



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

1. **PLEDGE OF ALLEGIANCE**

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

3. **PRESENTATIONS**

Oath of Office – Level I Reserves

Deputy City Clerk Della Santa administered the oath of office to David Gomez and Bill Lane.

Tree Awards – Kathy Hughes Anderson

Town Arborist Kathy Hughes Anderson presented the following residents with the 2010 Tree Awards:

Zan Jones for a Chinese Elm and Palm Tree

Virginia and John Rugeiro for Persimmon, *Diospyros kaki* 'Hachiya'

Pat and Ralph Haines for a Live Oak

Evelyn Arata for a Monkey Puzzle, *Araucaria araucana*

Julia & Mike Samachisa for a Cork Oak, *Quercus suber*

Adelman Family (Derek & Etsuko) for a Valley Oak, *Quercus lobata* and a grove of mature Redwoods

4. **PUBLIC COMMENTS**

Public Comment received from Atherton residents:

Loren Gruner regarding recent fatalities in Atherton.

Denise Kupperman regarding Grand Boulevard project.

Jon Buckheit regarding false arrest charges and encouragement of a citizen police review board.

Don Way regarding admiration for City Manager Gruber.

Melinda Tevis read several words and their meaning from the dictionary. These words included civics, civilized, civilization, civility, and citizen. Tevis discussed a recent news article and thanked the Mayor for her comments.

5. REPORT OUT OF CLOSED SESSION

The Mayor called the October 20, 2010 special meeting to order at 5:00 p.m.

Furth reported that Council Member Marsala was absent.

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: Miscellaneous - Teamsters Local Union 856

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

Employee Organization: Management Employees

Agency Negotiators: Jerry Gruber, City Manager; Assistant City Manager Eileen Wilkerson

Employee Organization: Confidential Employees

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

Employee Organization: APOA

Furth reported that Item A was tabled to a future Agenda.

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

1. *Pacific Peninsula Group v. Town of Atherton, and Does 1 through 50*, San Mateo Superior Court, Case No. CIV 497841

2. *Jonathan B. Buckheit v. Tony Dennis, Dean DeVlugt, Anthony Kockler, The Town of Atherton, The County of San Mateo, and Jerry Carlson* U.S. District Court for the Northern District of California, San Francisco Division, Case No. CV 09-5000

Furth reported that there is no reportable action from Item B.

C. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION (Subsection (c) of Government Code Section 54956.9) *One potential case*

Furth reported that there is no reportable action from Item C.

D. PUBLIC EMPLOYEE APPOINTMENT: INTERIM CITY MANAGER (Subsection (b)(1) of Government Code Section 54957)

Furth reported that Item D was reported during the previous special meeting and action was taken to appoint Nadine Levin as the Interim City Manager for the Town of Atherton.

6. CITY MANAGER'S REPORT

Council Member Carlson asked if Gruber was successful in getting a meeting set up with Caltrans. Gruber said he has directed Public Works Director Jones and Police Chief Guerra to meet with Caltrans representatives to address the issue of the recent fatalities on El Camino Real.

Jones added that he is attending a meeting at Senator Simitian's office with Caltrans to address the issue.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

Disaster Plan Presentation by Ryan Zollicoffer – Emergency Services Coordinator, Menlo Park Fire Protection District

Ryan Zollicoffer presented the Council with a PowerPoint presentation on the proposed Disaster Plan. Zollicoffer discussed the timeline and flowchart of the process from start to finish in developing the Disaster Plan.

Zollicoffer explained that the purpose of a Disaster Plan is to put processes in place to protect citizens, property, environment and local businesses. It provides responders with documentation and checklist to effectively manage local emergencies and it conforms to NIMS and SEMS standards in order to receive Federal Disaster Assistance.

Zollicoffer discussed emergency response with recent disasters which included a plane crash in Palo Alto this past February and the pipeline explosion in San Bruno this past September.

Zollicoffer concluded that the Town may be exposed to increased liability claims, could risk state disaster funding/recovery and could be exposed to limited grant funding if there is no disaster plan in place.

Council discussed the fact that they were all given a NIMS test last year which they all took for certification. Zollicoffer explained that it is one step in the process and will soon be an annual requirement.

Chief Schapelhouman discussed the location of the Emergency Operations Center and options the Town has. Schapelhouman stressed how important it is for the Town and the Fire District along with all other agencies to have a professional and trusting relationship at all times. Schapelhouman said if you don't have a professional working relationship and constant interaction between all agencies including Police, Fire and Public Works then we will not succeed in an emergency.

Chief Guerra discussed the implementation of the command vehicle the Police Department currently has.

City Manager Gruber said it is a minimal cost to utilize the regional facility in Menlo Park and it should be looked into. Gruber added that it is important for the Town to continue to have quarterly exercises with emergency plans and allocate funds to restock the emergency supplies which are very old and outdated. Gruber concluded that it is very important to put together a joint meeting of the City Council and the Menlo Park Fire District officials during implementation of the plan.

Action was taken on the consent calendar under Item 20.

CONSENT CALENDAR (Items 8-20)

Vice Mayor Dobbie had questions for items 11 and 16.

Council Member Lewis had edits for item 8, questions on items 10 and 11, and pulled item 14.

Council Member Carlson had a comment on item 19.

Mayor McKeithen had a statement to make on item 10, and typographical revisions to items 12, 17, 19 and 20.

Atherton resident Loren Gruner had a question on item 13.

8. APPROVAL OF SEPTEMBER 8, 2010 SPECIAL MEETING, SEPTEMBER 15, 2010 REGULAR MEETING, SEPTEMBER 20, 2010 SPECIAL MEETING, AND SEPTEMBER 30, 2010 MEETING MINUTES (2)

Recommendation: Approve September 8, 2010 Special meeting, September 15, 2010 regular meeting, September 20, 2010 special meeting and two September 30 special meeting minutes.

Council Member Lewis gave non-substantive edits to the September 15th and September 30th minutes. The changes will be implemented.

9. APPROVAL OF BILLS AND CLAIMS FOR FEBRUARY 2010 IN THE AMOUNT OF \$1,218,191

Recommendation: Approve Bills and Claims in the amount of \$1,218,191

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2010

Report: Finance Director Louise Ho

Recommendation: Receive the General Fund Financial Report for the three months ended September 30, 2010

Council Member Lewis asked what upward trend the Building Department is seeing. Finance Director Ho said it is approximately up by 18%.

Mayor McKeithen requested comparisons of expenditures and revenues from prior years in the future monthly financial reports. Ho will implement the changes.

11. PURCHASE OF A 15TB HARD DRIVE TO RECORD POLICE DEPARTMENT BUILDING SECURITY VIDEO & ALLOW THE DESTRUCTION OF “ROUTINE VIDEO MONITORING” RECORDS AFTER ONE YEAR AS DEFINED BY GOVERNMENT CODE SECTION 34090.6(A) AND TOWN OF ATHERTON POLICY 1.1

Report: Police Chief Mike Guerra

Recommendation: Authorize the purchase of a 15TB hard drive that will be used to record video from the PD’s security camera system, which will have the capacity to record one year of data in compliance with Government Code Section 34090.6(a). Staff also recommends that Council authorize the destruction of “routine video monitoring” records as defined by 34090.6(a), and in a manner that is already defined in Atherton Records Policy 1.1

Vice Mayor Dobbie questioned why the Town has video monitoring on the premises in areas that include the Post Office and parking lots. Police Chief Guerra said the video monitoring does not include any audio recording and the server capacity only records up to 15 days and depends on

motion which activates the system. Guerra added that it is not uncommon to have video recording devices at a Post Office.

Council Member Lewis said upgrading of video monitoring systems was approved by Council in 2008 and it seems reasonable to have the video surveillance in place.

Mayor McKeithen said she was not aware that surveillance would be installed in the Administrative offices at Town Hall. McKeithen asked representatives from the Menlo Park Fire District if it was common to have surveillance at a Post Office.

Ryan Zollicoffer said that in the past he worked with the United States Postal Service during their terror scare on Capitol Hill and surveillance cameras were installed at a lot of postal offices for anti-terror measures in light of suspicious packages.

City Manager Gruber said the Town has posted signs letting individuals know that surveillance is on the premises.

12. RESOLUTION 10-55 AUTHORIZING INDIVIDUALS TO ACT ON BEHALF OF THE TOWN OF ATHERTON STARS DEFERRED COMPENSATION PLAN

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Approve Resolution 10-55 adopting a Resolution authorizing specified individuals to act on behalf of the Plan while serving as Town employees

Mayor McKeithen questioned why the resolution refers to Eileen Wilkerson whose last day is tomorrow. City Attorney Furth informed Council that Wilkerson intends to sign the resolution and have the paperwork done by tomorrow to close out a program she has been working on. Furth said Wilkerson only has the power to administer this while employed by the Town.

13. ADOPT A RESOLUTION APPROVING A “NO PARKING FROM 7-9 AM AND 2-4 PM” ZONE ON ALTREE COURT

Report: Public Works Director Duncan Jones

Recommendation: Adopt resolution 10-56 approving a “No Parking from 7-9 AM and 2-4 PM” zone on Altree Court.

Loren Gruner, Atherton resident, questioned the reason for this particular item.

Public Works Director Jones said this is the same issue the Town had with Surrey Lane where residents are parking in areas that block emergency access and resident access to their properties. Jones added that the Transportation Committee made the recommendation.

Gruner said Altree Court is the only place to park if you do not want to be on a busy street waiting to pick up your children. Gruner said the parking for parents is slowly being eroded in many areas and it causes very serious safety issues.

Council Member Lewis said if this is a true issue of blocking emergency access shouldn't the resolution state that there shall be no parking at all.

Jones said the Committee and staff only addressed when the issue actually occurs.

Council member Carlson asked if there is anything that can be done to allow for more parking on Ringwood Avenue.

City Manager Gruber said he plans to incorporate considerations from the Menlo Park Fire District, the School District, the residents and Town officials to come up with viable solutions.

Council Member Carlson recommended that the Transportation Committee set up an ad-hoc committee to work with the parents of the schools.

14. ADOPT A RESOLUTION REVISING THE “NO RIGHT TURN ON RED 7 AM TO 7 PM” AT OAK GROVE AVENUE AND MIDDLEFIELD ROAD TO “NO RIGHT TURN ON RED MON-FRI 7:30-9:30 AM AND 1:30-3:30 PM”

Report: Public Works Director Duncan Jones

Recommendation: Adopt Resolution 10-57 revising the “No Right Turn on Red 7 AM to 7 PM” at Oak Grove Avenue and Middlefield Road to “No Right Turn on Red Mon-Fri 7:30-9:30 AM and 1:30-3:30 PM”

Council Member Lewis felt that the proposed new time blocks were not well considered. Lewis said children pour into school after 9:30 a.m. and 3:30 p.m. Lewis said it would be better to keep the time block as is right now.

Denise Kupperman agreed with Council Member Lewis and felt the hours should remain at 7:00 a.m. to 7:00 p.m.

Mayor McKeithen said there was an overwhelming argument brought to the Transportation Committee that people do not pay attention to the sign because the hours are so inclusive and a lot of times there is no traffic whatsoever so it is largely ignored.

Vice Mayor Dobbie said residents came to the Transportation Committee and requested that the hours be removed mainly for Saturday and Sundays. Dobbie added that the 7:00 a.m. to 7:00 p.m. is largely ignored.

Council Member Lewis said the Police Department should begin enforcing it more and making drivers obey the law.

Jones said he spoke with Menlo-Atherton High School representatives and these times do fit in with the school’s bell schedule. Jones said there are some odd days with scheduling and there will always be some times when right turns will be allowed outside the hours while people are in the crosswalks but drivers should not they are to yield to pedestrians by law.

15. ADOPT A RESOLUTION SETTING A 10 MPH SPEED LIMIT IN ALL PUBLIC WORKS CONSTRUCTION ZONES

Report: Public Works Director Duncan Jones

Recommendation: Adopt Resolution 10-58 setting a 10 mph speed limit in all public works construction zones

16. AWARD OF CONTRACT FOR THE TOWN LANDSCAPE MAINTENANCE SERVICES

Report: Public Works Director Duncan Jones

Recommendation: Award the contract for Town Landscape Maintenance Services, to Frank & Grossman, the low bidder on the October 14, 2010 bids, for \$2,083 per month, for a total of \$16,664 for the next 8 months and to authorize the City Manager to sign the contract on behalf of the Town. Approve staff recommendation to include the add-alternate price of \$480 per month for maintenance of the City Manager's house at 160 Watkins to the low base bid of \$1,603 for a total of \$2,083 per month

Vice Mayor Dobbie questioned why there is an addition of \$480 per month for maintenance of the City Manager's house and what it is paying for. Jones said it is for the landscape maintenance of the yards and bushes and it is on a twice a week basis. City Manager Gruber said the grounds at the house have significantly deteriorated.

Vice Mayor Dobbie said he felt \$480 is too expensive.

17. PROCLAMATION DECLARING RED RIBBON WEEK FROM OCTOBER 25 THROUGH OCTOBER 31, 2010

Report: Police Chief Mike Guerra

Recommendation: Approve Proclamation Declaring Red Ribbon Week from October 25 through October 31, 2010

18. APPROVE AMENDMENT TO AGREEMENT WITH MENLO ATHERTON LITTLE LEAGUE ASSOCIATION

Report: City Manager Jerry Gruber

Recommendation: Approve the amendment for little league baseball between the Menlo Atherton Little League Association and the Town of Atherton; authorize the City Manager to execute the agreement

19. AGREEMENT FOR LEGAL SERVICES WITH OFFICES OF STUART FLASHMANN (CALIFORNIA HIGH SPEED RAIL AUTHORITY)

Report: City Manager Jerry Gruber

Recommendation: Approve agreement for Legal Services with Office of Stuart Flashmann (California High-Speed Rail Authority); authorize City Manager to execute

Council Member Carlson requested that the contract include that there will be cost-sharing with the City of Palo Alto. City Attorney Furth said she will add a note to the contract.

20. ADOPT RESOLUTION 10-59 APPROVING THE EMERGENCY OPERATION PLAN 2010 AND ADOPT RESOLUTION NO 10-60 APPROVING THE NATIONAL INCIDENT MANAGEMENT SYSTEM AS THE CRITERIA FOR MEASURING THE PERFORMANCE

Report: City Manager Jerry Gruber

Recommendation: Adopt Resolution 10-59 approving the Emergency Operation Plan and adopt Resolution 10-60 approving the National Incident Management System (NIMS) as the criteria for measuring the performance

MOTION by Dobbie, second by Carlson to approve the consent agenda with the exception of Item 14 which will be voted upon separately. The motion passed.

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

MOTION by McKeithen, second by Dobbie to approve Item 14. The motion passed.

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

PUBLIC HEARINGS (21)

21. AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING AND REPLACING CHAPTER 15.48 OF THE ATHERTON MUNICIPAL CODE ESTABLISHING WATER-EFFICIENT LANDSCAPING STANDARDS

Report: City Manager Jerry Gruber

Recommendation: Introduce Ordinance repealing and replacing Chapter 15.48, Establishing Water Efficient Landscaping Guidelines, to the Atherton Municipal Code. Three votes are required to introduce the ordinance. A second vote, scheduled at least ten days from the date of this meeting, is required to adopt the ordinance. Staff is recommending rescinding Chapter 15.48, Establishing Water Efficient Guidelines, of the Atherton Municipal Code, in its entirety, and replacing it with a new Chapter 15.48, Water Efficient Landscaping Ordinance

City Manager Gruber said the water ordinance has been a long time coming for the Town and is a very important issues.

Town Arborist Kathy Hughes-Anderson gave a brief presentation of the ordinance. Anderson said the State's model ordinance, Model Water Efficient Landscape Ordinance (MWELo), became effective for all cities and counties in California as of January 1, 2010. The Bay Area Water Supply and Conservation Agency (BAWSCA) developed a model ordinance that they are asking local jurisdictions to adopt instead of adopting the State ordinance. BAWSCA's ordinance is as effective as the state's. The Town can adopt the State's ordinance, adopt the BAWSCA ordinance, or create our own ordinance. The proposed water efficient landscaping ordinance is as effective and stringent as the State's Model Ordinance, but simpler and easier to implement. Staff is recommending that all projects subject to the Landscape Water Conservation Ordinance may be designed and certified by a licensed landscape architect, a licensed landscape contractor, or that of a certified landscape irrigation auditor. The proposed ordinance allows an option of exceeding the 25% turf limit by calculating a water budget. Staff is recommending that the Ordinance should read "separate meters for landscaped areas greater than 5,000 square feet is highly recommended."

Vice Mayor Dobbie asked if this applies to all water, including well water. Anderson said it includes all water, including well water.

Mayor McKeithen asked how well usage is monitored. Anderson said it is calculated by maximum water allowance and you have to stay within that when you calculate your usage.

Council member Carlson asked if there were landscape experts or residents involved. Anderson said not as many as she would have anticipate, but the landscape architects are aware of the ordinance and know they have to comply with it. Anderson concluded that staff plans to create education materials and outreach with residents.

MOTION by Dobbie, second by Lewis to Introduce Ordinance repealing and replacing Chapter 15.48, Establishing Water Efficient Landscaping Guidelines, to the Atherton Municipal Code with the intent of rescinding Chapter 15.48, Establishing Water Efficient Guidelines, of the Atherton Municipal Code, in its entirety, and replacing it with a new Chapter 15.48, Water Efficient Landscaping Ordinance. The motion passed.

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

REGULAR AGENDA (Items 22-25)

22. RECRUITMENT OF INTERIM CITY MANAGER; RETIREMENT OF ASSISTANT CITY MANAGER; CONSIDERATION OF APPOINTING A TRANSITIONAL INTERIM CITY MANAGER

Report: Oral

Recommendation: Consideration of Adoption of Resolution Appointing a Transitional Interim City Manager

Council Member Lewis felt that the Town is lucky with the “bridge” Interim City Manager appointment of Nadine Levin from Management Partners. Lewis said she is sad that the Town was unsuccessful in retaining City Manager Jerry Gruber and Assistant City Manager Eileen Wilkerson. Lewis said Wilkerson wore many hats and put many procedures into place that will protect the Town. Lewis said Gruber quickly assembled a qualified team of Town Administrative employees during very difficult times. Lewis said both employees deserve very high accolades.

Council Member Lewis read into the record a letter from Atherton resident and former Mayor Malcolm Dudley.

Council Member Carlson said he was very sorry to hear of Wilkerson’s departure and thanked her very much for her contributions to the Town. Carlson concluded that it is tough to be a City Manager because you are tugged and pulled in all different directions and he will miss Gruber’s constant smile during difficult times within the Town.

Vice Mayor Dobbie clarified that there was no pressure put on either the City Manager or the Assistant City Manager in their decision to depart the Town.

No Action was taken.

23. DISCUSS ESTABLISHING A DATE FOR SOLICITING COMMUNITY INPUT FOR QUALIFICATIONS FOR THE PERMANENT CITY MANAGER AS WELL AS ESTABLISHING A CITIZENS REVIEW COMMITTEE FOR THE PERMANENT CITY MANAGER

Report: Oral

Mayor McKeithen said she requested this item to be on the agenda for citizen input into the process. McKeithen said there are not enough citizens in the audience at this particular meeting to come to a conclusion and she hopes the current audience can spread the word that Council wants citizen input. McKeithen said she would like to hold a special community meeting specifically to listen to the residents’ views before an RFP is developed for the permanent City Manager position.

Loren Gruner, Atherton resident, questioned whether the residents will know more about candidates ahead of time. Gruner said this would allow for resident input in a more constructive way.

Council Member Lewis said she sent an email to the Mayor outlining several different items to what the process might entail.

Gruner suggested putting something on the Town website to allow for residents to give ideas and thoughts throughout the process.

Don Way, Atherton resident, said this is the most difficult decision Council will have to make. Way encouraged Council to form a citizens committee to articulate what is most important to residents in terms of characteristics of a City Manager.

No Action was taken.

24. RECLASSIFICATION OF THE “TEMPORARY” ADMINISTRATIVE ASSISTANT TO THE POLICE CHIEF TO “REGULAR” EXECUTIVE ASSISTANT/POLICE DEPARTMENT

Report: City Manager Jerry Gruber

Recommendation: Reclassify the employment status of the temporary Administrative Assistant to the Police Chief to regular employment status, approve designation to the job classification Executive Assistant, set full time equivalent to 1.0 FTE and Set the Bargaining Unit as Confidential

Police Chief Guerra discussed the roles of the current temporary Administrative Assistant. Guerra reiterated that this position is not secretarial to the Chief. Guerra concluded that the Police Department has no secretarial staff support, but it would be nice to have someone who can fill that void.

Council Member Lewis asked how many more hours per week would the position fill. Guerra said a total of 8 more hours.

MOTION by Dobbie, second by Carlson to reclassify the employment status of the temporary Administrative Assistant to the Police Chief to Executive Assistant at a regular part-time employment status of 0.75FTE. The motion passed.

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

25. REQUEST FROM AUDIT COMMITTEE TO ALLOW REVIEW AND DRAFTING OF POLICIES RELATED TO TOWN CREDIT CARD, INVENTORY, ACCOUNTS PAYABLE, AND USE OF INTERNS

Report: Finance Director Louise Ho

Recommendation: To be Determined

Mayor McKeithen made revisions to the minutes provided by the Finance Director.

MOTION by Dobbie, second by Carlson to approve allowing the Audit Committee to review and drafting of policies related to Town credit card, inventory, accounts payables and allow utilization of interns without Council approval. The motion passed.

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

Furth clarified that interns would need to be obtained through staff.

26. COUNCIL REPORTS

Vice Mayor Dobbie thanked City Manager Gruber for his contributions to the Town and wished him well in his future.

City Manager Gruber thanked Council for allowing the opportunity to serve as the Town City Manager and said that it “has been fun.”

27. FUTURE AGENDA ITEMS

None.

28. PUBLIC COMMENTS

None.

29. ADJOURN

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

Mayor McKeithen adjourned the meeting at 9:42 p.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk