



Minutes
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
December 15, 2010
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

Mayor Dobbie called the meeting to order at 7:15 p.m.

Dobbie thanked his colleagues for electing him to the office of Mayor. Dobbie said he was born and raised in Scotland which was a very poor Country with hard working individuals who started at a very young age. “Work hard, honor your work, don’t go into debt and ensure you receive the best value for every penny you spend.” Dobbie said the Town will do very well if they follow this motto. Dobbie said the Town has substantial challenges to overcome but with the right attitudes, good planning and efficient execution of our plans the Town can overcome many of these obstacles.

Mayor Dobbie said he prefers 2011 to be a “doing” Council who gets things done. Dobbie asked his colleagues and staff to help make meetings more efficient by urging Council to discuss items with staff before meetings, summarize their positions and stick to the issues.

Dobbie concluded that he would like to stabilize Town finances, create trust with Town residents, communicate openly and keep the Town as a beautiful and highly desirable place to live.

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

PROCLAMATION PRESENTED TO BILL AWBREY

Mayor Dobbie presented Bill Awbrey with his proclamation which he read for the record.

PG&E – GAS TRANSMISSION AND DISTRIBUTION LINES

Ashlee Simpson,

4. **PUBLIC COMMENTS**

Valerie Gardner, on behalf of the Environmental Programs Committee, recognized Charles Marsala and thanked him for all of his work during his years on Council. Gardner said Marsala is hard working, dedicated and spent an enormous amount of time and devotion to many accomplishments.

Jon Buckheit, Atherton resident, said he has advocated for a citizen police review board mainly because nothing has been done in regards to acknowledgements that his police report was falsified. Buckheit reminded that the accusation of child abuse has so much moral tribulations that even if the person is not arrested or convicted it will ruin their lives. Buckheit concluded that the fact that nothing has been done about his police report is a very big disappointment.

Carol Flaherty, Atherton resident, said Charles Marsala has worked tirelessly to tackle incredibly difficult issues and has an amazing capacity for detail. Flaherty said Marsala has an amazing capacity for detail and has the ability to offer broad perspectives. Flaherty said Marsala is a person of character, integrity and fairness. Flaherty offered her sincerest gratitude to Charles Marsala.

Charles Marsala thanked the residents, Council and staff and said Atherton is an amazing place to live and he is happy to be a part of it.

5. REPORT OUT OF CLOSED SESSION

The meeting was called to order at 6:00 p.m.

Jon Buckheit, Atherton resident, said all he has ever wanted was to have his record expunged and appropriate action taken. Buckheit said he has spent an enormous amount of money expunge his record. Buckheit has requested that Council stop the investigation that Chief Guerra has begun and begin a new investigation with a court-appointed investigator. Buckheit concluded that he is willing to reasonably resolve this case once and for all if Council is willing to appoint a neutral investigator through a judge.

Mayor Dobbie made a public announcement of the items to be taken up in closed session.

A. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION (Subsection (c) of Government Code Section 54956.9)

Two potential cases

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

*1. 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*

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

City Attorney Furth reported that under Item A, Council has voted unanimously to settle a complaint brought forth by John Mattes to the Department of Fair Employment and Housing restoring to him accrued vacation hours. Furth said the agreement will be available for inspection at Town Hall.

City Attorney Furth reported under Item C, Council approved 4-0-1 with Widmer abstaining to offer the position of Interim City Manager to John Danielson. Council has also agreed to appoint Mayor Jim Dobbie and Council Member McKeithen to an ad-hoc committee to negotiate a proposed contract with Mr. Danielson. Approval of the contract and appointment of Danielson would occur at a future Council meeting.

There was no reportable action for Item B.

6. CITY MANAGER'S REPORT

Interim City Manager Nadine Levin called to Council attention several time sensitive matters one of which is the annual Council strategic meeting which usually occurs in January.

Council Members Carlson and Lewis preferred a meeting in January. Mayor Dobbie felt January was too early and believed Council already knows their priorities.

Council Member Carlson said that holding a meeting in January would be a good time to get the new Interim City Manager up to speed on priorities.

Council Member McKeithen preferred facts and data for a strategic meeting and would like the Interim City Manager to be on board for more then a few weeks to assimilate the information.

Vice Mayor Widmer said it is in the Towns best interest to have multiple strategic meetings and develop a roadmap of key issues to work from.

Council agreed to set Thursday, February 3, 2011 as the strategic planning workshop. Mayor Dobbie requested that DellaSanta poll Council for preferable times that day.

Interim City Manager Levin said Council has set a joint meeting with the Finance Committee for January 13th. At the last Finance meeting members indicated they wanted Cutwater, the Town portfolio investment advisor, to come and give a presentation on a Saturday. Saturday meetings with Cutwater are not possible. Levin suggested having staff poll Council for a date. Council agreed.

Levin said the lease for the playschool in the park is due to expire in June 2011. Levin said that by this winter, for the next academic year is September 2011 and parents need to know by this winter if there children have a place to go. Levin said Ms. Knox is interested in a ten year lease. Levin recommended negotiating a shorter lease since the library in the park has not yet been established.

Council agreed that the Town should negotiate a short term lease.

Levin said code enforcement has been receiving several complaints about individuals putting out their garbage cans early and leaving them out late. Levin said it is not unusual for municipalities to have provisions that limit and set the times that allow the Town residents to have their garbage cans out.

Council Member Carlson thanked Levin for the excellent work she has done and it has been great to have her professional service for the past two months.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** - None

CONSENT CALENDAR (Items 8-26)

Council Member Carlson removed Items 13 and 25.

Council Member McKeithen removed Items 22 and 26.

Vice Mayor Widmer removed Items 9, 12, 16, 19, 20, 21, and 23.

Mayor Dobbie removed Item 17.

8. **APPROVAL OF AMENDMENT TO OCTOBER 20 REGULAR MEETING MINUTES, NOVEMBER 6 SPECIAL MEETING, NOVEMBER 15 SPECIAL MEETING AND NOVEMBER 17, 2010 REGULAR MEETING**

Recommendation: Approve Amendment to October 20 Regular meeting, November 6 Special meeting, November 15 Special meeting and November 17, 2010 regular meeting minutes

10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE FIVE MONTHS ENDED NOVEMBER 30, 2010**

Recommendation: Accept Monthly Financial Report

11. **ACCEPTANCE OF TREASURER'S REPORT FOR THE FIRST QUARTER ENDED SEPTEMBER 30, 2010**

Report: Finance Director Louise Ho

Recommendation: Accept the Treasurer's Report for the First Quarter Ended September 30, 2010

14. **STAFF RESPONSE TO AUDIT COMMITTEE RECOMMENDATIONS**

Report: Interim City Manager Nadine Levin

Recommendation: Accept staff's response to the Audit Committee's recommendations

15. **ROAD IMPACT FEE REPORT FOR FY 2009-2010 (AB 1600 STATE REPORTING REQUIREMENT)**

Report: Public Works Director Duncan Jones

Recommendation: Approve the Road Impact Fee Report for FY 2009-2010

18. **AWARD OF CONTRACT FOR THE TREE MAINTENANCE SERVICE AGREEMENT, PROJECT NUMBER 11-53099, IN AN AMOUNT NOT TO EXCEED \$47,000**

Report: Public Works Director Duncan Jones

Recommendation: Award the contract for the Tree Maintenance Service Agreement, Project Number 11-53009, in an amount not to exceed \$47,000 to the low bidder on the December 15, 2010 bids and to authorize the Mayor to sign the contract on behalf of the Town.

**24. SACRED HEART SCHOOL COMMERCIAL BUILDING PLAN REVIEW
AUTHORIZATION TO PAY CSG CONSULTANTS FOR WORK PERFORMED**

Report: Interim City Manager Nadine Levin

Recommendation: Authorize the payment of \$44,686.98 to CSG Consultants from the collected plan review fees of \$59,582.64 received from the processing of building permits for 150 Valparaiso Ave. Building A, B, C and D

MOTION by McKeithen, second by Carlson to approve the Consent Calendar which consists of items 8, 9, 10, 11, 14, 15, 18 and 24. The motion passed unanimously with Vice Mayor Widmer abstaining from Item 8.

9. APPROVAL OF BILLS AND CLAIMS FOR NOVEMBER 2010 IN THE AMOUNT OF \$1,091,015

Recommendation: Approve Bills and Claims in the amount of \$1,091,015

Vice Mayor Widmer questioned the travel reimbursement cost for an employee and wondered if it would have been cheaper for the employee to fly rather than drive.

Public Works Director Jones said the employee had to fly into an airport that was not near the conference and so after doing a comparative cost analysis it was cheaper to drive.

Council Member McKeithen raised concern that all Town employees are supposed to be using their Town issued credit cards and not their personal credit cards then submitting for reimbursement.

MOTION by Lewis, second by McKeithen to approve bills and claims in the amount of \$1,091,015. The motion passed unanimously.

12. ACCEPTANCE OF FISCAL YEAR 2009-10 BASIC FINANCIAL STATEMENTS, REPORT ON COMPLIANCE WITH THE AGREEMENT FOR DISTRIBUTION OF SAN MATEO COUNTY MEASURE A FUNDS FOR LOCAL TRANSPORTATION PURPOSE, AGREED UPON PROCEDURES REPORT ON COMPLIANCE WITH THE PROPOSITION 111 APPROPRIATIONS LIMIT, AND MEMORANDUM ON INTERNAL CONTROL AND REQUIRED COMMUNICATIONS

Report: Finance Director Louise Ho

Report: Accept FY 2009-10 Basic Financial Statements, Report on Compliance with the Agreement for Distribution of San Mateo County Measure A Funds, Agreed Upon Procedures Report on Compliance with the Proposition 111 Appropriations Limit, and the Memorandum on Internal Control and Required Communications

Vice Mayor Widmer said the audit report eludes to staff getting things done in a timely manner; Widmer questioned Interim Building Official Dennis Lockard on when he anticipates completing the road impact fee refunds. Lockard said he anticipates it will be complete in the next thirty days.

MOTION by McKeithen, second by Lewis to Accept FY 2009-10 Basic Financial Statements, Report on Compliance with the Agreement for Distribution of San Mateo County Measure A Funds, Agreed Upon Procedures Report on Compliance with the Proposition 111 Appropriations Limit, and the Memorandum on Internal Control and Required Communications. The motion passed unanimously.

16. AMEND THE TOWN LANDSCAPE CONTRACT

Report: Public Works Director Duncan Jones

Recommendation: Approve Amendment to the current landscape contract in the amount of \$912.00 per month be added to the current contract price of \$2,083 per month for a total of \$2,995 per month for the remainder of the 2010/11 fiscal year

Vice Mayor Widmer asked if this contract would preclude the Town from doing projects in the park.

City Manager Levin said this item is an amendment to the existing contract and it includes a provision for termination.

MOTION by Lewis, second by McKeithen to approve Amendment to the current landscape contract in the amount of \$912.00 per month be added to the current contract price of \$2,083 per month for a total of \$2,995 per month for the remainder of the 2010/11 fiscal year. The motion passed unanimously.

17. AWARD A PURCHASE ORDER TO SERRAMONTE FORD IN THE AMOUNT OF \$25,726.75 FOR THE PURCHASE OF ONE FORD F-250 PICK-UP TRUCK

Report: Public Works Director Duncan Jones

Recommendation: Authorize the purchase of one Ford F-250 pick-up truck from Serramonte Ford for a cost of \$25,726.75 including tax and fees

Mayor Dobbie asked if the truck would be acceptable if the transmission were repaired. Jones said the truck would barely be acceptable and it might last but there is always a possibility that it will not.

Council Member Lewis asked if staff looked at used trucks. Jones said that buying new trucks for the trucks that are used on a daily basis have a lot more efficiencies.

Council Member Carlson said he will rely on staff's judgment and suggested proceeding.

Vice Mayor Widmer said it may be worthwhile to do analysis on the difference between a lease, new and used trucks.

Council agreed to table the item until an analysis can be done.

MOTION by Dobbie, second by McKeithen to table the item to the January 19, 2011 Council meeting. The motion passed.

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

19. AWARD OF CONTRACT FOR THE POLICE/ADMINISTRATION ROOF REPLACEMENT PROJECT, PROJECT NUMBER 56043

Report: Public Works Director Duncan Jones

Recommendation: Award the contract for the Police/Administration roof replacement Project, Project Number 56043 to the low bidder on the December 15, 2010 bids, and to authorize the Mayor to sign the contract on behalf of the Town

Vice Mayor Widmer asked if this is a firm fixed price contract. Public Works Director Jones said it has estimated quantities that give estimated price.

MOTION by McKeithen, second by Widmer to award the contract for the Police/Administration roof replacement Project, Project Number 56043 to the low bidder on the December 15, 2010 bids, and to authorize the Mayor to sign the contract on behalf of the Town. The motion passed unanimously.

- 20. APPROVE AN AGREEMENT WITH THE WEST BAY SANITARY DISTRICT**
Report: Public Works Director Duncan Jones
Recommendation: Approve an agreement with the West Bay Sanitary District (WBSD)

Vice Mayor Widmer said he has concerns that the provisions for severability need to be expanded. Widmer said the Town is getting 15 year guarantees on five-year contracts. Widmer thinks there needs to be provisions that in the event a contract is terminated in five years the Town could still gain the benefit of the 15 years.

MOTION by Dobbie, second by Widmer to approve an agreement with the West Bay Sanitary District (WBSD) and allow the City Attorney to make non-substantive changes in order to accommodate preferences for WBSD that do not diminish the Town's rights and add a general severability clause. The motion passed unanimously.

- 21. APPROVE A REQUEST FOR PROPOSALS FOR AN ARCHITECT TO PERFORM SITE PLANNING AND CONCEPTUAL DESIGN FOR A NEW ATHERTON LIBRARY**
Report: Public Works Director Duncan Jones
Recommendation: Approve a Request for Proposals (RFP) for an architect to perform site planning and conceptual design for a new Atherton Library

MOTION by McKeithen, second by Dobbie to approve a Request for Proposals (RFP) for an architect to perform site planning and conceptual design for a new Atherton Library. The motion passed unanimously.

- 22. SURPLUS AND AUCTION OF POLICE VEHICLES**
Report: Police Chief Mike Guerra
Recommendation: Authorize PD to surplus one marked police vehicle and two police motorcycles because they are no longer serviceable. Staff also recommends that the surplus vehicles be auctioned through a Town approved contractor

Council Member McKeithen asked if the Town-approved auction service company is on a bid basis and is a new company selected annually. McKeithen question why Items 22 and 26 were not done together.

Police Chief Guerra said the vendor the Police Department has been using is out of Modesto and the contract has been a multi-year contract. Guerra said staff is currently looking at a more efficient vendor who will take incremental pieces rather than waiting for multiple large items as the current firm does.

Council Member McKeithen asked if there should be an RFP process. Finance Director Ho said that it should be done this way in order to make sure the company that the assets are being sent to is a credible firm that will send payment.

Council Member McKeithen requested that staff look into whether the Town is following the capital assets policy and whether it could be consolidated with another local jurisdiction.

Public Works Director said Redwood City competitively bid their auction and the Town worked it out with the City to consolidate the auction.

MOTION by McKeithen, second by Lewis to authorize PD to surplus one marked police vehicle and two police motorcycles because they are no longer serviceable conditioned that staff work to ensure that this can or can not be consolidated with another City and if not then staff to go out and get a competitive bid from a credible firm. The motion passed.

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

26. AUCTION AGREEMENT WITH FIRST CAPITOL AUCTION, INC. AND REQUEST TO AUCTION OFF SURPLUS TOWN EQUIPMENT

Report: Public Works Director Duncan Jones

Recommendation: Approve permitting First Capitol Auction of Vallejo to pick up and auction off 15 pieces of surplus town equipment and sell at auction, per agreement

Council Member McKeithen questioned whether it is cheaper then selling to an auction yard.

Public Works Director Jones said after speaking with Redwood City he is believes it would make more money to sell the vehicles to an auction company.

MOTION by McKeithen, second by Carlson to approve permitting First Capitol Auction of Vallejo to pick up and auction off 15 pieces of surplus town equipment and sell at auction, per agreement. The motion passed.

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

23. ADOPTION OF RESOLUTION SETTING FORTH THE SALARY AND BENEFITS FOR CONFIDENTIAL EMPLOYEES FOR FISCAL YEAR 2009-10 AND 2010-11

Report: Interim City Manager Nadine Levin

Recommendation: Adopt Resolution 10-69 setting the salary and benefits of the Town's Confidential Employees

Vice Mayor Widmer asked what these current employees earn up to this point and do they have non-contributory benefits for themselves and their families. Widmer said that if they do he is not interested in a take-away but if they do not he is not interested in a gift.

Interim City Manager Levin said the three employees in this unit will be contributing to health care and in terms of a tiered system any employees who come into the position after this resolution is passed will move into a more contributory retirement plan then current employees have.

Levin added that in regards to active employee retiree health, active employees, which consist of the three employees in the current positions, under this agreement, will begin paying 3% of their costs effective January 1, 2011. Levin said the intent is for existing employees to pay the 3% health and Council can either approve the resolution conditioned upon staff correcting the language to reflect that or the item can be tabled to the February agenda. Levin concluded that the Town will continue to pay 100% of the dental and vision costs.

MOTION by Adopt Resolution 10-69 setting the salary and benefits of the Town's Confidential Employees based on the fact that the Town will pay 97% of the existing employees health benefit effective January 1, 2011. The motion passed.

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

25. REQUEST TO REIMBURSE EXPENSES FOR EXPERT PRESENTER AT THE RAIL COMMITTEE MEETING

Report: Interim City Manager Nadine Levin

Recommendation: Consider a request to reimburse a portion of Mr. Jean-Claude Guez's travel expenses

Council Member Carlson asked Rail Committee member Greg Conlon to brief Council.

Conlon said that Jean-Claude Guez spent four days in the area meeting with the Rail Committee and the Peninsula Cities Consortium and several of the Towns State and Federal contacts and is not charging for his experience. He has 15 years experience in constructing and operating the Rail system. Conlon concluded that Guez is only seeking expense reimbursements for part of his flight.

Council Member Lewis said other experts will come forward and wondered if this would set a precedent. Council Member Carlson explained that this is special circumstances because Guez is not a volunteer.

MOTION by Carlson, second by McKeithen to approve a \$1,000 reimbursement to Mr. Jean-Claude Guez for travel expenses. The motion passed.

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

PUBLIC HEARINGS (27-29)

27. ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING CHAPTERS 15.02 AND 15.19 AND AMENDING CHAPTERS 15.04, 15.08, 15.12, 15.16, 15.18, 15.20, 15.22 AND 15.44 IN ORDER TO ADOPT BY REFERENCE THE 2010 CALIFORNIA BUILDING STANDARDS CODE, INCLUDING THE RESIDENTIAL, FIRE (BY RATIFICATION), ELECTRICAL, PLUMBING, MECHANICAL, ENERGY, HISTORICAL BUILDING, GREEN AND EXISTING BUILDING CODES AND CHAPTER 1 DIVISION II OF THE 2010 EDITION OF THE CALIFORNIA BUILDING CODE AS THE ATHERTON ADMINISTRATIVE CODE

Report: Interim Building Official Dennis Lockard

Recommendation: Adopt Ordinance 560 adding chapters 15.04, 15.08, 15.12, 15.16, 15.18, 15.20, 15.22, and 15.44 in order to adopt by reference the 2010 California Building Standards Code, including the residential, fire (by ratification), electrical, plumbing, mechanical, energy, historical building, green and existing building codes and Chapter 1 Division II of the 2010 edition of the California Building Code as the Atherton Administrative Code

MOTION by Dobbie, second by Carlson to adopt Ordinance 560 adding chapters 15.04, 15.08, 15.12, 15.16, 15.18, 15.20, 15.22, and 15.44 in order to adopt by reference the 2010 California Building Standards Code, including the residential, fire (by ratification), electrical, plumbing, mechanical, energy, historical building, green and existing building codes and Chapter 1 Division II of the 2010 edition of the California Building Code as the Atherton Administrative Code. The motion passed.

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

28. ADOPTION OF AN ORDINANCE ADDING CHAPTER 17.37 TO THE ATHERTON MUNICIPAL CODE TO CREATE THE PARKER AVENUE OVERLAY DISTRICT (P) AND ADOPTION OF AN ORDINANCE AMENDING THE ZONING MAP TO TITLE 17 OF THE ATHERTON MUNICIPAL CODE TO REZONE TWENTY-TWO LEGAL LOTS ON PARKER AVENUE FROM R1-A TO R1-A (P)

Report: Deputy Town Planner Lisa Costa Sanders

Recommendation: Adopt Ordinance 587 adding Chapter 17.37 to the Atherton Municipal Code to create the Parker Avenue Overlay District (P) and adopt Ordinance 588 amending the Zoning Map to Title 17 of the Atherton Municipal Code to rezone twenty-two legal lots on Parker Avenue in Town of Atherton from R1-A to R1-A(P) and waive further reading.

Deputy Town Planner Lisa Costa Sanders gave a brief background on Item 28.

Council Member Carlson said he was concerned that the 15 foot height would lead to flat roofs.

Costa Sanders said a single story structure can be built with a 15-foot height limit and have a pitch roof because the walls are typically going to be nine to ten feet.

Council Member Lewis said a new project on Alejandra Avenue has a front structure with a 15 foot pitch roof in front of a large side wall and it looks just fine.

Colleen Anderson, Atherton resident proposed allowing a deck over the garage which would still be lower then the second story. Anderson thanked Council for all of their hard work.

Costa Sanders said if someone were to have a flat roof on the single story portion and have a deck with a railing then staff would measure the 15 foot height limit to the top of the railing.

MOTION by McKeithen, second by Lewis to Adopt Ordinance 587 adding Chapter 17.37 to the Atherton Municipal Code to create the Parker Avenue Overlay District (P) and adopt Ordinance 588 amending the Zoning Map to Title 17 of the Atherton Municipal Code to rezone twenty-two legal lots on Parker Avenue in Town of Atherton from R1-A to R1-A(P) and waive further reading. The motion passed.

Ayes: 3 Nays: 1 (Dobbie) Abstain: 1(Widmer) Absent: 0

**29. ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON AMENDING SECTIONS 17.52.030, 17.36.030, 17.32.030, 17.33.030 AND
ADDING SECTIONS 17.32.040 D.4, 17.32.040 E.2, 17.33.040 D.3, 17.33.040 E.1,
17.33.040 G.2, AND 17.36.060 TO THE ATHERTON MUNICIPAL CODE
IMPLEMENTING THE ATHERTON 2007-2014 HOUSING ELEMENT**

Report: Deputy Town Planner Lisa Costa Sanders

Recommendation: Adopt Ordinance 561 amending the Town of Atherton Municipal Code Title 17. The proposed amendments would implement the recently adopted 2007-2014 Housing Element Update

Council Member McKeithen said the parking requirement seems extreme. She asked if there needs to be a parking spot for each child.

Costa Sanders said it is only for the second dwelling unit and there are no restrictions on the main residence.

Vice Mayor Widmer asked what the intent was to allow an individual to be in a dwelling that encroaches onto the back side yard.

Costa Sanders said it discussed several times by the General Plan Committee and Planning Commission and recommended by Council to pass certification.

MOTION by McKeithen, second by Carlson to adopt Ordinance 561 amending the Town of Atherton Municipal Code Title 17. The proposed amendments would implement the recently adopted 2007-2014 Housing Element Update. The motion passed.

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

REGULAR AGENDA (Items 30-33)

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

Report: Deputy Town Planner Lisa Costa Sanders

Recommendation: Staff and the Environmental Programs Committee recommend the City Council review the attached collection rate options and provide direction to Staff to advertise a rate increase hearing

Deputy Town Planner Costa Sanders said the current contract with Allied is due to expire on December 31, 2010 and a new contract with Recology will take effect on January 1, 2011. The new Collection Agreement with Recology includes expanded refuse and recycling services. Recycling will now be picked up weekly and will include single stream (one container for all bottles/cans/paper/cardboard) as well as new residential organics recycling (food scraps collected with green waste).

Costa Sanders said the Town increased its rates effective March 19, 2010, which resulted in nine months of increased revenue collection or an actual rate increase of 16.9%. The rate increase in 2010 was necessary due to increased operating expenses and increased disposal costs. Based on

direction provided by the Environmental Programs Committee and the City Council with the last rate increase, staff requested the SBWMA prepared a progressive rate structure scenario, where the cost per gallon is adjusted for larger containers to reflect the increased costs of disposing of larger volumes of waste over time. Two proposed progressive rate structure scenarios have been prepared. The first includes a 10% premium on 64-gallon containers and a 20% premium on 96-gallon containers. This rate structure was modeled after progressive rate structures found in other SBMWA jurisdictions. The second progressive rate structure scenario holds 20-gallon containers at \$20 per month and includes a 15% premium on 64-gallon containers and a 25% premium on 96 gallon containers.

Costa Sanders concluded that staff recommends a progressive rate increase with a 10% premium on 64 gallon containers and a 20% premium on 96 gallon containers for 2011 based on direction provided at the Environmental Programs Committee to proceed with a progressive rate structure and review of other jurisdictions progressive rates to ensure consistency with local practices.

Council Member Carlson said the original projection for 2010/11 was a 25% rate increase and now it says a minimum of 38.5% increase; Carlson asked what changed. Carlson asked if there was a wage increase that was not estimated.

Kevin McCarthy, SBWMA Executive Director, said there was no change in the rate increase and it was a lower projection in the tipping fee estimates. McCarthy added that Ox Mountain added approximately 40% increase in their fees. McCarthy concluded that one employee decertified from the Teamsters and a clerical unit that voted to unionize which resulted in higher wages and benefits.

Council Member McKeithen asked what the 16.9 increase in 2010 for disposal costs were compared to the new disposal cost increase. Costa Sanders said the previous increase was a “catch up” because there was no increase in several years.

McKeithen said there will be three years of increase which include the 16.9% from last year, a possible 42.5% this year and another increase next year which will not go over well with residents.

Council discussed the different scenarios presented in the staff report, specifically the recommendation from the Environmental Program Committee (EPC) who recommended 20 gallon containers be held at \$20.00 per month and the 64 gallon and 96 gallon containers be increased with a higher progressive rate.

Council Member Lewis said the EPC recommended a 20 gallon container size be reduced to a low number and back fit on the larger size in an attempt to get residents to use less solid waste. Lewis added that Atherton is the largest green waste recycler on the Peninsula and it has to be paid for so it filters to the solid containers.

Vice Mayor Widmer asked if the CPI reduces does the rate reduce. McCarthy said the cost of the contractor going forward will be CPI based plus recognizing the CBA wage and benefit rate until the contract expires. McCarthy added that the CPI's are applied to a whole series of cost proponent the cost proponent would go down.

Vice Mayor Widmer asked McCarthy to confirm that the CPI is a composite rate and if in fact the composite rate goes down then the rates would go down. McCarthy said yes.

Widmer asked if the 10% franchise fee can be used to reduce the rates. Interim City Manager Levin said it currently goes into the General Fund but can be used however Council decides.

Mayor Dobbie said many people who are not classified as disabled but are very old and cannot bring their cans to the curb and how much will it cost for Recology to pick up the cans from the backyard. Sanders said a doctor letter can be sent to Recology to waive the fee.

Gino Gasparini, Recology, said the \$20.00 is for the set of garbage containers included in your service but each additional green waste container will be another \$20.00.

Dobbie asked if there is recyclables such as cardboard on the ground next to the container will it be picked up as it has in the past. Gasparini said they will reload the container and dump it.

Council Member McKeithen asked if the green waste can vary from month to month. Gasparini said it can because it is seasonal and all it would take is a phone call with start and stop service dates.

City Attorney Furth said the rate structure is constrained by a few laws and the principal one is proposition 218 which requires you to spread these costs in a way that does not unduly shift them from one person to another. So if there is a particular group or kind of collection that you think should be charged less it could be supplemented from the General Fund or you can choose to conduct a study that proves it is a rationale way for spreading costs. Furth concluded that the Town is required to make reasonable accommodations for people with disabilities and it permits us to provide extra services for people who should have them at no charge leaving it as a general cost spread amongst everybody.

Mayor Dobbie asked is a self-declaration would work for people who can not take their containers out. Furth said she will look into it.

Dobbie asked why the rates are so much higher then other cities. Gasparini said the difference is for example, that other cities can pick up garbage for a 1,000 homes in an eight hour period and can only pick up less then half of that in Atherton because of the size of the homes.

Council Member Carlson asked if the garbage company is having to look at wage and benefits cuts for its employees. McCarthy said the SBWMA is a JPA with only eight employees and no unions so at this point there are no issues.

Costa Sanders said the cost structure looks at a total rate increase of 51.5% which completes the full pay off to Allied. Sanders added that in 2012 the Town won't have the pay off to Allied and could potentially have a surplus and may not need to raise rates at that time.

Council Member McKeithen said even if it is not a surplus it would be a very minimal increase. McKeithen said she prefers the full payment now. Dobbie agreed.

McKeithen supported a progressive rate structure with the 10% premium on 64-gallon containers and a 20% premium on 96-gallon container with a total amount due to Allied, effective March 1, 2011 and retroactive to January 1, 2011.

MOTION by McKeithen, second by Dobbie to utilize the staff recommended rate increase with a 10% premium on 64 gallon containers and a 20% premium on 96 gallon containers

that would be effective March 1, 2011 but calculated as a twelve month period, look into self-certification for the residents who are not able to carry their containers to the curb and make sure that residents know that they can get a 96 gallon container at no additional charge. Furthermore staff to look into the design of the containers and whether it holds less than it did before.

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

Vice Mayor Widmer said he would like to see a different structure for the green waste and would like the 10% franchise fee to be considered to use in reducing rates.

31. UPDATE FROM AD-HOC COMMITTEE FOR LEGAL COUNSEL SELECTION AND DISCUSS RFP PROCESS FOR COMMITTEE

Report: Interim City Manager Nadine Levin

Recommendation: Determination of date to interview resident candidates, confirm the number of resident committee members will be three or some other number; define role and expectations for the committee and its interaction with the Council

Council Member Lewis said the ad-hoc committee has complete what they were charged with doing and is seeking further direction from the entire Council. Lewis added that Council originally set the Committee to allow for three resident members and since a total of six applications were received they may consider expanding the Committee.

Council Member Carlson said the role and process of the Committee needs to be clearly defined. Lewis added that interviews should be held soon and a Committee should be established.

Council Member McKeithen suggested staff poll Council for a date in January.

Council Member Lewis said the rationale for having residents on the committee is to allow them to do some groundwork in the vetting of applicants.

Council Member McKeithen felt Council should work side by side with the Committee throughout the entire process.

Vice Mayor Widmer suggested letting the residents start the process by coming up with a prioritized list for Council to concentrate on.

Staff will poll Council for a Council meeting in January to interview the applicants.

32. COUNCIL OF CITIES DECEMBER MEETING – COUNCIL GUIDANCE ON VOTING MATTERS

Report: Deputy City Clerk Theresa DellaSanta

Recommendation: Council to give guidance direction to San Mateo County Council of Cities representative (Mayor) and alternate representative (Council Member) on voting matters at the December 17, 2010 meeting

Council Member Carlson volunteered to attend the meeting. Carlson said he will support Council Member Matsumoto from South San Francisco and Council Member Turner from Woodside.

Council agreed.

13. ACCEPT REPORT FROM THE AUDIT COMMITTEE IN RESPONSE TO THE FY 2009-10 AUDIT REPORT

Report: Finance Director Louise Ho

Recommendation: Accept the Audit Committee recommendations in response to the FY 2009-10 audit report

Council Member Carlson said there were certain things that were in the Auditors report that were not in the Audit Committee report and vice versa.

Carlson felt that paragraph 3 should be removed because it is a policy decision. Carlson suggested that paragraph 4 be modified to include that it needs further discussion and direction from Council before anything is finalized.

MOTION by McKeithen, second by Dobbie to accept the Audit Committee recommendations in response to the FY 2009-10 audit report with removal of paragraph 3 and modification of paragraph 4. The motion passed.

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

33. APPOINTMENT OF INTERIM CITY MANAGER

Report: Verbal

Recommendation: To Be Determined

Mayor Dobbie said that Council approved, in closed session, 4-0-1 with Widmer abstaining to offer the position of Interim City Manager to John Danielson. Council has also agreed to appoint Mayor Jim Dobbie and Council Member McKeithen to an ad-hoc committee to negotiate a proposed contract with Mr. Danielson. Approval of the contract and appointment of Danielson would occur at a future Council meeting.

MOTION by McKeithen, second by Carlson to offer John Danielson the position of Interim City Manager and allow Mayor Dobbie and Council Member McKeithen to negotiate a contract. The motion passed unanimously.

34. COUNCIL REPORTS

Nothing further to add to written reports.

35. FUTURE AGENDA ITEMS

None.

36. PUBLIC COMMENTS

None.

37. ADJOURN

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

Mayor Dobbie adjourned the meeting at 10:55 p.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**