely. The motion passed.

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

31. ADOPT RESOLUTION 10-17 MODIFYING THE TOWN DRAINAGE CRITERIA TO EXEMPT DETACHED SINGLE-FAMILY HOMES FROM THE MAINTENANCE AGREEMENT REQUIREMENT

Report: Public Works Director Duncan Jones

Recommendation: To Be Determined

City Manager Gruber said he and Public Works Director Jones have met with residents to discuss the drainage criteria and will continue to meet with residents until the topic is brought back to Council for approval.

Public Works Director Jones said the Resolution brought to Council is step one in modification to the Towns drainage criteria. Jones said in order to stay compliant with the municipal regional permit we can not exempt projects that are not detached single-family homes. Jones stated that he is concerned about rescinding the provision because the principle reason for these criteria was to allow staff to assist residents with drainage problems from neighboring residences. Jones said by eliminating this provision we are removing staff's ability to help residents.

Jones stated that if Council approves the Resolution brought forth he would request provisions, in the near future, to prepare a modified recorded notification to future owners of the property in order to show future home owners where the system is and what needs to be done to maintain the system. Jones concluded that he would like a good abatement system put in place to allow staff to step in and help the residents if their system is failing or if the owner is not remedying the situation.

Council Member Marsala said he was in favor of rescinding the maintenance agreement.

Jon Buckheit, Atherton resident, said he had several residents prepared to donate their three minutes so he could give a Power Point presentation he made on the civilian police oversight committee and he has been robbed of that ability. Buckheit said he felt Council Member Marsala had a very different view several months ago when he came to him for a loan.

Linda Grossman, Atherton resident, said she has a drainage ditch behind her house which collects a lot of water from neighboring uphill properties. Grossman said they have two absentee landlords and a couple of new owners who have not been able to maintain the ditch. Grossman concluded that if there is not notification to property owners letting them know they are responsible for maintenance then the Town will have serious problems.

Jeff Wise, Atherton resident, spoke on behalf of several residents who attended meetings on this topic over the last few months, and were in support of rescinding the agreement. Wise agreed that the Town does need some kind of recourse to respond to a problem and strengthen the abatement process.

Carol Flaherty, Atherton resident, thanked Jones and Gruber for the productive drainage meeting with residents. Flaherty said she reviewed drainage plans for two different Counties and they do not

have mandatory recording requirements for individual homes. Flaherty concluded that no one has a problem with having an abatement process in place for the Town.

Mayor McKeithen asked for clarification on the reporting requirement. Jones said the municipal regional permit requires recording of a maintenance and operations agreement for regulated projects and detached single-family homes are not regulated projects so the municipal regional permit does not require it for detached single-family homes.

Denise Kupperman, Atherton resident, said she concurs with the prior two residents and believes there should be a provision for an abatement process. Kupperman suggested a possible further study to define drainage criteria.

Mike McPherson, Atherton resident, said he has a well in his yard and he has an individual come out to check annually and certify it is working properly. McPherson suggested this as a process for the drainage systems.

Vice Mayor Dobbie said the current maintenance agreement treats all lots in Atherton the same and there are plenty of lots that do not have any drainage problems. Dobbie suggested potentially allowing a homeowner to hire a hydrologist to check to see whether they have drainage problems.

Jones said he plans to meet with the engineers to talk about the criteria and explore alternatives.

Council Member Lewis thanked the residents who have stayed involved in the process and attended the meetings on the drainage criteria. Lewis said she would support an annual notice to all properties with a drainage system.

Mayor McKeithen said she agrees with an annual notice and an abatement process but would also like to see recordation of the system for notice to future home owners.

Council Member Carlson said he is in support of rescinding the agreement and putting out an annual notice.

City Attorney Furth said it is crucial that the Town has documentation of what was approved by Council and recommended only approving the recommendation set forth in Resolution 10-17 to rescind the agreement. Furth said if Council agrees on further provisions such as recording of the system then Council can direct staff to come back with language.

MOTION by Lewis, second by McKeithen to adopt resolution 10-17 modifying the Town drainage criteria to exempt detached single-family homes from the maintenance agreement requirement including all agreements entered into since 2007, placing the burden of maintaining the systems completely on the property owner, with no independent check by the Town and the Town will undertake a program to annually notify all properties with systems of the need to maintain the systems, i.e., before the winter rain begins. The motion passed.

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

Council took up Item 34 next.

**34. FIVE-YEAR GENERAL FUND FINANCIAL FORECAST FOR
FY 2009-10 TO FY 2013-14**

Report: Finance Director Louise Ho

Recommendation: Receive the Five-Year General Fund Financial Forecast for FY 2009-10 to FY 2013-14

Finance Director Ho said Staff has prepared a financial forecast for FY2009/10 through FY2013/14 which is one of many scenarios of what could take place assuming the current economic climate continues. Ho said this model is a very conservative approach and this is based on a worst case scenario. Ho concluded that the figures are based on assumptions.

Council Member Carlson said every year the rate of growth of expenditures surpasses the rate of growth of revenues and this is a serious problem. Carlson said the Town needs to get its expense growth in line with revenue growth in terms of the assumptions for expenses. Carlson said he can not conclude that these assumptions show the Town needs to ask voters for more money in taxes. Carlson said staff should look at what a certain percentage change in a certain expense would amount to on an annual basis. Carlson suggested a study session on the five-year financial plan and concluded that staff should look at possibly funding only 50% of GASB, and cost sharing opportunities with other agencies to cut overhead before going to the ballot.

Vice Mayor Dobbie concurred with Carlson and added that when we are spending more then we are bringing in we need to do something about it. Dobbie added that based on these assumptions he feels that the Town could run out of cash by calendar year 2012. Dobbie concluded by echoing Council Member Carlson's ideas and added that the Town has desperate financial problems.

Council Member Marsala said Council received a five-year plan in 2006 and it showed deficits for 2010 which are a little off but it was alarming back then to show where the Town was headed. Marsala said 15% of the reserve needs to increase to be 15% of the General Fund every year and wondered if there was a cost of how that money gets put into the reserve as the reserve needs to grow or would that further increase our deficit year by year.

Finance Director Ho said the 15% minimum Fund Balance is a Council adopted policy to maintain the General Fund Reserve to not go below 15% of the annual General Fund expenditure. Ho said staff is projecting each year that the Town will be able to meet the 15% minimum until 2014 which is when the Town would go below the 15%.

Mayor McKeithen felt this was not the worse case scenario because legal costs consistently go up, so why would we assume they are going to go down and since a high speed rail lobbyist costs us \$5,000 per month which adds up to \$60,000 per year that already surpasses these assumptions. McKeithen added that we have the Road Impact Fee Refunds on tonight's Agenda which shows a beginning fund balance of 7.2 million and shows a transfer from General Fund reserve of 1.1 million to go into the Road Impact Fee to make up for illegal transfers made out of the Road Impact Fee Fund. McKeithen said the money being transferred into the Road Impact Fee Fund will be quickly dispersed to pay for the refunds. McKeithen concluded that there are far worse case scenarios.

Council Member Lewis said the Town did refund Business License Fees which were being collected illegally and reduced the projected income from Business License Fees substantially. Lewis said the Town is not bringing in the revenue that they had been in the past because fees such

as the Road Impact Fee were illegal and clearly should be refunded. Lewis concluded that things need to change and costs need to be cut and she would like to see some re-forecasting including Council Member Carlson's suggestions to modify the assumptions.

John Davey, Atherton resident, said drastic circumstances call for drastic measures and since the Police Department needs over 50% of housing in a new town center which represents about seven million dollars in cost, and takes up more than 50% of salaries Council should look at outsourcing with a possible annex to allow the current officers to keep their jobs.

Carol Flaherty, Atherton resident, said it is apparent that there is a serious problem and the Town can not afford the retirement plans of the Police Department. Flaherty said the Town should look at a two-tier structure retirement system and possible outsourcing of the Police Department.

Jeff Wise, Atherton resident, said Council needs to be judicious in how they approach the finances and carefully evaluate expenditures and sources of revenue.

Eric Corgan, said the Police Department is one of the reasons he moved to Atherton and he hopes they are not outsourced.

Denise Kupperman, Atherton resident, said it is good to be conservative and careful with money. Flaherty said pension plans should be evaluated and reconsidered. Kupperman concluded that in the future when we look at a parcel tax we look at a five or ten year plan as a part of it.

Jon Buckheit, Atherton resident, said that at a certain point when you try to squeeze too much revenue out of public constituents the actual whole revenue goes down and he felt Atherton is reaching that point and home values will decrease because of it.

Council Member Marsala said the comments made by residents on outsourcing the Police Department is something Council has been discussing over the last year and it will definitely need to be addresses as a major discussion with Town residents.

Council concurred to hold a special study session on the five year financial plan along with the classification study.

32. APPROVE RESOLUTION 10-18 APPROVING BUDGET AMENDMENT FOR FY 2009-10

Report: Finance Director Louise Ho

Recommendation: Adopt Resolution 10-18 approving the budget amendment for FY 2009-10 for the General Fund and Road Construction Impact Fee Fund (**Needs 4/5

Approval)**

Finance Director Louise Ho said that in order to go ahead with the Road Impact Fee refunds the General Fund would have to transfer \$1,112,562 to the Road Impact Fee Fund to make the refunds. Ho said Staff is also seeking \$40,000 for Muniservices to assist in the Road Impact Fee refund processing and an additional transfer from the Special Tax Fund of \$339,653 to the General Fund for the Police Department share of the GASB 45 (unfunded retiree healthcare cost) and the overhead allocation cost.

City Attorney Furth clarified that by approving Resolution 10-18 it would correct inappropriate charges made to the Road Impact Fee Fund in FY 2003-04 of \$423,713 and transfers to General Fund between FY 2002-03 to FY 2005-06 of \$679,849, for a total of \$1,112,562 which requires a supermajority vote of Council.

Jeff Wise, Atherton resident, said correcting an accounting error does not require a supermajority vote, and felt it would be an appropriate compromise to have the \$40,000 cost of processing refunds come out of the Road Impact Fee Fund so it does not require additional funds to be transferred from the General Fund.

Ho said the reason for the supermajority vote is because the Town does not have available revenue to do the transfer because State law requires the General Fund to have a balanced budget each year and the only available funding source the Town has is from reserves.

Furth added that she has not been able to find any legal authority for using the Road Impact Fee Fund to pay for administrative costs and the supermajority vote is not a statutory requirement, it is a Council adopted policy which can be changed with a simple majority vote.

Mayor McKeithen felt the supermajority rule had no meaning if it could be repealed by a simple majority. McKeithen said she was not in support of a transfer of General Fund Reserve into the Road Impact Fee account because of the current fiscal crisis. McKeithen said she agrees that the Town is legally obligated to replenish the funds but does not agree that it be replenished when there is not a balanced budget. McKeithen said cuts should be made and she can not, in good faith, approve a refund from a reserve account. McKeithen concluded that it can be viewed as a gift of public funds and she will not avoid her duties of stewardship to make sure the taxpayers money is used correctly.

Vice Mayor Dobbie said he felt Council made a big mistake when it rescinded the Road Impact Fee because he felt it was a fair fee. Dobbie said there is no reason why all of the citizens of the Town should be subsidizing road repairs caused by the full-size trucks of builders and developers.

Council Member Marsala agreed that there is wear and tear from larger trucks on the roads but there is a problem when we charge Menlo School \$150,000 when they can cross the street and be in Menlo Park. Marsala said the Town has overcharged and been at 40% higher than other cities and it needs to be cleaned up. Marsala concluded that if approved, it is possible the Town may refund a substantially less amount than what was budgeted for.

Council Member Lewis said she sits on the dais sometimes and feels Council is moving along and taking the high road and then feels blindsided. Lewis said approval of Resolution 10-18 does not allow the refund of Road Impact Fees; it will clean up accounting errors made by former Town officials. Lewis added that taking money from the Road Impact Fee Fund to build a Public Works facility or something else is a clear misuse of funds and if it needs to be fixed by taking from reserves, it should be done. Lewis concluded that if this fails because of the lack of a supermajority vote then she will ask for a future Agenda item to change the supermajority requirement.

Council Member Carlson said the Town has received illegal gain from the Road Impact Fee and he would also support dropping the supermajority requirement if it affects the outcome. Carlson said Council has been involved in a clean up process for a long time and this would be a big step in putting a lot of that clean up behind us if we can come to an agreement.

MOTION by McKeithen, second by Dobbie to authorize the transfer from the Special Parcel Tax in the amount \$339,653 to the General Fund for the Police Department share of GASB 45, unfunded retiree health cost and the overhead allocation costs. The motion failed.

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

MOTION by Lewis, second by Carlson to adopt Resolution 10-18 approving the budget amendment for FY 2009-10 to correct the inappropriate charges made to the Road Impact Fee Fund in FY2003-04 of \$423,713 and transfers to General Fund between FY 2002-03 to FY 2005-06 of \$679,849, for a total of \$1,112,562. The motion failed due to lack of a supermajority vote.

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

33. RESOLUTION 10-19 IMPLEMENTING REFUND PROGRAM FOR ROAD IMPACT FEES PAID FROM JULY 1, 2006 THROUGH SEPTEMBER 17, 2009

Report: City Manager Jerry Gruber

Recommendation: Adopt Resolution 10-19 setting out the procedures for refunding road impact fees paid from July 1, 2006 through September 17, 2009

City Attorney Furth said Council can choose to go ahead with the Road Impact Fee refund capping it at the balance of the existing fund. Furth recommended, for clarity purposes, bringing it back once the funds are available.

Jeff Wise, Atherton resident, said when this issue was addressed over the last several months, part of that discussion was on doing the right thing. The Mayor just said a few minutes ago that the misallocation and transfer out of the Road Impact Fee Fund was illegal. What he is hearing now, is that although it was an illegal transfer of funds that were collected, under questionable legality, that you are choosing to not take the action necessary to implement the Resolution you passed last month. Wise said this is the type of action that causes the Town to question Council decisions. Wise concluded this kind of behavior belies the whole notion of transparency that this Council consistently speaks of.

Mayor McKeithen said she agrees with paying back the Road Impact Fees but not from reserves.

Jon Buckheit, Atherton resident, said while he has no opinion on the Road Impact Fee, he feels that when Council makes incisive comments about each other instead of engaging in polite debate that their constituents can not uphold the ideal management that you request of them if you can not be polite to each other in public.

Carol Flaherty, Atherton resident, said the Road Impact Fee is not legal because it is covered under the Traffic Vehicle Code in California and under that code you can not charge for road maintenance because it is covered and paid for in one's taxes. Flaherty concluded that 100% of this fee is owed whether the Town decides to pay it or not.

Mike McPherson, Atherton resident, said he recognizes that Council is stuck between a rock and a hard spot. McPherson said the City Attorney and Town Manager had a very good alternative to go from July 1, 2005, when the ruling was made public, until December 1, 2006 when you began

giving notice. McPherson concluded it would be a lot less money and would give you a defensible position.

MOTION by Carlson, second by McKeithen to table the item. The motion passed unanimously.

Council agreed to waive the 10:30 p.m. rule to continue debating the rest of the Agenda.

35. RECOMMENDATION BY PLANNING COMMISSION TO AMEND THE SCHOOL EVENT GUIDELINES UNDER THE SPECIAL EVENTS ORDINANCE

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Amend the School Event Guidelines for the Special Events Ordinance to change the hours of use of the outdoor field for non-school related events held on school property

William Grindley, Planning Commissioner, said the Planning Commission was charged with reviewing the hours of operations for non-school related outdoor events held on school property. The Planning Commission established a subcommittee, consisting of Commissioners Grindley and Lively who spent fourteen months interviewing all the schools, major team sports and players and came up with a solution. The Subcommittee felt that setting a time around sunset is a practical solution.

Council Member Carlson thanked Commissioners Grindley and Lively for their time and dedication on this issue.

Council Member Lewis supported the Planning Commission recommendation.

Council Member Marsala asked why the football fields can not be used until sunset on the weekends. Planning Commissioner Grindley said there was no opposition to weekend use, and the controversy was geared towards weekday hours. Marsala concluded that the guidelines should be uniform between all schools.

David McAdoo, Menlo School, questioned why the Commission chose the term “sunset” rather than “civil twilight” which is generally accepted for sport events as when it is no longer safe to play on outdoor fields. McAdoo said the difference in time is approximately a half hour later.

Deputy Planner Lisa Costa Sanders said when Council referred this to the Planning Commission it was very specific to focus on outdoor field use only.

A Pop Warner Board Member requested that Council reject the recommendation of the Planning Commission because he felt that sports groups should be exempted from these guidelines. He concluded that Council is disregarding the Grand Jury report on this issue.

Bob Williams, President of Menlo-Atherton Pop Warner, said for ten years they have practiced until 8:00 p.m. with no citizen complaints. Williams said they are a non-profit group which keeps kids off the streets and it is the only place to practice. Williams concluded that restricting practice to sunset would have serious implications for the program.

Mayor McKeithen asked Furth what the impact of the Grand Jury report has on what Council decides. Furth said generally a Grand Jury report is an opinion about legalities and not a ruling but it should be reviewed, analyzed and considered. Furth said she will come back to Council with more information.

MOTION by Lewis, second by Marsala to continue the item to a future agenda with a possible language change to “civil twilight.” The motion passed.

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

Council concurred to direct staff to review the Grand Jury report and anything else that is germane to the Town’s appropriate legal authority to amend the guidelines.

36. COMPARISON OF THE R1-A AND R1-B ZONING DISTRICTS

Report: Deputy Town Planner Lisa Costa Sanders

Recommendation: Discuss the request and provide direction to staff as appropriate

Deputy Planner Costa Sanders said she did a comparison of the two districts and the main difference is the height limit and the floor area. The side rear setbacks are the same but there is a difference in front and rear setbacks. There is no difference in accessory structure requirements. Costa Sanders concluded that Council studied this issue on Parker Avenue a year ago and voted not to proceed with rezoning.

Mayor McKeithen asked what it would take to revise the current ordinance. Costa Sanders said it would need to go to Planning Commission for review before Council action.

Council Member Marsala moved to send this back to Planning Commission for further review. Marsala said last March he was in favor of not changing the rear setbacks but reducing the front setbacks which he is still in favor of. Marsala said he was concerned after hearing public comment that rear and side setbacks interfere with neighbors.

Costa Sanders said it is easier to change to language in the code rather than changing the zoning. It is a longer process to rezone as opposed to an ordinance amendment.

Vice Mayor Dobbie said a large number of homeowners are not following the requirements and even though he had voted no last year he is much more sympathetic to those who are following the rules.

City Attorney Furth said Council can create a brand new zone with its own set of standards or alternatively keep the zoning as is but modify the zoning standards in a way that would mean lots at a particular size could be treated differently.

Council Member Lewis asked what the determining factor is to be designated as an R1A or an R1B zone and wondered why there is such a large difference in square footage between the two zones. Lewis said it doesn’t seem fair or equitable.

Council Member Carlson said there should be a broader look to see how to rationalize lot size and allow more equitable options.

Dick Pike, Atherton resident, compared this topic to a zombie. Pike said Council drives a stake through its heart three to four times in the last twenty years and it keeps popping back up. Pike concluded that he would come back every time this topic was brought up to defend what the Atherton founders had in mind which was not to redevelop and to keep from overcrowding.

Jon Buckheit, Atherton resident, said not all homes are built to the same standard. Some already have storage space and a second level and some do not. Buckheit concluded that it should be standardized throughout the Town.

John Freschini, Atherton resident, said this issue has been repeated for years because new home owners come into Town and think their home is too small and want to build bigger. Freschini said it overcrowds and goes against the Towns General Plan and requested that Council not let this happen.

Michael Bennet, Atherton resident, said that setbacks should be proportioned to the size of the lot.

Jonathan Tang, Atherton resident, said he is in the process of building a home under the R1A standard and would be impacted by any further consideration of the City Council.

Colleen Anderson, Atherton resident, said smaller lots in R1A have a restriction on the second story. Anderson said she purchased her home in her twenties and did not know the restrictions she had in her zoning district. Anderson said it is fair for any lot less than 10,000 square feet to become more standardized with the larger lots.

Linda Pike, Atherton resident, said a lot of the houses were built before the new zoning change. Pike said there are 11 garages on her street and only two of them house cars and even if Council allowed garages for every property there would still be cars on the streets.

Jeff Wise, Atherton resident, said if Council refers this topic back to Planning he suggested making sure Council gives a very specific and tight parameter.

Mayor McKeithen said she walked Parker Avenue and when she had a chance to look at the properties she felt that she made the wrong decision last year. McKeithen felt the setback for the driveway gate should definitely be looked at again.

McKeithen motioned to send the issue back to Planning Commission to review it to look for the easiest way to do it in R1B with the understanding that there would be no changes in rear setback, the building height would be lessened to 28-feet, the side wall to 18-feet, and that there would be no limitation on the second story and a 30-foot front setback.

Council Member Lewis asked for more broad direction to give Planning Commission leeway in case they come up with a more equitable option.

Council concurred to have the Planning Commission review provisions in R1B and recommend how they can be applied in R1A for lots less than 10,000 square feet.

37. CONSIDERATION OF ADDING A SECOND MEETING DATE PER MONTH FOR CITY COUNCIL MEETINGS IN LIEU OF SPECIAL MEETINGS

Recommendation: To Be Determined

Item 37 was tabled to the April 21, 2010 Agenda.

38. CONSIDERATION OF THE REQUEST TO REFER THE REVIEW OF HOME OCCUPATION REGULATIONS TO THE GENERAL PLAN COMMITTEE

Report: Deputy Planner Lisa Costa Sanders

Recommendation: Discuss the request and provide direction to staff as appropriate

Item 38 was tabled to the April 21, 2010 Agenda.

39. REVIEW AND DISCUSS THE CARGILL/DMB DEVELOPMENT PLAN

Recommendation: To Be Determined

Item 39 was tabled to the April 21, 2010 Agenda.

Items removed from Consent Agenda were taken up next.

19. APPROVAL OF THE CONSULTANT SERVICES AGREEMENT BETWEEN MUNISERVICES, LLC AND THE TOWN OF ATHERTON FOR PROPERTY TAX ALLOCATION AUDIT

Report: Finance Director Louise Ho

Recommendation: Approve the consultant services agreement with MuniServices LLC; and authorize the City Manager to execute the agreement

Council Member Lewis felt this could backfire on the Town if the error is found against the Town.

Mayor McKeithen said the Consultant does not get paid if they do not find underpayments.

Council concurred to table the item to the April Agenda to allow for more information.

21. APPROVAL OF CONSULTANT SERVICES AGREEMENT BETWEEN MUNISERVICES, LLC AND THE TOWN OF ATHERTON FOR ROAD IMPACT FEE REFUND PROCESSING

Report: Finance Director Louise Ho

Recommendation: Approve the consultant services agreement with MuniServices LLC and authorize the City Manager to execute the agreement

Vice Mayor Dobbie said he would not support this item because he feels the Road Impact Fee was a fair fee and puts the cost where the damage is occurring.

Council tabled Item 21 to the April 21, 2010 Agenda.

22. APPROVAL OF CONSULTANT SERVICE AGREEMENT FOR HIGH SPEED RAIL GOVERNMENT AFFAIR SERVICE WITH CAPITOL ADVOCATES FOR AN AMOUNT NOT TO EXCEED \$20,000.00

Report: City Manager Jerry Gruber

Recommendation: Approve Consultant Services Agreement for High Speed Rail Government Affairs Services with Capitol Advocates

Council Member Carlson said he felt the scope of work should include that Atherton may wish to consult or ask for a specific task and if so it should be kept confidential from any other clients. Council Member Lewis concurred with Carlson.

Mayor McKeithen said Rail Committee member Julie Quinlan requested additional language that to the extent Atherton has Capitol Advocates do something for the Town and no other client she wanted to make sure it either remains confidential or that the Town say it is ok to share the information.

Vice Mayor Dobbie said the Consultant has several more Republican contacts than Democratic contacts and was not sure if this is the right consultant for Atherton.

Jack Ringham, Rail Committee member, expressed his reservations for approving this agreement because he felt it would be too difficult to find and measure the Consultant's accomplishments.

Mayor McKeithen clarified that the scope of services says that guiding principles shall be used by Consultant when advocating on behalf of the City, but the guiding principles are not included and should be clarified. McKeithen said Rail Committee member Jim Janz added the following language:

- 1 - Lobby and coordinate with educational, labor and business organizations to promote Town's concerns as directed by Atherton.
- 2 - Coordinate and promote complimentary goals between Atherton, Menlo Park and Palo Alto.

Mike McPherson, Atherton resident, said it is very important to stay on the same level as Menlo Park and Palo Alto because Atherton would not speak as loudly if not combined with its neighbors.

William Grindley, Atherton resident, suggested one member of the Rail Committee should stay on the Consultant's case and make sure he is doing what he is charged to do.

MOTION by Carlson, second by Marsala to approve Consultant Services Agreement for High Speed Rail Government Affairs Services with Capitol Advocates. The motion passed.

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

23. ADOPTION OF RESOLUTION 10-16 APPROVING UPDATE OF THE TOWN'S CONFLICT OF INTEREST CODE AND APPENDIX "A" DESIGNATING POSITIONS IN THE CONFLICT OF INTEREST CODE

Report: Deputy City Clerk Theresa DellaSanta

Recommendation: Adopt Resolution No. 10-16 approving Appendix "A" dated March 2010, which updated the designated positions disclosure categories in the Conflict of Interest Code

MOTION by Marsala, second by Carlson to Adopt Resolution No. 10-16 approving Appendix "A" dated March 2010, which updated the designated positions disclosure categories in the Conflict of Interest Code. The motion passed.

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

24. APPROVE A LETTER TO THE PENINSULA JOINT POWERS BOARD REGARDING THE CALTRAIN ELECTRIFICATION FINAL ENVIRONMENTAL ASSESSMENT/ENVIRONMENTAL IMPACT REPORT (EA/EIR)

Report: Public Works Director Duncan Jones

Recommendation: Approve a letter to the Peninsula Joint Powers Board (JPB) regarding the Caltrain Electrification Final Environmental Assessment/Environmental Impact Report (EA/EIR)

Jack Ringham, Rail Committee member, said he just received a copy of a letter from Caltrans to the Town announcing that at an April 1 Joint Powers Board meeting they will certify and adopt the electrification EIR which means there would be no public comment and, if this letter is approved, they will not have to pay any attention to it. Ringham suggested the Town send a letter opposing certification due to the fact that six years have elapsed since the draft EIR was published, responses to the EIR were not available for review until September of 2009 and as of March 17 the final electrification EA/EIR has not been made available to the public.

Council Member Carlson suggested Ringham work with Public Works Director Jones to draft a new letter. Ringham added that it may need legal review to protect the Town against future claims if Caltrans does decide to certify the EIR.

City Attorney Furth said whatever the Town objects to should be included in that letter for a record.

MOTION by Carlson, second by Lewis to approve the letter to the Peninsula Joint Powers Board (JPB) regarding the Caltrain Electrification Final Environmental Assessment/Environmental Impact Report (EA/EIR) as written and direct staff to write a new letter opposing certification. The motion passed.

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

27. AWARD A PURCHASE ORDER TO SERRAMONTE FORD IN THE AMOUNT OF \$45,209.95 FOR THE PURCHASE OF ONE FORD F-350 UTILITY BODY PICK-UP TRUCK

Report: Public Works Director Duncan Jones

Recommendation: Authorize the purchase of one Ford F-350 utility body pick-up truck from Serramonte Ford for a cost of \$45,209.95

City Manager Gruber clarified that the extra \$20,000 is for the bed and associated tool boxes to go with the truck. Gruber said Staff originally intended to buy a new dump truck which Council approved funding for, but it is very difficult to find a used dump truck that meets government emissions standards. While Public Works was searching for a dump truck their service vehicle was in an accident and totaled. Gruber said he suggested that Public Works request funds be reallocated to get their totaled service vehicle back into fleet operations.

Vice Mayor Dobbie questioned, with Town's current cash position, why Staff is not considering repairing the vehicle and if it were hit by another car why isn't their insurance covering it.

Public Works Director Jones said the truck is totaled and would cost far more than what it would be worth after it was repaired. Jones added that the truck was scheduled for replacement for next year.

Jones concluded that the truck was used every day by Public Works and our crews are struggling to get by without the truck.

Mayor McKeithen asked if Public Works will still come forward for another \$75,000 for a dump truck next year. Jones said he may be able to squeeze another year out of the dump truck.

McKeithen asked that given the financial position of the Town does the vehicle need all the added utilities. Jones said this is the equipment Redwood City recommends having on the service vehicles. Jones concluded that the tools need to be locked up at all times because people have taken the tools off the truck before.

Council Member Marsala felt Council should move ahead with this purchase because there comes a point when the useful life of the vehicle starts to fall apart. Marsala suggested having confidence in Staff to do their analysis.

Council Member Carlson asked Gruber if he is confident in Jones decisions. Gruber said yes.

MOTION by Carlson, second by Marsala to authorize the purchase of one Ford F-350 utility body pick-up truck from Serramonte Ford for a cost of \$45,209.95. The motion passed.

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

40. COUNCIL REPORTS

Mayor McKeithen clarified a statement made at the February 2010 meeting with regard to the Victoria and Hoover traffic study.

41. FUTURE AGENDA ITEMS

COLLEAGUES MEMO TO ADD ADMINISTRATIVE CITATION ORDINANCE TO APRIL 21, 2010 CITY COUNCIL AGENDA

Report: Mayor McKeithen and Vice Mayor Dobbie

City Attorney Furth said that if this is added to the April Agenda it would be brought back as a first reading.

MOTION by McKeithen, second by Dobbie to add Administrative Citation Ordinance to the April 21, 2010 City Council Agenda. The motion passed.

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

MOTION by Lewis, second by Carlson to add revisions to the Towns general fund reserve policy to the April Agenda. The motion passed.

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

42. PUBLIC COMMENTS

None.

43. ADJOURN

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

Mayor McKeithen adjourned the meeting at 12:49 a.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**