



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**SEPTEMBER 16, 2008**

**6:00 P.M.**

**Meeting Room**

**Town Administrative Offices**

91 Ashfield Road

Atherton, California

**Special Meeting**

**6:00 P.M.    ROLL CALL            Dobbie, J. Carlson, Marsala, Janz, McKeithen**

**6:02 P.M.    PUBLIC COMMENTS**

**6:05 P.M.    CLOSED SESSION**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to  
Government Code Section 54957(b)(1)**

**Title: City Attorney**

**Title: City Manager**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**ADJOURN**

Agendas and staff reports may be accessed on the Town website at: [www.ci.atherton.ca.us](http://www.ci.atherton.ca.us)  
☛ *Please contact the City Clerk's Office at 650.752.0500 with any questions.* Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**September 17, 2008**  
**5:30 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

**5:30 P.M.     ROLL CALL             Dobbie, J.Carlson, Marsala, Janz, McKeithen**

**5:32 P.M.     PUBLIC COMMENTS**

**5:35 P.M.     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: Miscellaneous - Teamsters Local Union 856**

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

**Employee Organization: Atherton Police Officers Association**

**(APOA)**

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

**Employee Organization: Management Employees**

**B.     CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Anticipated Litigation, Initiation of Litigation pursuant to Subsection (c) of Government Code Section 54956.9**

**One (1) potential case**

- C. **CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**

**Town of Atherton vs. P.G.&E CIV 471234 Superior Court of California, County of San Mateo**

- D. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

**Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**

**Three (3) potential cases**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**ADJOURN**

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☛ *Please contact the City Clerk's Office at 650.752.0500 with any questions.* Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**SEPTEMBER 17, 2008**

**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

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

- 7:00 P.M.    1.    **PLEDGE OF ALLEGIANCE**
- 7:03 P.M.    2.    **ROLL CALL**      Dobbie, J. Carlson, Marsala, Janz, McKeithen
- 7:05 P.M.    3    **PRESENTATIONS**
- A.    Swearing In/Oath of Office for Chief of Police Glenn Nielsen
- B.    Swearing In/Oath of Office for Police Lieutenant Michael Guerra  
Police Sergeant Anthony Kockler, and Communications  
Supervisor John Mattes
- C.    Kevin McCarthy – SBWMA – RFP Operations, Facilities, and  
Collection
- 8:00 P.M.    4.    **PUBLIC COMMENTS** *(This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the Agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the Council from acting on items not listed on the Agenda except by special action of the City Council under specified circumstances. Speakers' time is limited to three minutes.)*
- 8:10 P.M.    5.    **REPORT OUT OF CLOSED SESSION**
- 8:15 P.M.    6.    **CITY MANAGER'S REPORT**
- 8:25 P.M.    7.    **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed  
by Resolution No. 99-6)

**San Mateo County Mosquito and Vector Control District**  
**Dr. Sam Lerner**

**8:40 P.M.      CONSENT CALENDAR (Items 8-27)**

*(Consent Calendar items are routine in nature and are generally considered in one motion and adopted by a single vote of the City Council. If discussion regarding a Consent Calendar item is desired, the member(s) of the City Council, public, and/or staff wishing to pull the item should so indicate at the time the Mayor calls for consideration of the Consent Calendar.)*

**8.      APPROVAL OF MINUTES OF THE SPECIAL JOINT CLOSED SESSION MEETING OF THE CITY COUNCIL AND ATHERTON RAIL COMMITTEE OF AUGUST 5, 2008, AND THE SPECIAL CLOSED SESSION MEETING AND REGULAR CITY COUNCIL MEETING OF AUGUST 20, 2008**

**9.      APPROVAL OF BILLS AND CLAIMS FOR AUGUST IN THE AMOUNT OF \$1,193,117**

**10.     ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR AUGUST 2008**

**11.     ADOPTION OF A RESOLUTION RATIFYING COLLECTION AND ALLOCATION OF BUILDING INSPECTION FEES**

**Recommendation:** Staff recommends that the City Council adopt a resolution ratifying collection and allocation of building inspection fees.

**12.     APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE HOLBROOK-PALMER PARK FOUNTAIN LANDSCAPE PROJECT, PROJECT NO. 08-006**

**Recommendation:** Approve the plans and specifications and authorize advertisement for bids for the Holbrook-Palmer Park Fountain Landscape Project, Project No. 08-006.

**13.     APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

**Recommendation:** Approve revised Council Committee assignments made by Mayor Janz.

**14.     APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH KIKUCHI & ASSOCIATES FOR LANDSCAPE DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK IRRIGATION MASTER PLAN PROJECT**

**Recommendation:** Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape design services for the Holbrook-Palmer Park Irrigation Master Plan Project in an amount not to exceed \$20,200, plus a 10% contingency, for a total authorization of \$22,220.

**15. AUTHORIZATION TO SURVEY TOWN RESIDENTS ABOUT SECOND DWELLING UNIT, GUEST HOUSES AND INTERNAL LIVING UNITS**

**Recommendation:** Authorize Town Staff to send the attached survey to all Town residents with the October edition of the *Athertonian*.

**16. ADOPTION OF A RESOLUTION APPROVING A NEW POLICY – POLICY AGAINST WORKPLACE VIOLENCE**

**Recommendation:** Staff recommends that the City Council Adopt a Resolution Approving a New Policy - Policy Against Workplace Violence

**17. ADOPTION OF RESOLUTIONS REVISING TOWN OF ATHERTON CITY COUNCIL RULES OF PROCEDURE AND TOWN OF ATHERTON CODE OF CONDUCT AND PROCEDURES**

**Recommendation:** Staff recommends that the City Council adopt resolutions amending the City Council Rules of Procedure and the Code of Conduct and Procedures to include provisions regarding statements made regarding City Council policy.

**18. APPROVAL OF THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, THE CITY OF EAST PALO ALTO, THE TOWN OF ATHERTON, THE COUNTY OF SAN MATEO AND THE COUNTY OF SANTA CLARA TO PROVIDE FOR A CABLE TELEVISION AND VIDEO FRANCHISING ADMINISTRATION AND ENFORCEMENT PROCESS IN LIGHT OF THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT**

**Recommendation:** Staff recommends that the City Council approve the Amended and Restated Joint Exercise of Powers Agreement (Amended JPA) by and between the City of Palo Alto, the City of Menlo Park, the City of East Palo Alto, the Town of Atherton, the County of San Mateo and the County of Santa Clara to provide for a cable television and video franchising administration and enforcement process relating to state franchise holders under the California Digital Infrastructure and Competition Act (DIVCA). The amended JPA will serve as the substitute for the Joint Exercise of Powers Agreement, dated July 26, 1983, and the Joint Operating Agreement, dated October 13, 1983.

**19. RESPONSE TO GRAND JURY RE GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENT 45 (GASB) 45 (FINANCE)**

**Recommendation: Approve the letter in response to the Grand Jury.**

**20. SET A DATE FOR A PUBLIC HEARING FOR AN APPEAL OF THE PLANNING COMMISSION'S DECISION REGARDING 67 MARYMONT AVENUE**

**Recommendation: In accordance with Atherton Municipal Code Section 17.64, staff recommends that the City Council set the date for the public hearing for the City Council meeting of October 15, 2008.**

**21. ADOPTION OF TWO RESOLUTIONS REGARDING AB2544 ANNUITANT MEDICAL INSURANCE – MISCELLANEOUS AND MANAGEMENT GROUPS**

**Recommendation: Adopt a Resolution raising annuitant contributions for the Miscellaneous Group to comply with AB 2544 amending Section 22892 of the Government Code, relating to public employee health benefits, and rescinding Resolution 08-05 and Resolution 92-21; and Adopt a Resolution raising annuitant contributions for the Management Group to comply with AB 2544 amending Section 22892 of the Government Code, relating to public employee health benefits, and rescinding Resolution 08-07.**

**22. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24**

**Recommendation: Approve the recommendations of the Screening Committee on a process to fill those terms that have expired or have been extended and/or recruit for new members on Committees/Commissions.**

**23. ADOPT A RESOLUTION APPROVING A NO STOPPING ZONE ON ENCINAL AVENUE ALONG THE FRONTAGE OF ENCINAL SCHOOL BETWEEN MIDDLEFIELD ROAD AND THE ENCINAL SCHOOL DRIVEWAY**

**Recommendation: Adopt a resolution approving a “No Stopping” zone on Encinal Avenue along the frontage of Encinal School between Middlefield Road and the Encinal School driveway.**

**24. UPDATE ON CITY MANAGER’S GOALS AND OBJECTIVES AS IDENTIFIED IN THE 2008/09 BUDGET**

**Recommendation: Review and accept update of City Manager’s goals and objectives as identified in the 2008/09 Budget.**

**25. RESOLUTION ADOPTING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 99 DEBELL DRIVE FROM A DETERMINATION BY THE PUBLIC WORKS DIRECTOR (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)**

**Recommendation: Consider attached resolution making findings and, if appropriate, adopt the resolution by majority vote**

**26. APPROVE AMENDING THE AGREEMENT WITH MENLO-ATHERTON LITTLE LEAGUE TO KEEP THE FIELD BACKSTOPS IN PLACE YEAR-ROUND**

**Recommendation: Approve amending the agreement with Menlo-Atherton Little League to keep field backstops in place year-round, including continuing the increased insurance coverage, and including a provision for Little League to recondition the backstops and maintain them a satisfactory condition.**

**27. AWARD OF A SOLE SOURCE CONTRACT TO NOR-CAL COATINGS FOR THE MISCELLANEOUS TOWNHOUSE REPAIRS PROJECT, PROJECT NO. 08-018**

**Recommendation: Award the sole source contract for the Miscellaneous Townhouse Repairs Project, Project No. 08-018, to Nor-Cal Coatings for \$48,940, with a 10% construction contingency of \$4,894, for a total authorization of \$53,834; and to authorize the City Manager to sign the contract on behalf of the Town.**

**PUBLIC HEARINGS (Item 28A&B)**

**8:50 P.M.**

**28A. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17.28 REGARDING SPECIAL EVENTS**

**Recommendation: Consider amending Chapter 17.38 regarding Special Events. A majority vote is required to introduce the ordinance.**

**28B. INTRODUCTION OF AN ORDINANCE ADDING A NEW CHAPTER 9.06 REGARDING PARADE PERMITS;**

**Recommendation: Consider ordinances adding a new Chapter 9.06 Parades, Marches and Assemblages. A majority vote is required to introduce the ordinance.**

**REGULAR AGENDA** (Items 29-31)

- 9:15 P.M. 29. **REQUEST TO INITIATE REZONING OF PARKER AVENUE FROM R1-A TO R1-B ZONING DISTRICT** (*Continued from the City Council meeting of August 20, 2008.*)

**Recommendation:** The applicant has requested a continuance to January 2009.

- 9:15 P.M. 30 **REVIEW LETTER RESPONDING TO GRAND JURY REPORT UNDER LETTER DATED JULY 14, 2008**

**Recommendation:** Direct City Attorney to prepare and send final version of response to the letter with modifications, if any, approved by the majority of the City Council.

- 9:45 P.M 31. **BRIEF THE CITY COUNCIL ON ACTION TAKEN ON SEPTEMBER 8, 2008, BY THE LIBRARY JPA GOVERNING BOARD REGARDING ATHERTON'S LIBRARY FUNDS (INFORMATIONAL ONLY)**

- 10:05 P.M. 32. **COUNCIL REPORTS**

- 10:15 P.M. 33. **PUBLIC COMMENTS**

- 10:25 P.M. 34. **ADJOURN**

***PLEASE NOTE:***

***In compliance with SB 343, materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the Town Administrative Offices, 91 Ashfield Road, during normal business hours.***

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*☛ Please contact the City Clerk's Office at 650.752.0500 with any questions*

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**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON RAIL COMMITTEE**  
**August 5, 2008**  
**7:00 P.M.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**Special Joint Meeting**

The meeting was called to order by Mayor Janz at 7:07 p.m.

**ROLL CALL**

**PRESENT:** Dobbie, J. Carlson, Marsala, Janz, McKeithen  
McPherson, Lively, Conlon, Ringham, Maulbetsch, Dudley

**PUBLIC COMMENTS**

There were no public comments.

**CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
**Initiation of litigation pursuant to subsection (c) of Government Code Section**  
**54956.9:**

**One (1) potential case**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**City Attorney Marc Hynes reported out of Closed Session that the Atherton City Council, by unanimous vote of those Council Members participating at a special meeting on August 5, 2008, has authorized initiation of litigation by the Town against the California Hi-Speed Rail Authority (“CHSRA”).**

**ADJOURN**

**The meeting was adjourned by Mayor Janz at 8:20 p.m.**

**Respectfully submitted,**

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**James R. Janz**  
**MAYOR**

**Minutes Prepared by:**  
**Kathi Hamilton**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**AUGUST 20, 2008**  
**5:30 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

The meeting was called to order by Mayor Janz at 5:30 p.m.

**ROLL CALL**

**PRESENT:** Jim Dobbie  
Jerry Carlson  
Charles E. Marsala  
James R. Janz  
Kathy McKeithen

**PUBLIC COMMENTS**

There were no public comments.

**CLOSED SESSION**

- A. **CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**  
**John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834**
- B. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**  
  
Three (3) potential cases
- C. **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: Atherton Police Officers Association (APOA)**

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

**Employee Organization: Management Employees**

**RECONVENE TO OPEN SESSION**

**Report of action taken.**

**City Attorney Marc Hynes reported out of Closed Session as follows:**

**Regarding Item A, Existing Litigation, John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834, John P. Johns dismissed his case against the Town.**

**Regarding Item B, ANTICIPATED LITIGATION – Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9, there was no reportable action taken.**

**Regarding Item C, Labor negotiations pursuant to Government Code Section 54957.6, there was no reportable action taken.**

**ADJOURN**

**The meeting was adjourned by Mayor Janz at 6:58 p.m.**

**Respectfully submitted,**

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**James R. Janz  
MAYOR**

**Minutes Prepared by:  
Kathi Hamilton**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**AUGUST 20, 2008**

**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

**Mayor Janz called the meeting to order at 7:04 p.m.**

**1. PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

**PRESENT**    **Jim Dobbie**  
                 **Jerry Carlson**  
                 **Charles E. Marsala**  
                 **James R. Janz**  
                 **Kathy McKeithen**

**City Manager Jerry Gruber and City Attorney Marc Hynes were also present.**

**3. PRESENTATIONS**

**There were no Presentations.**

**4. PUBLIC COMMENTS**

**William Grindley, Atherton, asked for the status of the PMC contract regarding historic artifacts and their future.**

**Deputy Town Planner Lisa Costa Sanders responded that PMC had conducted interviews with the stakeholders and obtained valuable information. PMC's recommendation for proceeding was to hold two public workshops to obtain feedback from the general public/residents of Atherton and bring recommendations from the workshops to Council.**

**Elizabeth Lewis, Atherton, asked when the Business License Tax and possible refund would be discussed.**

**City Attorney Marc Hynes said the matter would be the subject of a forthcoming report, possibly in October.**

**5. REPORT OUT OF CLOSED SESSION**

City Attorney Marc Hynes reported out of Closed Session as follows:

- A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9**  
**John P. Johns vs. the Town of Atherton, Superior Court of California, San Mateo County, CIV 473834**

**Mr. John P. Johns dismissed his case against the Town.**

- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
**Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:**

**Three (3) potential cases**

**There was no reportable action taken.**

- C. 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: Atherton Police Officers Association (APOA)**

**Agency Negotiators: Jerry Gruber, City Manager; Glenn Berkheimer, I.E.D.A.  
Employee Organization: Management Employees**

**There was no reportable action taken.**

**6. CITY MANAGER'S REPORT**

**City Manager Jerry Gruber announced that Lieutenant Glenn Nielsen was selected as Atherton's Chief of Police. The new Finance Director, Louise Ho, would be starting in late September and came from the City of Sausalito. Eileen Wilkerson was named Assistant City Manager and worked previously with the County of San Mateo Harbor District. Recruitment for a City Clerk would begin soon. The City Attorney and legal counsel for Cal Water were working to finalize an MOU regarding an evacuation plan for west Atherton. Staff walked one of the recommended evacuation routes and would determine the cost to improve it, and other evacuation routes were being solicited. City Manager Gruber attended a Local Agency Formation Commission (LAFCo) Board meeting where the Municipal Services Review was adopted, as well as where the Sphere of Influence and the Sphere of Influence of the Town of Atherton Channel District were reaffirmed. If the Town wished to change the Sphere of Influence, a request for an amendment would need to be made to LAFCo. A Joint City Council/Park and Recreation Commission workshop was scheduled for Monday,**

August 25, 2008, at 6:00 p.m., at the Main House in Holbrook-Palmer Park. City Manager Gruber reported on several other meetings he attended during the previous month.

In response to Council Member Marsala, City Manager Gruber said he spoke with some board members of Pop Warner Football. Thus far, he had not received any complaints regarding noise, etc. Regarding unfunded liability, City Manager Gruber thought another meeting with John Bartell would be beneficial. Regarding the General Plan revisions, Deputy Town Planner Lisa Costa Sanders responded that the General Plan Committee wanted its revisions incorporated into the General Plan and another meeting was scheduled for the first Wednesday in October. One or two meetings would be scheduled for the Planning Commission before going to the City Council.

Vice Mayor Carlson requested that minutes from all the committees/commissions be provided as soon as possible and posted on the website.

## 7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

The Atherton Dames – Marylue Timpson, President of the Atherton Dames, noted that Holbrook-Palmer Park was donated in 1950 and accepted by the Town in 1964. In 1968, the Atherton Dames was formed with the sole purpose of raising funds for Holbrook-Palmer Park capital projects. The Dames recently revised its fundraising efforts to have all funds go toward the Master Landscape Plan. Two projects would be implemented within the next 18 months: 1) The Pedestrian Bridge; and 2) Landscaping between the Water Tower and Carriage House. The next fundraiser was the Town Bar-be-cue, “Swing in the Park,” on September 7. During the holiday season, a Children’s Tea was scheduled, as well as the Easter Egg Hunt in the spring, which had been very successful in the past.

### CONSENT CALENDAR (Items 8-28)

Council Member Dobbie requested Item No. 21 be removed for discussion.

In response to Vice Mayor Carlson, Interim Finance Officer Bill Yeomans clarified questions on Item No. 10. Public Works Director Duncan Jones clarified questions on Item No. 15.

In response to Council Member McKeithen, Public Works Director Duncan Jones clarified questions on Item Nos. 14, 16, and 18. Council Member McKeithen requested that Item No. 23 be removed for discussion. Police Chief Glenn Nielsen responded to a question regarding Item No. 24.

Elizabeth Lewis requested a correction to the Minutes of July 16, 2008, regarding a comment from Council Member Dobbie stating he won in every precinct in the June 3, 2008, Special Election. She clarified that she won in Precinct 3007. She submitted a printout from the Registrar of Voters office. *(Note: The Minutes actually read that Mr. Dobbie stated he won “support” in every precinct.)*

**MOTION – to approve the Consent Calendar as presented with the exception of Item Nos. 21 and 23 which were removed and placed on the Regular Agenda for discussion.**

**M/S Dobbie/J.Carlson**

**Ayes: 5 Noes: 0 Absent: 0 Abstain: 0**

- 8. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL MEETING, THE SPECIAL CLOSED SESSION MEETING, AND REGULAR CITY COUNCIL MEETING OF JULY 18, 2008**
- 9. APPROVED BILLS AND CLAIMS FOR JULY IN THE AMOUNT OF \$1,215,264**
- 10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JULY 2008 AND ADOPTION OF A RESOLUTION MAKING A TECHNICAL CORRECTION TO THE 2008-09 BUDGET**

**Received the Monthly Financial Report for July 2008. Adopted Resolution No. 08-30, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO MAKE A TECHNICAL CORRECTION TO THE FY 2008-2009 BUDGET”**

- 11. ACCEPTANED THE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2008**
- 12. APPROVED THE FIRST AMENDMENT TO THE JOINT POWERS AGREEMENT WITH THE HOUSING ENDOWMENT AND REGIONAL TRUST (HEART) OF SAN MATEO COUNTY**

**Authorized the Mayor to execute the attached first Amendment to the Joint Exercise of Powers Agreement (JPA) for the Housing Endowment and Regional Trust of San Mateo County (HEART) to continue the Town’s participation in the San Mateo County Housing Foundation.**

- 13. APPROVE A PURCHASE ORDER TO SILICON CONSTELLATIONS FOR THE IN-STREET LIGHTED CROSSWALK AT SACRED HEART, PROJECT NO. 08-013**

**Approved a purchase order for the In-Street Lighted Crosswalk at Sacred Heart Project, project number 08-013 to Silicon Constellations, the low bidder on informal bids, for \$20,884.34, with a 10% construction contingency of \$2,088.43, for a total authorization of \$22,972.77; and to authorized the City Manger to sign the contract on behalf of the Town.**

- 14. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WILSEY HAM FOR FINAL DESIGN SERVICES FOR THE FLETCHER-RIDGEVIEW PROJECT**

**Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Wilsey Ham to provide final design services for the Fletcher Ridgeview Project in an amount not exceed \$70,244, plus a 10% contingency, for a total authorization of \$77,268.40.**

15. **APPROVE A PURCHASE ORDER WITH KIMLEY HORN AND ASSOCIATES, INC., FOR SPEED SURVEY SERVICES FOR 12 STREETS, IN AN AMOUNT NOT TO EXCEED \$20,000**

Accepted the proposal and authorized the City Manager to sign a Purchase Order with Kimley-Horn and Associates, Inc., to provide Speed Survey services for 12 streets in an amount not exceed \$20,000.

16. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR CREEK STABILIZATION DESIGN SERVICES FOR THE UPPER ATHERTON CHANNEL REPAIR PHASE 2 PROJECT**

Accepted the proposal and authorize the City Manager to sign a Professional Services Agreement with BKF Engineers to provide creek stabilization design services for the Upper Atherton Channel Repair Phase 2 Project in an amount not to exceed \$151,653, plus a 10% contingency, for a total authorization of \$166,818.30.

17. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC., FOR STRUCTURAL AND CIVIL ENGINEERING DESIGN SERVICES FOR THE HOLBROOK-PALMER PARK TRAIL AND BRIDGE PROJECT**

Accepted the proposal and authorized the City Manager to sign a Professional Services Agreement with Biggs Cardosa Associates, Inc., (BCA) to provide Structural and Civil Engineering Design services for the Holbrook-Palmer Park Trails and Bridge Project in an amount not exceed \$33,500, plus a 10% contingency, for a total authorization of \$36,850.

18. **APPROVE AN AMENDMENT TO REVISE THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC., FOR MUNICIPAL CIVIL ENGINEERING SERVICES**

Approved an amendment to revise the Professional Services Agreement (PSA) with CSG Consultants, Inc.

19. **APPROVAL OF LEASE AGREEMENT TO WILLIAMS SCOTSMAN, INC., FOR - THE POLICE DEPARTMENT TRAILER REPLACEMENT PROJECT, PROJECT NO. 08-016**

Approved a lease for the Police Department Trailer Replacement, Project No. 08-016, to Williams Scotsman, the low bidder for \$37,616, with a demolition cost of \$4,856, for a total authorization of \$42,472; and to authorize the City Manager to sign the contract on behalf of the Town.

20. **REVIEW OF PROPOSAL FROM PMC FOR EXPANDED SCOPE OF SERVICES AND BUDGET FOR TOWN OF ATHERTON ZONING CODE UPDATE**

Authorized PMC's expanded scope of services and budget for the zoning code update.

- ~~21. APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS  
(Removed from the Consent Calendar and placed on the Regular Agenda for discussion.~~

~~Recommendation: Approve revised Council Committee assignments recommended by Mayor Janz.~~

22. APPROVAL OF STATE TELECOMMUNICATIONS CONTRACT

Authorized the City Manager to sign State contracts with AT&T.

- ~~23. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24 (Removed from the Consent Calendar and placed on the Regular Agenda for discussion.~~

24. APPROVAL OF 9-1-1 UPGRADE FROM ZETRON COMMUNICATIONS

Approved the contract with Zetron Inc., for the 9-1-1 emergency phone system upgrade.

25. APPROVAL OF THE PUBLIC WORKS DEPARTMENT PURCHASE OF A BACKHOE TRACTOR FOR FY 2008-09

Authorized the purchase of one John Deere Backhoe for a cost of \$97,742.68. The Town will “piggy back” on the State of California’s Multiple Award Schedule (CMAS) 4-08-23-0022A with Pape Machinery in lieu of receiving multiple bids.

26. APPROVAL OF AN EXTENSION OF THE CONTRACT FOR THE INDEPENDENT AUDITOR

Approved an extension of the contract with the independent audit firm of Caporicci & Larson, with the scope to include updating the Appropriations Limit review.

Mayor Janz moved Item No. 33 forward to be heard before Item No. 27.

33. APPROVAL OF THE SCREENING COMMITTEE RECOMMENDATION FOR AN APPOINTMENT TO THE ARTS COMMITTEE

Council Member Marsala indicated the Screening Committee did not have a recommendation that evening. The interview process was delayed.

Mayor Janz moved Item No. 29 forward to be heard before Item No. 27.

29. AMENDMENTS TO CITY COUNCIL RULES OF PROCEDURE/TOWN CODE OF CONDUCT REGARDING STATEMENTS REPRESENTING TOWN POLICY  
(Continued from the City Council meeting of July 16, 2008.)

City Attorney Marc Hynes said the item was brought back that evening in order to incorporate items that had been added to the Governing Resolution of Committees/Commissions relative to a policy regarding Council Members and Members of Committees/Commissions presenting themselves as speaking on behalf of the Town or City Council be limited to situations where there was prior City Council approval or a statement of previously approved City Council policy. Exhibit B (attached to the staff report) showed how the language would be revised in the City Council Rules of Procedure and the Town of Atherton Code of Conduct. Additionally, if there were an interest to go more broadly into the subject, a workshop could be scheduled for a future date.

Council Member McKeithen had asked for the item to be continued from the last meeting. She was asking a broader question; that is, when a Council Member acted in a private capacity but, in essence, acted as a representative of the Town, bringing the Town into the issue that might be an embarrassment to the Town, was there anything that could be done to control it.

City Attorney Hynes said drafting language was not only difficult due to First Amendment rights of the speaker but also the discussion and development of such a policy should take place in a future workshop.

Vice Mayor Carlson suggested focusing on Exhibit B that evening and discussing any other issues in a work shop.

**MOTION – to approve language as outlined in Exhibit B:** 1) City Council Rules of Procedure. 11.7 Representations of Town and/or City Council policy – Council members shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval; and 2) Town of Atherton Code of Conduct and Procedures 100.09.05 – City Council Members, Members of the Commissions, Committees and Staff shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.

M/S J.Carlson/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor Janz moved Item No. 31 forward to be heard before Item No. 27.

**31. APPROVAL OF MEMBERS TO THE BLUE RIBBON TASK FORCE REGARDING A NEW TOWN CENTER**

At the May 21 City Council meeting, Council approved the creation of a Blue Ribbon Task Force (BRTF) to consider the feasibility of a new Town Center, as well as its composition that would include: Council Members from the Town Center Committee; staff from the Police, Administration, Building, Public Works, Planning, and Information Technology (IT) Departments; others who would use the facility such as the Heritage Committee, Friends of the Library, Arts Committee, Library staff; other interested parties such as the ACIL, Central Atherton Resident’s Association (CARA),

**Audit Committee (for Finance Oversight); a representative from Fundraising Task Force; and two representatives from the Design Committee - one architect and one landscape architect. On August 1, 2008, the Town Center Committee met and, as part of the agenda, discussed adding the two architects from the community at large to the BRTF. These positions were solicited by advertising in the *Almanac* and in the *Athertonian*.**

**Council Member Marsala said the first meeting of the BRTF was scheduled for August 27. The Town Center Committee was recommending William Grindley and James Ransohoff as the two architects to be appointed to the BRTF.**

**Council Member McKeithen believed an updated needs study should be conducted first. The potential effect of High-Speed Rail should be considered whether for a new facility or a remodeled one, along with what type of financing would be needed, either public or private or a combination of both. In addition to churettes, public input was very important and should include publications in the *Almanac*, *the Athertonian*, on the website, etc. There were many questions to be answered and information the public needed in order to make an informed decision.**

**Council Member Marsala agreed High-Speed Rail needed to be considered. There were at least 10 items to discuss at the first meeting as well as a tour of facilities. All the prior reports would be reviewed along with financials and other cities' reports. The possibility of a bond measure was discussed as an option.**

**Council Member McKeithen believed there was a perception that the project was a "done deal" without public input.**

**Council Member Dobbie believed three proposed solutions were needed to present to a considerable number of the public for input.**

**Mayor Janz said that was the purpose of the BRTF, i.e., to solicit that input. The BRTF should determine whether the 2006 Space Study needed to be updated. He hoped the BRTF would be spearheading the project, not the Council.**

**MOTION – to appoint William Grindley and James Ransohoff, architects, to the Blue Ribbon Task Force and to reaffirm the composition as outlined in the staff report of May 21, 2008**

**M/S Marsala/Janz**

**Paul Quinlan, Atherton, believed the BRTF should determine what was needed, what was deficient, and what should be done in order for the public to understand the issues. He said there was the perception that it was a "done deal." Additionally, broader representation on the BRTF was needed.**

**John Rugeiro, Atherton, asked for a list of potential private donors.**

**Jean Schaaf, Atherton, was familiar with Mr. Ransohoff's work and was disappointed he was being considered for appointment to the BRTF.**



pattern of access that had existed for over 60 years. The compromises being discussed did not address the issue of precedent. The street was not built to handle the level of traffic that would result. The Town had the right to revoke the encroachment permit. He urged Council to uphold the appeal.

Thom Bryant, applicant, met with the neighbors who had a direct view of the property and was prepared to extend a fence along the his property line on Madrone Road, to install a gate that coordinated with the fence, and believed they were the right thing to do. Alternatives suggested by the Whites were unworkable. The compromises were really above and beyond Town requirements. He urged Council to reject the appeal and grant the encroachment permit.

Sue Gallen, applicant, read a letter from David and Meg Freed, neighbors, indicating their support for the project at 99 DeBell Drive. The Town had approved all the plans; and if the Council did not allow completion of the project, the applicants would be left with no alternative but to pursue the matter in court. As taxpayers, they were angry that the Council would waste money on an issue that did not require a lawsuit to resolve. After driving on Madrone Road, they believed the White's new home had a far larger negative impact on the rural nature of the neighborhood. They encouraged Council to deny the appeal.

Leigh White, appellant, bought the property on Madrone Road to build a new home on a street that had a one-lane paved road 14-feet wide. She was unprepared for the changes as a result of the Bryant's project. She summarized her concerns: 1) setting a precedent; 2) creating a safety issue with a one-lane road with little visibility; 3) changing the character of the neighborhood; and 4) the possibility of devaluing properties. She believed there was still a question as to whether Madrone Road was a private street and what that might mean. The issue needed to be investigated in order to know how to protect the road from further encroachment and alternatives needed to be investigated more thoroughly.

John Beltramo, Atherton, said one of the reasons he had lived on Madrone Road for over 50 years was the unique, rural, country character of the road. His concerns were: 1) the visual aspect of the scenic road and its character would be forever ruined; 2) a precedent would be set for other homes to seek access on Madrone Road; and 3) there was no assurance of long-term maintenance with a future owner. The benefit to one homeowner was at the expense of the residents of Atherton. He urged Council to grant the appeal.

Nancy Sterling, Atherton, said those who built new homes in Atherton deserved to know what the rules were at the time they built. The Bryants followed all the rules the Town presented, submitted their plans which were approved, and built their home. Madrone Road was like any other street in Town; the public drove down it, parked on it, and used a driveway to turn around. The precedent was already set in other areas of Town where driveways were on streets other than at the front of the property. Change was happening all over Town and all residents were created equal with the same rights.

**Michael Demeter, Atherton, lived on Toyon Road, a private road with public access. The property owners on Toyon Road were responsible for all the maintenance and received nothing from the Town. In the future, staff should talk to the people who own the road early in the process.**

**Mayor Janz closed the public hearing.**

**Public Works Director Duncan Jones explained that Madrone Road had not been constructed to Town standards or in compliance with the General Plan and remained a private street, subject to private maintenance, with a public right-of-way. As a condition for the approval of the project, the homeowner agreed to participate in maintaining the road.**

**In response to Mayor Janz, Attorney Jean Savaree clarified Council could direct that the condition be recorded on the deed.**

**In response to Council Member Marsala, Attorney Savaree said the definition of “rural” was one the Council would ponder that evening, e.g., did rural mean trees on one side of the street, or did it mean the type of street as opposed to the vegetation along the side of it. Additionally, the Council had the ability to revise any ordinance and could ensure a precedent would not be set.**

**In response to Vice Mayor Carlson, Public Works Director Jones explained he issued approximately six encroachment permits a day and consulted the General Plan, the Municipal Code, and ordinances to help him evaluate the permits, which was the administrative procedure in place. On the subject property line, he ensured there was not a “no access strip,” and he determined there was no reason to withhold the permit. Once the issue arose, he met with those neighbors, the City Manager, and the City Attorney before issuing the permit.**

**In response to Vice Mayor Carlson, Attorney Savaree said Council could take as much time as needed to make a determination on the appeal.**

**In response to Mayor Janz, Public Works Director Jones said the potential increased traffic on Madrone Road would not be any different than that of any other cul-de-sac of the same size. Having one additional home to help maintain the road would be a benefit to the other property owners. Additionally, the overgrown state of the vegetation on the side of the road, which was in the right-of-way, would become a violation of the Municipal Code as a safety issue if the road were upgraded to Town standards.**

**MOTION – to grant the appeal**

**M/S J. Carlson/Dobbie**

**Vice Mayor Carlson said the General Plan called for maintaining existing neighborhood environments. By not including the residents from the beginning, staff did not have the proper perspective to ascertain if what was being proposed was or was not in the best interests of the Town. The burden was placed upon the appellant and**

**the Council to demonstrate that the permit should be withdrawn. He addressed the issues raised by Attorney Savaree at the July City Council meeting: 1) the garage could be accessed by using the existing driveway on DeBell Drive and/or Fair Oaks; 2) he was unsure whether structural changes to the garage would be necessary to use the accesses; and 3) the driveway certainly changed the look and feel of the neighborhood, and 4) property owners believed their properties would be devalued. The public interest issues in the matter were: 1) ensuring and maintaining the rural quality of life environment as specified in Atherton's General Plan; 2) the importance of residents' engagement in matters that affected their neighborhoods should be actively sought early in the process; 3) ordinances, rules, and regulations could not foresee every eventuality, and staff should make an extra effort to explore other feasible solutions when things were out of the norm; and 4) special situations needed to be given recognition and factored into the process. If Council were to grant the appeal, he hoped the applicant would consider other alternatives before seeking legal action. Additionally, he hoped the neighbors would reach out and show appreciation to the Bryants.**

**Council Member Dobbie said the General Plan was similar to the Constitution of the United States. Everything should be measured against the General Plan. The owners of 99 DeBell had other methods of accessing the garage that were feasible. Once the encroachment permit was allowed, stopping other neighbors on 99 DeBell from doing the same thing would be impossible. The rural atmosphere would be degraded and against the tenants of the General Plan. He supported granting the appeal.**

**Council Member Marsala disclosed that prior to the meeting he met with the homeowner, Ms. White, and Wayne. He encouraged the homeowner to work with the neighbors. He did not believe the General Plan was the Constitution and Council needed to be careful not to pass ordinances that violated it as both the State and Federal Constitutions trumped Town ordinances. The definition of rural needed to be defined. Although maintaining the rural character was important, being fair to those building new homes as to what was right and what was not was also important.**

**Mayor Janz concurred with many of the comments of his colleagues. The reality was the situation was not unique; there were other locations where homes fronted on one street and backed on another. The situation could occur again and he encouraged the General Plan Committee to address the issue. The General Plan stated, "...in the best interests of the Town," not the street and not the neighbors. The project was designed and built and permits were given following the code. People were permitted to do things that neighbors might not like. Traffic from one home would be added to Madrone Road but taken off DeBell. From a Town-wide perspective, there was really no effect. The fact the house was at the end of DeBell was important because it would not affect every home on Madrone. He frankly did not believe home values would be devalued. Neither did he think a boat or racecar were relevant. Regarding the visual impact of the street, he believed the visual appearance was actually improved. The current landscaping was in fact illegal and did not really serve as a screen. A precedent for the future cut both ways: if allowed, the other homes could do the same thing; if denied, Atherton would be embarking on design review.**

**Mayor Janz called for a vote on the Motion.**

**Ayes: 2 (Dobbie/J.Carlson) Noes: 2 (Marsala/Janz) Absent: 0 Abstain: 0**

**Motion failed.**

**MOTION – to deny the appeal on the condition that the applicant be required to 1) participate in the cost of maintaining Madrone Road and the requirement be a recorded covenant running with the land; 2) that the applicant agree to install and maintain a fence, a solid gate, and landscape screening with a covenant running with the land so long as access to the property was from Madrone Road**

**M/S Janz/Marsala**

**Council Member Marsala wanted the Council to have input on how the issue of access was addressed at the General Plan Committee.**

**Mayor Janz called for a vote on the Motion.**

**Ayes: 2 (Marala/Janz) Noes: 2 (Dobbie/J.Carlson) Absent: 0 Abstain: 0**

**Motion failed.**

**Attorney Savaree clarified if there were no further motions, the affect was that the encroachment permit would remain in effect.**

**MOTION – to deny the appeal and grant the Encroachment Permit with the following conditions: 1) the applicant participates in the maintenance of the road; and 2) the applicant installs a solid fence, entry gate, and landscape screening, with both conditions to be enforced through deed restrictions**

**M/S Janz/Marsala**

**Ayes: 4 Noes: 0 Absent: 0 Abstain: 0**

**Mayor Janz called for a recess at 9:25 p.m. The meeting was reconvened at 9:30 p.m. Council Member McKeithen and City Attorney Marc Hynes returned to the dais.**

**REGULAR AGENDA (Items 30-34)**

**28. REQUEST TO INITIATE REZONING OF PARKER AVENUE FROM R1-A TO R1-B ZONING DISTRICT**

**At the request of the applicant, the item was continued to the City Council meeting of September 17, 2008.**

**30. DISCUSS SETTING ASIDE BUILDING FUNDS FOR TOWN CENTER (*Continued from the City Council meeting of July 16, 2008.*)**

**Interim Finance Officer Bill Yeomans said the item was placed on the agenda as a follow up to the action to increase the Building Department fees in January. Council had discretion as to whether monies would be set aside out of Building funds in a**

**special fund or as a reserve in the General Fund or remaining within the General Fund balance.**

**Discussion ensued regarding language in the resolution adopted in 2000 stating \$200,000 should be set aside in a 406 Fund and subsequent budget resolutions that set aside \$220,000, as well as subsequent Council's authorizing the use of those funds for other projects. Additionally, there was discussion regarding confusion in the resolution referencing a staff report from the Public Works Department and not the Building Department**

**Council Member Marsala said he listened to the tape of the May 2000 meeting (a verbatim transcript was included in the packet) that mirrored the resolution passed the in 2000. The transcript stated the building fees would be raised for staff time and administrative services: 1) \$146,000 a year would be added from the Building Department to allocate towards operations such as the City Manager, Finance, and City Clerk, and 2) establish a carryover fund. Additionally, the former Building Official proposed setting aside \$200,000 a year for four years as the Building Department's share of a new facility to replace the trailers. At the end of the four years, the program would be reevaluated. Council Member Marsala provided handouts showing the total revenues minus expenses in the Building Department over the years. He showed what should have been set aside for the Building Department's share of administrative overhead. The net surplus of \$2.9 million was what should be available for the building fund.**

**Council Member Dobbie asked if funds were set aside for a new Town Center in a special account, and private contributions paid for the building, could the funds be transferred back to the General Fund easily. Conversely, if the funds were kept in the General Fund, would there be more revenue than needed.**

**Interim Finance Officer Yeomans said Council policy would set it aside; and if the fund were not necessary, Council could return it to the General Fund.**

**City Attorney Marc Hynes clarified if the rationale for establishing the fees in the Building Department were based in part on replacing facilities, the funds could be kept anywhere; however, the money should go toward replacing the Building Department space.**

**A discussion ensued regarding the inspection carryover fund. Additional discussion took place regarding the ambiguity of the resolution adopted in May 2000.**

**Council Member McKeithen said clear numbers were needed, i.e., real cost accounting to determine what remained.**

**City Attorney Hynes said an audit trail between collection of fees and costs upon which the fees were based was needed. He would be distressed to find the department could be run on \$50 a square foot and the Town was collecting \$250.**

**Vice Mayor Carlson suggested that Council could take action that evening ratifying what went on in the past. Further, Council could request an analysis of a cost**

**allocation to support the Building Department that would become the new basis for future fees.**

**Virginia Rugeiro, Atherton, thought money should be allocated for more speed signs in the Town rather than for a new facility.**

**Richard Moore, Atherton, said he would like a fee chart showing where the money was going when residents pay building permit fees. As a public relations tool, Council should do an analysis to justify the fees every year.**

**Paul Quinlan, Atherton, agreed with the City Attorney that the first step was to determine whether there was a surplus or not. If there were a surplus, legally the funds needed to be used for the Building Department and could be used for capital projects.**

**Council Member McKeithen reiterated clear numbers were needed. Once expenses were determined in the Building Department including overhead, administrative support, software, corporation yard, and inspection carryover a surplus could be determined. Additionally, Council could determine whether to set up a fund for capital improvement or commit a certain amount of monies from the reserves to support a capital improvement program.**

**Council Member Marsala believed it would be difficult to determine administrative costs over the past years. He suggested determining a number everyone could agree on and move forward.**

**Interim Finance Director Yeomans suggested looking at other Building Departments to help determine a cost.**

**Vice Mayor Carlson made the following motion:**

**MOTION – to ratify what happened in the past based on the 2000 analysis, instruct staff to undertake a detailed analysis of Building Department costs projected in 2008-09, and return to Council no later than December**

**City Attorney Hynes clarified the rationale as set out in the May 9, 2000, staff report would be set forth in a resolution and brought to Council at its next meeting for ratification.**

**Vice Mayor Carlson withdrew the motion.**

**Staff was to return to Council by the December City Council meeting with a complete analysis of the Building Department costs.**

**23. RECOMMENDATIONS FROM THE SCREENING COMMITTEE REGARDING THE APPOINTMENT PROCESS FOR COMMITTEES/COMMISSIONS IN CONJUNCTION WITH RESOLUTION NO. 08-24 (Removed from the Consent Calendar for discussion.)**

**Council Member McKeithen said since the structure of the committees/commissions had been changed and, in some instances, recruitment for the entire committee was necessary, e.g., the Audit Committee and the Traffic/Transportation Subcommittee; and given the fact that the Screening Committee consisted of only two Council Members, one of whom had served for two years, she suggested the entire Council act as the Screening Committee for the vacancies.**

**Council Member Dobbie concurred.**

**Council Member Marsala disagreed. He did not believe, with the exception of the Audit Committee and the Traffic/Transportation Subcommittee, there would be that much turnover not to utilize the Screening Committee.**

**Vice Mayor Carlson said the situation was unique with regard to the two committees. In the future, terms would be staggered. As long as Council Members were willing to schedule their time to interview potential candidates, he was in favor of the entire Council interviewing all the applicants for the Audit Committee and the Traffic/Transportation Subcommittee.**

**Mayor Janz was concerned that the process would take place at a Special meeting and not part of a Regular City Council meeting.**

**City Attorney Marc Hynes reminded Council that Resolution No. 08-24 set out that the Screening Committee would interview and recommend appointments to the City Council.**

**Vice Mayor Carlson suggested the Screening Committee could present the full number of applicants to the Council without a recommendation.**

**City Attorney Hynes said that could be done and the resolution would not need to be amended.**

**Council Member Marsala reminded the Council that Vice Mayor Carlson had recommended not having a Screening Committee in the past and which he favored at the time. It was said that by having Screening Committee members rotated, any preferences on the part of Council Members would be balanced. He suggested Council might need to move away from the Screening Committee process altogether.**

**Vice Mayor Carlson suggested that issue could be discussed at a workshop. The immediate question was whether the current Screening Committee should submit all candidates for the Audit Committee and Traffic/Transportation Subcommittee to the full Council.**

**City Attorney Hynes suggested that Council direct the Screening Committee to submit all the candidates for the Audit Committee and the Traffic/Transportation Subcommittee to the Council for consideration of appointment.**

**By consensus, the Council so directed.**

**John Ruggeiro, Atherton, said the Screening Committee was the most important committee and believed there should be more than two Council Members making the recommendations.**

**David Henig, Atherton, questioned whether the Council should be selecting members of the Audit Committee at all. He suggested an independent process.**

**Mayor Janz clarified the Audit Committee was tasked with assisting the independent auditors in the annual audit.**

### **32. CITY MANAGER'S WORK PLAN FOR IMPLEMENTATION OF GOALS AND OBJECTIVES**

**City Manager Jerry Gruber said Council directed him to develop a Work Plan to implement the five Goals and Objectives developed at the May 2, 2008, Council Work Session. City Manager Gruber worked with Senior Management Staff and the proposed Work Plan was before the Council that evening.**

**Vice Mayor Carlson commented on the Goals as follows: 1) Long-term financing mechanisms for the Town: staff should determine the dates when Council would begin to consider a measure, along with what education and community outreach would be necessary, as well as whether the parcel tax should be continued or a gross receipts tax should be pursued, etc; 2) the Housing Element: dates for the General Plan Committee and Planning Commission to discuss the issues needed to be determined; 3) the Town Center: Council agreement was needed on the scope of the project; 4) the Quad Gates: determine whether the Town would provide funds; additionally, there was a need to inform the public of the impact of High-Speed Rail.; 5) Annexation: Council discussion was needed and whether a consultant was needed to work out the pros and cons with a financial analysis and how it would benefit the Town.**

**Council Member McKeithen suggested making the changes as suggested by Vice Mayor Carlson and distributing them to Council. She further suggested discussing them after the November election,**

**Vice Mayor Carlson suggested a Council workshop be scheduled for January.**

**City Manager Gruber said he would make the suggested changes to the Work Plan and distribute it to Council.**

## **21. APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

**Council Member Dobbie was dissatisfied with the Council Committee assignments. He requested to be assigned to the Town Center Committee, the Screening Committee, and the Holbrook-Palmer Park Foundation.**

**Mayor Janz indicated he referenced Council Member Dobbie's checklist of preferences before making assignments. Additionally, there was less than six months left before new assignments would be made; however, he suggested that all Council Members fill out a new checklist and submit it to him for reassignments.**

**Richard Moore, Atherton, said the Emergency Preparedness Committee was important and asked Council to consider reinstated it.**

**John Rugeiro, Atherton, agreed with Council Member Dobbie's comments.**

## **34. COUNCIL REPORTS**

- Council Member McKeithen attended the Finance Committee meeting and discussed financing alternatives, reserves, Financial Plan, and the contract with Caporicci and Larsen. A Disaster Preparedness Day was scheduled for September 13 at the San Mateo Expo Center, from 10 a.m. to 2 p.m.**
- Council Member Marsala wanted a discussion of financial procedures scheduled for a future meeting for the entire Council. The League of California Cities was encouraging people to write, call, etc., State Legislators regarding the budget. The State could borrow 10% of property tax revenues but would have to pay interest. He suggested setting side money in the reserves for the State borrowing fund.**
- Vice Mayor Carlson attended the Council of Cities meeting where the Genentech tax problem was discussed. He had questions regarding SBWMA's request for all the participating agencies to approve a \$60 million bond and would be meeting with Mr. McCarthy before next month's presentation to Council.**
- Council Member Dobbie said the General Plan Committee reviewed the Zoning Code Update and a final review was scheduled. He went of a Police ride-along.**
- Mayor Janz said the Council and Rail Committee had a Joint meeting on August 5. Council joined in a lawsuit with the California Planning and Conservation League and two rail organizations that were bringing a California Environmental Quality Act (CEQA) lawsuit against the High-Speed Rail over the adequacy of their Environmental Impact Statement and Report (EIS/EIR) for the connection of the Peninsula with the Central Valley. The City of Menlo Park also joined in the lawsuit. Further, if the Bond passed, the Town was being asked to go on the record to say the train should be built in a trench rather than a tunnel. Both items would be included on the September agenda. Mayor Janz said a workshop was scheduled in Menlo Park on September 9 and he encouraged Council Members to attend. City Attorney Hynes said the challenge was focused on the EIR.**

**35. PUBLIC COMMENTS**

**John Ruggeiro, Atherton, noted that Tim Wang passed away on Saturday, August 16.**

**36. ADJOURN**

**Mayor Janz adjourned the meeting at 11:12 p.m.**

**Respectfully submitted,**

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**Kathi Hamilton**  
**Acting City Clerk**

**TOWN OF ATHERTON**  
**CLAIMS LIST**  
 August 2008

Payroll Checks	11809 – 12014	\$ 30,869
Electronic Transfers		511,658
A/P Checks	26803 – 26969	650,589
TOTAL		\$1,193,117

I, Jerome Gruber, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 11809 - 12014 (payroll) and 26803 – 26969 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$1,193,117; are true and correct, and that there are sufficient funds for payment.

\_\_\_\_\_  
 Jerome Gruber  
 City Manager

The above claims, check numbers 11809 – 12014 (payroll) and 26803 - 26969 (accounts payable), and electronic transfers for employees direct deposits, federal payroll taxes and fees, inclusive, amount to \$1,193,117; are true and correct, and are authorized for payment.

\_\_\_\_\_  
 James R. Janz  
 Mayor, Town of Atherton

**SOURCE OF FUNDS**

<b>101</b>	General Fund	\$427,175
<b>105</b>	Tennis	3,379
<b>201</b>	Special Parcel Tax	73,242
<b>202</b>	Transportation	-
<b>203</b>	Gas Tax	-
<b>210</b>	Road Construction Impact Fees	13,428
<b>211</b>	Park Grants	83,915
<b>213</b>	Library	1,754
<b>401</b>	General Capital Projects	386
<b>403</b>	Atherton Channel District	-
<b>610</b>	Vehicle Replacement	-
<b>611</b>	Computer Maint. & Replacement	18,201
<b>612</b>	Administrative Services	29,109
<b>715</b>	Evans Estate	-
<b>740</b>	Tree Committee	-
TOTAL		\$650,589



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: MONTHLY FINANCIAL REPORT, AUGUST 2008**

#### **RECOMMENDATION:**

Receive the Monthly Financial Report for August 2008.

#### **INTRODUCTION:**

The attached schedules show revenues and expenditures for all funds as of August 30, 2008.

#### **HIGHLIGHTS:**

Revenues in the General Fund for August are \$183,131. Expenditures in the General Fund for August are \$1,016,357. The resulting August loss is normal as property tax and other revenues are received in December and April.

The tennis courts were patched in August, so an adjustment will need to be made to the Tennis Fund (105). The trees on Selby Lane were ordered (\$15,700) so the Tree Committee Fund (740) reflects that transaction.

#### **FISCAL IMPACT:**

Revenue and Expenditure Summary schedules for FY 2008-09 are attached.

Prepared by:

Approved by:

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William Yeomans  
Interim Finance Officer

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Jerome Gruber  
City Manager

**TOWN OF ATHERTON**  
**Revenue Summary**  
for the Month Ended August 30, 2008

<b>Fund</b>	<b>Revenue source</b>	<b>2008-09 Budget</b>	<b>Current Period Revenue</b>	<b>Year to date Revenues</b>	<b>% received</b>
	Property Tax	4,731,282	13,163	13,163	0%
	Sales & Use Tax	238,235	13,315	19,676	8%
	Other Taxes	1,461,300	25,188	40,181	3%
	Licenses & Permits	1,870,000	109,342	278,600	15%
	Fines & Forfeitures	41,000	200	2,886	7%
	Revenue from Other Agencies	782,706	-50,706	6,834	1%
	Charges for Services	723,000	64,186	157,349	22%
	Investment & Rental Income	511,000	6,204	15,300	3%
	Other Revenues	34,000	2,239	2,528	7%
	<b>Total General Fund Revenues</b>	<b>10,392,523</b>	<b>183,131</b>	<b>536,517</b>	<b>5%</b>
	Interfund (Operating Transfers) In	250,000			
101	<b>General Fund Total</b>	<b>10,642,523</b>	<b>183,131</b>	<b>536,517</b>	<b>5%</b>
	<b>Special Revenue Funds</b>				
105	Tennis	8,000	440	590	7%
201	Special Parcel Tax	1,858,000	0	0	0%
202	Transportation	280,000	23,500	41,125	15%
203	Street Improvement (Gas Tax)	139,000	0	0	0%
209	State COPS Grant	100,000	0	0	0%
210	Road Construction Impact Fees	1,265,033	59,292	155,401	12%
211	Grants Fund	247,300	0	0	0%
213	Library	650,000	0	0	0%
	<b>Total</b>	<b>4,547,333</b>	<b>83,232</b>	<b>197,116</b>	<b>4%</b>
	<b>Capital Project Funds:</b>				
401	Capital Improvement	27,200	0	0	0%
402	Storm Drainage	21,000	0	0	0%
403	Channel Drainage District	79,666	168	168	0%
406	Facilities Construction	4,000	0	0	0%
	<b>Total</b>	<b>131,866</b>	<b>168</b>	<b>168</b>	<b>0%</b>
	<b>Internal Service Funds:</b>				
610	Vehicle Replacement	59,620	0	0	0%
611	Information Technology	109,641	0	0	0%
612	Administrative Services	311,024	0	0	0%
614	Workers Compensation Insurance				
	<b>Total</b>	<b>480,285</b>	<b>0</b>	<b>0</b>	<b>0%</b>
	<b>Trust and Agency Funds:</b>				
715	Evans Creative Design	14,500	0	0	0%
740	Tree Committee	4,600	0	0	0%
	<b>Total</b>	<b>19,100</b>	<b>0</b>	<b>0</b>	<b>0%</b>
	<b>Total Revenues</b>	<b>15,821,107</b>	<b>266,531</b>	<b>733,801</b>	<b>5%</b>

**TOWN OF ATHERTON**  
**Expenditure Summary**  
for the Month Ended August 30, 2008

Fund	Description	2008-09 Budget	Current Period Expenditures	Year to date Expenditures	% spent
101	General Fund				
	11 City Council	37,277	516	10,174	27%
	12 City Manager	737,136	57,139	92,383	13%
	16 City Attorney	206,228	26,667	35,167	17%
	18 Finance	442,256	33,832	45,109	10%
	25 Building	1,544,931	103,495	152,406	10%
	40 Police	5,151,586	468,004	673,565	13%
	50 Public Works	2,521,151	326,704	409,822	16%
	<b>101 General Fund Total</b>	<b>10,640,565</b>	<b>1,016,357</b>	<b>1,418,626</b>	<b>13%</b>
	<b>Special Revenue Funds</b>				
	105 Tennis	7,176	7,601	8,562	119%
	201 Special Parcel Tax	2,220,000	11,116	4,747	0%
	202 Transportation	464,845	0	24,845	5%
	203 Street Improvement (Gas Tax)	75,000	0	3,920	5%
	209 Law Enforcement (State COPS)	100,000	0	0	0%
	210 Road Construction Impact Fees	2,020,500	0	0	0%
	211 Grants	646,300	0	0	-0%
	213 Library	203,900	1,308	6,187	3%
	<b>Total</b>	<b>5,737,721</b>	<b>20,025</b>	<b>48,261</b>	<b>1%</b>
	<b>Capital Project Funds:</b>				
	401 Capital Improvement	96,200	0	530	1%
	402 Storm Drainage	20,049	0	0	0%
	403 Channel Drainage District	110,000	0	0	0%
	<b>Total</b>	<b>226,249</b>	<b>0</b>	<b>530</b>	<b>0%</b>
	<b>Internal Service Funds:</b>				
	610 Vehicle Replacement	125,000	0	0	0%
	611 Information Technology	112,751	2,801	9,180	8%
	612 Administrative Services	335,480	15,976	105,853	32%
	<b>Total</b>	<b>573,231</b>	<b>18,777</b>	<b>115,033</b>	<b>20%</b>
	<b>Trust and Agency Funds:</b>				
	715 Evans Creative Design	11,500	0	0	0%
	740 Tree Committee	17,600	16,011	16,011	91%
	<b>Total</b>	<b>29,100</b>	<b>16,011</b>	<b>16,011</b>	<b>55%</b>
	<b>Total Expenditures</b>	<b>17,206,866</b>	<b>1,071,170</b>	<b>1,598,461</b>	<b>9%</b>



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: RESOLUTION RATIFYING COLLECTION AND ALLOCATION OF BUILDING INSPECTION FEES**

#### **RECOMMENDATION:**

Staff recommends that the City Council adopt a resolution ratifying collection and allocation of building inspection fees.

#### **BACKGROUND:**

By Resolution No. 00-13, adopted May 17, 2000, the City Council enacted building permit and inspection fees calculated in accordance with Table 1-A of the 1977 Uniform Building Code based on a valuation of new construction and of remodeling of \$250.00 per square foot. A Staff Report dated May 9, 2000, and presented at a special meeting of the City Council on May 9, 2000, justified the \$250.00 per square foot valuation (in place of the previous \$110.00 per square foot valuation).

The report recited that the change in valuation basis would raise building permit fees an average of 71%. Using building permit revenues for the 2000-2001 fiscal year, anticipated to be approximately \$700,000, the increase resulting from the change in valuation from \$110.00 per square foot to \$250.00 per square foot was anticipated to generate an additional \$497,000.00.

Because building permit revenues must be used for building permit activities, the additional \$497,000 in anticipated revenues was justified by showing that it would fund the following programs:

1. A cost allocation plan to reimburse administrative departments for their costs associated with supporting the building inspection function: \$146,000 was allocated as from the additional \$497,000 revenue.

2. An inspection carry-over fund to pay for inspection services on projects that take longer than one year to construct was estimated to cost approximately \$600,000 to fund one year's worth of inspection work: \$150,000 from the additional \$497,000 was designated to be set aside for four years to establish this fund.

3. A permanent building fund to pay for the Building Department's portion of a new permanent structure was estimated to be \$800,000. This was based upon a calculation that a new building would cost 4 million dollars with the Building Department utilizing 20% of the floor area. \$200,000 from the \$497,000 was designated to be set aside for four (4) years.

The \$497,000 increase was thus justified as follows:

\$146,000 cost allocation plan;  
\$150,000 inspection carry-over funds;  
\$200,000 permanent building fund.  
\$496,000

The Resolution attached will ratify actions taken by the City Council in connection with these fees, both as to their calculation and as to their allocation.

**FISCAL IMPACT:**

None

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes  
City Attorney

\_\_\_\_\_

Jerry Gruber  
City Manager

Attachments: Resolution No. 08 -  
Resolution No. 00-13  
Building Official Staff Report dated May 9, 2000  
Building Official (Planning Fees) Staff Report dated May 9, 2000  
Public Works Director Staff Report dated May 9, 2000  
Police Chief Staff Report dated May 9, 2000

**RESOLUTION NO. 08-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
RATIFYING CHARGES AND FEES FOR SPECIFIED SERVICES**

**WHEREAS**, by Resolution No. 00-13, adopted May 17, 2000, the Town of Atherton established building permit and inspection fees, planning fees, police department fees, and public works department fees as described; and

**WHEREAS**, since adoption of Resolution No. 00-13, the Town has collected fees as set out in said Resolution, and as subsequently amended; and

**WHEREAS**, the basis for said fees was set out in reports considered by the City Council on May 9, 2000, at a special meeting of the City Council which such fees were then implemented by Resolution No. 00-13; and

**WHEREAS**, the increase in building fees was justified in the report of the Building Official dated May 9, 2000, based upon a cost allocation plan to reimburse administrative departments for their costs associated with supporting the building inspection function; creation of an inspection carry-over fund to pay for inspection services on projects that take longer than one year to construct; and a permanent building fund to pay for the building department's portion of a new permanent structure; and

**WHEREAS**, the amounts of these respective funds were approximately \$146,000 per year for cost allocation plan, \$150,00 per year for four years for the inspection carry-over fund, and \$200,000 per year for four years for the permanent building fund; and

**WHEREAS**, fees based upon the foregoing justifications have been collected in accordance with the valuation of \$250.00 per square foot established by Resolution No. 00-13;

**NOW, THEREFORE**, the City Council of the Town of Atherton hereby resolves as follows:

The building permit fee calculated and allocated as described in the staff report of the Building Official dated May 9, 2000, and Resolution No. 00-13 adopted on May 17, 2000, are hereby ratified.

This Resolution shall be effective immediately upon adoption.

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:*

*AYES:*  
*NOES:*  
*ABSENT:*  
*ABSTAIN:*

*Council Members:*  
*Council Members:*  
*Council Members:*  
*Council Members:*

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James Janz, MAYOR  
Town of Atherton

ATTEST:

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Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

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Marc G. Hynes, City Attorney

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: MICHAEL A. HOOD, BUILDING OFFICIAL**  
**DATE: FOR THE COUNCIL MEETING OF MAY 9, 2000**  
**SUBJECT: BUILDING INSPECTION FEES**

**RECOMMENDATION:**

Pass a motion to approve a resolution pertaining to building inspection fees.

**INTRODUCTION:**

At the April 12, 2000 City Council meeting staff presented a proposal to adjust valuation figures used to calculate building inspection fees and to adjust permit and service fees to reflect the Town's actual cost of providing service.

**ANALYSIS:**

For the last ten years the Building Inspection Department has used the figure of \$110.00 per square foot for new construction and \$70.00 per square foot for remodel construction as the basis of calculating the value of construction in Atherton. The actual cost of new construction and remodel work has risen over the years and is now more realistically in the range of \$250.00 to \$350.00 per square foot.

Building permit fees are based on building valuation. The formula for calculating the building permit fee is shown in Table 1-A of the 1997 Uniform Building Code. Raising

Building Fees  
City Council Meeting; May 9, 2000

the valuation basis from \$110.00 per square foot to \$250.00 per square foot will raise the building permit fees an average of 71%.

Building permit revenues for the 2000-2001 fiscal year are anticipated to be approximately \$700,000. A 71% increase in building permit fees will generate an additional \$497,000. Since building permit revenues must be used for building permit related activities the additional revenues will be used to fund the following programs:

1. A **cost allocation plan** to reimburse administrative departments for their costs associated with supporting the building inspection function.

Administrative departments, including the City Manager, Finance, and City Clerk, cost approximately \$730,000 per year. If the cost of these departments is distributed to the Building Department based on the Building Department's percentage of total Town personnel, then 20% or \$146,000 should be allocated as a cost to the Building Department.

2. An **inspection carry-over fund**, to pay for inspection services on projects that take longer than one year to construct.

Permit fees are collected before a permit is issued and those fees are used to pay for plan checking and inspection services. Since most construction projects last more than one fiscal year, the funds to pay for inspection services should be carried over from one fiscal year to the next until the project is complete. Rather than specifically carrying over the revenues for each of several hundred projects, a group carry-over fund is usually established.

Without a carry-over fund, if the economy entered a severe depression, as it did in the mid 70's and again in the 80's, we could be faced with the situation where inadequate revenue was generated to service the existing, ongoing construction projects. In other words, with out a carry-over fund we are left with an inspection liability with no source of revenue. Revenues, in this case, would be drawn from the General Fund until the inspection liability was met.

It is therefore prudent to establish an inspection carry-over fund of approximately one-year's worth of inspection work or approximately \$600,000. At least \$150,000 per year should be set aside for four years to establish this fund.

Building Fees

City Council Meeting; May 9, 2000

3. A **Permanent Building Fund** to pay for the Building Department's portion of a new, permanent structure.

Currently the Building Department is housed in temporary, modular units. If a new, permanent town facility is built then the Building Department would pay its share of the new building construction. A new building is estimated to cost \$4,000,000 with the Building Department utilizing 20% of the floor area. The prorated share of the Building Department would therefore be \$800,000. This amount would be set aside at a rate of \$200,000 per year for four years.

Prepared By:

Approved:

s/Michael A. Hood  
Michael A. Hood, Building Official

s/Ralph Freedman  
Ralph Freedman, City Manager

**RESOLUTION NO. 00-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF  
ATHERTON RELATING TO CHARGES FOR PUBLIC SERVICES**

**WHEREAS**, the City Council of the Town of Atherton finds it necessary to recover at least some of the costs of special and extraordinary services rendered by the various departments of the Town, and

**WHEREAS**, at the direction of the City Council, the Building, Planning, Police and Public Works Departments of the Town have conducted in-depth studies to determine the actual cost to the Town of providing various special services rendered by those departments, and

**WHEREAS**, the City Council has received reports from the said Departments, showing that, in each case, the present fees charged are not adequate to recover even a relatively small portion of the costs of the services rendered, and in some instances departments of the Town are rendering special services without any cost recovery whatever, and

**WHEREAS**, said reports include recommendations for proposed new fees which new fees would be fair and would be adequate to recover a portion of said costs, but which would not, in any instance, exceed the actual costs of rendering such special services,

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the Town of Atherton as follows:

1. The City Council hereby finds and determines that the following established charges are reasonable and necessary for the specified services, and that the cost to the Town of providing such services equals or exceeds, in every instance, the charges hereby established.

2. The following charges and fees are hereby established, to be charged for special or extraordinary public services rendered by the following named departments of the Town of Atherton:

A. Building Permit and Inspection Fees: Fees calculated in accordance with Table 1-A of the 1997 Uniform Building Code, based on a valuation of new construction and of remodeling at \$250.00 per square foot.

B. Planning Fees: All those fees listed as "Proposed" in that certain report of the Building Official dated May 9, 2000, a true copy of which report is attached hereto and by this reference incorporated herein.

C. Police Department Fees: A service charge of \$25.00 per month for each alarm system connected directly to the Police Department's Communications Center.

D. Public Works Department Fees: All those fees listed as "Recommended" in that certain report of the Public Works Director dated May 9, 2000, a true copy of which report is attached hereto and by this reference incorporated herein.

3. The foregoing fees shall be effective immediately, and shall be applicable to all applications filed after the adoption of this resolution.

**AND BE IT FURTHER RESOLVED** that if any section, subsection, sentence, clause, phrase, or portion of this resolution or the application thereof to any person or circumstances is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof nor other applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

**AND BE IT FURTHER RESOLVED** that all other resolutions and orders in conflict herewith be, and they are hereby, repealed.

\* \* \* \* \*

*I HEREBY CERTIFY that the foregoing Resolution was regularly introduced and adopted at a regular meeting of the City Council of the Town of Atherton held on May 17, 2000 by the following roll call vote:*

Ayes:	5	Councilmembers	Carlson, Conwell, Dudley, Fisher, Chapman
Noes:	0	Councilmembers	
Absent:	0	Councilmembers	
Abstain:	0	Councilmembers	

Dated: May 17, 2000

/s/ Nanette F. Chapman  
Nanette F. Chapman, Mayor  
Town of Atherton

ATTEST:

/s/ Sharon Barker  
Sharon Barker, City Clerk

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: MICHAEL A. HOOD, BUILDING OFFICIAL**  
**DATE: FOR THE COUNCIL MEETING OF MAY 9, 2000**  
**SUBJECT: PLANNING FEES**

**RECOMMENDATION:**

Pass a motion to approve a resolution pertaining to planning fees.

**INTRODUCTION:**

At the April 12, 2000 City Council meeting staff presented a proposal to adjust planning fees to reflect the Town's actual cost of providing service.

**ANALYSIS:**

For the last ten years the Building Inspection Department has charged fees for various planning related activities. The staff work is done by contract through Neal Martin and Associates. A review of the Neal Martin billings reveals that the Town is not recovering the cost of providing this planning service. As an example, we collect \$450.00 for a Conditional Use Permit and our actual average cost is \$700.00 for Neal Martin's services and \$50.00 in administrative services. Administrative services include the processing of applications and the posting of public notices.

Planning Fees  
City Council Meeting; May 9, 2000

The following list shows our current and our suggested charges for providing the related planning services. The proposed charges would cover the Building Department's staff time of processing the applications and posting the required public notices.

<b>SERVICE</b>	<b>CURRENT</b>	<b>PROPOSED</b>
CONDITIONAL USE PERMIT	450.00	750.00
VARIANCE	450.00	750.00
FRONT-REAR YARD REDESIGNATION	450.00	750.00
FENCE HEIGHT VARIANCE	450.00	750.00
ZONING EXCEPTION REVIEW	450.00	750.00
APPEAL	200.00	500.00
ZONING ORDINANCE AMENDMENT	900.00	2500.00
ENVIRONMENTAL IMPACT REPORT	400.00+Deposit	Actual Cost
ENVIRONMENTAL ASSESSMENT	400.00+Deposit	Actual Cost

Prepared By:

Approved:

s/Michael A. Hood  
Michael A. Hood, Building Official

s/Ralph Freedman  
Ralph Freedman, City Manager

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: CLIFF TEMPS, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE COUNCIL MEETING OF MAY 9, 2000**

**SUBJECT: PUBLIC WORKS FEES**

**RECOMMENDATION:**

Pass a motion to approve the resolution pertaining to Public Works fees.

**INTRODUCTION:**

Public Works provides a variety of special services relating to granting permission to use Town rights-of-way and review of private property improvement. The cost of providing these services exceeds the amount collected through current fees. Many services are provided at no charge to the recipient. The Town's General Fund currently absorbs the difference between cost and revenue. The recommended Public Works fees contained in the attached table and resolution will raise sufficient revenue to cover the costs of Public Works' special services.

**ANALYSIS:**

To arrive at appropriate charges for services, the actual cost of providing Public Works services was examined. This was made much easier through the change to a program based budget, in which Public Works Review and Regulation is identified as a separate program. The cost of providing Public Works Review and Regulation services was determined to be \$172,000. This is made up of the actual cost of staff time, including benefits; internal department support, including transportation, training, supplies, etc.; and an appropriate portion of the cost of support provided by other departments, including Administration and Finance. The \$172,000 also includes allowances for paying a proportionate share of the cost of replacing facilities to house Town staff .

In developing recommendations for individual fees for services, the following four items were considered simultaneously in an effort to achieve a balanced program:

- The time and expense of providing the service.

- Maintaining reasonable relationships between fees for different services requiring similar efforts.
- What other agencies in the County charge for various services.
- Producing total revenues from all fees that match the total cost of services provided.

The last item above is the bottom line for fee justification. Based on our best estimate of the activity that will be experienced in each fee area, adoption of the recommended fees will produce \$171,300 in revenue to cover the \$172,100 projected expense. To achieve this level of revenue, most of the recommended fees are set at or near the highest charged by other agencies in the County. All are recommended as reasonable, and in relation to the time and expense of the service provided. The foregoing “conclusions” can and will be tested through program accounting in the coming fiscal year. A complete list of recommended fees, with comparisons to present fees and fees charged by other agencies is attached.

**FISCAL IMPACT:**

Adoption of the recommended fees will make the provision of Public Works’ special services self-supporting.

Prepared By:

Approved:

Cliff Temps  
Public Works Director

Ralph Freedman  
Interim City Manager

**CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: BROWN D. TAYLOR, INTERIM CHIEF OF POLICE**  
**DATE: FOR THE COUNCIL MEETING OF MAY 9, 2000**  
**SUBJECT: PROPOSED POLICE DEPARTMENT RESTRUCTURING**

**RECOMMENDATION:**

That the City Council review and evaluate the proposed restructuring of the Police Department from a total of 32 full time employees to a total of 25.5 full and part time employees.

**INTRODUCTION:**

At the City Council “Mid-Year” budget review session staff reported that the internal operating processes and systems of the Police Department needed attention and that certain opportunities to improve organizational efficiencies available.

From that time a Department “Organizational Profile” was developed through a series of interviews with virtually every member of the Department, and review and analysis of various documents and reports. The purpose of the “Profile” is to identify allocation of sworn and non-sworn staff by unit and function, and principal assigned responsibilities of staff, identify operational redundancies, and to identify operational areas that are sound in their administration and areas of organizational dysfunction.

Attached to this report is an Executive Summary of a larger report to follow. The Executive Summary is offered only to frame and provide substance to the proposed recommendations now at the City Manager level for consideration.

**ANALYSIS:**

Recommendations to the City Manager are driven primarily by the Town’s 1.4 million dollar funding deficit, and supported by the Police Services Study analysis.

**Essential Service:** Recommendations are the elimination of and /or modification of the following programs and positions:

- Eliminate The Traffic Safety Program.  
Sufficient justification in terms of the number of traffic accidents and traffic related issues does not support a commitment of three traffic safety officers.
- Reduce the Investigative Services Unit by One Position.  
The Investigative Services Unit, now comprised of one Sergeant and one Police Officer (detective) does not have a sufficient workload to sustain the activities of two investigators.
- Eliminate the School Resource Officer Position.  
Although productive, this position is not essential to the delivery of police services.
- Eliminate the position of Police Captain.  
Duties of the position are, as practiced, redundant to the position of Police Chief and / or are at a level that should be accomplished by a position that does not have executive status.
- Eliminate the position of Administrative Lieutenant.  
Given the size of the Department and associated volume of activities the “administrative / business” related duties of the position that require “executive oversight” are not significant. Those responsibilities that are of an executive nature, (financial plan, strategic plan, personnel administration) can be adopted by the Office of Chief of Police. Other duties of the position, Training, SRO supervision can be reassigned to the first line supervisors or CSO / Clerical personnel.
- Eliminate the position of Executive Assistant.  
The volume and nature of work for an organization the size of Atherton does not support an Assistant at this level. The position does however, support the need for a clerical / CSO position for 20 hours per week.

### **Essential Service Delivery Organization**

With the aforementioned recommendations in place the basic service delivery component would be as follows:

- Chief of Police
- Field Operations Lieutenant
- One Investigative / Administrative Sergeant
- Four Patrol Teams Staffed as follows:

- One Sergeant (Supervisor)
- Three Officers, (one of which is a K-9 unit)
- Five Communications / Records Personnel
- One Community Service Officer
- One Part Time (20 hrs per week) CSO / Administrative Assistant.

Total Complement:

- 19 Sworn Officers
- Six Non-Sworn Positions
- One Part Time Non-Sworn Position

**Total Personnel 25.5 Employees.**

The proposed “essential service model” while reducing the number of “specialty and support” assignments actually increases each one of the four patrol teams by one officer. Staffing patrol in this manner should mitigate the overtime costs associated with attrition on the patrol teams and provide each of the teams with greater flexibility to address specialty activities such as traffic enforcement.

**ALTERNATIVES:**

1. Basic Service Recommendation:

The recommendations are “**Basic Service**”, (as opposed to “essential service”) recommendations that are supported by the police services study analysis independent of funding deficit consideration.

All of the aforementioned staff reductions with the following modifications:

- Retain one of the three Traffic Officer positions.
- Retain the second position in the Investigative Services Unit to serve as a Detective and School Resource Officer.

The combination of above would provide the Department with a flexible support services unit to address specific community needs. This Unit of three (one Sergeant and two Police Officers) would focus as a team on specific traffic related issues, significant criminal offenses requiring protracted attention, and / or special public safety projects.

2. Essential Service Recommendation – Two

Reduce the “essential service” proposal by one additional officer. This would provide a patrol staffing level of eleven police officers and four sergeants (total of 14). This alternative will not allow for a patrol staffing plan of four, (sergeant and three officers)

**FISCAL IMPACT:**

Budget reduction when compared to the proposed budget for fiscal 1999 / 2000 for each of the following proposals are as follows:

- Proposed Essential Service Recommendation .....\$577,000.00 (approximate)
- Basic Service Alternative .....\$417,000.00 (approximate)
- Essential Service Recommendation – Two .....\$657,000.00 (approximate)

The above figures include specific review of all components of Department Programs. Personnel costs for Department operations continue to reside at approximately 82% of total expenses.

**ADDITIONAL INFORMATION:**

Atherton Police Services Study “Executive Summary” is attached as backup information.

Prepared by:

Approved:

Brown D. Taylor  
Interim Chief of Police

Ralph Freedman  
Interim City Manager



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: APPROVAL OF PLANS AND SPECIFICATIONS AND  
AUTHORIZATION TO ADVERTISE HOLBROOK-PALMER  
PARK FOUNTAIN LANDSCAPE PROJECT NUMBER 08-006**

#### **RECOMMENDATION:**

Approve the plans and specifications and authorize advertisement for bids for the Holbrook-Palmer Park Fountain Landscape Project, Project No. 08-006.

#### **INTRODUCTION:**

The FY 2008-09 adopted Capital Improvement Program includes funds for constructing the Fountain Landscape Project. The need for this project resulted from the restoration of the historic fountain and approval of the Landscape Master Plan for Holbrook-Palmer Park. This area of the park was included in the "First Steps" portion of the Master Plan.

#### **ANALYSIS:**

The Fountain Landscape Project will reinstall the historic fountain in the front lawn of the Main House of Holbrook-Palmer Park. The fountain will include a mechanical box with appropriate pumps and filters to operate and maintain the fountain. The fountain will be surrounded by a pathway with benches and landscaping, with a border of trees. The concept plans were previously approved by the Park and Recreation Commission and the City Council.

The Fountain Landscape project is budgeted for construction in FY 2008-09. Kikuchi & Associates prepared the design for the project. The Fountain Landscape Project plans and specifications are ready to be advertised for construction.

**FISCAL IMPACT:**

Parcel Tax funds in the amount of \$105,000 are budgeted for this project in FY 2008-09. The Engineer's Estimate for the Fountain Landscape Project is \$105,000. In addition, a 10% construction contingency of \$10,500 would bring the total estimate to \$115,500. The project is scheduled to receive bids in November and award the contract at the November 19, 2008 City Council meeting.

Prepared By:

Approved:

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Duncan L. Jones, P.E.  
Public Works Director

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Jerome D. Gruber  
City Manager



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: JERRY GRUBER, CITY MANAGER**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: APPROVAL OF REVISED CITY COUNCIL COMMITTEE ASSIGNMENTS**

#### **RECOMMENDATION:**

Approve revised Council Committee assignments made by Mayor Janz.

#### **BACKGROUND/ANALYSIS:**

A revised list was presented at the City Council Meeting of August 20, 2008. After a brief discussion, Mayor Janz requested that all Council Members resubmit a checklist of preferences and he would revise the Council Committee assignments accordingly. The following is a list of revisions:

1. Council Member Dobbie will replace Mayor Janz on the Town Center Committee.
2. Council Member Dobbie will be appointed to the General Plan Committee, and Mayor Janz will replace Council Member McKeithen as the alternate.
3. Council Member Dobbie will replace Council Member Marsala on the Screening Committee.
4. Council Member Dobbie will be the 4<sup>th</sup> alternate to City/County Association of Governments (C/CAG).
5. Council Member Dobbie will be appointed to the Holbrook-Palmer Park Foundation, and Council Member Marsala will replace Vice Mayor Carlson as the alternate.
6. Council Member Dobbie will replaced Vice Mayor Carlson as the alternate on the San Francisco Airport Community Roundtable.

Attachment: Revised Committee Assignments List

**REVISED**  
**ATHERTON CITY COUNCIL COMMITTEE ASSIGNMENTS**

ATHERTON RAIL COMMITTEE

J. Carlson  
J. Janz

ENVIRONMENTAL PROGRAMS COMMITTEE

C. Marsala  
J. Janz

FINANCE COMMITTEE

J. Carlson  
K. McKeithen

GENERAL PLAN COMMITTEE

J. Carlson  
J. Dobbie  
J. Janz (Alt.)

SCREENING COMMITTEE

J. Carlson  
J. Dobbie

TOWN CENTER COMMITTEE

C. Marsala  
J. Dobbie

TRANSPORTATION/TRAFFIC COMMITTEE

K. McKeithen  
J. Carlson

## **OTHER GOVERNMENTAL COMMITTEE ASSIGNMENTS**

### **ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG)**

J. Carlson  
J. Janz (Alt.)

### **CITY/COUNTY ASSOCIATION OF GOVERNMENTS – C/CAG**

Janz  
J. Carlson (1<sup>st</sup> Alt.)  
K. McKeithen (2<sup>nd</sup> Alt)  
C. Marsala (3<sup>rd</sup> Alt)  
J. Dobbie (4<sup>th</sup> Alt)

### **HOLBROOK-PALMER PARK FOUNDATION**

J. Dobbie  
C. Marsala (Alt.)

### **LEAGUE OF CALIFORNIA CITIES**

J. Carlson

### **LIBRARY JPA GOVERNING BOARD (SAN MATEO COUNTY)**

C. Marsala  
K. McKeithen (Alt.)

### **PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE**

K. McKeithen  
J. Carlson (Alt.)

### **SAN FRANCISCO AIRPORT/COMMUNITY ROUNDTABLE**

K. McKeithen  
J. Dobbie (Alt)

### **SAN MATEO COUNTY EMERGENCY SERVICES COUNCIL**

K. McKeithen  
C. Marsala (Alt.)

### **SAN MATEO COUNTY SUB-REGIONAL HOUSING – POLICY ADVISORY COM.**

J. Janz  
J. Carlson (Alt)

### **GRAND BOULEVARD TASK FORCE**

C. Marsla



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH  
KIKUCHI & ASSOCIATES FOR LANDSCAPE DESIGN SERVICES FOR  
THE HOLBROOK-PALMER PARK IRRIGATION MASTER PLAN  
PROJECT**

#### **RECOMMENDATION:**

Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Kikuchi & Associates to provide landscape design services for the Holbrook-Palmer Park Irrigation Master Plan Project in an amount not to exceed \$20,200, plus a 10% contingency, for a total authorization of \$22,220.

#### **BACKGROUND:**

The Holbrook-Palmer Park Master Plan was approved by Council in April 2005. Many of the projects included in the Master Plan will require additional water demand or modified irrigation configuration. There is a desire to bring forward the Water Tower Lawn project, which will have a high additional water demand because there is currently very little vegetation and not irrigation where the project is proposed. As discussed at the joint City Council/Park and Recreation Commission meeting on August 25, 2008, in order to effectively implement the Water Tower Lawn Project and other Landscape Master Plan projects, an overall irrigation plan needs to be developed. There was agreement that the underground infrastructure should be designed and constructed in phases as the projects are implemented.

The purpose of an irrigation master plan is to determine the water demands of each area of the Park, determine the capacity of the existing well, develop upgrades to the existing well or

additional wells to provide the needed water, develop a master irrigation layout and a phasing plan. Detailed irrigation designs for each Master plan project will be designed with the landscape design of the project. The well upgrades and additions, the major piping and the detailed irrigation for each Landscape Master Plan project will be designed to be implemented in phases as needed.

**ANALYSIS:**

Kikuchi & Associates was selected for Park landscape design services by a qualifications based selection process. They are now considered to be the park landscape architects. Their qualifications include irrigation design.

**FISCAL IMPACT:**

Parcel Tax funds in the amount of \$50,000 were budgeted for the Big Turf Remediation project in FY 2007-08, and carried forward into 2008-09. The Irrigation Master Plan is the first step in upgrading the Big Turf irrigation system.

The Scope of Services and Fee Estimate were negotiated with the selected firm. The final negotiated fee estimate is \$20,200. A 10% contingency of \$2,020 would bring the total authorization to \$22,220, which is within the approved budget.

Prepared By:

Approved:

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Duncan L. Jones, P.E.  
Public Works Director

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Jerome D. Gruber  
City Manager

Attachments: PSA with proposal

PROFESSIONAL SERVICES AGREEMENT  
FOR  
LANDSCAPE ARCHITECTURAL DESIGN SERVICES  
HOLBROOK-PALMER PARK IRRIGATION MASTER PLAN

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and KIKUCHI & ASSOCIATES, hereinafter referred to as the "Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. Project Designation. The Consultant is retained by the City to perform landscape architectural design services in connection with the project designated as Holbrook-Palmer Park Carriage Irrigation Master Plan.
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within 120 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.
4. Payment. The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:
  - a. Payment for the work provided by Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Consultant shall not exceed \$20,200.00, without express written modification of the agreement signed by the City.
  - b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
  - c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.
  - d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.

5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.
6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.
7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.
8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.
9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant
10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

12. Non-Waiver. Waiver by the City of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

13. Termination.

a. The City reserves the right to terminate this agreement at any time by giving thirty (30) days written notice to the Consultant.

b. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this agreement between surviving members of the Consultant and the City, if the City so chooses.

14. Notices. Notices to the Town of Atherton shall be sent to the following address:

Duncan Jones, Atherton Public Works Director  
91 Ashfield Road  
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

Kikuchi & Associates  
730 Mill Street  
Half Moon Bay, CA 94019

15. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both City and Consultant.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Town of Atherton

Consultant

By \_\_\_\_\_  
Jerry Gruber, City Manager

By \_\_\_\_\_

Approved as to Form

By \_\_\_\_\_  
Marc Hynes, City Attorney

EXHIBIT "A"  
SCOPE OF SERVICES

EXHIBIT "B"  
PAYMENT

1. Consultant shall be paid up to \$20,200.00 as per Exhibit "B" to complete the scope of work as outline in Exhibit "A".
2. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.

June 18, 2008



Kikuchi & Associates  
Landscape Architecture  
Site Planning

Duncan Jones, PE  
Director of Public Works  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

RE: Landscape Architectural Services – Holbrook-Palmer Park Irrigation Master Plan

Dear Duncan,

It has been a pleasure to work with you on the Holbrook-Palmer Park landscape improvements. Thank you for the opportunity to provide continuing services to the Town of Atherton. Per your request, we have determined the professional fees necessary to document an Irrigation Master Plan for the entire Holbrook-Palmer Park. Please find this letter a detailed description of our services and fees.

IRRIGATION MASTER PLAN DESIGN PHASE: Upon your authorization, we will commence an Irrigation Master Plan Design for the entire park for the purpose of planning for future park improvement projects as well as to determine whether or not the current irrigation well can continue to provide sufficient water for current as well as future demands. This Irrigation Master Plan Phase will provide an Existing Conditions Plan, an Existing Water Demand Plan, and Irrigation Master Plan, and an Irrigation Phasing Plan. All of these plans will aid the Town in managing current and future water use at Holbrook-Palmer Park. The following is the process we will follow throughout the Irrigation Master Plan Design Phase:

1. Kikuchi & Associates will meet at the site with a Town representative to discuss the conditions of the existing irrigation system. We will walk the site with the representative to record the locations of existing valves, circuits, and mainlines and we will also inventory the newer, more recently installed irrigation circuits. Additionally, we will determine the capacity and flow rate of the existing irrigation well. From the information gathered at the walk-through and as part of additional observations, we will produce an irrigation as-built drawing.
2. From the irrigation as-built drawing and our field observations, we will calculate as closely as possible the existing irrigation system demand in gallons per day or week as appropriate. A plan will be generated indicating water use zones with each zone representing a different water demand. This number will become a

benchmark number for redesigning the existing system and will help in determining if another well may be necessary.

3. A new Irrigation Master Plan will be designed based on the Holbrook-Palmer Park Master Plan build-out and will indicate hydrozones with estimated water demand for each zone, mainline pipe routing, valves locations, and hydraulic engineering for the new mainline. Recently installed irrigation circuits and equipment will be maintained and considered “new”. Outdated circuits and lines will be considered defunct and will be re-zoned for future improvements. Based on the new irrigation master plan, the total water demand will be calculated and the determination as to whether or not a new irrigation well is necessary will be made.
4. Upon completion of the Irrigation Master Plan, a Phasing Plan will be generated. The purpose of this plan will be to determine a sequence by which the Irrigation Master Plan is implemented. Recently installed circuits will be given a priority over future phases of park work. Irrigation mainline, well, and valve locations will all be considered when determining an order of installation.

Please note that this phase does not include specific circuit design or head layout for any of the areas within the park. Individual circuit designs will take place as part of the area specific improvements under separate permits as they take place in the future.

During this phase we will meet with you to review these documents and the progress of our drawings at critical stages.

Our fees for this phase are based upon our estimated personnel time to accomplish the above outlined scope of work. At this time we anticipate a total of approximately 245 hours over a three month period of time in order to produce a twenty-five sheet set irrigation master plan. We will invoice our fees monthly for this phase on a time and materials basis based on a lump sum amount of . . . \$20,200.00

Please note that Construction Observation is not included in the above fees. Time, if required, will be determined in the future upon completion of this scope of work.

Fee Schedule

Sr. Principal time	\$135.00/hr.
Jr. Principal time	\$120.00/hr.
Associate time	\$100.00/hr.
Project Manager time	\$90.00/hr.
Draftsman time	\$80.00/hr.
Clerical time	\$45.00/hr.
Reproductions	cost plus 10% handling
Mileage	\$.40/mile

Any services not included with the described scope of work, beyond the control of the Landscape Architect are Additional Services to be billed at the hourly rates. Design revisions beyond the scope listed above may result in additional fees. Printing and reproduction costs other than for inner-office use are reimbursable expenses as noted. Billings shall be submitted monthly for the time expended and are due within 30 days or subject to a 1-1/2% interest charge.

Kikuchi & Associates maintains a \$1,000,000 professional liability policy and a \$2,000,000 general office insurance policy.

We are looking forward to working with the Town of Atherton on this phase of Holbrook-Palmer Park improvements. If you have any questions in regards to the process, our fee structure, or any other item as described above, please feel free to call. Please let us know if there is any additional information needed in order for the Town to execute an Agreement.

Sincerely,



Christopher Kankel, ASLA, Vice President  
California Registration Number 4051

<b>H-P Park Irrigation Master Plan</b>				
<i>Task</i>	<i>Sr. Principal</i>	<i>Jr. Principal</i>	<i>P.M./Drafts</i>	<i>Clerical</i>
<i>1. Site Recon./Existing Conditions:</i>				
misc. start-up	1	6		
site recon for base			6	
base in CAD			12	
meet w/Town rep. & walk site		4	6	
well research		2		
draft plan		2	12	
cover sheet		1	3	
misc.		2	2	2
subtotal	1	17	41	2
hourly rates	\$135.00	\$120.00	\$90.00	\$45.00
fee	\$135.00	\$2,040.00	\$3,690.00	\$90.00
<b>Task Subtotal</b>				<b>\$5,955.00</b>
<i>2. Existing Irrigation Demand Plan:</i>				
zone existing conditons plan		4	20	
calculate water demand		6	6	
tabulate and draft calculations		4	2	
misc.		2	2	2
subtotal	0	16	30	2
hourly rates	\$135.00	\$120.00	\$90.00	\$45.00
fee	\$0.00	\$1,920.00	\$2,700.00	\$90.00
<b>Task Subtotal</b>				<b>\$4,710.00</b>
<i>3. Irrigation Master Plan:</i>				
park master plan into CAD			10	
design and draft	2	16	24	
misc.	1	4	4	2
subtotal	3	20	38	2
hourly rates	\$135.00	\$120.00	\$90.00	\$45.00
fee	\$405.00	\$2,400.00	\$3,420.00	\$90.00
<b>Task Subtotal</b>				<b>\$6,315.00</b>
<i>4. Phasing Plan:</i>				
design and draft	1	8	16	
misc		3	3	
subtotal	1	11	19	0
hourly rates	\$135.00	\$120.00	\$90.00	\$45.00
fee	\$135.00	\$1,320.00	\$1,710.00	\$0.00
<b>Task Subtotal</b>				<b>\$3,165.00</b>
<b>Project Total</b>				<b>\$20,145.00</b>



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: NEAL J. MARTIN, TOWN PLANNER**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: AUTHORIZATION TO SURVEY TOWN RESIDENTS ABOUT SECOND DWELLING UNIT, GUEST HOUSES AND INTERNAL LIVING UNITS**

#### **RECOMMENDATION:**

Authorize Town Staff to send the attached survey to all Town residents with the October edition of the *Athertonian*.

#### **BACKGROUND and DISCUSSION:**

One of the goals of the City Council is to obtain certification of the 2007-14 Housing Element Update from the California Department of Housing and Community Development (HCD).

One of the programs acceptable to (HCD) for providing new affordable housing in smaller cities like Atherton is the development of Second Dwelling Units. However, during the period 1999-2006, only four new Second Dwelling Units were constructed in Atherton. Suggestions have been made as to how the development of new Second Dwelling Units might be increased, and those will be discussed in the coming months as the Update is prepared.

However, HCD also requires projections of future numbers of Second Dwelling Units by income category. HCD requires that projections be based on current actual rental rates obtained through the use of surveys. In order to obtain the necessary data, Staff is proposing to mail the attached survey to all Atherton residents with the October 2008 edition of the *Athertonian*. The accompanying article is also proposed to be included in the *Athertonian*.

In addition, the survey would provide the Council with information concerning use of guest houses, availability of internal living units, and residents' opinions about possible ordinance changes.

**FINANCIAL IMPACT:**

The cost for the 2007-14 Housing Element Update Project is included in the adopted 2008-09 Atherton Budget. The cost of the survey will be a part of that budget item.

**FORMAL MOTION:**

I move that the City Council authorize Town Staff to send the attached survey to all Town residents with the October edition of the *Athertonian*.

Prepared by:

Approved by:

\_\_\_\_\_  
Neal J. Martin  
Town Planner

\_\_\_\_\_  
Jerry Gruber  
City manager

Attachment

## *Athertonian* Article

### **City Council Urges Survey of Guest Houses, 2<sup>nd</sup> Dwelling Units and Internal Living Quarters**

Every seven years or so, Atherton and all of the other cities and counties in California are faced with a State mandate to update the Housing Elements of their General Plans. The next update is required to be completed by Atherton and other Bay Area jurisdictions by June 2009. Each city and county is required to plan for providing market rate housing, as well as, their fair share of affordable housing within their jurisdiction. In the past, Atherton has used planning for 2<sup>nd</sup> Dwelling Units to provide a part of its fair share of affordable housing. Another way has been to support the expansion of faculty housing at Menlo College and Menlo School in addition to support for the provision of housing for the retired religious on the campus of Sacred Heart Schools.

The housing elements are reviewed and judged whether they meet the provisions of State Housing Element Law by the California Department of Housing and Community Development. The Town's ability to provide new housing sites is limited by its low density zoning and almost completely developed condition.

There is, however, an opportunity to use Atherton's existing stock and future construction of guest houses, 2<sup>nd</sup> dwelling units and internal living quarters as a means of meeting its fair share of affordable housing requirements. Currently in Atherton, guest houses are limited to a 30 day per year occupancy. 2<sup>nd</sup> dwelling units may be occupied full time but are limited in their placement on the lot. Internal living quarters for in-laws, staff, and others are limited by the number of kitchens permitted in each house.

The City Council is most interested in determining the current type, size, occupancy status, rental rates, if any, and the community's opinion concerning possible changes to existing ordinances related to guest houses, 2<sup>nd</sup> dwelling units and internal living quarters. Possible ordinance changes include removing the 30-day per year occupancy limitation for guest houses, allowing 2<sup>nd</sup> dwelling units to be located in the area of the lot where other accessory structures can be located, and allowing full kitchens in internal living quarters.

The survey included in this addition of the *Athertonian* is intended to obtain this information. **This survey is anonymous** and will not be used by the Town regarding the legality of these types of dwelling units. The City Council asks that one survey be filled out for each household in Atherton, even if there is not an existing guest house, 2<sup>nd</sup> dwelling unit or internal living quarter at this property. Please return the survey to Atherton City Clerk, 91 Ashfield Road, Atherton, CA 94027.

Draft

**Town of Atherton**  
**Second Dwelling Unit, Guest House and Internal Living Unit Survey**

State law requires all cities, towns and counties to plan for the provision of affordable housing. Atherton uses Second Dwelling Units as one means of complying with the law. In order to better understand the availability of Second Dwelling Units in Atherton, the City Council is requesting that residents fill out this survey. The City Council is also requesting people’s opinions and interest in making Guest Houses available for rent or occupancy on a full time basis.

Your cooperation in filling out and returning this survey is appreciated.

**Please note that this survey is to be completed anonymously** and that no identifying information is required or requested from the person completing the survey.

**Definitions:**

A **Second Dwelling Unit** is a self-contained dwelling that may be occupied on a full time basis, containing living and sleeping facilities, facilities for cooking and eating, and a bathroom. It may be either attached to the main building, or separate from it.

A **Guest House** is a self-contained dwelling that may only be occupied for up to 30 days per year, containing living and sleeping facilities, facilities for cooking and eating, and a bathroom. It is normally detached from the main building.

An **Internal Living Unit** is additional living quarters inside homes, containing living and sleeping facilities, facilities for cooking and eating (however, a second full kitchen is not allowed), and a bathroom.

If you have a Second Dwelling Unit, Guest House or Internal Living Unit please circle the appropriate letter for the responses in Section A.

If you do not have a Second Dwelling Unit, Guest House or Internal Living Unit please fill out Section B.

**Section A**

<b>Second Dwelling Unit</b>	<b>Guest House</b>	<b>Internal Living Units</b>
1. About how big is your unit? a. Under 600 square feet b. Over 600 square feet c. Estimate size _____ square feet	1. About how big is your unit? a. Under 600 square feet b. Over 600 square feet c. Estimate size _____ square feet	1. About how big is your unit? a. Under 600 square feet b. Over 600 square feet c. Estimate size _____ square feet
2. Is the unit: a. Attached to your main house? b. Detached from the main house?	2. Is the unit: a. Attached to your main house? b. Detached from the main house?	2. Type of unit: a. Studio b. 1 bedroom c. 2 bedroom
3. Type of unit: a. Studio b. 1 bedroom c. 2 bedroom	3. Type of unit: a. Studio b. 1 bedroom c. 2 bedroom	3. Is the unit occupied? a. Yes (if “yes” proceed to question #5) b. No (if “no” ignore question #4, and go to #5)

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Second Dwelling Unit	Guest House	Internal Living Units
4. Is the unit occupied? a. Yes (if “yes” proceed to question #5) b. No (if “no” ignore question #5, and go to #6)	4. How often is the unit occupied? a. 1 time per year b. 2 times per year c. Usually occupied d. Rarely occupied	4. What is the monthly rent of your unit? a. No rent charged b. Under \$600 c. \$601 to \$1,000 d. \$1,001 to \$1,500 e. \$1,501 to \$2,000 f. Other (please specify \$ _____)
5. What is the monthly rent of your unit? a. No rent charged b. Under \$600 c. \$601 to \$1,000 d. \$1,001 to \$1,500 e. \$1,501 to \$2,000 f. Other (please specify \$ _____)	5. If permitted, would you be interested in renting or occupying your Guest House full time? a. Yes (if “yes” proceed to question #6) b. No (if “no” proceed to Section B)	5. If you don’t currently rent your unit, what would you expect to charge if you did? a. No rent charged b. Under \$600 c. \$601 to \$1,000 d. \$1,001 to \$1,500 e. \$1,501 to \$2,000 f. Other (please specify \$ _____)
6. If you don’t currently rent your unit, what would you expect to charge if you did? a. No rent charged b. Under \$600 c. \$601 to \$1,000 d. \$1,001 to \$1,500 e. \$1,501 to \$2,000 f. Other (please specify \$ _____)	6. What would you expect to charge if you rented your Guest House? a. No rent charged b. Under \$600 c. \$601 to \$1,000 d. \$1,001 to \$1,500 e. \$1,501 to \$2,000 f. Other (please specify \$ _____)	
7. How many Second Dwelling Units do you have? a. Please specify _____		

**Section B**

8. Would you support or oppose an ordinance change to increase the allowable size of a Second Dwelling Unit from 600 square feet to 1,200 square feet?  
 a. Support  
 b. Oppose

9. Would you support or oppose an ordinance change that would increase the amount of time that a Guest House could be occupied from 30 days per year to full time?  
 a. Support  
 b. Oppose

10. We would appreciate your comments and suggestions.

Thank you for your participation.

ATHERTON CITY COUNCIL



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: EILEEN WILKERSON, ASSISTANT CITY MANAGER**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: ADOPTION OF A RESOLUTION APPROVING A NEW POLICY – POLICY  
AGAINST WORKPLACE VIOLENCE**

#### **RECOMMENDATION:**

Staff recommends that the City Council Adopt a Resolution Approving a New Policy - Policy Against Workplace Violence

#### **INTRODUCTION:**

A Town policy against workplace violence is needed to comply with Federal and State law, to reaffirm the Town's strong commitment to prohibit workplace violence, and to provide a safe work environment that is free of violence and the threat of violence.

In August 2008, staff began preparing a Draft Town Policy - Policy Against Workplace Violence. During the past month, the draft policy has undergone revisions due to review by the Town's City Manager, Management Team, Union Business Representatives and Shop Stewards, and District legal and labor counsel.

The draft policy presented to the Council for action on September 17 was emailed to all appropriate Union representatives for both Atherton Police Officers' Association (APOA) and Teamsters Local Union No. 856. The draft policy was posted on September 2, 2008, for staff comment.

APOA sent an email supporting the Policy and there have been no comments from Teamsters or any staff as of today.

Prepared by:

Approved by:

---

Eileen Wilkerson  
Assistant City Manager

---

Jerry Gruber  
City Manager

Attachment:

- Draft Town Policy - Policy Against Workplace Violence
- Resolution

# Town of Atherton

<b>DRAFT Policy</b>	<b>Number:</b> xx	<b>Date of Approval:</b>	<b>Adopted By:</b> Resolution xx-08
<b>Title:</b> Policy Against Workplace Violence	<b>Prepared By:</b> J. Gruber	<b>Revised By:</b>	<b>Page:</b> Page 1 of 2
<b>Purpose:</b> To reaffirm the Town's strong commitment to prohibit workplace violence as defined below and to provide a safe work environment that is free of violence and the threat of violence.			

## 1. STATEMENT OF POLICY

The Town of Atherton is committed to providing a safe work environment that is free of violence and the threat of violence. Effectively handling critical workplace incidents, especially those dealing with actual or potential violence, is a top priority.

1. Violence or the threat of violence against or by any employee or elected official of the Town of Atherton or any other person is unacceptable.
  - 1.1 Should a non-employee or Town elected official, on Town of Atherton property, demonstrate or threaten violent behavior he/she may be subject to criminal prosecution, or
  - 1.2 Should an employee, during working hours, demonstrate or threaten violent behavior he/she may be subject to disciplinary action up to and including termination and also may be subject to criminal prosecution.
2. The following actions are considered violent acts:
  - 2.1 Striking, punching, slapping or assaulting another person.
  - 2.2 Fighting or challenging another person to a fight.
  - 2.3 Grabbing, pinching or touching another person in an unwanted way whether sexually or otherwise.
  - 2.4 Engaging in dangerous, threatening or unwanted horseplay.
  - 2.5 Possession, use, or threat of use, of a gun, knife or other weapon of any kind on Town of Atherton property, including parking lots, other interior and exterior premises, Town of Atherton vehicles, or while engaged in activities for the Town of Atherton in other locations, unless such possession or use is a requirement of the job.
  - 2.6 Verbal assaults. Verbal assaults are statements that would place a reasonable person in fear of harm for the safety of himself/herself or others and that serve no legitimate workplace purpose.
  - 2.7 Threatening harm or harming another person, or any other action or conduct that implies the threat of bodily harm.
3. Any employee or Town elected official who is a victim of any violent threatening or harassing conduct, any employee or Town elected official witness to such conduct, or any employee or Town elected official receiving a report of such conduct, whether the perpetrator is a Town of Atherton employee or a non-employee, shall immediately report the incident to their supervisor or other appropriate person in the chain of command.

911 Law Enforcement  
Site Supervisor  
Assistant City Manager, 650/752-0546  
City Manager, 650/752-0500

<b>DRAFT Policy</b>	<b>Number:</b> xx	<b>Date of Approval:</b> x	<b>Adopted By:</b> Resolution xx-08
<b>Title:</b> Policy Against Workplace Violence	<b>Prepared By:</b> J. Gruber	<b>Revised By:</b>	<b>Page:</b> Page 2 of 2

4. No one, acting in good faith, who initiates a complaint or reports an incident under this policy will be subject to retaliation or harassment by the Town.
5. Any employee reported to be a perpetrator will be provided both due process and may, at the employee's own expense, engage a representative to advise and assist the employee before the Town of Atherton takes disciplinary action.
6. Anyone who fears for the safety of the victim, perpetrator, or others should call law enforcement immediately.

**RESOLUTION NO. 08-\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO APPROVE TOWN POLICY – POLICY AGAINST WORKPLACE VIOLENCE**

**WHEREAS**, the City Council has determined that a Town policy - Policy Against Workplace Violence is needed to comply with Federal and State law, to reaffirm the Town’s strong commitment to prohibit workplace violence, and to provide a safe work environment that is free of violence and the threat of violence;

**THEREFORE BE IT RESOLVED**, that the City Council does hereby approve Town policy - Policy Against Workplace Violence as presented in the attachment to this Resolution and incorporated by reference herein; and

**FURTHER BE IT RESOLVED**, that the City Council does hereby adopt this Resolution.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 17<sup>th</sup> day of September, 2008, by the following vote:*

*AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:  
ABSTAIN: COUNCIL MEMBERS:*

\_\_\_\_\_  
James R. Janz, MAYOR  
Town of Atherton

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes  
\_\_\_\_\_  
Marc G. Hynes, City Attorney



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JEROME GRUBER, CITY MANAGER**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: ADOPTION OF RESOLUTIONS REVISING TOWN OF ATHERTON  
CITY COUNCIL RULES OF PROCEDURE AND TOWN OF ATHERTON  
CODE OF CONDUCT AND PROCEDURES**

#### **RECOMMENDATION:**

Staff recommends that the City Council adopt resolutions amending the City Council Rules of Procedure and the Code of Conduct and Procedures to include provisions regarding statements made regarding City Council policy.

#### **BACKGROUND - ANALYSIS:**

The attached resolutions conform the Rules of Procedure and the Code of Conduct and Procedures to provisions which the Council previously adopted in the Resolution Governing Town Committees and Commissions.

#### **FISCAL IMPACT:**

**None.**

Prepared by:

/s/ Marc Hynes

Marc G. Hynes  
City Attorney

Approved by:

\_\_\_\_\_  
Jerome Gruber  
City Manager

Attachment: Exhibit A. Resolution Amending City Council Rules of Procedure  
Exhibit B. Resolution Amending Code of Conduct and Procedures

**RESOLUTION NO. 08-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING CITY COUNCIL RULES OF PROCEDURE REGARDING STATEMENTS  
CONCERNING TOWN POLICY**

The City Council of the Town of Atherton hereby resolves as follows:

Section 1. The Town of Atherton City Council Rules of Procedure shall be amended by adding thereto a new Paragraph 11.7 entitled "Representations of Town and/or City Council Policy" to read as follows:

**"11.7 Representations of Town and/or City Council policy**

Council members shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval."

This Resolution shall be effective immediately upon adoption.

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:*

<i>AYES:</i>	<i>Council Members:</i>
<i>NOES:</i>	<i>Council Members:</i>
<i>ABSENT:</i>	<i>Council Members:</i>
<i>ABSTAIN:</i>	<i>Council Members:</i>

\_\_\_\_\_  
James Janz, MAYOR  
Town of Atherton

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc G. Hynes, City Attorney

**RESOLUTION NO. 08-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING TOWN OF ATHERTON CODE OF CONDUCT AND PROCEDURES  
REGARDING STATEMENTS CONCERNING TOWN POLICY**

The City Council of the Town of Atherton hereby resolves as follows:

Section 1. The Town of Atherton Code of Conduct and Procedures shall be amended by adding thereto a new Section 100.09.05 to read as follows:

**“100.09.05** City Council Members, Members of the Commissions, Committees and Staff shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be made without additional City Council approval.”

This Resolution shall be effective immediately upon adoption.

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:*

<i>AYES:</i>	<i>Council Members:</i>
<i>NOES:</i>	<i>Council Members:</i>
<i>ABSENT:</i>	<i>Council Members:</i>
<i>ABSTAIN:</i>	<i>Council Members:</i>

\_\_\_\_\_  
James Janz, MAYOR  
Town of Atherton

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc G. Hynes, City Attorney



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: APPROVAL OF THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO, THE CITY OF MENLO PARK, THE CITY OF EAST PALO ALTO, THE TOWN OF ATHERTON, THE COUNTY OF SAN MATEO AND THE COUNTY OF SANTA CLARA TO PROVIDE FOR A CABLE TELEVISION AND VIDEO FRANCHISING ADMINISTRATION AND ENFORCEMENT PROCESS IN LIGHT OF THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT**

### **RECOMMENDATION:**

Staff recommends that the City Council approve the Amended and Restated Joint Exercise of Powers Agreement (Amended JPA) by and between the City of Palo Alto, the City of Menlo Park, the City of East Palo Alto, the Town of Atherton, the County of San Mateo and the County of Santa Clara to provide for a cable television and video franchising administration and enforcement process relating to state franchise holders under the California Digital Infrastructure and Competition Act (DIVCA). The amended JPA will serve as the substitute for the Joint Exercise of Powers Agreement, dated July 26, 1983, and the Joint Operating Agreement, dated October 13, 1983.

### **BACKGROUND:**

In July 1983, a Joint Exercise of Power Agreement as entered into by Palo Alto, Menlo Park, East Palo Alto, Atherton, and portions of San Mateo and Santa Clara Counties (the Joint Powers) for purposes of obtaining cable television service for residents, businesses, and institutions within these jurisdictions. In October 1983, the parties executed a Joint Operating Agreement giving the City of Palo Alto the sole authority to administer the cable franchise process on behalf of the Joint Powers.

On January 1, 2007, DIVCA went into effect. The purpose of DIVCA is to create a streamlined process for the granting of video service franchises in an effort to foster the rollout of technology, encourage competition, and expand customer choice. This new law permanently changed the franchising and regulatory structure for the provision of cable television and other video services in California. Under DIVCA, video service franchises are now granted exclusively by the California Public Utilities Commission (Commission) rather than by local franchising entities.

In 2007, the Council amended the Atherton Municipal Code to reflect changes in the law due to DIVCA. In 2008, the Council amended the Atherton Municipal Code to establish a fee, consistent with DIVCA, to support public education and government access (PEG) that will apply to AT&T and to Comcast as they provide service under their new state franchise.

DIVCA allows the Joint Powers to continue to serve as the “local entity” for DIVCA purposes. This permits the Joint Powers to continue to rely on Palo Alto for such activities as franchise fee and PEG fee collection and audits, PEG oversight and customer service with respect to all state franchise holders who provide video service in the Joint Powers’ service area. It is recommended that the Council approve the proposed Amended JPA, in substitution of the existing Joint Exercise of Powers Agreement and the Joint Operating Agreement, to reflect changes in the law due to DIVCA and to allow Palo Alto to continue to administer the cable and video franchise enforcement and monitoring process for state franchise holders. A copy of the Amended Agreement showing the revisions is attached to this report.

**FISCAL IMPACT:**

Approval of this Amended Agreement will continue the Town’s ability to receive revenues from COMCAST with the City of Palo Alto as the managing agent.

Prepared By:

Approved By:

/s/ Marc Hynes  
Marc G. Hynes  
City Attorney

\_\_\_\_\_  
Jerry Gruber  
City Manager

Attachment: Amended Agreement

Contract No. \_\_\_\_\_

**AMENDED AND RESTATED  
JOINT EXERCISE OF POWERS AGREEMENT  
BY AND BETWEEN  
THE CITY OF PALO ALTO,  
THE CITY OF MENLO PARK,  
THE CITY OF EAST PALO ALTO,  
THE TOWN OF ATHERTON,  
THE COUNTY OF SAN MATEO  
AND  
THE COUNTY OF SANTA CLARA**

**Dated as of \_\_\_\_\_, 2008**

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**AMENDED AND RESTATED JOINT EXERCISE OF POWERS  
AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO,  
THE CITY OF MENLO PARK, THE CITY OF EAST PALO ALTO,  
THE TOWN OF ATHERTON, THE COUNTY OF SAN MATEO  
AND THE COUNTY OF SANTA CLARA**

This Amended and Restated Joint Exercise of Powers Agreement (the “Agreement”), dated \_\_\_\_\_, 2008 (the “Effective Date”), is made by the City of Palo Alto, the City of Menlo Park, the City of East Palo Alto, the Town of Atherton, the County of San Mateo and the County of Santa Clara (individually, a “Party” and, collectively, the “Parties” or the “JPACable Joint Powers”), in reference to the following facts and circumstances:

**RECITALS:**

A. Title 1, Division 7, Chapter 5 of the California Government Code (the “Joint Exercise of Powers Act” or the “Act”), Section 6500 et seq., authorizes two or more public agencies by agreement to jointly exercise any power common to the contracting agencies. Each of the Parties is a “public agency” within the meaning of the Act, Section 6500.

B. In July 1983, the Parties executed a Joint Exercise of Power Agreement (the “JPA Agreement”), authorizing the City of Palo Alto (“Palo Alto”), on behalf of the JPACable Joint Powers, to administer a cable television franchising process within a common geographical area or franchise area (the “Franchise Area”), described in “Exhibit A,” to award one or more franchises to render state-of-the-art cable television services in that area.

C. In October 1983, the Parties executed a Joint Operating Agreement (the “JOA Agreement”), authorizing Palo Alto on behalf of the JPACable Joint Powers to administer and otherwise oversee and implement the cable television franchise that was awarded to Cable Communications Cooperative of Palo Alto, Inc. (the “Co-op”), in March 1986. In July 2000, the City Council of Palo Alto (the “Council”) approved the assignment and transfer of the Co-op franchise to TCI Cablevision of California, Inc. (“TCI”). In October 2003, Comcast Cable Communications, Inc. acquired TCI’s assets, while Comcast of California IX, Inc. (“Comcast”) held the franchise under the JPA Agreement (the “Comcast franchise”).

D. Under the JPA Agreement, Palo Alto on behalf of the JPACable Joint Powers is granted the power and authority to award and administer a cable franchise for the Franchise Area, as it is outlined in Exhibit A, and a Joint Cable Working Group is (and to the extent there is created by the Cable Joint Powers a Franchise Review Board are) established to deal with any cable issues that may arise. Palo Alto intends to continue as the administrator of the Comcast franchise, to the extent obligations under that franchise will continue to be performed until July 24, 2010, in accordance with

DIVCA, referred to in Recital F, and the Comcast State Franchise (as defined in Section 2.2) and the AT&T State Franchise (as defined in Section 2.2), on behalf of the Cable Joint Powers.

E. Under the JOA Agreement, Palo Alto on behalf of the JPA Cable Joint Powers is required to, among matters, account for franchise fee payments and administration expenses related to administration and enforcement of the Comcast franchise, and to administer the community access process on behalf of the Parties.

F. In September 2006, the Digital Infrastructure and Video Competition Act, Assembly Bill 2987, Stat. 2006, Chapter 700 (“DIVCA”), changed the laws and regulations governing video franchises. The California Public Utilities Commission (the “CPUC”) now has the sole authority to issue video franchises, and local agencies are permitted only to regulate current local cable franchises until the earlier of the expiration date of such franchises or a date on which it is determined that there exists effective competition following the entry of a holder of a state franchise into the Franchise Area. Under DIVCA, a local agency retains its right to impose and collect a franchise fee, to require a franchise to abide by certain public, educational and governmental (“PEG”) channel access (“PEG Access”) obligations, and to exercise due authority over management of their public rights-of-way.

G. One or more of the JPA members, including Palo Alto, Menlo Park, East Palo Alto, and Atherton have adopted, and the Counties of San Mateo and Santa Clara are in the process of adopting, ordinances to conform their applicable ordinances, resolutions, laws, rules and regulations to DIVCA. In furtherance thereof, the JPA Cable Joint Powers intends to amend and restate the selected provisions of the JPA Agreement and the JOA Agreement in order to address, among other matters, the rights and obligations of the Parties and the role of Palo Alto with respect to current and future cable and video franchise issues arising in connection with the Comcast franchise obligations, to the extent outstanding, issued to Comcast of California IX, Inc. (“Comcast”) and, in particular, the provision of PEG Access by Comcast and any other holder of a state video franchise (“State Franchise”) which operates within the Franchise Area (“State Franchisee”). Both Comcast and Pacific Bell Telephone Company dba AT&T California (“AT&T”) have been awarded State Franchises to operate within the Franchise Area as of the Effective Date.

H. The Parties intend to substitute this Agreement for the JPA Agreement and JOA Agreement. It is the intention of the Parties to give to the California Secretary of State written notice of the amendment to the Joint Exercise of Powers Agreement in accordance with California Government Code section 6503.5.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the following covenants, terms and conditions, the Parties agree:

## SECTION 1. TERM; PURPOSE OF AGREEMENT

1.1 The term of this Agreement will commence on its execution by the Parties and continue on a year-to-year basis until the Parties agree to terminate this Agreement or a majority of the Parties have withdrawn from the Cable Joint Powers pursuant to Section 6.

1.2 Pursuant to the Joint Exercise of Powers Act, the purpose of this Agreement is (A) to provide for the administration of the cable television and video franchising and franchise administration and enforcement processes relating to the cable franchise State Franchises separately granted to Comcast and AT&T (and any other State Franchisee) to provide cable and related video services within the Franchise Area until the current Comcast franchise expires on or before July 24, 2010, and thereafter as provided in Sections 2.3 and 2.4, and (B) to provide for the administration of any other respective expiration dates of their State Franchises and any renewals thereof that results in the provision of cable and/or related video services within the Franchise Area at any time during the term of this Agreement. The purpose of this Agreement is also to make efficient use of the common powers of each Party and develop all other reasonably necessary or appropriate powers to provide greater individual and group coordination and collaboration among the Parties to secure state-of-the-art video services to the extent permitted by the laws and regulations governing such services and operations.

## SECTION 2. ORGANIZATION, POWERS, FUNCTIONS

2.1 There will not be established pursuant to the Act an agency which will be a public entity separate from the Parties. The Parties, acting in their capacity as a joint action agency, will be informally referred to in this Agreement as the Cable Joint Powers.

2.2 Palo Alto is empowered and authorized to administer and enforce the Comcast franchise and no other franchise until the Comcast franchise expires in July 2010, or earlier in accordance with DIVCA, State Franchises awarded to Comcast (the "Comcast State Franchise") and AT&T (the "AT&T State Franchise") and any other State Franchisee seeking to provide video service under DIVCA within the Franchise Area, except as (a) provided in Sections 2.3 or 2.4, or (b) as may be expressly disapproved by the Parties and expressly reserved to any Party other than Palo Alto or, if the other franchise is unique to any Party, as may be expressly approved by such Party. Nothing in this Agreement will be construed to limit the right of any Party to issue and administer a cable or video franchise that operates wholly and exclusively within that Party's jurisdictional boundary or to take such actions as are necessary to effectuate the purpose of this Agreement.

2.3 Notwithstanding the provisions of Sections 1.2 and 2.2, if Comcast obtains a State Franchise and intends to continue operating within the Franchise Area under its

State Franchise, then the Parties empower and authorize Palo Alto to administer the Comcast State Franchise and the AT&T State Franchise on behalf of the PartiesCable Joint Powers to the extent Palo Alto elects to continue to administer the franchise operating within the Franchise Area and to the extent it is permitted by DIVCA, including, but not limited to, collecting and remitting the franchise fee and any PEG support fee after accounting for reasonable and necessary expenses, enforcing customer service standards, and managing PEG Access for the Franchise Area. A Party may at any time give reasonable notice to Palo Alto and the other Parties that, in accordance with Section 6, it wishes to withdraw from this Agreement and assume all rights and obligations with respect to the administration and management of the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within its jurisdictional boundary.

2.4 Notwithstanding the provisions of Sections 1.2 and 2.2, if any entity other than Comcast or AT&T is granted a State Franchise and it elects to provide video service within the Franchise Area, then the PartiesCable Joint Powers empower and authorize Palo Alto to administer that State Franchise on behalf of the PartiesCable Joint Powers to the extent Palo Alto elects to continue to administer such State Franchise operating within the Franchise Area and to the extent it is permitted by DIVCA, including, but not limited to, collecting and remitting the franchise fee and any PEG support fee after accounting for reasonable and necessary expenses, enforcing customer service standards, and managing PEG Access for the Franchise Area. A Party may at any time give reasonable notice to Palo Alto and the other Parties that, in accordance with Section 6, it wishes to withdraw from this Agreement and assume all rights and obligations with respect to the administration and management of such State Franchise operating within its jurisdictional boundaries.

2.5 The right of Palo Alto to acquire an ownership interest in the cable or video system of Comcast pursuant to Sections 1.2.01 and 1.2.02 of the JOA Agreement is hereby terminated. The right of any Party or some, but not all, Parties to acquire an ownership interest in the cable or video system of Comcast, AT&T or any other State Franchisee will be determined by agreement of the Parties at a mutually convenient time.

### SECTION 3. WORKING GROUP, REVIEW BOARD

3.1 Palo Alto's city manager (the "City Manager") will establish a joint cable working group (the "Working Group") to consider any and all cable and video service-related issues relating to the Comcast franchise and, as applicable, the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within the Franchise Area pursuant to Section 2.4, and to make recommendations to be presented to the council of Palo Alto ("City Council"). The City Manager or designee will chair the Working Group meetings and proceedings and otherwise provide staff services to the Working Group. These meetings will not be subject to compliance with the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

3.1.1 Each Party has the right to designate an individual to become a voting member of the Working Group. A representative of Stanford University will may be designated the representative of the County of Santa Clara.

3.1.2 The Working Group will continue to function during the Comcast franchise and, thereafter, the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within the Franchise Area pursuant to Section 2.4, for the purpose of oversight, review and enforcement of all requirements of the operation and management of the cable or video system over which DIVCA confers authority to local agencies.

3.2 Upon its Palo Alto's receipt of a request, in writing, of a majority of the Parties, Palo Alto by its City Manager or designee will inform the Parties of the request to appoint a franchise review board (the "Review Board") to address any issue that cannot or has not been resolved by the Working Group to the complete satisfaction of all Parties. Palo Alto then will arrange for a meeting to consider the creation of the Review Board. The governing body of each Party will each appoint an individual to serve on the Review Board. The Review Board, if appointed, will consist of seven (7) members, appointed by the governing body or the delegate of each Party; provided, however, two (2) members will be appointed by the City Council Palo Alto and one (1) member each will be appointed by the other five (5) Parties. The County of San Mateo member will represent the interests of residents of unincorporated San Mateo County, comprising Ladera, Menlo Oaks and University Heights. The County of Santa Clara will represent the interests of residents of unincorporated Santa Clara County, comprising the Leland Stanford Junior University. These meetings will be subject to compliance with the Ralph M. Brown Act, California Government Code Section 54950 *et seq.* The Parties acknowledge that the Review Board has not been appointed as of the Effective Date.

3.2.1 The Review Board, if appointed, will review and resolve issues formally raised by any Party in accordance with Section 3.2 in regard to the administration, and enforcement of the franchise or the and execution of responsibilities relating to State Franchise(s) Franchises operating within the Franchise Area assigned to local agencies by DIVCA that are issues not expressly delegated to Palo Alto to handle under the terms of this Agreement, or delegated to the franchisee for disposition, or delegated to any Party

pursuant to such Party's authority by the terms of any franchise agreement or similar document. Issues arising under the Review Board's jurisdiction may include, but will not be limited to, PEG Access. The processes and procedures for formally presenting issues to and resolving issues by the Review Board will be established at the time the Review Board is appointed.

3.2.1 The Review Board, if appointed, will convene only when a majority of the Partiesmembers of the Cable Joint Powers requests, in writing, the convening of such meeting and notice is directed to Palo Alto, as the administrator, that all Cable Joint Powers members shall be given notice of the convening of such meeting in order to resolve any issue that is presented by one or more Partiesmembers of the Cable Joint Powers.

3.2.2 Palo Alto, as administrator of the JPA Agreement and continuing as the administrator of this Agreement in accordance with Section 2.2, will be responsible for the oversight, enforcement and regulation of the Comcast franchise Comcast State Franchise, the AT&T State Franchise and, as well, any other State Franchise, consistent with DIVCA. Palo Alto will follow the determinations of the Review Board, if appointed, in matters under the Review Board's jurisdiction. In its role of administrator, Palo Alto will provide the Review Board members on a regular basis at the frequency as may be determined by the Review Board information on its activities and substantial changes in the Comcast franchise Comcast State Franchise, the AT&T State Franchise and, as well, any other State Franchise, including, but not limited to, rates, services, PEG Access and other negotiations matters. The City Manager or designee with the assistance of the Working Group members will provide staff services to the Review Board, if appointed, and such services are requested and approved by the Cable Joint Powers.

#### SECTION 4. FRANCHISE-RELATED REVENUES AND EXPENSES

4.1 Palo Alto will receive and account for any and all franchise fees due and payable by Comcast, AT&T and any other State Franchisee, to the Cable Joint Powers. The franchise fees will be made payable to Palo Alto. After itPalo Alto accounts for the reimbursement of all costs and expenses contemplated in Section 4.2, Palo Alto will distribute the franchise fees to the other Parties on the basis of the percentage of franchise revenue derived from cable or video customers in each jurisdiction.

4.2 Palo AlsoAlto will be reimbursed for all out-of-pocket costs and expenses incurred in connection with its administration of the Comcast Franchise Comcast State Franchise, the AT&T State Franchise and any other State Franchise, operating within the Franchise Area. The franchise fees received will be allocated according to the following priority:

A. To reimburse Palo Alto for any out-of-pocket costs that Palo Alto may incur in the administration of any and all franchisesState Franchises, including, but not limited to, reasonable attorneys' fees and the fees of consultants with expertise in cable and video franchising and the costs associated with PEG Access and programming for

any PartyCable Joint Powers member other than Palo Alto or otherwise reasonably attributable to a Partysuch member;

B. To cover the costs of the regulatory and oversight functions; and

C. To pay for other cable- or video-related activities benefiting the area in which the revenue was generated, as allocated by Palo Alto among all of the Parties on the basis of the percentage of revenues derived from the cable or video customers located in each jurisdiction.

4.3 The Working Group will review Palo Alto's reimbursement requests on a quarterly basis or other frequency as may be determined by the Working Group. The Review Board, if appointed and so authorized, will review Palo Alto's reimbursement claims to the extent such claims are not approved by the Working Group, and the. The determination of the Review Board will be final.

4.4 Palo Alto will submit an accounting of franchise-related revenues and expenses to the Cable Joint Powers on a quarterly basis or other frequency as may be determined by the Working Group. Palo Alto's accounting of franchise-related revenues and expenses will be audited annually by an independent auditor and included in the audit of Palo Alto's books and accounts, which will be conducted annually. The audit of the independent auditor will be made available to all other Parties within thirty (30) days of its issuance.

## SECTION 5. PUBLIC, EDUCATION AND GOVERNMENT ACCESS

5.1 The Parties have appointed the public benefit corporation and not-for-profit entity, the Midpeninsula Community Media Center, Inc. ("Media Center"), as the community access organization to administer the PEG access channels and manage PEG aAccess support on the cable or video systems that are required to be provided under the Comcast franchise Comcast State Franchise, the AT&T State Franchise and any other State Franchise in the provision of PEG aAccess in the Franchise Area, including, but not limited to, the development of rules for the administration of bandwidth of the institutional network to be made available to public institutions and non-commercial users of the cable or video service system(s) in the Franchise Area. Each Party will reasonably cooperate with the Media Center or other community access organization for the purpose of implementing PEG aAccess.

5.2 Any revocation of the designation of the Media Center or other entity as the community access organization may be referred to the Review Board, if appointed, whose decision on revocation will be final.

5.3 Palo Alto will ensure that the Media Center or other community access organization performs the following primary responsibilities:

- A. The adoption of rules governing the use of PEG channel time and facilities;
- B. The scheduling and use of PEG channel time and facilities;
- C. The provision of training to PEG channel access users;
- D. The raising and uses of funds for PEG aAccess purposes consistent with the Comcast franchise Comcast State Franchise, the AT&T State Franchise and any other State franchise(s)Franchise;
- E. The maintenance of PEG aAccess channels and facilities and coordination of the use of institutional network access facilities;
- F. The promotion of PEG aAccess; and
- G. The development of new PEG aAccess uses and the determination of the need for additional PEG Access channels and facilities.

5.4 Palo Alto will require the Media Center or other community access organization to provide reports annually or at other established frequency to the City Council and the Review Board, if appointed, on its budget and activities, including, but not limited to, its accomplishments during the annual reporting period or any other reporting period.

5.5 Each Party will be responsible for administering the government access channel(s) and that portion of the institutional network available for local government use within its jurisdictional boundary lying within the Franchise Area.

5.6 Palo Alto will receive and account for any and all PEG support fees paid and to be paid by Comcast, AT&T and any other State Franchisee serving the Franchise Area and remit the appropriate amounts to the Media Center or other community access organization. The PEG support fees will be made payable to Palo Alto.

## SECTION 6. WITHDRAWAL OF MEMBER

6.1 Any Party may withdraw from participation in the Cable Joint Powers or the Review Board, if appointed, or the Working AgreementGroup, on terms and conditions mutually acceptable to the Parties or, if no agreement can be reached by the Parties, as determined by an arbitrator acceptable to the Parties or in accordance with applicable law.

6.2 A Party seeking to withdraw will provide no less than threesix (36) months' prior written notice to the other Parties of its intention to withdraw. A Party

which seeks to withdraw from the Cable Joint Powers will perform all of its outstanding obligations under this Agreement through the effective date of its withdrawal. A Party's obligation to pay for its allocable portion of administrative costs and expenses incurred to the effective date of withdrawal will survive the withdrawal of a Party from the Cable Joint Powers, and such obligation will also survive the termination of this Agreement.

SECTION 7. NOTICES

7.1 All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by a Party to any other Party or Parties, will be provided, in writing, and will be deemed sufficiently given and served upon the other Party if (1) personally served, (2) sent by United States Postal Service certified mail, postage, prepaid, (3) sent by express delivery service, or (4) in the case of a facsimile, if sent to the telephone number(s) set forth below during normal business hours of the receiving party and followed within 48 hours by delivery of hard copy of the material sent by facsimile, in accordance with (1), (2) or (3) above. Personal service will include, but not be limited to, service by express delivery service and service by facsimile transmission. Delivery of notices properly addressed will be deemed complete when the notice is physically delivered to the Party's designated representative. All notices provided pursuant to this Agreement will be addressed as set forth below or as a Party may subsequently designate by written notice.

TO: Palo Alto  
City Manager  
City of Palo Alto  
P.O. Box 10250  
250 Hamilton Avenue  
Palo Alto, CA 94303  
FAX: (650) 329-2468

with a copy to:  
City Clerk  
City of Palo Alto  
P.O. Box 10250  
250 Hamilton Avenue  
Palo Alto, CA 94303  
FAX: (650) 323-631

And  
City Attorney  
City of Palo Alto  
P.O. Box 10250  
250 Hamilton Avenue  
Palo Alto CA 94303  
FAX: (650) 329-2646

TO: Menlo Park  
City Manager  
City of Menlo Park

701 Laurel Street  
Menlo Park, CA 94025  
FAX: (650) 328-7935

with a copy to:

City Clerk  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025  
FAX: (650) 328-7935

And

City Attorney  
City of Menlo Park  
11100 Alma Street, Suite 210  
Menlo Park, CA 94025  
FAX: (650) 324-0227

TO: East Palo Alto

City Manager  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto, CA 94303  
FAX: (650) 853-3115

with a copy to:

City Clerk  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto, CA 94303  
FAX: (650) 853-3115

And

City Attorney  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto CA 94303  
FAX: (650) 853-50923

TO: Atherton

Town Manager  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027  
FAX: (650) 614-1212

with a copy to: Town Clerk  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027  
FAX: (650)

And Town Attorney  
Town of Atherton  
P. O. Box 279  
Mountain View, CA 94042  
FAX: (650) 967-1395

TO: San Mateo County Executive Manager  
County of San Mateo  
400 County Center  
Redwood City, CA 94063  
FAX: (650) 363-1916

with a copy to: County Clerk  
County of San Mateo  
400 County Center  
San Mateo, CA 94063  
FAX: (650) 363-1916

And County Counsel  
County of San Mateo  
400 County Center  
Redwood City, CA 94063  
FAX: (650) 363-4034

TO: Santa Clara Leland Stanford Jr. University  
450 Serra Mall  
Stanford, CA 94305  
FAX: (650)

with a copy to: General Counsel  
450 Serra Mall  
Stanford, CA 94305  
FAX: (650)

TO: Santa Clara County Executive  
County of Santa Clara  
70 West Hedding, 11<sup>th</sup> Floor  
San Jose, CA 95110  
FAX: (408) 293-5649

with a copy to: Office of the County Counsel

County of Santa Clara  
70 West Hedding, 9<sup>th</sup> Floor  
San Jose, CA 95110  
FAX: (650) 292-7240

SECTION 8. MISCELLANEOUS

8.1 This Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties will comply with all applicable federal, state and local laws in the exercise of their rights and the performance of their obligations under this Agreement.

8.2 All provisions of this Agreement, whether covenants or conditions, will be deemed to be both covenants and conditions.

8.3 This Agreement represents the entire agreement and understanding between the Parties and it supersedes all prior negotiations, representations and contracts, written or oral. This Agreement may be amended by an instrument, in writing, signed by the Parties. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

8.4 Any and all exhibits that may be referred to in this Agreement are by such references incorporated in this Agreement and made a part hereof.

8.5 The Parties agree that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendment or Exhibit hereto.

8.6 As used in this Agreement, the special terms will have the same meaning as those words are defined in the Comcast franchise or in DIVCA, including California Public Utilities Code section 5830. In the event of a conflict, the definitions in section 5830 will take precedence, unless the context otherwise requires the Comcast franchise definition to apply.

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IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement onas of the Effective Date.

ATTEST

CITY OF PALO ALTO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Asst. City Attorney

APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Administrative Services

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

CITY OF MENLO PARK

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

CITY OF EAST PALO ALTO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

TOWN OF ATHERTON

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

COUNTY OF SAN MATEO

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

COUNTY OF SANTA CLARA  
BY: STANFORD UNIVERSITY

\_\_\_\_\_  
SecretaryCounty Clerk

\_\_\_\_\_  
PresidentChair

APPROVED AS TO FORM:

\_\_\_\_\_  
GeneralCounty Counsel

EXHIBIT A



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: BILL YEOMANS, INTERIM FINANCE OFFICER**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: RESPONSE TO GRAND JURY REGARDING GASB45**

#### **RECOMMENDATION:**

Approve letter to Grand Jury.

#### **INTRODUCTION:**

GASB45 (Governmental Accounting Standards Board Statement 45) is a requirement of the Accounting profession to estimate costs for other post-employment benefits (OPEB). The Grand Jury has required all public agencies in San Mateo County to respond on the status of their GASB 45 analysis and costs. A draft response is attached.

Prepared By:

Approved by:

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Bill Yeomans  
Interim Finance Officer

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Jerry Gruber  
City Manager

Attachments:  
Draft Letter to County Grand Jury.



**Town of Atherton**  
**Office of the Mayor**

91 Ashfield Road  
Atherton, California 94027  
650-752-0500  
Fax 650-688-6528

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September 18, 2008

Hon. Joseph C. Scott  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

RE: Awareness of San Mateo County Government Agencies of Reporting  
Requirements for Non-Pension Post-Employment Benefits Report

Hon. Judge Scott:

The Town of Atherton agrees with the findings in the Grand Jury Report and will comply with the three recommendations:

1. The Town of Atherton understands the requirements of GASB 45 (Other Postemployment Benefits, "OPEB"), which are required to be implemented for the Town's Annual Report for the year ending June 30, 2009.
2. The Town's Finance Department will be calculating the OPEB liabilities this fall and making recommendations for funding those liabilities before the preparation of next year's Budget for FY 2009-2010.
3. The Town is in strong financial condition and is prepared to address this obligation.

Sincerely,

James R. Janz  
MAYOR



## Superior Court of San Mateo County

Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

John C. Fitton  
Court Executive Officer  
Clerk & Jury Commissioner

(650) 599-1711  
FAX (650) 363-4698

July 10, 2008

Town Council  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: Awareness of San Mateo County Government Agencies of Reporting Requirements for Non-Pension  
Post-Employment Benefits Report

Dear Councilmembers:

The 2007-2008 Grand Jury filed a report on July 10, 2008 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Joseph C. Scott.

As you are the public agency that has been commented upon by the Grand Jury, your comments are due no later than October 8, 2008 to:

Hon. Joseph C. Scott  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

For all findings, the responding person or entity shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Additionally, as to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.

2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefor.

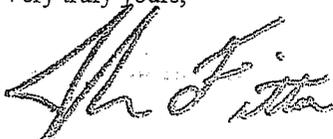
Please submit your responses as follows:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
  - Prepare original on letterhead, address and mail to Judge Scott.
2. Responses to be placed at the Grand Jury website.
  - Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
  - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1711.

If you have any questions regarding these procedures, please do not hesitate to contact Michael P. Murphy, County Counsel, at (650) 363-4762.

Very truly yours,



John C. Fitton  
Court Executive Officer

JCF:mc  
Enclosure

cc: Hon. Joseph C. Scott  
Michael P. Murphy

Information Copy: Town Manager

## Investigation

The Grand Jury began by reviewing the financial reports of the County of San Mateo (County) and interviewing the County Manager and Controller's staff. Next, a questionnaire was mailed to the 73 other agencies in the county that are likely to have OPEB obligations. The questionnaire (see Appendix 1) asked not only about awareness of and preparedness to comply with GASB 45, but also for current expenditures and estimates of liability. All the questions and the responses are discussed below in the Findings.

## Findings

The prescribed implementation dates for GASB 45 are determined by an agency's annual revenues:

**Table 1: Implementation Deadlines**

	<b>Annual Revenues</b>	<b>Effective Date for GASB 45</b>
Phase 1	Revenues \$100 million or more	2007-08
Phase 2	Revenues \$10 million or more but less than \$100 million	2008-09
Phase 3	Revenues less than \$10 million	2009-10

The County implemented GASB 45 reporting beginning with the fiscal year ended June 30, 2006. The County's implementation was early; it was required no later than fiscal year 2007-2008. Clearly, the County was aware and prepared to comply well in advance.

Of the 73 agencies (other than the County) that were queried, 72 responded to the questionnaire. This is a response rate of 99%. The Yes/No responses are tallied in Table 2.

**Table 2: Summary of Yes/No questions and responses**

Question	Response	
	Yes	Percent
1. Is your agency aware of the requirements of GASB 45 in regard to reporting the cost of other post-employment benefits?	70	97
2. Does your agency have either funded or unfunded OPEB liabilities?	53	74
3. If your answer to #2 is Yes, does your agency's current financial statement disclose funded and unfunded OPEB liabilities for your employees as required by GASB 45 standards?	15	21
4. Has your agency retained an actuary to determine the amount, if any, of your OPEB liabilities?	37	51
5. Have you received an actuarial study of your OPEB liabilities?	26	36
6. If your agency has not retained an actuary, do you have an informal estimate of its unfunded OPEB liability?	7	10
7. Has your agency set aside or earmarked any funds for your OPEB liabilities?	23	32
7b. If Yes, is it in a trust?	2	3
<b>Total</b>	<b>72</b>	<b>100</b>

Responses to the Yes/No questions indicated that:

- Seventy of seventy-two agencies were aware of the requirements of GASB 45.<sup>3</sup>
- While 70 agencies acknowledged awareness of GASB 45, only 53 agencies indicated they had OPEB liabilities; i.e., had an obligation to pay benefits for both current and former employees.
- Even though 53 agencies indicated they had OPEB liabilities, only 15 indicated that they were already reporting those liabilities.<sup>4</sup> Most were not yet reporting OPEB liabilities because their disclosure dates are from 2008 to 2010.
- More than half of the agencies had retained an actuary to help determine the agency's OPEB obligations.
- About a third of the agencies had set aside or earmarked funds for their OPEB liabilities. Only two of these agencies had deposited said funds in a separate trust account.

<sup>3</sup> Two agencies indicated they were unaware of GASB 45 requirements, but one has no employees and the other believes it has no obligations.

<sup>4</sup> It appears that 13 of these agencies, all school districts, have been reporting their ongoing current year's OPEB expenditures rather than their liabilities.

Agencies were also asked to provide some quantitative information regarding their OPEB expenditures and obligations. The detail data is in Appendix 2. Table 3 shows a summary:

**Table 3: Summary Statistics**

	Total Eligible Employees & Retirees	Current Eligible Employees	Current Eligible Retirees	Current OPEB Expenditure	Amount Currently Set Aside	Estimated OPEB Liability	Current Expenditure per Retiree	Set Aside per Eligible Employee	Estimated OPEB per Eligible Employee
Minimum	1	0	0	0	2,040	150,000	112	282	8,312
Maximum	1,600	1,000	716	8,158,533	30,115,703	58,218,000	23,182	19,800	123,708
Median	108	85	32	189,744	500,000	5,586,250	4,795	4,380	55,300
Mean	293	194	99	526,294	2,017,020	17,057,060	6,041	5,898	58,612
Standard Deviation	381	242	154	1,193,464	6,169,952	24,406,518	5,003	5,679	42,418
StdDev/Mean	130%	124%	156%	227%	306%	143%	83%	93%	72%

The 72 agencies responding to this survey have a wide range of purposes and sizes; their diversity is evident in Table 3. The large differences between minima and maxima, means and medians, and the large standard deviations (relative to the means) all confirm the diversity (heterogeneity) of the agencies in the County. This diversity is evident not only in terms of purpose and size, but also in the nature of the benefits. The most generous agencies pay full medical coverage premiums for spouses/survivors as well as retirees, and some agencies grant different benefits to different employee categories.

Table 4 (below) shows the number of agencies granting each benefit type to each category of employee. Here again, the diversity of the agencies prevents meaningful generalization. Not all agencies have boards, councils, police or fire staff. More agencies offer health benefits than dental benefits, and so on, moving from left to right.

**Table 4: Benefit and Employee Categories**

Question 10					
Employee Category	Health	Dental	Vision	Mental Health	Other-specify
Board	12	9	6		1
Council	9	2			
Management	45	20	13	1	1
Administration	43	18	12	2	1
Police	16	1			
Fire	14	2	1		
Public Works	17	1			
Other-specify	31	18	13	1	1
Total	187	71	45	4	4

Table 5 (below) shows that vesting for life is not universal, but is more frequent for the employee categories of council, police, fire and public works. For example, 14 agencies grant health benefits to firefighters (Table 4), and those health benefits are vested for life (Table 5).

The last row in Table 5 shows the percentage of lifetime vesting for each benefit type (the totals of Table 5 divided by the totals of Table 4). In other words, of the 187 instances of health care benefits granted, 124 (66%) of those instances were vested for life.

**Table 5: Vesting for Life**

Question 11				
Employee Category	Health	Dental	Vision	Mental Health
Board	5	2	2	
Council	9	1		
Management	27	4	2	1
Administration	28	6	4	1
Police	14	1		
Fire	13	2	1	
Public Works	14	1		
Other-specify	14	4	4	1
<b>Total</b>	<b>124</b>	<b>21</b>	<b>13</b>	<b>3</b>
<b>% Vested</b>	<b>66%</b>	<b>30%</b>	<b>29%</b>	<b>75%</b>

## Conclusions

Most agencies in the county are making good faith efforts to comply with GASB 45. The 72 agencies who responded to this survey had varying degrees of awareness of the requirements set forth in GASB 45, but none was totally unaware. Fifteen agencies indicated, some perhaps mistakenly, that they are already reporting OPEB liabilities. All of those that had not yet reported, but knew they were required to do so, had submitted deadline dates. However, four of those that have set 2008 deadlines had not yet retained actuaries, so it may be difficult for them to meet their deadlines.

GASB 45 only requires disclosure of actuarially estimated liabilities; it does not require pre-funding of those liabilities, nor does it require analysis of the ability of an agency to fulfill its OPEB commitments. Even pre-funding of the actuarial accrued liability (AAL) does not ensure that an agency will be able to pay its future OPEB costs because:

1. The AAL is a forecast of the cost of benefits already accrued by current employees, vested former employees, and retirees.
2. All estimates of future results, including the AAL, depend on actuarial and financial assumptions which may significantly differ from actual results.
3. The assumptions themselves are usually based on past (albeit recent) experience, which may not be predictive of the future.

Examples of the key assumptions which could change unexpectedly:

- Employee behavior in terms of turnover and age of retirement
- Benefit terms and costs
- Financial rates of return

Many actuarial studies provide multiple estimates of AAL based on varying assumptions. These estimates can vary over a wide range. For example, one responding city's high estimate of its unfunded AAL was more than 50% greater than its low estimate. The high estimate assumed no pre-funding and a rate of return of 4.25%, while the low estimate assumed full pre-funding and a 7.75% return. These pairings of funding methods with rates of return are logical, in that a short-term rate of return of 4.25%, with no pre-funding, was easily attainable in 2006-2007. However, in April 2008, the San Mateo County Investment Pool returned 3.40%, significantly less than its return of 4.75% in May 2007.<sup>5</sup> Similarly, the pre-funding assumption that a diversified portfolio of long-term investments, including stocks, would return 7% to 8% was realistic, given actual returns for 2003-2007. But a pre-funded, long-term diversified investment portfolio could return much less than 7% in 2008, perhaps even less than 0%. The S&P 500 stock index declined by more than 9% from May 2007 to April 2008 (1,531 to 1,388).

These observations are not meant to disparage. They are presented only to show that actuarial estimates are no better than their assumptions. Over the 20 and 30 year amortization periods typically assumed by these estimates, many changes affecting the adequacy of funding will probably occur. For the reasons cited above, reassessments of OPEB liabilities every two or three years, as mandated by GASB 45, are advisable.

As noted above in the Findings section, the 72 agencies who responded to this survey cover a wide range of purposes and sizes. The attempt to "normalize" size by dividing dollars by numbers of employees was not especially effective, because the demographics and the nature of OPEB benefits granted by the agencies vary significantly. Assessment of each agency's ability to meet its OPEB obligations would require extensive research and analysis.

Even with the uncertainties, GASB 45 estimates serve to alert agencies to the potential effects of their OPEB policies. For example, in a Council Communication dated February 13, 2008, the managerial staff of the City of Vallejo, California (Vallejo) noted that Vallejo's largest unfunded liability was its AAL for OPEB, in the amount of \$135 million. This document also acknowledged that Vallejo had no available cash to fund (amortize) this liability.<sup>6</sup> On May 23, 2008, Vallejo filed for bankruptcy. This is an

<sup>5</sup> The County Investment Pool is managed by the County Treasurer on behalf of agencies in the county, such as special districts and school districts, which invest in the Pool. According to the County Pooled Investment Policy, "To meet the needs of liquidity and long term investing, the County has established the County Investment Pool. This fund is suitable for planned expenditures or capital funds. The securities in this pool may have longer individual maturities but will have a dollar weighted average maturity of no more than five years."

<sup>6</sup> <http://www.ci.vallejo.ca.us/uploads/253/021308%20-%20Amended%20City%20Council%20-%20Special%20Meeting%20-%20Budget%20Workshop%20with%20Staff%20Reports.pdf>

extreme case, but it does illustrate the serious effect that OPEB obligations can have on the financial well-being of a city.

## **Recommendations**

The San Mateo County Civil Grand Jury (2007-2008) recommends that all government agencies in the county that have OPEB obligations (other than the County):

1. Understand the requirements of GASB 45, especially with regard to the difference between current expenditures and long-term liabilities for other post employment benefits (OPEB).
2. Comply with GASB 45 and disclose their OPEB liabilities in accordance with the implementation deadlines.
3. Maintain long-term solvency while meeting OPEB obligations by:
  - a. carefully reviewing the assumptions and results of actuarial OPEB liability estimates, and
  - b. adjusting OPEB compensation policies as needed.

# Appendix 1

## GASB 45 Questionnaire

Excerpted from *GASB: Other Postemployment Benefits: A Plain-Language Summary of GASB Statements No. 43 and No. 45*

As the name suggests, *other postemployment benefits* (OPEB) are postemployment benefits *other than pensions*. OPEB generally takes the form of health insurance and dental, vision, prescription, or other healthcare benefits provided to eligible retirees, including in some cases their beneficiaries. It may also include some types of life insurance, legal services, and other benefits.

- 1) Is your agency aware of the requirements of GASB 45 in regard to reporting the cost of Other Postemployment Benefits?

Yes \_\_\_\_\_  
No \_\_\_\_\_

- 2) Does your agency have either funded or unfunded OPEB liabilities?

Yes \_\_\_\_\_  
No \_\_\_\_\_

- 3) If your answer to #2 is Yes, does your agency's current financial statement disclose funded and unfunded OPEB liabilities for your employees as required by GASB 45 standards?

Yes \_\_\_\_\_  
No \_\_\_\_\_

If No, please provide either the date at which your agency intends to disclose funded and unfunded OPEB liabilities in accordance with GASB 45, or provide a brief explanation as to why your agency need not do so (example: No OPEB liabilities).

Date: mm \_\_\_\_ dd \_\_\_\_ yy \_\_\_\_\_

or

Explanation \_\_\_\_\_  
\_\_\_\_\_

4) Has your agency retained an actuary to determine the amount, if any, of your OPEB liabilities?

Yes \_\_\_\_\_

No \_\_\_\_\_

5) Have you received an actuarial study of your OPEB liabilities?

Yes \_\_\_\_\_

No \_\_\_\_\_

If Yes, please provide a copy within 30 days of receipt of this questionnaire.

6) If your agency has not retained an actuary, do you have an informal estimate of its unfunded OPEB liability?

Yes \_\_\_\_\_

No \_\_\_\_\_

If Yes, what is that informal estimate? \_\_\_\_\_

7) Has your agency set aside or earmarked any funds for your OPEB liabilities?

Yes \_\_\_\_\_

No \_\_\_\_\_

If Yes, how much has been provided? \$ \_\_\_\_\_

If Yes, is it in a trust? Yes \_\_\_\_\_ No \_\_\_\_\_

8) What is the total number of current employees and retirees that will receive OPEB benefits under your current program? \_\_\_\_\_

How many are current employees? \_\_\_\_\_

Retirees? \_\_\_\_\_

9) What was your agency's total cost of premiums/contributions for OPEB in your most recent fiscal year? \_\_\_\_\_

10) If your agency does have obligations to provide OPEB to retired employees, please indicate which OPEB benefits are available to each category of employee by checking the cells in the table below

(check if the benefit is available).

	Health	Dental	Vision	Mental Health	Long Term Care	Other-specify
Board						
Council						
Management						
Administration						
Police						
Fire						
Public Works						
Other-specify						

11) Are OPEB benefits vested for life? Please indicate which OPEB benefits are vested for life for each category of employee by checking the cells in the table below

(check if the benefit is vested for life).

	Health	Dental	Vision	Mental Health	Long Term Care	Other-specify
Board						
Council						
Management						
Administration						
Police						
Fire						
Public Works						
Other-specify						

## Appendix 2 Quantitative Results

Agency Name	Column: Question:	A		B		C		D		E		F		G		H		I	
		8	Total Eligible Employees & Retirees	8a	Current Eligible Employees	8b	Current Eligible Retirees	9	Current OPEB Expenditure	7a	Amount Currently Set Aside	6a	Estimated OPEB Liability *	Col D / C	Current Expenditure per Retiree	Col E / A	Set Aside per Eligible Employee	Col F / A	Estimated OPEB per Eligible Employee
Belmont	City	179	179	123	56	358,000	784,000	10,300,000	6,393	4,380	57,542								
Brisbane	City	106	106	81	25	104,000	4,160												
Burlingame	City	472	472	256	216	1,750,000	8,102	54,150,000			114,725								
Daly City	City	814	814	520	294														
Foster City	City	96	96	65	31	119,856	1,175,707												
Half Moon Bay	City	60	60	50	10	8,772						12,247							
Menlo Park	City	302	302	235	67														
Millbrae	City	140	140	90	50	267,754	1,500,000					10,714							
Pacifica	City	120	120	110	10	146,352													
Redwood City	City	782	782	534	248	1,274,643	1,453,747					14,635	5,140	1,859					
San Carlos	City	166	166	106	60	242,000	875,000					4,033	1,900	5,271					
San Mateo	City	920	920	540	380	722,000													
South San Francisco	City	629	629	397	232	1,200,000	1,000,000												
Atherton	Town	46	46	34	12	33,365													
Colma	Town	64	64	50	14	138,000													
Hillsborough	Town	167	167	85	82	677,385	2,000,000												
Woodside	Town	20	20	20	0														
Half Moon Bay	Fire	53	53	25	28	241,032	60,000	6,556,500	8,608	1,132	123,708								
Coastside	Fire	52	52	25	27	565,890													
Belmont-San Carlos	Fire	87	87	39	48	140,000	385,000	4,616,000	2,917	4,425	53,057								
Woodside	Fire	81	81	47	34	344,800													
Bayshore	School	7	7	0	7	42,388	42,388												

Belmont - Redwood Shores	School	331	312	19	347,939			18,313	
Brisbane	School	108	76	32	42,839			1,339	
Burlingame	School	23	0	23	93,000			4,043	
Hillsborough	School	203	171	32	49,023			1,532	
Jefferson Elementary	School	541	472	69	407,983			5,913	
Jefferson Union High School	School	624	465	159	1,409,406	263,904		8,864	423
La Honda - Pescadero	School	5	0	5	40,000		150,000	8,000	30,000
Las Lomitas	School	212	145	67	144,038	350,000		2,150	1,651
Menlo Park	School	334	241	93	404,347	94,325		4,348	282
Millbrae	School	291	202	89	189,744			2,132	
Pacifica	School	358	260	98	520,000	500,000		5,306	1,397
Portola Valley	School	10	0	10	37,284	163,614		3,728	16,361
Ravenswood	School	612	592	20	100,000			5,000	
Redwood City	School	56	0	56	284,102			5,073	
San Bruno Park	School	277	230	47	199,270		2,302,365	4,240	8,312
San Mateo Union	School	75	0	75	220,000			2,933	
San Mateo Foster City	School	1600	1000	600	919,231	2,811,841		1,532	1,757
Sequoia Union	School	1138	640	498	2,127,048	1,700,000		4,271	1,494
South San Francisco	School	660	358	302	1,366,118	0		4,524	
Woodside Elementary	School	16	0	16	80,202	80,202		5,013	5,013
SMCo Community College	School	1521	805	716	8,158,533	30,115,703		11,395	19,800
SMCo Transit District	Transportation	893	694	199	597,000		58,218,000	3,000	65,194
Coastside	Water	30	18	12	73,345			6,112	
Mid-Peninsula	Water	22	19	3	30,397	84,000		10,132	3,818
North Coast County	Water	46	24	22	510,000	700,000		23,182	15,217
Mid-Coastside Sewer	Sanitary	2	0	2	969			485	
West Bay	Sanitary	40	26	14	1,570			112	
SMCo Mosquito Abatement	District	6	0	6	27,542			4,590	

Midpeninsula Regional Open Space	District	92	87	5	3,088		618	
Broadmoor Police Protection	District	1	0	1	1,800	2,040	1,800	2,040
SMCo Harbor	District	37	31	6	78,919	250,000	13,153	6,757
Lowest Value		1	0	0	0	2,040	112	282
Highest Value		1,600	1,000	716	8,158,533	30,115,703	23,182	19,800
						58,218,000		8,312
								123,708

\* In Column F, where low and high estimates were provided, this table reports the midpoint between low and high.

4  
5  
6  
7



**Town of Atherton**

**CITY COUNCIL STAFF REPORT**

**TO: THE HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: KATHI HAMILTON, ACTING CITY CLERK**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: SET A DATE FOR A PUBLIC HEARING FOR AN APPEAL OF THE  
PLANNING COMMISSION'S DECISION REGARDING 67 MARYMONT  
AVENUE**

**RECOMMENDATION:**

In accordance with Atherton Municipal Code Section 17.64, staff recommends that the City Council set the date for the public hearing for the City Council meeting of October 15, 2008.

**BACKGROUND:**

On September 8, 2008, the property owner of 67 Marymont Avenue, Jon Ververloh, filed an appeal of the decision of the Planning Commission regarding conditions attached to the approval of a Conditional Use Permit.

Atherton Municipal Code Section 17.64.050 states, "A public hearing shall be held by the city council on all appeals. At its next regular meeting following the receipt of a complete application for an appeal, the city council shall set a date for the public hearing which shall be held within forty days."

**FISCAL IMPACT:**

The cost of the appeal is borne by the appellant. A check for \$750 has been received by the Town.

Prepared by:

Approved by:

---

Kathi Hamilton  
Acting City Clerk

---

Jerry Gruber  
City Manager

Attachments:

1. Letter of Appeal from Jon Venverloh, dated September 8, 2008
2. Atherton Municipal Code section 17.64

**Jon Venverloh**

67 Marymont Avenue ■ Atherton, California 94027 ■ 650-366-1663 ■ venverloh@gmail.com

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2008 SEP -8 P 3: 16

Date: September 8, 2008

To: City Clerk  
Town of Atherton

Cc: Lisa Costa-Sanders, Deputy Planner  
Andrea Mardesich, Planner

RE: Appeal of Conditions attached to Approval of Conditional Use Permit for a Basement under an Accessory Structure.  
The Venverloh Residence  
67 Marymont Ave., Atherton, CA  
APN #: 070-021-090

We hereby appeal the Conditions decided by the Planning Commission on August 27, 2008 and submit the appeal fee of \$750.

*Paid by Check 3d12  
R# 17058*

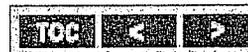
Thank you.

Warmly,



Jon Venverloh

(32 hits)



## Chapter 17.64 APPEALS

### Sections:

**17.64.010 Purpose.**

**17.64.020 Time limits.**

**17.64.030 Stay of proceedings.**

**17.64.040 Transmittal of data.**

**17.64.050 Public hearing.**

**17.64.060 City council action.**

**17.64.070 Effective date.**

### **17.64.010 Purpose.**

An appeal from any zoning ordinance related decision, action, ruling, judgement or order of the planning commission, any city official or advisory committee may be made to the city council by any person aggrieved or affected by such decision or any Atherton citizen, pursuant to the provisions of this chapter. Any appeal shall be in writing and state the facts upon which an error, omission or abuse of discretion was made by the decision maker. (Ord. 407 § 14-5(A), 1985)

### **17.64.020 Time limits.**

All appeals shall be made within ten calendar days from the date of such decision, shall be in writing and shall be filed with the city clerk. (Ord. 407 § 14-5 (B), 1985)

### **17.64.030 Stay of proceedings.**

An appeal stays all further proceedings on the matter until an action is taken by the city council, the appeal is withdrawn, or a release of stay is executed. A release of stay may only be issued by the city council, city manager or a court of record when he/they certify that by reason of the certified facts, imminent peril to life and property would be caused. (Ord. 407 § 14-5(C), 1985)

### **17.64.040 Transmittal of data.**

Prior to the next regular city council meeting following receipt of an appeal, the secretary of the planning commission, city official, or secretary of the advisory committee, shall transmit to the city council all data filed in connection with the case, any minutes of public hearings, any findings and the decision. (Ord. 407 § 14-5(D), 1985)

### **17.64.050 Public hearing.**

A public hearing shall be held by the city council on all appeals. At its next regular meeting following the receipt of a complete application for an appeal, the city council shall set a date for the public hearing which shall be held within forty

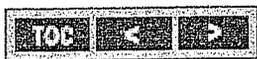
days. (Ord. 407 § 14-5(E), 1985)

**17.64.060 City council action.**

The city council shall act on the appeal within sixty days after closing the public hearing. The council may affirm, reverse or modify the original decision, provided that appropriate findings are made to support the decision. (Ord. 407 § 14-5(F), 1985)

**17.64.070 Effective date.**

A permit or decision which has been the subject of an appeal or review by the council shall become effective three days following the date on which the permit is granted or decision is affirmed by the council. The decision of the council upon an appeal or review shall be final and conclusive. (Ord. 407 § 14-5(G), 1985)



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## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: PAULA PIERCE, ASST. FINANCE DIRECTOR  
BILL YEOMANS, CONTRACT FINANCE OFFICER**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: ADOPTION OF TWO RESOLUTIONS REGARDING  
AB2544 ANNUITANT MEDICAL INSURANCE –  
MISCELLANEOUS AND MANAGEMENT GROUPS**

#### **RECOMMENDATION:**

- A. Adopt a Resolution raising annuitant contributions for the Miscellaneous Group to comply with AB 2544 amending Section 22892 of the Government Code, relating to public employee health benefits, and rescinding Resolution 08-05 and Resolution 92-21; and
- B. Adopt a Resolution raising annuitant contributions for the Management Group to comply with AB 2544 amending Section 22892 of the Government Code, relating to public employee health benefits, and rescinding Resolution 08-07.

#### **INTRODUCTION:**

On April 16, 2008, you adopted the attached resolutions. The Finance Committee and staff met with CalPERS on June 19, 2008, to discuss the retiree benefit costs and the requirements of the legislation. CalPERS has requested that new resolutions be adopted to replace Resolution 08-05 and Resolution 08-07 and Resolution 92-21.

**FISCAL IMPACT:**

These resolutions, in accordance with State law, raise the employer contributions immediately for annuitants to 80% of full-time employee health benefits and, over the next four years, to 95% and 100% respectively

The extra cost of Miscellaneous health benefits for FY08-09 is about \$2,000 and for Management health benefits for FY08-09, is about \$20,000. These costs were anticipated in the FY08-09 Budget.

Prepared By:

Approved by:

---

Bill Yeomans  
Contract Finance Officer

---

Jerry Gruber  
City Manager

Attachments:

Council Staff Report, February 20, 2008

Resolution 08-07

Resolution 08-05

Resolution 92-21

**RESOLUTION NO 08-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES MEDICAL AND HOSPITAL CARE ACT ONLY WITH RESPECT TO MEMBERS OF A SPECIFIC EMPLOYEE ORGANIZATION; AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS; AND RESCINDING RESOLUTION 08-7**

**WHEREAS**, Government Code Section 22922(b) provides that a contracting agency may elect upon proper application to participate under the Public Employees' Medical and Hospital Care Act with respect to a recognized employee organization only; and

**WHEREAS**, Government Code Section 22892(c) provides that a contracting agency may fix the amount of the employer's contribution for employees and the employer's contribution for annuitants at different amounts provided that the monthly contribution for annuitants shall be annually increased by different amounts provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly contribution for employees, until such time as the amounts are equal; and

**WHEREAS**, the Town of Atherton, hereinafter referred to as the Public Agency, is a local agency contracting with the Public Employees' Retirement System, and

**WHEREAS**, The Public Agency desires to obtain for the members of the **Management Group** who are employees and annuitants of the agency, the benefit of the Act and to accept the liabilities and obligations of an employer under the Act and Regulations; now, therefore, be it

**NOW THEREFORE, BE IT RESOLVED** that the Public Agency elect, and it does hereby elect, to be subject to the provisions of the Act; and be it further

**RESOLVED** that the employer's contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members, in a health benefits plan or plans up to a maximum of 100% of the total premium for an employee enrolled for self and two or more family members plus administrative fees and Contingency Reserve Fund assessments; and be it further

**RESOLVED** that the employer's contribution for each annuitant shall be increased annually by **5 percent** of the monthly contribution for employees, until such time as the contributions are equal; and that the contribution for employees and annuitants shall be in addition to those amounts contributed by the Public Agency for administrative fees and to the Contingency Reserve Fund; and be it further

**RESOLVED** that the executive body appoint and direct, and it does hereby appoint and direct, Jerome Gruber to file with the Board of Administration of the Public Employees' Retirement System a verified copy of this Resolution, and to perform on behalf of said Public Agency all functions required of it under the Act and Regulations of the Board of Administration; and be it further

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on his 21<sup>st</sup> day of April, 2008, by the following vote:*

<i>AYES:</i>	<i>Council Members</i>
<i>NOES:</i>	<i>Council Members</i>
<i>ABSENT:</i>	<i>Council Members</i>
<i>ABSTAIN:</i>	<i>Council Members</i>

---

James R Janz, MAYOR  
TOWN OF ATHERTON

ATTEST:

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

---

Marc G. Hynes, City Attorney

**RESOLUTION NO 08-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES MEDICAL AND HOSPITAL CARE ACT ONLY WITH RESPECT TO MEMBERS OF A SPECIFIC EMPLOYEE ORGANIZATION; AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS; AND RESCINDING RESOLUTION 08-05 AND RESOLUTION 92-21**

**WHEREAS**, Government Code Section 22922(b) provides that a contracting agency may elect upon proper application to participate under the Public Employees' Medical and Hospital Care Act with respect to a recognized employee organization only; and

**WHEREAS**, Government Code Section 22892(c) provides that a contracting agency may fix the amount of the employer's contribution for employees and the employer's contribution for annuitants at different amounts provided that the monthly contribution for annuitants shall be annually increased by different amounts provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly contribution for employees, until such time as the amounts are equal; and

**WHEREAS**, the Town of Atherton, hereinafter referred to as the Public Agency, is a local agency contracting with the Public Employees' Retirement System, and

**WHEREAS**, The Public Agency desires to obtain for the members of the **Miscellaneous Group** who are employees and annuitants of the agency, the benefit of the Act and to accept the liabilities and obligations of an employer under the Act and Regulations; now, therefore, be it

**NOW THEREFORE, BE IT RESOLVED** that the Public Agency elect, and it does hereby elect, to be subject to the provisions of the Act; and be it further

**RESOLVED** that the employer's contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members, in a health benefits plan or plans up to a maximum of 95% of the Blue Shield Access Plus basic/supplemental Bay Area/Sacramento HMO rate for an employee enrolled for self and two or more family members plus administrative fees and Contingency Reserve Fund assessments; and be it further

**RESOLVED** that the employer's contribution for each annuitant shall be increased annually by **5 percent** of the monthly contribution for employees, until such time as the contributions are equal; and that the contribution for employees and annuitants shall be in addition to those amounts contributed by the Public Agency for administrative fees and to the Contingency Reserve Fund; and be it further

**RESOLVED** that the executive body appoint and direct, and it does hereby appoint and direct, Jerome Gruber to file with the Board of Administration of the Public Employees' Retirement System a verified copy of this Resolution, and to perform on behalf of said Public Agency all functions required of it under the Act and Regulations of the Board of Administration; and be it further

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on his 17th day of September, 2008, by the following vote:*

*AYES: Council Members  
NOES: Council Members  
ABSENT: Council Members  
ABSTAIN: Council Members*

\_\_\_\_\_  
James R Janz, MAYOR  
TOWN OF ATHERTON

ATTEST:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc G. Hynes, City Attorney



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER

**FROM:** PAULA PIERCE, ASST. FINANCE DIRECTOR  
BILL YEOMANS, CONTRACT FINANCE OFFICER

**DATE:** FOR THE MEETING OF FEBRUARY 20, 2008

**SUBJECT:** ADOPTION OF THREE RESOLUTIONS FIXING THE  
EMPLOYER'S CONTRIBUTION UNDER THE PUBLIC  
EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT

#### **RECOMMENDATION:**

Adopt the attached resolutions raising annuitant contributions to comply with AB 2544 amending Section 22892 of the Government Code, relating to public employee health benefits.

#### **INTRODUCTION:**

Rates for retiree ("annuitant") health insurance have not been raised by resolution since their inception in 1992 when the Town of Atherton entered into agreement with the Public Employees' Retirement System (CalPERS) to participate in Public Employees' Medical and Hospital Care Act (PEMHCA). To comply with AB 2544 the Town must submit resolutions for its three bargaining units whenever medical insurance contributions for active employees change, currently annually.

#### **ANALYSIS:**

Under the Public Agency provisions of the PEMHCA program, contracting agency employers, including the Town of Atherton, may elect to contribute to employee and annuitant health care in equal amounts or may establish a lesser monthly employer contribution for annuitants. If the "unequal" method (PEMHCA section 22892) was

chosen (as Atherton did), employers were previously required to annually increase the monthly annuitant contribution for health care by not less than 5 percent of the monthly employer contributions. Employers under this approach did not necessarily achieve parity with active employee contributions over time, and the Town of Atherton has not adjusted this rate according to health care contributions since the original resolution was passed. Assembly Bill 2544, passed on August 21, 2006, changes the computation for annual increases to annuitant health care under the unequal method. Under the new provisions, agencies have to annually increase the total monthly annuitant health care contribution to equal an amount not less than the number of years the agency has been in the PEMHCA program, multiplied by 5 percent of the current monthly employer contribution for employees, until such time that the employer contribution for annuitants equals the employer contribution paid for employees. However, this annual adjustment to the minimum monthly employer contribution for an annuitant authorized by this change cannot exceed one hundred dollars (\$100) per annuitant.

**FISCAL IMPACT:**

To catch up with these payments under AB 2544, Atherton must increase retiree monthly health contributions for Miscellaneous and Managerial employees by the maximum \$100 per annuitant. With nine former employees currently covered in that group, the Town will pay \$900 per month more, or \$10,800 per year. The Police unit has three former employees, which will increase the Town's cost by \$300 per month or \$3600 per year. So the total cost will increase by \$14,400 per year.

Prepared By:

Approved by:

\_\_\_\_\_  
Bill Yeomans  
Interim Finance Director

\_\_\_\_\_  
Jerry Gruber  
City Manager

Attachments: Resolutions

**RESOLUTION 08-05**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON FIXING THE EMPLOYER’S CONTRIBUTION UNDER THE PUBLIC EMPLOYEES’ MEDICAL AND HOSPITAL CARE ACT**

**WHEREAS**, Government Code Section 22892(a) provides that a local agency contracting under the Public Employees’ Medical and Hospital Care Act shall fix the amount of the employer’s contribution at an amount not less than the amount required under Section 22892(b) of the Act; and

**WHEREAS**, Government Code Section 22892(c) provides that a contracting agency may fix the amount of the employer’s contribution for employees and the employer’s contribution for annuitants at different amounts provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly contribution for employees, until such time as the amounts are equal; and

**WHEREAS**, the Town of Atherton, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by members of the Miscellaneous Employee Group.

**NOW, THEREFORE, BE IT RESOLVED** that the employer’s contribution for each annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members in a health benefits plan up to a maximum of \$506.28 with respect to employee enrolled for self alone; \$1012.57 for an employee enrolled for self and one family member; and \$1316.34 for an employee enrolled for self and two or more family members, plus administrative fees and Contingency Reserve Fund assessments.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 20th day of February, 2008, by the following vote:*

*AYES: 3 Council Members: J. Carlson, Marsala, Janz  
NOES: 0 Council Members: None  
ABSENT: 1 Council Members: McKeithen  
ABSTAIN: 0 Council Members: None*

\_\_\_\_\_  
James R. Janz, MAYOR  
TOWN OF ATHERTON

ATTEST:

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

---

Marc G. Hynes, City Attorney

**RESOLUTION 08-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON FIXING THE EMPLOYER’S CONTRIBUTION UNDER THE PUBLIC EMPLOYEES’ MEDICAL AND HOSPITAL CARE ACT**

**WHEREAS**, Government Code Section 22892(a) provides that a local agency contracting under the Public Employees’ Medical and Hospital Care Act shall fix the amount of the employer’s contribution at an amount not less than the amount required under Section 22892(b) of the Act; and

**WHEREAS**, Government Code Section 22892(c) provides that a contracting agency may fix the amount of the employer’s contribution for employees and the employer’s contribution for annuitants at different amounts provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly contribution for employees, until such time as the amounts are equal; and

**WHEREAS**, the Town of Atherton, hereinafter referred to as the Public Agency, is a local agency contracting under the Act for participation by members of the Management Employee Group.

**NOW, THEREFORE, BE IT RESOLVED** that the employer’s contribution for each annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members in a health benefits plan up to a maximum of \$749.83 with respect to employee enrolled for self alone; \$1499.66 for an employee enrolled for self and one family member; and \$1949.56 for an employee enrolled for self and two or more family members, plus administrative fees and Contingency Reserve Fund assessments.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 20th day of February, 2008, by the following vote:*

*AYES: 3 Council Members: J. Carlson, Marsala, Janz  
NOES: 0 Council Members: None  
ABSENT: 1 Council Members: McKeithen  
ABSTAIN: 0 Council Members: None*

\_\_\_\_\_  
James R Janz, MAYOR  
TOWN OF ATHERTON

ATTEST:

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

---

Marc G. Hynes, City Attorney

RESOLUTION 92-21

A RESOLUTION OF THE TOWN OF ATHERTON  
ELECTING TO BE SUBJECT TO  
PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT  
ONLY WITH RESPECT TO MEMBERS OF A SPECIFIC EMPLOYEE ORGANIZATION  
AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE  
EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS

WHEREAS, Government Code Section 22850.3 provides that a contracting agency may elect upon proper application to participate under the Public Employees' Medical and Hospital Care Act with respect to a recognized employee organization only; and

WHEREAS, Government Code Section 22857 provides that a contracting agency may fix the amount of the employer's contribution for employees and the employer's contribution for annuitants at different amounts provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly contribution for employees, until such time as the amounts are equal; and

WHEREAS, the Town of Atherton, hereinafter referred to as the Public Agency is a local agency contracting with the Public Employees' Retirement System; and

WHEREAS, the Public Agency desires to obtain for the members of non-police unit, who are employees and annuitants of the agency, the benefit of the Act and to accept the liabilities and obligations of an employer under the Act and Regulations;

NOW, THEREFORE, BE IT RESOLVED that the Public Agency elect, and it does hereby elect, to be subject to the provisions of the Act;

AND BE IT FURTHER RESOLVED that the employer's contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members in a health benefits plan up to a maximum of \$155.00 (Single), \$310.00 (Married), and \$414.00 (Family) per month;

AND BE IT FURTHER RESOLVED that the employer's contribution for each annuitant shall be the amount necessary to pay the cost of his/her enrollment, including the enrollment of his/her family members, in a health benefits plan up to a maximum of \$16.00 per month;

AND BE IT FURTHER RESOLVED that the employer's contribution for each annuitant shall be increased annually by five percent of the monthly contribution for employees, until such time as the contributions are equal; and that the contributions for employees and annuitants shall be in addition to those amounts contributed by the Public Agency for administrative fees and to the Contingency Reserve Fund;

AND BE IT FURTHER RESOLVED that the executive body appoint and direct, and it does hereby appoint and direct, the City Manager to file with the Board of Administration of the Public Employees' Retirement System a verified copy of this Resolution, and to perform on behalf of said Public Agency all functions required of it under the Act and Regulations of the Board of Administration;

AND BE IT FURTHER RESOLVED that coverage under the Act be effective on August 1, 1992.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 17th day of June, 1992, by the following vote:

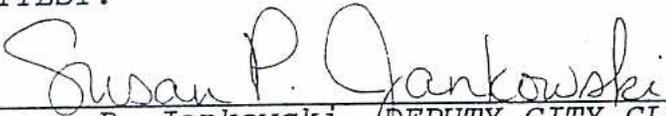
AYES: COUNCILMEMBER: Christopher E. Cobey  
William R. Conwell  
Malcolm H. Dudley  
Nanette F. Chapman  
Dianne M. Fisher

NOES: COUNCILMEMBER: None

ABSENT: COUNCILMEMBER: None

  
\_\_\_\_\_  
Christopher E. Cobey, MAYOR  
TOWN OF ATHERTON

ATTEST:

  
\_\_\_\_\_  
Susan P. Jankowski, DEPUTY CITY CLERK  
TOWN OF ATHERTON



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JEROME GRUBER, CITY MANAGER**

**FROM: KATHI HAMILTON, ACTING CITY CLERK  
MARC G. HYNES, CITY ATTORNEY**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: RECOMMENDATIONS FROM THE SCREENING COMMITTEE  
REGARDING A PROCESS FOR COMMITTEES/COMMISSIONS  
APPOINTMENTS/RECRUITMENT TO CONFORM TO  
RESOLUTION 08-24**

#### **RECOMMENDATION:**

Approve the recommendations of the Screening Committee on a process to fill those terms that have expired or have been extended and/or recruit for new members on Committees/Commissions.

#### **BACKGROUND:**

At the City Council meeting of August 20, 2008, this item was removed from the Consent Calendar for discussion. Council discussion and subsequent direction was for the Screening Committee to submit all the candidates for the Audit Committee and the Traffic/Transportation Subcommittee to the full Council for consideration and appointment. The Council did not, however, approve the recommended process for recruitment for those committees with vacancies and expiration of terms.

#### **ANALYSIS:**

The item is being returned on this agenda for Council approval of the Screening Committee's recommendations. Staff will proceed with a recruitment process with publication of a notice in the Almanac, on the Town's website, and in posting locations.

Prepared by:

Approved by:

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Kathi Hamilton  
Acting City Clerk

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Jerry Gruber  
City Manager

Attachments



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JEROME GRUBER, CITY MANAGER**

**FROM: KATHI HAMILTON, ACTING CITY CLERK  
MARC G. HYNES, CITY ATTORNEY**

**DATE: FOR THE MEETING OF AUGUST 20, 2008**

**SUBJECT: RECOMMENDATIONS FROM THE SCREENING COMMITTEE  
REGARDING A PROCESS FOR COMMITTEES/COMMISSIONS  
APPOINTMENTS/RECRUITMENT TO CONFORM TO  
RESOLUTION 08-24**

#### **RECOMMENDATION:**

Approve the recommendations of the Screening Committee on a process to fill those terms that have expired or have been extended and/or recruit for new members on Committees/Commissions.

#### **BACKGROUND:**

Council adopted Resolution No. 08-24 to govern Committees/Commissions at its June 18, 2008, meeting. While the resolution was under discussion, some Committee Members' terms were extended while Council determined the composition of the resolution, while others' terms expired. The next step is to develop a process to recruit for those vacancies and/or expiration of terms for some committees. Staff sent a memo to the Screening Committee outlining Alternatives one and two for each of the subject committees (attached) and asking for recommendations on how to proceed. The Screening Committee has made the following selection of the respective alternative (either one or two) as listed below.

#### **ANALYSIS:**

**Arts Committee:** Resolution No. 08-24 established that membership can be up to ten members, five members appointed to a four-year term commencing in 2008 and ending April 30, 2012, and the remaining members' terms shall be three years commencing in 2008 and ending on April 30, 2011. Thereafter, each term of office shall be four years. Currently, there are three members on the Arts Committee.

**Alternative one:** Extend the current members' terms for four years and recruit for two members for a four-year term and five members for a three-year term, to be interviewed by the Screening Committee and approved by Council.

**Atherton Rail Committee:** Resolution No. 08-24 established that membership consists of two Council Members and up to 10 residents of the Town. The term of office for appointed members shall be a four-year term commencing in 2007 and ending on April 30, 2011. Thereafter, each term of office shall be four-years. Currently, there are six appointed residents on the Rail Committee.

**Alternative one:** Since the four-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2011. Recruit for new members.

**Audit Committee:** Resolution No. 08-24 established that the Audit Committee consists of five members, including two Council Members of the Finance Committee, and three members appointed by Council. The term of office for all members ended on April 30, 2008. Thereafter, one term shall be for two years ending April 2010. The remaining terms shall be for four years ending April 2012; thereafter, the term office shall be four years. Currently, there are five appointed members of the Audit Committee.

**Alternative two:** Ask current members to reapply, recruit for new members, with all going through the Screening Committee process and approved by Council.

**Environmental Programs Committee:** Resolution No. 08-24 established that the EPC consists of up to 12 members, including two Council Members and ten residents of the Town appointed by Council. Five of the appointed members shall be appointed to a two-year term commencing in 2007 and ending April 20, 2009. The remaining members' terms shall be four years commencing in 2007 and ending April 30, 2011. Thereafter, each term of office shall be four years. Currently, there are four appointed members on the EPC.

**Alternative one:** Since the two-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2009. Recruit for new members, one term for two years ending in 2009, four terms for four years, ending in 2011.

**Transportation/Traffic Subcommittee:** The Transportation/Traffic Subcommittee consists of five members including two Council Members and three appointed members. The term of office is for four years. Currently, there are three appointed members on the Subcommittee. One member was appointed in May 2008. The other two terms expired in 2008.

**A New Alternative:** Ask current members to reapply, recruit for new members, with all going through the Screening Committee process and approved by Council.

If Council approves the Screening Committee's recommendations, staff will proceed with a recruitment process with publication of a notice in the Almanac, on the Town's website, in posting locations.

**FISCAL IMPACT:**

If Council approves the Screening Committee's recommendations, cost for advertising in the *Almanac* will be incurred, as well as staff's time to administer the process.

Prepared by:

Approved by:

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Kathi Hamilton  
Acting City Clerk

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Jerry Gruber  
City Manager

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Marc G. Hynes  
City Attorney



**Town of Atherton**  
**Office of the City Clerk**

91 Ashfield Road  
Atherton, California 94027  
650-752-0549  
Fax 650-688-6528

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DATE: July 29, 2008

TO: Vice Mayor Carlson  
Council Member Marsala

FROM: Kathi Hamilton, Acting City Clerk

SUBJECT: Commission/Committee Appointments and/or Recruitments

Council adopted Resolution 08-24 to govern Committees/Commissions. While the resolution was under discussion, some terms were extended until Council determined the composition of the resolution. The next step is to recruit for those vacancies and/or expiration of terms. I have outlined below what the resolution has set out and some alternatives to solve the issues. I am forwarding this to the Screening Committee for your recommendations, which will then be presented to the full Council at the August meeting. I welcome your thoughts and suggestions as we go forward.

**Arts Committee:** Resolution 08-24 established that membership can be up to ten members, five members appointed to a four-year term commencing in 2008 and ending April 30, 2012, and the remaining members' terms shall be three years commencing in 2008 and ending on April 30, 2011. Thereafter, each term of office shall be four years.

Currently, there are three members on the Arts Committee.

**Alternative one:** Extend the current members' terms for four years and recruit for additional members to go through the Screening Committee process and approved by Council; or

**Alternative two:** Ask the current members to reapply and recruit for new members to go through the Screening Committee process and approved by Council

**Atherton Rail Committee:** Resolution 08-24 established that membership consists of two Council Members and up to 10 residents of the Town. The term of office for appointed members shall be a four-year term commencing in 2007 and ending on April 30, 2011. Thereafter, each term of office shall be four-year.

Currently, there are six appointed residents on the Rail Committee.

**Alternative one:** Since the four-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2011. Recruit for new members.

**Alternative two:** Ask current members to reapply and recruit for new members to go through the Screening Committee process and approved by Council

**Audit Committee:** Resolution No. 08-24 established that the Audit Committee consists of five members, including two Council Members of the Finance Committee, and three members appointed by Council. The term of office for all members ended on April 30, 2008. Thereafter, one term shall be for two years ending April 2010. The remaining terms shall be for four years ending April 2012; thereafter, the term office shall be four years.

Currently, there are five appointed members of the Audit Committee.

**Alternative one:** Since the Audit Committee's appointed members have been reduced to three, ask current members to reapply, go through the Screening Committee process, and recommend three to be approved by Council.

**Alternative two:** Ask current members to reapply and **recruit for new members** to go through the Screening Committee process and recommend three to be approved by Council.

**Environmental Programs Committee:** Resolution No. 08-24 established that the EPC consists of up to 12 members, including two Council Members and ten residents of the Town appointed by Council. Five of the appointed members shall be appointed to a two-year term commencing in 2007 and ending April 20, 2009. The remaining members' terms shall be four years commencing in 2007 and ending April 30, 2011. Thereafter, each term of office shall be four years.

Currently, there are four appointed members on the EPC.

**Alternative one:** Since the two-year term commenced in 2007, the assumption is the current members' terms would be extended and expire in 2009. Recruit for new members, one term for two years ending in 2009, four terms for four years, ending in 2011.

**Alternative two:** Ask current members to reapply and recruit for new members to go through the Screening Committee process and approved by Council with five terms expiring in 2009, and four terms expiring in 2011.

**General Plan Committee:** The General Plan Committee does not need recruitment at this time. Three members' terms will expire in 2010, and two members' terms will expire in 2011.

**Parks and Recreation Commission:** The Park and Recreation Commission does not need recruitment at this time. Two members were reappointed in June, the Atherton Dames and Holbrook-Palmer Park Foundation members' terms expire in 2009, three terms expire in 2011, and two terms expire in 2012.

**Transportation/Traffic Subcommittee:** The Transportation/Traffic Subcommittee consists of five members including two Council Members and three appointed members. The term of office is for four years.

Currently, there are three appointed members on the Subcommittee. One member was appointed in May 2008. The other two terms expired in 2008.

**Alternative one:** Extend the newly appointed member's term to April 30, 2012. Ask the other two members to reapply and recruit for new members.

**Alternative two:** Extend all current members' terms to April 30, 2008.

Once the Screening Committee makes its recommendation to Council I will begin a recruitment process by placing an ad in the Almanac and advertising on the website.

I look forward to your comments.

cc: Jerry Gruber, City Manager  
Marc Hynes, City Attorney



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER

**FROM:** DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

**DATE:** FOR THE MEETING OF SEPTEMBER 17, 2008

**SUBJECT:** ADOPT A RESOLUTION APPROVING A NO STOPPING  
ZONE ON ENCINAL AVENUE ALONG THE FRONTAGE  
OF ENCINAL SCHOOL BETWEEN MIDDLEFIELD ROAD  
AND THE ENCINAL SCHOOL DRIVEWAY

#### **RECOMMENDATION:**

Adopt a resolution approving a “No Stopping” zone on Encinal Avenue along the frontage of Encinal School between Middlefield Road and the Encinal School driveway.

#### **INTRODUCTION:**

Encinal School recently reconfigured the frontage of the school to create a new driveway with a right-turn lane, a bus stop area and an expanded on-site drop-off area for their campus expansion plan. Existing signs along Encinal Avenue read “No Parking in Bike Lane”. It is uncertain if this is an official zone, but the sign is no longer a standard sign. The school has requested that the signs be changed to the standard “No Stopping Any Time” signs.

#### **ANALYSIS:**

Public Works staff evaluated the standard signs recommended by the Manual on Uniform Traffic Control Devices and determined that the best signs for this situation would be “No Stopping Any Time.” Because this area is a mixture of turn lane, bus stop and bike lane, it is appropriate for the restriction to apply at all times. The area is only along the

school frontage; therefore, the area is not appropriate for resident parking in the evening and the school hour limitation on the “No Stopping” zone would not apply.

**FISCAL IMPACT:**

The cost will be changing four signs on existing posts and staff time to install them. The signs will cost approximately \$200 each, and four signs will be needed, for a total cost of \$800.

Prepared By:

Approved by:

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Duncan L. Jones, P.E.  
Public Works Director

---

Jerry Gruber  
City Manager

**RESOLUTION 08-**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON GOVERNING TRAFFIC AND PARKING ON ALONG THE FRONTAGE OF ENCINAL SCHOOL BETWEEN MIDDLEFIELD ROAD AND THE ENCINAL SCHOOL DRIVEWAY PURSUANT TO ATHERTON MUNICIPAL CODE, SECTION 10.04.010**

**WHEREAS**, in the Atherton Municipal Code, Section 10.04.010, the City Council of the Town of Atherton was given authority to adopt by resolution such rules and regulations as it finds necessary for the governing of traffic and parking on various streets and highways within and under the jurisdiction of said Town; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the Town of Atherton, California does hereby order, authorize and adopt the following regulations governing traffic and parking:

Establishment of a “NO STOPPING AT ANY TIME” zone, along the frontage of Encinal School between Middlefield Road and the Encinal School driveway

**IT IS FURTHER ORDERED AND DIRECTED**, that pursuant to the provisions of the Vehicle Code of the State of California, proper signs shall be erected as hereinabove provided before these regulations shall be effective.

\* \* \* \* \*

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 17<sup>th</sup> day of September, 2008, by the following vote:*

*AYES: Council Members:  
NOES: Council Members:  
ABSENT: Council Members:  
ABSTAIN: Council Members:*

ATTEST:

\_\_\_\_\_  
James R. Janz, MAYOR  
TOWN OF ATHERTON

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marc G. Hynes, City Attorney



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
CITY MANAGER, JERRY GRUBER**

**FROM: JERRY GRUBER CITY MANAGER**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: UPDATE ON CITY MANAGER'S GOALS AND  
OBJECTIVES AS IDENTIFIED IN THE 08/09 BUDGET**

#### **RECOMMENDATION:**

Review and accept update of City Manager's goals and objectives as identified in the 2008/09 Budget.

#### **INTRODUCTION:**

Every three months, I will be updating the City Council on my goals and objectives as identified in the 2008/09 budget. If any changes occur with regard to those goals and objectives, I will keep the Council informed.

1. Investigate long-term financing mechanisms well in advance of the parcel tax sunset date of June 2010.
  - The City Manager and Finance Director have conducted some preliminary analysis relating to the Town adopting a utility user fee. The City Manager will ask the new Finance Director to make this a priority as part of her goals and objectives.
2. Determine the political, economic, and operational feasibility of a new or remodeled Atherton Town Center and implement recommendations from the feasibility study.
  - A Blue Ribbon Task Force has been formed and is in the process of evaluating the need for a remodeled or new facility.

3. Pursue options of obtaining Town of Atherton Housing Element State Certification.
  - Significant progress is being made with regard to obtaining a State Certified Housing Element Certification.
4. Determine feasibility of annexation, commercial, and residential, and if feasible pursue annexation of designated areas.
  - Neal Marin & Associates has prepared a detailed analysis on what steps are necessary for annexation to occur. I have met with the Planning Manager and the Director of Economic Development for Redwood City to discuss Atherton's sphere of influence and Redwood City's sphere of influence. I will be attending Redwood City Planning Commission Workshop on Saturday, September 27. The Planning Commission will be discussing its general plan. I will be meeting with Martha Poyatos of LAFCO to discuss and learn more about the annexation process.
5. Fund and build quad gates at train crossings and implement quiet zones and get Caltrain to accommodate Atherton's concerns regarding High-Speed Rail.
  - Public Works Director Duncan Jones has received a detailed summary and timeline regarding the installation of quad gates for the Town of Atherton. Unfortunately, due to funding restraints, Caltrain has tentatively decided to install only one set of quad gates. Public Works Director Duncan Jones has sent Mark Simon of Caltrain a letter outlining why alternative safety mechanisms at Watkins Avenue are unacceptable.
6. Recruit and hire Police Chief, Assistant City Manager, and Finance Director.
  - All positions have been filled.
7. Recruit and hire Atherton's next part-time City Clerk.
  - The recruitment brochure for the City Clerk position has been created and the Town has started advertising for the position of City Clerk.
8. Mentor current and future department heads and staff in order to develop a strong management team that shares the City Manager's philosophy of management while supporting the goals and objectives of the City Council.
  - The City Manager will be working closely with department heads to ensure that their goals and objectives are being met; with the addition of the Assistant City Manager, training classes will be made available to promote staff development.
9. Be responsive to residents of Atherton and their concerns in a timely manner.
  - I answer all phone calls and emails within a twenty-four hour period and make sure that I follow up with concerns from our residents. I encourage all department managers to personally handle residents' complaints and concerns within the same time frame. We continually strive to improve customer service.
10. Evaluate and implement additional resources to improve communications between the Town and residents of Atherton.
  - Staff has significantly improved the *Athertonian*.

- The Town's website has been improved and we have started an email signup for residents to be informed of news about Atherton.
  - Additional articles in *The Almanac* relating to Building, Planning, and workshop activities.
  - Added one additional phone line to the Building Department.
11. Stay informed and involved with regional issues that impact Atherton.
    - The City Manager is actively involved in areas such as refuse collection, transportation, and numerous other regional matters that affect Atherton. Now that the Assistant City Manager is onboard, I will spend more time on regional matters.
  12. Develop an honest and respectful relationship with the City Council of Atherton.
    - The City Manager is committed to treating each Council Member with respect and will continue to spend one-on-one time with each Council Member in order to develop a healthy professional relationship.
  13. Complete labor negotiations with Atherton Police Officers' Association, Miscellaneous, and Management group.
    - The City Manager has hired IEDA and significant progress has been made with regard to labor negotiations.
  14. Maintained fiscal responsibility by adhering to the 2008/09 budget.
    - This is one of the City Manager's highest priorities. Although additional unanticipated expenses have occurred as part of the 2008/09 budget. I will continue to try to fund those expenses within the existing budget.
    - I will work closely with the new Finance Director in order to determine that revenues are inline with expenditures.
  15. Complete the annual financial statement.
    - Caporicci & Larson will be doing our audit this year and a contract has been signed. Audit Committee members need to be selected for the Audit Committee. I will be working with the City Clerk on soliciting members for the Audit Committee.
  16. Complete a memorandum of understanding between the Town of Atherton and the Menlo Park Fire Protection District.
    - The Walsh Road Evacuation Plan is moving forward and two memorandums of understanding have been drafted. One for the Circus Club and the other for California Water.
  17. Minimize legal costs by working closely with Town Council, legal Council, and stakeholders.
    - All Legal matters to date have been settled and legal costs remain low.
  18. Develop professionally through CAL-ICMA and local and regional organizations.
    - City Manager attends monthly San Mateo County City Manager Association meetings.
    - The City Manager will be attending the annual League of California Cities in Long Beach California on September 25 and 26.
  19. Being a strong leader with emphasis on restoring a sense of pride and professionalism to the Town of Atherton and to the position of City Manager.

- The City Manager will continue to lead the senior management team while promoting staff development, organizational proficiency, and professionalism.
20. Work with Caltrans and local and regional stakeholders to improve drainage on El Camino Real.
- The Public Works department has cleaned all excess vegetation and debris off the fences of residents along El Camino Real. By doing so has improved drainage along the highway.
  - The City Manager has met with the City Manager of Redwood City and the Economic Development Director to discuss drainage on El Camino Real.
  - The City Manager is involved in the Grand Boulevard initiative and has met with Mike Garvey to discuss improving drainage along El Camino Real as part of the initiative.
  - The City Manager will be bringing a resolution to the City Council in October in support of the Grand Boulevard initiative.
  - The City Manager will be meeting with representatives from CCAG to discuss drainage on El Camino Real.
21. Support all department heads on achieving their goals and objectives.
- The City Manager continues to support all department heads on achieving their goals and objectives as outlined in the 2008/09 budget.
  - The City Manager meets weekly with all department heads to ensure that each department is operating efficiently.
  - The City Manager will have the Assistant City Manager, and Finance Director establish goals and objectives for the remainder of the fiscal year.

**ANALYSIS:**

Significant progress has been made with regard to the City Manger's goals and objectives.

**FISCAL IMPACT:**

The fiscal impact for the City Manager's goals and objectives for 08/09 budget have been minimal and fall within the limits of the budget.



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS**

**FROM: JEAN B. SAVAREE, SPECIAL COUNSEL**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: RESOLUTION ADOPTING FINDINGS ON APPEAL OF  
THE PROPERTY OWNERS AT 99 DEBELL DRIVE FROM  
A DETERMINATION BY THE PUBLIC WORKS DIRECTOR  
(CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)**

#### **RECOMMENDATION.**

Consider attached resolution making findings and, if appropriate, adopt the resolution by majority vote.

#### **BACKGROUND.**

At the City Council meetings on July 16, 2008 and August 20, 2008, the City Council conducted a public hearing on an appeal by Leigh and David White regarding a determination by the Public Works Director to issue an encroachment permit for construction of a driveway at 99 DeBell Drive. Attached is a resolution setting forth the findings to support the denial of the appeal.

#### **FISCAL IMPACT.**

None.

Prepared By:

Approved By:

/s/ Jean Savaree  
Jean B. Savaree  
Special Counsel

\_\_\_\_\_  
Jerry Gruber  
City Manager

Attachment

**RESOLUTION NO. 08-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
DENYING APPEAL OF PUBLIC WORKS DIRECTOR'S ISSUANCE OF  
ENCROACHMENT PERMIT FOR 99 DEBELL DRIVE, ATHERTON**

The City Council of the Town of Atherton hereby resolves as follows:

The City Council of the Town of Atherton having reconsidered the matter, and in accordance with the provisions of Chapter 17.44 and particularly Sections 17.44.020 and 17.44.050 of the Atherton Municipal Code hereby makes the following findings and determinations in the appeal from the decision of the Public Works Director dated June 4, 2008, regarding issuance of an encroachment permit for property located at 99 DeBell Drive, Atherton, California.

1. Leigh and David White ("Appellants"), owners of property located at 73 Madrone Road, Atherton, California, ("Owners") timely appealed the decision of the Public Works Director to issue an encroachment permit to Thom Bryant and Susan Gellen, owners of 99 DeBell Drive ("Applicants"), for construction of a driveway.

2. The City Council held appeal hearings on July 16, 2008 and August 20, 2008.

3. Written and documentary evidence was presented and considered by the City Council, along with testimony from the Appellants, Applicants and members of the public, all of which testimony and evidence was received without objection and considered and discussed by the City Councilmembers during the public hearings and thereafter in making their determination.

4. The City Council determines that, based upon substantial evidence, the appeal should be denied. In denying the appeal, the Council affirms the issuance of the encroachment permit for 99 DeBell Drive, thereby allowing Applicants to proceed with construction of the driveway in accordance with Encroachment Permit 07-994 and subject to the following conditions:

A. Applicants shall participate in the maintenance of Madrone Road.

B. Applicants shall install a solid fence and landscape screening along the Madrone Road border of their property and a driveway entrance gate to the satisfaction of the Planning Director.

This Resolution shall be effective immediately upon adoption.

*I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote.*

*AYES:*                      *Council Members:*  
*NOES:*                     *Council Members:*  
*ABSENT:*                 *Council Members:*  
*ABSTAIN:*                *Council Members:*

ATTEST:

---

James R. Janz, MAYOR  
Town of Atherton

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

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Jean B. Savaree, Special Counsel

**RECORDING REQUESTED BY**

Town of Atherton

**WHEN RECORDED MAIL TO:**

Town of Atherton  
Public Works Department  
93 Station Lane  
Atherton, CA 94027

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**REVOCABLE ENCROACHMENT PERMIT  
FOR FACILITIES**

THE TOWN OF ATHERTON, a municipal corporation ("Town"), pursuant to Chapter 12.06 of the Atherton Municipal Code, hereby grants to \_\_\_\_\_ ("Permittee"), a revocable encroachment permit to allow certain facilities to be installed in certain premises owned or controlled by the Town as described in Exhibit A attached here and incorporated by this reference.

The conditions of this encroachment permit are as follows:

1. The authorized encroachments are described in Exhibit A and as shown on the plans, a copy of which are on file in the offices of Town.
2. Permittee shall indemnify, defend and hold Town harmless from and against any and all claims, demands, costs, expenses, and liabilities arising from or in any manner related to the issuance of the encroachment permit and the construction of improvements by Permittee within the premises described in Exhibit A..
3. Permittee shall at all times maintain in full force and effect a policy of general liability insurance providing coverage to Town of not less than two million dollars (\$2,000,000.00) against the liabilities referred to in paragraph 2 of this permit. Such policy shall expressly provide that coverage thereunder shall be primary with respect to any other liability insurance maintained by Town and shall not be reduced or cancelled without at least twenty (20) days prior written notice to Town. The obligation of Permittee to indemnify and defend Town shall not be limited to the amount of such insurance coverage therein.
4. Permittee shall participate in the maintenance of the road in a similar manner as all other properties served by the road to which this permit relates.
5. Permittee shall install a solid fence, entry gate, and landscape screening on and along the frontage of the property to the road to which this permit relates.
6. This permit shall constitute a covenant running with the land which shall be binding upon the successors and assigns of Permittee, including all future owners of the property or any interest therein.
7. This permit shall not constitute the transfer or relinquishment of any ownership interest held by Town in the premises described in Exhibit A nor shall this permit confer any vested or proprietary rights upon the holder of the permit beyond the right to utilize the encroachment area in the manner authorized by the permit and subject to all of the conditions set forth herein.
8. This permit may be revoked by the City Manager upon any violation of the conditions of the permit or if it becomes necessary for Town to utilize any portion or all of the encroachment area to prevent, correct or abate a safety or health hazard or any existing or threatened hazard to the condition or maintenance of the premises described in Exhibit A or any utilities installed therein, or if the Town otherwise requires use of any portion or all of the encroachment area. In the absence of emergency, Town shall provide at least ninety (90) days written notice of revocation during which time Permittee shall at Permittee's own expense, remove such portion or all of the private improvements constructed within the permitted area as may be directed by the City Manager..

TOWN OF ATHERTON

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager

The undersigned hereby accepts the foregoing encroachment permit and agrees to observe or perform all of the conditions set forth therein

PERMITTEE

Dated: \_\_\_\_\_

\_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct..

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

(Notary Seal)



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER , CITY MANAGER**

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: APPROVE AMENDING THE AGREEMENT WITH MENLO-  
ATHERTON LITTLE LEAGUE TO KEEP THE FIELD BACKSTOPS IN  
PLACE YEAR-ROUND**

#### **RECOMMENDATION:**

Approve amending the agreement with Menlo-Atherton Little League to keep field backstops in place year-round, including continuing the increased insurance coverage, and including a provision for Little League to recondition the backstops and maintain them a satisfactory condition.

#### **BACKGROUND:**

After extensive discussion and controversy, in July 2000 the City Council approved a license agreement with Menlo-Atherton Little League, Inc. (Little League) permitting Little League to construct, operate and use a baseball field in Holbrook-Palmer Park. One provision of the agreement, Article 1, Paragraph 7, states:

Little League may install fencing on the first and third baselines of the Project Area baseball field, an appropriate backstop and players seating area fencing (the "Field Improvements") at the start of each Season during the term of this Agreement provided that the Field Improvements shall be removed by Little League at the end of each Season.

By letter to the Mayor dated July 7, 2007, Little League requested relief from this provision. The request was considered by the City Council at the July City Council meeting and referred to the Park and Recreation Commission for a recommendation. At its August 2007 meeting, the Park

and Recreation Commission recommended that the request be denied. The City Council at its September 2007 meeting decided to allow the backstops to stay for a trial year, provided that Little League provided \$2 million insurance coverage for any accidents or injuries resulting from use of the backstop.

**ANALYSIS:**

There have been no complaints filed or recorded incidents of unwarranted activities on the ball fields or claims related to the backstops in the past year that the backstops remained standing.

The Park and Recreation Commission considered the item at its September 3, 2008, meeting and recommended that the backstops be permitted to remain in place so long as they are reconditioned and maintained in good condition. Little League is requesting relief from the requirement to remove the backstops at the end of the season in part due to the damage caused by removing and storing them. This damage should now be repaired so that the backstops will remain in good condition now that they are remaining standing year-round.

**ALTERNATIVES:**

Pass a motion choosing one of three alternatives:

1. Comply with the existing contract and remove the backstops at the end of each season.
2. Allow the backstops to remain for another year, including continuing the increased insurance coverage, and re-evaluate next July.
3. Allow the backstops to remain year round, and continue the increased insurance coverage.

**FISCAL IMPACT:**

There is no fiscal impact to the Town by this decision.

Prepared by:

Approved by:

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Duncan L. Jones, P.E.  
Public Works Director

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Jerome D. Gruber  
City Manager

Attachments: Amended Agreement for 1 year trial period  
Second Amendment to License Agreement

FIRST AMENDMENT TO  
LICENSE AGREEMENT

(HOLBROOK-PALMER PARK LITTLE LEAGUE BASEBALL FIELD)

This First Amendment to the License Agreement ("Agreement") originally entered into on July 19, 2000, is hereby entered into on the date set forth below by and between the Town of Atherton, a California municipal corporation ("Atherton") and the Menlo-Atherton Little League, Inc., a 501(c)(3) tax exempt organization ("Little League").

RECITALS

WHEREAS, Article XI, subparagraph 3 of the Agreement provides for modification or waiver of the provisions of the Agreement when executed in writing by each of the parties; and

WHEREAS, Little League has requested a waiver of the provisions of Article I, subparagraphs 6 and 7 which require the removal of Field Improvements by Little League at the end of each season.

WHEREAS, based upon consideration including an agreed upon revision to insurance requirements set out in Article VI of the Agreement, Atherton agrees to waive the requirements for removal of improvements described below for a period of one (1) year from and after July 1, 2007, through and including June 30, 2008.

NOW, THEREFORE, the parties agree as follows:

1. Waiver of Article I, subparagraphs 6 and 7 for a period of one (1) year.

Atherton hereby waives, for a period of one (1) year commencing July 1, 2007 and ending on June 30, 2008, the requirement in Article I, subparagraphs 6 and 7 requiring removal by Little League at the end of each season of outfield fencing, first and third baseline fencing, backstop and players' area seating fencing. Thereafter, the described Field Improvements shall be removed in accordance with the terms and conditions of subparagraphs 6 and 7 of Article I of the Agreement.

2. In consideration for the foregoing waiver by Atherton of the requirement for removal of Field Improvements as described above, Little League hereby agrees to the following revisions to Article VI of the Agreement:

"ARTICLE VI. INSURANCE

Little League shall maintain public liability insurance covering Little League's use of the Project Area and Little League field improvements owned, installed, used and maintained by Little League in an amount equal to not less than TWO MILLION DOLLARS (\$2,000,000.00) with an endorsement showing Atherton as an additional insured.

Each party understands and agrees that the insurance coverage provided by Little League will include coverage not only for Little League authorized activities and events, but also for any claims for personal injury or property damage arising from the Field Improvements used, installed and maintained by Little League.

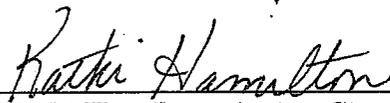
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to License Agreement to be effective as of July 1, 2007.

**ATHERTON:**

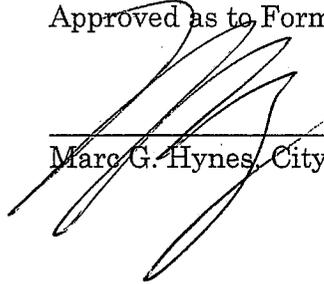
TOWN OF ATHERTON, a California municipal corporation

By:   
Alan B. Carlson, Mayor

Attest:

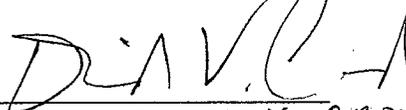
  
Kathi Hamilton, Acting City Clerk

Approved as to Form:

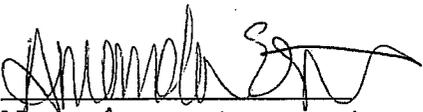
  
Marc G. Hynes, City Attorney

**LITTLE LEAGUE**

MENLO-ATHERTON LITTLE LEAGUE, INC., a 501(c)(3) tax exempt organization

By:   
Name: DAVID V. CROWDER  
Title: MENLO-ATHERTON LITTLE LEAGUE VICE PRESIDENT  
AND BOARD MEMBER

Attest:

  
Name: Amanda Estell  
Title: ~~Menlo Atherton Little League Board Member~~

SECOND AMENDMENT TO  
LICENSE AGREEMENT

(HOLBROOK-PALMER PARK LITTLE LEAGUE BASEBALL FIELD)

This Second Amendment to the License Agreement (“Agreement”) originally entered into on July 19, 2000, and amended on July 1, 2007, is hereby entered into on the date set forth below by and between the Town of Atherton, a California municipal corporation (“Atherton”) and the Menlo-Atherton little League, Inc., a 501(c)(3) tax exempt organization (“Little League”).

RECITALS

WHEREAS, Article XI, subparagraph 3 of the Agreement provides for modification or waiver of the provisions of the Agreement when executed in writing by each of the parties; and

WHEREAS, Little League has requested a waiver of the provisions of Article I, subparagraphs 6 and 7 which require the removal of Field Improvements by Little League at the end of each season.

WHEREAS, based upon consideration including an agreed upon revision to insurance requirements set out in Article VI of the Agreement, Atherton agrees to waive the requirements for removal of improvements described below.

NOW, THEREFORE, the parties agree as follows:

1. Waiver of Article I, subparagraphs 6 and 7.

Atherton hereby waives the requirement in Article I, subparagraphs 6 and 7 requiring removal by Little League at the end of each season of outfield fencing, first and third baseline fencing, backstop and players’ area seating fencing.

2. In consideration for the foregoing waiver by Atherton of the requirement for removal of Field Improvements as described above, Little League hereby agrees to reconditioning and maintaining the improvements as described in Article I, subparagraphs 6 and 7 to the satisfaction of the City Manager or designee, and further agrees to the following revisions to Article VI of the Agreement:

“ARTICLE VI. INSURANCE

Little League shall maintain public liability insurance covering Little League’s use of the Project Area and Little League field improvements owned, installed, used and maintained by Little League in an amount equal to not less than TWO MILLION DOLLARS (\$2,000,000.00) with an endorsement showing Atherton as an additional insured.

Each party understands and agrees that the insurance coverage provided by Little League will include coverage not only for Little League authorized activities and events, but also for any claims for personal injury or property damage arising from the Field Improvements used, installed and maintained by Little League. .

**IN WITNESS WHEREOF**, the parties hereto have executed this Second Amendment to License Agreement to be effective as of July 1, 2008..

**ATHERTON:**

TOWN OF ATHERTON, a California municipal corporation

By: \_\_\_\_\_  
James Janz, Mayor

Attest:

Approved as to Form:

\_\_\_\_\_  
Kathi Hamilton, Acting City Clerk

\_\_\_\_\_  
Marc G. Hynes, City Attorney

**LITTLE LEAGUE**

MENLO-ATHERTON LITTLE LEAGUE, INC., a 501(c)(3) tax exempt organization

By: \_\_\_\_\_  
Name:  
Title:

Attest:

\_\_\_\_\_  
Name:  
Title: Menlo-Atherton Little League Board Member



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JERRY GRUBER, CITY MANAGER**

**FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: AWARD OF A SOLE SOURCE CONTRACT TO NOR-CAL  
COATINGS FOR THE MISCELLANEOUS TOWNHOUSE  
REPAIRS PROJECT NUMBER 08-018 IN AN AMOUNT NOT TO  
EXCEED \$48,940 PLUS A TEN PERCENT CONSTRUCTION  
CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$53,834.**

#### **RECOMMENDATION:**

Award the sole source contract for the Miscellaneous Townhouse Repairs Project, Project No. 08-018, to Nor-Cal Coatings for \$48,940, with a 10% construction contingency of \$4,894, for a total authorization of \$53,834; and to authorize the City Manager to sign the contract on behalf of the Town.

#### **INTRODUCTION:**

The Townhouse interior was upgraded last year in order to update and repair it for the new City Manager to occupy. Exterior repairs, including underneath the house, were deferred to this year in favor of using last year's budget to upgrade the kitchen. This scope of work and proposal are to perform needed repairs to the exterior of the house, and to open the dining room to the newly repaired deck between the dining room and the sunroom.

This does not include rebuilding the patio and decks between the dining room and the garage; however, the remaining budget this year will be used to have Kikuchi, the park landscape architect, develop a master plan for the Townhouse yard, including a patio and deck plan and perform as much of the hardscape work (walkways, patios and decks) as possible with the remaining budget. Much of the landscape work will be implemented by the City Manager, and the major deck and patio plan will come back to Council for budgeting in the future, along with alternatives to rehabilitate instead of replacing. There

is some minor roofing work that also needs to be included within the remaining budget, including roof vents for bathrooms (currently vented into the attic) and repair or replacement of gutters and downspouts (currently sun degraded PVC).

**ANALYSIS:**

Nor-Cal Coatings was the only bidder on the previous Townhouse work, despite repeated attempts to obtain bids from other contractors. Nor-Cal Coatings was the low bidder on the Pavilion and Main House Repainting contracts and has performed excellent work on all projects handled by them. Town staff intends to have Nor-Cal Coatings approved as a sole-source vendor for all Town carpentry and painting work. Staff recommends that Nor-Cal Coatings be awarded this contract on a sole-source basis.

**FISCAL IMPACT:**

Parcel Tax funds in the amount of \$70,000 are budgeted for this project in FY 2008-09. Bids were received for the project on September 10, 2008. Nor-Cal Coatings was the sole bidder at \$48,940. A 10% construction contingency of \$4,894 would bring the total authorization to \$53,834, which is \$16,166 below the FY 2008-09 budget.

Prepared By:

Approved:

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Duncan L. Jones, P.E.  
Public Works Director

---

Jerome D. Gruber  
City Manager

Attachments: Nor-Cal Coatings Proposal

PROPOSAL AND CONTRACT

To: Jean Cardona – Director of Holbrook Palmer Park  
Phone #: 650-752-0534 fax#:688-6548  
Job location: City Manager’s provided residence @ 160 Watkins – Atherton,CA

From: NOR-CAL COATINGS - 3917 Donner St. - San Mateo, Ca. 94403 Lic# 801932-HIC  
www.liquidvinylsiding.net Email: [norcalcoatings@sbcglobal.net](mailto:norcalcoatings@sbcglobal.net)

650-378-4433 Cell# 650-504-1624 Fax# 650-378-4432

We propose to furnish labor and specified materials to complete the following:

- Replace back door and frame at laundry room and take down awning.**
- Remove concrete stairs and demo existing deck and hot tub.**
- Remove solid wood door in sunroom, build wall and add a window between the two existing windows at the door area. Window to match existing.**
- Remove double French doors in sun room and replace with a sliding glass door.**
- Add a set of double French doors to the wall at the south side of the DR and trim out.\*\***
- Add outside lights to corners of new doors to the deck from DR with a three way switch in sun room**  
**\*\*All new doors to be wood with a vinyl clad exterior and double pane low e glass.\*\***
- Replace window sill in sunroom that is dry rotted**
- Build stained RW deck to provide sitting area off sun room and provide flow of traffic from DR and bedroom area.**
- Replace all outside flood lights and bring wiring up to code.**
- Sand and paint window sills on the exterior of the house and touch up the trim surrounding them.**
- Patch and paint miscellaneous areas in the stucco around the house.**
- Remove fireplace insert and plumb for gas; replace with gas log system and glass door.**
- Seismic repairs under house to be brought up to code.**

\*\*\*In this proposal the **City** refers to the “City of Atherton and the **Park** refers to Jean Cardona the director of Hollbrook Palmer Park”

DOES NOT INCLUDE: The cost of permits, or debris disposal. City to provide debris box

\*\*\*Permits and inspections to be coordinated by the Park with the City\*\*\*


**\*\*Hidden conditions such as new areas of dry rot that are previously not defined are not part of this proposal.\*\***

**\*\*additional work or repairs will be discussed & billed @ \$60 per hr. plus cost of materials\*\*\***

**WORK TO BE COMPLETED FOR THE SUM OF: \$48,940.00**

**Labor: \$39,240.00 plus materials of \$9,700.00 = \$48,940.00**

PAYMENTS: Payment upon incremental completion as per previous agreement.

SUBMITTED BY: Ralph H. Santini - sole proprietor Nor-Cal coatings

\_\_\_\_\_ DATE: September 10, 2008

ACCEPTED BY:

\_\_\_\_\_ DATE: \_\_\_\_\_

**YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION**



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: CITY COUNCIL MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: INTRODUCTION OF AN ORDINANCE ADDING A NEW CHAPTER 9.06 REGARDING PARADE PERMITS; INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 17.28 REGARDING SPECIAL EVENTS**

#### **RECOMMENDATION:**

Consider ordinances adding a new Chapter 9.06 Parades, Marches and Assemblages and amending Chapter 17.38 regarding Special Events. A majority vote is required to introduce each ordinance.

#### **BACKGROUND:**

In 2005, the Town enacted a Special Events Ordinance which appears in Chapter 17.38 of the Atherton Municipal Code. (Exhibit A.)

In attempting to treat all "special events" in Town equally, the ordinance runs into issues related to constitutional activities including parades. The most significant of these is the fact that advance notice which may be otherwise required for special events to enable the Town to adequately respond to them is far too long for parades and assemblies exercising constitutional rights under the First Amendments to the United States and California Constitutions. Accordingly, these First Amendment issues have been "carved out" and placed into a separate ordinance which is proposed to be added as Chapter 9.06 of the Atherton Municipal Code. (Exhibit B.)

The revised Special Events Ordinance (Exhibit C) was considered at two meetings of the Planning Commission. The Planning Officer has also prepared and made the requisite public notice of the Special Events Ordinance for the City Council meeting.

The Special Events Ordinance and the Parade Permit Ordinance were prepared by the law firm of Colantuono & Levin, PC. This firm is one of the best known law firms providing legal advice

to municipalities throughout the State of California. This firm also represented the Town in the recent lawsuit which challenged the environmental analysis in connection with the Performing Arts Center for the Menlo-Atherton High School Campus.

Exhibit D is a red-lined version of the existing Special Events Ordinance (Exhibit A) showing recommended changes which are set out in Exhibit C. The details of the red-lined version may be helpful or confusing. I believe that Exhibit D it is confusing to read even though the “key” appears simple enough to follow: material deleted is lined out; new material is underlined with a double line.

By adopting the ordinances presented as Exhibits B and C, the Town will be in a position to enforce restrictions regarding special events which are designed to give Town residents a degree of peace and quiet when the various events are conducted in Town.

Analysis and Discussion:

Following approval of the Special Events Ordinance at the regular Planning Commission meeting on August 27, 2008, Vice Mayor Carlson reviewed the revisions and raised a number of questions which are addressed below;

1. Question. Section 17.38.030 Definition – Should “Town sponsored events” be an exclusion?

Response: The extent of the Special Events Ordinance has not been changed – Town sponsored events were not excluded previously. While Town-sponsored events could be excluded, there is no real limitation as to what “Town-sponsorship” means and includes. While this could be developed and defined, the purpose of the regulations as described in Section 17.38.020 would not support such an exclusion.

2. Question. If an event is not open to the general public, is it covered?

Response. The ordinance describes a special event as an activity to which the general public is invited. Events with restricted invitation lists are not subject to the Special Events Ordinance. This avoids issues involving people having private parties at their homes and also avoids any Town involvement with invitation only political fund raising events which would raise First Amendment problems were an attempt made to cover them.

3. Question. What is the minimum number of people in attendance to be considered an event?

Response. No minimum number is established for a special event. It is the activity itself, rather than the number of attendees, which may create a problem, i.e., live music, for example.

4. Question. Would it help clarify the rules if some examples of special events were given?

Response. Examples might be helpful. Section 17.38.040B of the original ordinance lists some examples. These have been retained and added to in the new ordinance in Section 17.38.040. At the same time, the words “walks”, “road races”, “bicycle rides” and “skate-a-thons” have been deleted. They are now included in the term “athletic events” which appear as number 6 in Section 17.38.040.

The term “procession” formerly appearing in Section 17.38.040 has been removed. The term “procession” invokes First Amendment issues which are more appropriately addressed in the Parade and Assemblies regulations in Chapter 9.06.

5. Question. The exception requirements appear to be focused entirely on schools. Should the Title be amended to show this?

Response. Section 17.38.045 deals with exception to Special Event permit requirements. The vast majority of these exceptions relate to schools. However, Section C refers to open house tours for the purpose of selling property under the regular course of a real estate transaction, I do not recommend any changes to the title.

6. Question. Responsible Parties are to notify the Town for exempt school-related events if there are unusual parking or traffic demands. What happens if this is not done?

Response. A violation of the Special Events Ordinance allows the Town to proceed either by way of a criminal proceeding (citations or criminal complaints) or civil injunctions. (See Section 17.38.090.)

For non-school related events no permit is required if the events meet the times and locations described in paragraphs 1 and 2 of Section 17.38.045B. There is no similar requirement for notification of traffic or parking demands as is the case for school-related events. This requirement could be added for non-school related events if the Council wishes.

7. Question. Why is there a 60-day application period for special events? Why not 30 days or 21 days?

Response. Section 17.38.050 requires a sixty (60) day lead time period for requesting a permit. This was put into the original ordinance because of the possibility of Planning Commission review. Inasmuch as the Planning Commission only meets monthly, by the time staff makes comments and matters are agendaized for planning commission meetings, the 60 day period was found necessary.

8. Question. Are these rules only for schools?

Response. While the exemptions in 17.38.045 (which in turn invoke conformance with time limits as described in that section) appear to give primary attention to events held at schools, the ordinance applies to special events throughout the Town. (See Section 17.38.040; 17.38.050B; 17.38.060A through D; and Section 17.38.070B 1 through 7.)

### **FISCAL IMPACT:**

Financial impact will depend on costs of enforcement and Planning Commission hearings pursuant to the provisions of Section 17.38.070A.

Prepared By:

Approved By:

Marc Hynes  
Marc G. Hynes  
City Attorney

\_\_\_\_\_  
Jerry Gruber  
City Manager

Attachments: Exhibit A Chapter 17.38 Atherton Municipal Code  
Exhibit B Parade Ordinance Chapter 9.06  
Exhibit C Revised Special Events Ordinance Chapter 17.38  
Exhibit D Redline versions showing Exhibit A revised to Exhibit C.

(40 hits)



## Chapter 17.38 SPECIAL EVENTS

### Sections:

- 17.38.010 Title.**
- 17.38.020 Purpose and intent.**
- 17.38.030 Definitions.**
- 17.38.040 Permit required.**
- 17.38.050 Application submittal requirements.**
- 17.38.060 Permit issuance.**
- 17.38.070 Permit requirements.**
- 17.38.080 Permit revocation.**
- 17.38.090 Violation as a public nuisance.**

### **17.38.010 Title.**

This chapter shall be known as the "Special Event Ordinance" and may be so cited. (Ord. 559 § 2 (part), 2005)

### **17.38.020 Purpose and intent.**

A. The purpose of this chapter is to ensure the comfort, safety and general welfare of the town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.

B. The intent of this chapter is to protect the residents from excessive noise, traffic and other intrusions upon their privacy. (Ord. 559 § 2 (part), 2005)

### **17.38.030 Definitions.**

A "special event" is an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the town of Atherton to which the general public is invited. (Ord. 559 § 2 (part), 2005)

### **17.38.040 Permit required.**

A. All special events held in the public right-of-way shall obtain a special event permit. Activities include, but are not limited to, processions such as: walks, road races, bicycle rides, skate-a-thons and similar activities.

B. A special event permit is required for any special event held on private property, occurring on two or more consecutive days where members of the general public are invited. Activities requiring a permit include, but are not limited to the following:

1. Motion picture filming;
2. House and garden tours;
3. Fundraisers;

4. Auctions;
5. Antique shows;
6. Concerts;
7. Other similar activities.

C. The following provisions shall apply to special events held at private and public schools and country clubs:

1. A permit is not required for on-site school-related events. Responsible parties shall notify the town of school events that may result in additional traffic or parking.

2. A permit is not required for non-school-related events held at schools and country clubs that meet the school event guidelines as prepared by the city manager and accepted by the city council. Responsible parties shall notify the town of events that may result in additional traffic or parking.

3. A special event permit is required for non-school-related events that are planned to occur outside of the school event guidelines.

D. Open house tours for the purpose of selling property under the regular course of a real estate transaction shall be exempt. (Ord. 559 § 2 (part), 2005)

#### **17.38.050 Application submittal requirements.**

The following items and information shall be submitted to the city manager or designee:

A. Completed application (application form supplied by the town) submitted to the town at least two months prior to the event;

B. Detailed description of the event;

C. Contact person available prior to and during the event;

D. Application fee (as set by resolution of the city council);

E. The anticipated number of attendees and number of vehicle trips per day;

F. An on- and off-site parking plan including the placement of barricades, etc.;

G. A deposit as determined by the police chief for the funding of any additional security measures not provided by the applicant;

H. A hold harmless agreement, naming the town, its employees and agents; and certificate of insurance, naming the town as additional insured. A form of hold harmless agreement, and insurance in the amount of two million dollars and insurance provider shall be reviewed and approved by the city attorney. (Ord. 559 § 2 (part), 2005)

#### **17.38.060 Permit issuance.**

A. The city manager or designee may issue a special event permit when in the opinion of the city manager or designee the event meets all of the requirements of this code and the Atherton general plan. The city manager or designee may refer items to the planning commission when, in his or her opinion, the public interest would be better served by the planning commission conducting a public hearing. The city manager or designee shall issue, deny or refer a special event permit within thirty days of receipt of a completed application. If the event will not be in conformance with either this code or the Atherton general plan the application shall be denied.

B. If a special event permit is issued by the city manager or designee, such official may impose any reasonable conditions to ensure the event will have a minimal impact on the community. Such conditions may include, but are not limited to, any of the following:

1. Adequate arrangements to prevent:

- a. Violation of Chapter 8.16, Noise Control,
  - b. Violation of Chapter 8.20, Nuisance Abatement,
  - c. Amplified sound,
  - d. Violation of any traffic laws,
  - e. Violation of any other section of this code;
2. Posting of docents at key/dangerous locations;
  3. Events, including setup and tear down, will be done during daylight hours if feasible;
  4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one hour prior to or after the end of the event;
  5. Other materials or mitigation measures deemed necessary by the city manager or designee;
  6. Parking barricades shall be set back a minimum distance as required by the city manager or his or her designee to ensure site distance clearance from special event site driveways and neighboring driveways. (Ord. 559 § 2 (part), 2005)

#### **17.38.070 Permit requirements.**

A. All special events held on private property shall be limited to no more than two consecutive weeks, including no more than two consecutive weekends. Any event for a longer period of time requires a conditional use permit from the planning commission.

B. All special events shall be publicly noticed at least ten days prior to the issuance of a permit, pursuant to the process outlined in State Planning and Zoning Law Section 65091, with a five-hundred-foot radius notification. However, if the event is not conducted on a single site, or is to be conducted within the public right-of-way, the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten days prior to issuance of a permit.

C. The applicant shall execute an agreement acknowledging obligations to comply with all required conditions of the special event permit.

D. No more than two special event permits shall be issued in a twelve-month period for special events on any private residential property. (Ord. 559 § 2 (part), 2005)

#### **17.38.080 Permit revocation.**

A special event permit may be revoked by the city manager or his or her designee in the event of any violation of the special events permit or this code. (Ord. 559 § 2 (part), 2005)

#### **17.38.090 Violation as a public nuisance.**

Each violation of this chapter is a misdemeanor and shall constitute a public nuisance and be subject to abatement as such. (Ord. 559 § 2 (part), 2005)

**ORDINANCE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATHERTON  
ADOPTING CHAPTER 9.06 OF THE ATHERTON MUNICIPAL CODE  
RELATING TO PARADES AND ASSEMBLIES**

**WHEREAS, Chapter 9.06 of the Atherton Municipal Code is adopted to establish a process to permit parades, marches and assemblies to ensure the health and safety of event participants, residents, workers, and other visitors, to prohibit illegal activities from occurring in the community, and to protect the rights of permit holders; and,**

**WHEREAS, Chapter 9.06 of the Atherton Municipal Code is intended to protect the right of the people to engage in expressive activities in the City's public places and establish the least restrictive, reasonable time, place and manner regulations of these activities.**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATHERTON DOES ORDAIN AS FOLLOWS:**

**SECTION 1. CODE AMENDMENT**

**Chapter 9.06 of the Atherton Municipal Code is hereby adopted to read as set forth in the Exhibit A attached to this Ordinance and incorporated herein by this reference.**

**SECTION 2. SEVERABILITY**

**Should any provision, section, paragraph, sentence or word of this Ordinance be declared invalid by any court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable.**

**SECTION 3. CONSTRUCTION**

**The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.**

**SECTION 4. EFFECTIVE DATE.**

**This Ordinance shall take effect thirty days after its adoption pursuant to California Government Code section 36937.**

**SECTION 5. CERTIFICATION.**

**The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.**

**PASSED, APPROVED AND ADOPTED, this \_\_\_\_\_ day of \_\_\_\_\_ 2008.**

\_\_\_\_\_  
**James R. Janz, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kathi Hamilton, Acting City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Mark Hynes, City Attorney**

**EXHIBIT A**

**CHAPTER 9.06: PARADES, MARCHES AND ASSEMBLAGES**

**Section**

<b>9.06.010</b>	<b>Definitions</b>
<b>9.06.020</b>	<b>Permit Requirements</b>
<b>9.06.030</b>	<b>Exemptions</b>
<b>9.06.040</b>	<b>Application for Permit</b>
<b>9.06.050</b>	<b>Criteria for Approval or Denial</b>
<b>9.06.060</b>	<b>Nondiscrimination</b>
<b>9.06.070</b>	<b>Notice of Issuance or Denial of Permit</b>
<b>9.06.080</b>	<b>Content of Permit</b>
<b>9.06.090</b>	<b>City’s Traffic Control Costs to be Paid by Person or Organization</b>
<b>Responsible</b>	<b>for Parade or Assembly</b>
<b>9.06.100</b>	<b>Interference with Parade or Assembly Prohibited</b>
<b>9.06.110</b>	<b>Prohibitions</b>
<b>9.06.120</b>	<b>Violation</b>

**§ 9.06.010 Definitions.**

As used in this chapter:

(A) “Parade” means any march, demonstration, procession, motorcade, or promenade consisting of persons, animals, or vehicles, or a combination thereof, having a common purpose, design, destination, or goal, upon any public place, which parade, march, demonstration, procession, motorcade, or promenade does not comply with normal and usual traffic regulations or control.

(B) “Assembly” means any meeting, demonstration, picket line, rally, gathering, or group other than a parade, as defined in subsection (A), that substantially inhibits the usual flow of pedestrian or vehicular travel on a public right of way or in a public place or: (1) is comprised of one hundred fifty or more persons, animals, or vehicles, or a combination thereof, (2) has a common purpose, design, or goal, and (3) is located upon any public street, sidewalk, alley, park, or other public place or occupies any public area.

**§ 9.06.020 Permit required.**

No person shall engage in, conduct, or carry on the activity of a parade or assembly without a permit issued under this chapter.

**§ 9.06.030 Exemptions.**

The permit requirements of this chapter shall not apply to:

(A) Spontaneous parades or assemblies occasioned by news or affairs coming into public knowledge within three days of such parade or assembly; provided, however, that the organizers thereof give written notice to the City at least twenty-four hours prior to such parade or assembly. Such written notice shall contain all of the following information:

- (1) The name, address and telephone number of the person or persons seeking to conduct the parade or assembly. This person or these persons shall be considered a permittee for the purposes of this chapter;
- (2) The name, address and telephone number of the headquarters of the organization, if any, and of the organizer or responsible head of such organization by whom or on whose behalf the parade or assembly is proposed to be conducted;
- (3) The name, address and telephone number of the person who will chair the parade or assembly and who will be responsible for its conduct;
- (4) The location and date of the proposed parade or assembly, including the assembly area, dispersal area, and the route to be traveled;
- (5) An estimate of the approximate number of persons expected to participate in the parade or assembly and an estimate of the number of persons expected to observe the parade or assembly;
- (6) The times at which the parade or assembly will start and conclude;
- (7) The security or other arrangements that will be provided to ensure that participants are properly directed.

(B) The city manager may deny permission to conduct a parade or assembly within eighteen hours of the submission of the notice pursuant to subsection (A) of this section if the city manager makes a finding requiring denial pursuant to section 9.06.050. If the city manager makes a finding requiring denial pursuant to that subsection, the city manager shall immediately provide notice of the denial, including the reason for the denial, in the manner specified in section 9.06.070.

**§ 9.06.040. Application for permit.**

(A) A person seeking issuance of a permit pursuant to this chapter shall file an application with the city manager on forms supplied by the city.

(B) The application shall be filed with the city manager not less than six days prior to the date of the parade or assembly except as otherwise provided in this chapter.

(C) An application shall include the following information and other information requested by the form that the city manager determines to be reasonably necessary to allow the city to review the application and to accomplish the purposes of this ordinance:

- (1) The name, address and telephone number of the person or persons seeking to conduct the parade or assembly;
- (2) The name, address and telephone number of the headquarters of the organization, if any, and of the organizer or responsible head of such organization by whom or on whose behalf the parade or assembly is proposed to be conducted;
- (3) The name, address and telephone number of the person who will chair the parade or assembly and who will be responsible for its conduct;
- (4) The location and date of the proposed parade or assembly, including the assembly area, dispersal area, and the route to be traveled;
- (5) An estimate of the number of persons expected to participate in the parade or assembly and the number of persons expected to observe it;
- (6) The times when the parade or assembly will start and conclude;
- (7) The type of security or other arrangements that will be provided to ensure that participants are properly directed as to the approved parade route, assembly area and dispersal area;
- (8) The minimum and maximum speeds that the parade is to travel, if vehicles are included, and the maximum number of platoons or units, if any, in the parade or assembly and the maximum and minimum distances to be maintained between the units of such parade or assembly;
- (9) The maximum length of such parade or assembly in miles or fractions thereof;
- (10) The number and type of vehicles, if any, in the parade or assembly;
- (11) Whether participants in the parade or assembly are expected to wear masks;
- (12) A statement signed by the person seeking the permit that the permittee agrees to defend, protect, indemnify and hold the city, its officers, employees, agents, and volunteers free and harmless from and against any and all claims, damages, expenses, losses or liabilities of any kind or nature whatsoever arising out of, or resulting from, the acts or omissions of permittee, or its officers, agents, employees or volunteers in connection with the permitted event or activity; and

the permit shall expressly provide that the permittee shall, at permittee's own cost, risk and expense, defend any and all such claims and all legal actions commenced or filed against the city, its officers, agents, employees, or volunteers, and that the permittee shall pay any settlement entered into and shall satisfy any judgment that may be rendered against the city, its officers, agents, employees, or volunteers with respect to such a claim ; and

(13) If the assembly or dispersal area is private property in all or part, the applicant must submit with the application proof of the property owner's permission for that uses of the property.

(D) Within twenty-four hours after the submission of the application, the city manager shall notify the applicant, in writing, whether the application is complete. If no such notice is time given, the application will be deemed to be complete.

### **§ 9.06.050 Criteria for approval or denial.**

(A) The following criteria shall apply to issuance or denial of a parade or assembly permit.

(B) The permit shall be issued by the City Manager unless he or she finds that:

(1) The information contained in the application is false or intentionally misleading; or

(2) The parade or assembly is proposed for the same time and location as another, permitted parade or assembly, with the first filed of two or more conflicting applications otherwise entitled to approval under this chapter to be approved and the later-filed applications denied; or

(3) The proposed route or location of the parade or assembly traverses a street or other public right-of-way that was scheduled for maintenance, construction or repair prior to the application for that parade or assembly permit and the conduct of the parade or assembly would interfere with such maintenance, construction or repair or the maintenance, construction or repair would represent a threat to the health or safety of the participants in the parade or assembly, in which case the City Manager shall inform the applicant of other suitable routes and invite an amended application for such a route; or

(4) The proposed area for the assembly or for the assembly or dispersal of a parade cannot accommodate the number of participants expected to participate in the parade or assembly, as reflected in the application; or

(5) The parade would result in a violation of any federal, state or local law or regulation.

Upon making any finding set forth in this subsection, the city manager shall deny the permit application and give notice as required by section 9.06.070 of this chapter.

(C) As a condition of the issuance of a permit under this chapter, the city manager may require a parade or assembly be limited to a portion of the width of the street or right-of-way upon which the applicant seeks to conduct the parade or assembly (such as a particular traffic lane or a sidewalk) or require that the parade or assembly relocate so as to avoid unsafe conflicts with vehicular travel; provided, that such limitation does not limit or interfere with the conduct of the parade or assembly or cause the parade or assembly to violate any other provision of this chapter or any other federal, state or local law or regulation.

**§ 9.06.060 Nondiscrimination.**

The city manager shall consider each application upon its merits and shall not discriminate in granting or denying applications, and shall not deny any permit based upon political or religious grounds, the content of any message associated with the parade or assembly, or any other reason not expressly stated in this chapter.

**§ 9.06.070 Notice of Issuance or denial of permit.**

(A) The city manager shall approve or deny the permit application and shall provide notice to the applicant of the action taken by telephone and by written notice sent via mail and by fax and / or email, if the applicant provides a fax number or email address, within the following times:

- (1) If the permit is sought under the provisions of section 9.06.040, within two days after submission of the application.
- (2) If the permit is sought under the provisions of section 9.06.030, within twenty-four hours after submission of the application.

(B) If the permit is denied, the notice of denial shall set forth the reasons for denial.

(C) The decision of the city manager to approve, conditionally approve, or deny a permit shall be final as to the city but shall be subject to judicial review in the manner provided by law.

**§ 9.06.080 Content of permit.**

(A) The city manager shall set forth in each permit the following information if, and as that information is set forth, in the approved application:

- (1) The name, address and telephone number of the person to whom the permit is issued;

(2) The names, addresses and telephone numbers of the sponsoring organization, if any;

(3) The name, address and telephone number of the chairperson of the parade or assembly;

(4) The date for which the parade or assembly is scheduled;

(5) The assembly area for the parade or assembly;

(6) The starting and ending times for the parade or assembly;

(7) The minimum and maximum speeds at which the parade is to progress, if vehicles are to be used;

(8) The route of the parade or assembly;

(9) The maximum number of platoons or units, if any, in the parade or assembly and the maximum and minimum distances to be maintained between the units of such parade or assembly;

(10) The maximum length of such parade or assembly in miles or fractions thereof;

(11) The dispersal area for the parade or assembly and the dispersal time;

(12) The number and type of vehicles, if any, which may be used in the parade or assembly;

(13) Whether any participants in the parade or assembly are expected to wear masks;

(14) The type of security or other arrangements that will be provided to ensure participants are properly directed as to the approved parade route or assembly area; and

(15) Any condition imposed pursuant to section 9.06.050(C).

(B) The information requested by section 9.06.040(C) and required to be reflected in a permit by section 9.06.080(A) is for the information of law enforcement only and is not to be construed as permission for, or a restriction on, the use of masks by any person for expressive purposes.

(C) A copy of each permit shall be kept upon the person in charge of the parade or assembly at the parade or assembly site at all times during the parade or assembly, including during assembly and dispersal. The permittee shall advise all participants in the parade or assembly of the terms and conditions of the permit prior to the commencement of the parade or assembly.

**§ 9.06.090 City's traffic control costs to be paid by person or organization responsible for parade or assembly.**

A permittee under the provisions of this chapter shall reimburse the city for all traffic-control costs incurred in connection with diverting traffic due to the closure of streets to accommodate a parade or assembly. These costs shall be established from time to time by the city council by resolution prior to the date of any event to which those costs will be charged. No fee shall be charged based upon the need for security or increased police protection due to the content of any message associated with the parade or assembly.

**§ 9.06.100 Interference with parade or assembly prohibited.**

No person shall knowingly join or participate in any parade or assembly conducted under permit from the city in violation of any of the terms of said permit, nor knowingly join or participate in any permitted parade or assembly without the consent of the permittee, nor in any other manner interfere with its progress or orderly conduct.

**§ 9.06.110 Prohibitions.**

The following prohibitions shall apply to all parades and assemblies:

(A) It shall be unlawful for any person to carry any sign, poster, plaque, or notice, unless such sign, poster, plaque, or notice is constructed solely of a cloth, paper, plastic, cardboard or any similar, lightweight, flexible material no greater than one-quarter inch in thickness.

(B) It shall be unlawful for any person to ride, drive, or cause to be ridden or driven any animal or any animal-drawn vehicle upon any public street, unless specifically authorized by a permit.

(C) It shall be unlawful for any person to carry, possess or wear any gas mask or similar device designed to filter air breathed and that would protect the respiratory tract and face against irritating, noxious gases lawfully used by public safety officers for the control of unlawful gatherings.

(D) It shall be unlawful for any person to fail to abide by the instructions of a traffic control officer given for the purpose of accommodating traffic, including emergency vehicles, through and across a the route or location of a parade or assembly.

Nothing in this section shall prohibit a disabled person from using equipment, a service animal or other item necessary for his or her safe participation in a parade or assembly.

**§ 9.06.120 Violation.**

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Any intentional violation of this chapter or the terms or conditions of a parade or assembly permit by a permittee or a participant in a parade or assembly is a misdemeanor punishable pursuant to applicable law.

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**Chapter  
17.38  
SPECIAL  
EVENTS**

**Sections:**

- 17.38.010 Title.**
- 17.38.020 Purpose and intent.**
- 17.38.030 Definitions.**
- 17.38.040 Permit required.**
- 17.38.050 Application submittal requirements.**
- 17.38.060 Permit requirements for Events on  
**Private Property.**
- 17.38.070 Permit issuance.
- 17.38.080 Permit revocation.**
- 17.38.090 Violation as a public nuisance; no  
election of remedies.**

**17.38.010 Title.**

This chapter shall be known as the "Special Event Ordinance" and may be so cited.

**17.38.020 Purpose and intent.**

- A. The purpose of this chapter is to ensure the comfort, safety and general welfare of the town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.
  
- B. The intent of this chapter is to protect the residents from excessive noise, traffic and other intrusions upon their privacy.

**17.38.030 Definition.**

A. "Special event" **means** an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the town of Atherton to which the general public is invited to watch, listen or participate other than an event subject to regulation under chapter 9.06 of this code.

B. **"Field use" means and includes setup, breakdown, warm-ups and practice sessions as well as scheduled athletic events or shows and exhibitions.**

**17.38.040 Permit required.**

A special event permit is required for any special event, including, but not limited to:

1. Motion picture filming;
2. House and garden tours;
3. Carnivals, circuses, fairs, festivals or similar activities;
4. Fundraisers;
5. Outdoor shows and exhibitions
6. Athletic events;
7. Auctions;
8. Antique shows;
9. Concerts;
10. Other similar activities.

#### **17.38.045 Exceptions to Special Event Permit Requirements**

- A. For events held at private and public schools, a permit is not required for on-site school-related events. No later than two weeks before a scheduled event, responsible parties shall notify the town of school events that may result in unusual traffic or parking demands.
- B. For non-school-related events held at private and public schools, no permit is required for the following;
  1. An indoor event planned to end no later than 9:00 p.m.; or
  2. An outdoor event, including field use, that satisfies each of the following criteria:
    - a. For events scheduled for Monday through Friday, the event's hours are limited to 8:00 a.m. to 7:00 p.m.;
    - b. For events scheduled for Saturdays, the event's hours are limited to 9:00 a.m. to 6:00 p.m.;
    - c. For events scheduled for Sundays, the event's hours are limited to 10:00 a.m. to 5:00 p.m.;
    - d. No equipment is used to amplify sound; and,
    - e. All lighting associated with the outdoor event is shielded or down-lit so the source of light does not shine onto adjacent properties.
- C. **Open house tours for the purpose of selling property under the regular course of a real estate transaction shall be exempt.**

#### **17.38.050 Application submittal requirements.**

The following items and information shall be submitted to the city manager or designee:

- A. Completed application (application form supplied by the town) submitted to the town not less than 60 calendar days, nor more than six months, before the event and signed by the Applicant. If the application is filed by an organization or business entity, the application shall be signed by an authorized officer of such organization

- or business entity;
- B. Detailed description of the event, including, but not limited to;
- i. The number and types of persons, animals and vehicles, the number of bands, other musical units and equipment capable of producing sound, if any, and limitations thereon related to noise abatement;
  - ii. A crowd control plan to include the number and location of traffic and crowd controllers, monitors, equipment and barricades to be furnished by the Special Event organizer;
  - iii. Provisions for any required emergency medical services; and,
  - iv. Conditions or restrictions on the use of alcoholic beverages and authorization for and conditions of the exclusive control or regulation of vendors and related sales activity by the Special Events organizer during the Special Event.
- C. Contact person available prior to and during the event;
- D. Application fee (as set by resolution of the town council);
- E. The anticipated number of attendees and number of vehicle trips per day;
- F. An on- and off-site parking plan including the placement of barricades, etc.;
- G. A deposit as determined by the ~~police chief~~ **City Manager** for the funding of any additional security measures beyond those provided by the applicant required pursuant to section subparagraph (B)(7) of section 17.38.060;
- H. A statement signed by the person seeking the permit that the permittee agrees to defend, protect, indemnify and hold the town, its officers, employees, agents, and volunteers free and harmless from and against any and all claims, damages, expenses, losses or liabilities of any kind or nature whatsoever arising out of, or resulting from, the acts or omissions of permittee, or its officers, agents, employees or volunteers in connection with the permitted event or activity; and the permit shall expressly provide that the permittee shall, at permittee's own cost, risk and expense, defend any and all such claims and all legal actions commenced or filed against the town, its officers, agents, employees, or volunteers, and that the permittee shall pay any settlement entered into and shall satisfy any judgment that may be rendered against the town, its officers, agents, employees, or volunteers with respect to such a claim.
- I. Evidence of liability insurance coverage for the event in an amount established by the town manager, which shall not be less than \$2 million, together with an additional insured endorsement to constitute the town and its officers, agents and employees as additional insureds.

**17.38.060 Permit requirements for Events on Private Property.**

- A. All special events held on private property shall be limited to no more than two consecutive weeks, including no more than two consecutive weekends. Any event for a longer period of time requires a conditional use permit from the planning commission.
- B. All applications for a permit for a special event shall be publicly noticed at least ten days prior to the issuance of a permit, pursuant to the process outlined in California Government Code Section 65091, with a five-hundred-foot radius notification. However, if the event is not conducted on a single site, the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten days prior to issuance of a permit.
- C. The applicant shall execute an agreement acknowledging his, her or its obligation to comply with all required conditions of the special event permit.
- D. No more than two special event permits shall be issued in a twelve-month period with respect to a given private residential property.

**17.38.070 Permit issuance.**

- A. The city manager or designee may issue a special event permit when in the opinion of the city manager or designee the event meets all of the requirements of this code and the Atherton general plan. The city manager or designee may refer items to the planning commission when, in his or her opinion, the public interest would be better served by the planning commission conducting a public hearing. The city manager or designee shall issue, deny or refer a special event permit within thirty days of receipt of a completed application. If the event will not be in conformance with either this code or the Atherton general plan the application shall be denied.
- B. If a special event permit is issued by the city manager or designee, such official may impose any reasonable conditions to ensure the event will have a minimal impact on the community and to ensure the health and safety of the public. Such conditions may include, but are not limited to, any of the following:
  - 1. Adequate arrangements to prevent:
    - a. Violation of Chapter 8.16, Noise Control,
    - b. Violation of Chapter 8.20, Nuisance Abatement,
    - c. Amplified sound,
    - d. Violation of any traffic laws,
    - e. Violation of any other section of this code;
  - 2. Posting of docents at key/dangerous locations;
  - 3. Events, including setup and tear down, will occur during daylight hours if feasible;
  - 4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one hour prior to or after the end of the event;

5. Other materials or mitigation measures deemed necessary by the city manager or designee;
  6. Parking barricades shall be set back a minimum distance as required by the city manager or his or her designee to ensure site distance clearance from special event site driveways and neighboring driveways.
  7. The city manager shall require security beyond that proposed by the applicant, and require a deposit against the cost of that security as provided in paragraph G of section 17.38.050, if in his or her judgment, after consultation with the chief of police, that additional security is necessary to protect the health and safety of participants in the event and others affected by the event.
- C. A copy of the Special Event Permit shall be kept on site at the venue of the Special Event and shall be made available for review or inspection by any City official upon request.
- D. Compliance with this ordinance does not exempt the holder of a Special Event Permit from compliance with all other provisions of the City Code or any other federal, state or local law or regulation.

**17.38.080 Permit revocation.**

A special event permit may be revoked by the city manager, the Chief of Police or the designee of either in the event of any violation of the special events permit, any conditions thereon, or any federal, state or local laws and regulations. Such revocation shall become effective immediately upon order of the City Manager or Chief of Police or their designees and shall remain in effect until the application has corrected the violation or the Special Event Permit has expired on its own terms. Unless exigent circumstances suggesting an imminent threat to public health and safety exists, the city official issuing the order shall orally inform the permittee of the circumstances justifying revocation of the permit and allow them a brief opportunity to be heard by that official before the order issues.

**17.38.085 Delegation of Authority and Authority to Adopt Rules and Regulations**

- A. The City Manager ~~and the Chief of Police~~ may delegate any or all of ~~their~~ **the Manager's** functions under this ordinance to designated ~~Deputy~~ **Assistant** City Managers and/or their designees.
- B. The City Manager is authorized to promulgate additional rules and regulations that are consistent with and that further the terms and requirements set forth in this ordinance and those rules and regulations shall be effective once notice of them has been given in the manner required for notice of ordinances of the ~~town~~ **city** council.

**17.38.090 Violation as a public nuisance; no election of remedies.**

Each violation of this chapter is a misdemeanor and shall constitute a public nuisance and be subject to abatement as such. Such violations may also be remedied or punished in any other manner authorized by this code, other law, or equity.

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**Chapter  
17.38  
SPECIAL  
EVENTS**

**Sections:**

- 17.38.010 Title.**
- 17.38.020 Purpose and intent.**
- 17.38.030 Definitions.**
- 17.38.040 Permit required.**
- 17.38.050 Application submittal requirements.**
- 17.38.060 Permit issuance.**
- 17.38.070 Permit requirements.**
- 17.38.080 Permit revocation.**
- 17.38.090 Violation as a public nuisance; no election of remedies.**

**17.38.010 Title.**

This chapter shall be known as the "Special Event Ordinance" and may be so cited. ~~(Ord. 559 § 2 (part), 2005)~~

**17.38.020 Purpose and intent.**

- A. The purpose of this chapter is to ensure the comfort, safety and general welfare of the town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.
- B. The intent of this chapter is to protect the residents from excessive noise, traffic and other intrusions upon their privacy. ~~(Ord. 559 § 2 (part), 2005)~~

**17.38.030 ~~Definitions~~ Definition.**

A "special event" is an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the town of Atherton to which the general public is invited. ~~(Ord. 559 § 2 (part), 2005)~~ to watch, listen or participate other than an event subject to regulation under chapter 9.06 of this code.

**17.38.040 Permit required.**

A. ~~All special events held in the public right-of-way shall obtain a special event permit. Activities include, but are not limited to, processions such as: walks, road races, bicycle rides, skate-a-thons and similar activities.~~ B. ~~A special event permit is required for any special event held on private~~

~~property, occurring on two or more consecutive days where members of the general public are invited. Activities requiring a permit include, but are not limited to the following, including, but not limited to:~~

1. Motion picture filming;
2. House and garden tours;
3. Carnivals, circuses, fairs, festivals or similar activities;
4. 3-Fundraisers;
5. Outdoor shows and exhibitions
6. Athletic events;
7. 4-Auctions;
8. 5-Antique shows;
9. 6-Concerts;
10. 7-Other similar activities.

### 17.38.045 Exceptions to Special Event Permit Requirements

~~C. The following provisions shall apply to special~~A. For events held at private and public schools ~~and country clubs:~~1. A, permit is not required for on-site school-related events. ~~Responsible~~No later than two weeks before a scheduled event, responsible parties shall notify the town of school events that may result in ~~additional~~unusual traffic or parking demands.

~~2. A permit is not required for~~ B. For non-school-related events held at ~~schools and country clubs that meet the school event guidelines as prepared by the city manager and accepted by the city council. Responsible parties shall notify the town of events that may result in additional traffic or parking.~~private and public schools, no permit is required for the following:

~~3. A special event permit is required for non-school-related events that are planned to occur outside of the school event guidelines.~~

~~D. Open house tours for the purpose of selling property under the regular course of a real estate transaction shall be exempt. (Ord. 559 § 2 (part), 2005)~~

1. An indoor event planned to end no later than 9:00 p.m.; or

2. An outdoor event, including field use, that satisfies each of the following criteria:

a. For events scheduled for Monday through Friday, the event's hours are limited to 8:00 a.m. to 7:00 p.m.;

b. For events scheduled for Saturdays, the event's hours are limited to 9:00 a.m. to 6:00 p.m.;

c. For events scheduled for Sundays, the event's hours are limited to 10:00 a.m. to 5:00 p.m.;

d. No equipment is used to amplify sound; and,

e. All lighting associated with the outdoor event is shielded or down-lit so the source of light does not shine onto adjacent properties.

**17.38.050 Application submittal requirements.**

The following items and information shall be submitted to the city manager or designee:

A. Completed application (application form supplied by the town) submitted to the town ~~at least two months prior to the event~~not less than 60 calendar days, nor more than six months, before the event and signed by the Applicant. If the application is filed by an organization or business entity, the application shall be signed by an authorized officer of such organization or business entity;

B. Detailed description of the event, including, but not limited to;

i. The number and types of persons, animals and vehicles, the number of bands, other musical units and equipment capable of producing sound, if any, and limitations thereon related to noise abatement;

ii. A crowd control plan to include the number and location of traffic and crowd controllers, monitors, equipment and barricades to be furnished by the Special Event organizer;

iii. Provisions for any required emergency medical services; and,

iv. Conditions or restrictions on the use of alcoholic beverages and authorization for and conditions of the exclusive control or regulation of vendors and related sales activity by the Special Events organizer during the Special Event.

C. Contact person available prior to and during the event;

D. Application fee (as set by resolution of the ~~city~~town council);

E. The anticipated number of attendees and number of vehicle trips per day;

F. An on- and off-site parking plan including the placement of barricades, etc.;

G. A deposit as determined by the police chief for the funding of any additional security measures ~~not~~beyond those provided by the applicant required pursuant to section subparagraph (B)(7) of section 17.38.060;

~~H. A hold harmless agreement, naming the town, its employees and agents; and certificate of insurance, naming the town as additional insured. A form of hold harmless agreement, and insurance in the amount of two million dollars and insurance provider shall be reviewed and approved by the city attorney. (Ord. 559 § 2 (part), 2005)~~

H. A statement signed by the person seeking the permit that the permittee agrees to defend, protect, indemnify and hold the town, its officers, employees, agents, and volunteers free and harmless from and against any and all claims, damages, expenses, losses or liabilities of any kind or nature whatsoever arising out of, or resulting from, the acts or omissions of permittee, or its officers, agents, employees

or volunteers in connection with the permitted event or activity; and the permit shall expressly provide that the permittee shall, at permittee's own cost, risk and expense, defend any and all such claims and all legal actions commenced or filed against the town, its officers, agents, employees, or volunteers, and that the permittee shall pay any settlement entered into and shall satisfy any judgment that may be rendered against the town, its officers, agents, employees, or volunteers with respect to such a claim.

I. Evidence of liability insurance coverage for the event in an amount established by the town manager, which shall not be less than \$2 million, together with an additional insured endorsement to constitute the town and its officers, agents and employees as additional insureds.

### **17.38.060 Permit issuance.**

- A. The city manager or designee may issue a special event permit when in the opinion of the city manager or designee the event meets all of the requirements of this code and the Atherton general plan. The city manager or designee may refer items to the planning commission when, in his or her opinion, the public interest would be better served by the planning commission conducting a public hearing. The city manager or designee shall issue, deny or refer a special event permit within thirty days of receipt of a completed application. If the event will not be in conformance with either this code or the Atherton general plan the application shall be denied.
- B. If a special event permit is issued by the city manager or designee, such official may impose any reasonable conditions to ensure the event will have a minimal impact on the community and to ensure the health and safety of the public. Such conditions may include, but are not limited to, any of the following:
1. Adequate arrangements to prevent:
    - a. Violation of Chapter 8.16, Noise Control,
    - b. Violation of Chapter 8.20, Nuisance Abatement,
    - c. Amplified sound,
    - d. Violation of any traffic laws,
    - e. Violation of any other section of this code;
  2. Posting of docents at key/dangerous locations;
  3. Events, including setup and tear down, will ~~be done~~occur during daylight hours if feasible;
  4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one hour prior to or after the end of the event;
  5. Other materials or mitigation measures deemed necessary by the city manager or designee;

6. Parking barricades shall be set back a minimum distance as required by the city manager or his or her designee to ensure site distance clearance from special event site driveways and neighboring driveways. ~~(Ord. 559 § 2 (part), 2005)~~

7. The city manager shall require security beyond that proposed by the applicant, and require a deposit against the cost of that security as provided in paragraph G of section 17.38.050, if in his or her judgment, after consultation with the chief of police, that additional security is necessary to protect the health and safety of participants in the event and others affected by the event.

C. A copy of the Special Event Permit shall be kept on site at the venue of the Special Event and shall be made available for review or inspection by any City official upon request.

D. Compliance with this ordinance does not exempt the holder of a Special Event Permit from compliance with all other provisions of the City Code or any other federal, state or local law or regulation.

#### **17.38.070 Permit requirements.**

- A. All special events held on private property shall be limited to no more than two consecutive weeks, including no more than two consecutive weekends. Any event for a longer period of time requires a conditional use permit from the planning commission.
- B. All applications for a permit for a special event shall be publicly noticed at least ten days prior to the issuance of a permit, pursuant to the process outlined in ~~State Planning and Zoning Law~~ California Government Code Section 65091, with a five-hundred-foot radius notification. However, if the event is not conducted on a single site, ~~or is to be conducted within the public right-of-way,~~ the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten days prior to issuance of a permit.
- C. The applicant shall execute an agreement acknowledging ~~obligations to~~ his, her or its obligation to comply with all required conditions of the special event permit.
- D. No more than two special event permits shall be issued in a twelve-month period ~~for special events on any~~ with respect to a given private residential property. ~~(Ord. 559 § 2 (part), 2005)~~

#### **17.38.080 Permit revocation.**

A special event permit may be revoked by the city manager, the Chief of Police or ~~his or her~~ the designee of either in the event of any violation of the special events permit ~~or~~

~~this code. (Ord. 559 § 2 (part), 2005),~~ any conditions thereon, or any federal, state or local laws and regulations. Such revocation shall become effective immediately upon order of the City Manager or Chief of Police or their designees and shall remain in effect until the application has corrected the violation or the Special Event Permit has expired on its own terms. Unless exigent circumstances suggesting an imminent threat to public health and safety exists, the city official issuing the order shall orally inform the permittee of the circumstances justifying revocation of the permit and allow them a brief opportunity to be heard by that official before the order issues.

#### **17.38.085 Delegation of Authority and Authority to Adopt Rules and Regulations**

- A. The City Manager and the Chief of Police may delegate any or all of their functions under this ordinance to designated Deputy City Managers and/or their designees.
  
- B. The City Manager is authorized to promulgate additional rules and regulations that are consistent with and that further the terms and requirements set forth in this ordinance and those rules and regulations shall be effective once notice of them has been given in the manner required for notice of ordinances of the town council.

#### **17.38.090 Violation as a public nuisance; no election of remedies.**

Each violation of this chapter is a misdemeanor and shall constitute a public nuisance and be subject to abatement as such. ~~(Ord. 559 § 2 (part), 2005)~~ Such violations may also be remedied or punished in any other manner authorized by this code, other law, or equity.

Document comparison done by DeltaView on Thursday, June 12, 2008 3:42:40 PM

Input:	
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Document 2	interwovenSite://NTDMS2/IMANAGE/88397/4
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
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Moved cell	
Split/Merged cell	
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Statistics:	
	Count
Insertions	59
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	106

**ITEM 29**

**REQUEST TO INITIATE REZONING OF PARKER  
AVENUE FROM R1-A TO R1-B ZONING DISTRICT**

*At the request of the applicant, this item will be continued until  
January 2009, at which time it will be re-noticed.*



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
JEROME GRUBER, CITY MANAGER**

**FROM: MARC G. HYNES, CITY ATTORNEY**

**DATE: FOR THE MEETING OF SEPTEMBER 17, 2008**

**SUBJECT: REVIEW LETTER RESPONDING TO GRAND JURY REPORT UNDER  
LETTER DATED JULY 14, 2008**

#### **RECOMMENDATION:**

Direct City Attorney to prepare and send final version of response to the letter with modifications, if any, approved by the majority of the City Council.

#### **BACKGROUND - ANALYSIS:**

Attached is a letter dated July 14, 2008, from John C. Fitton, Court Executive Officer, and a report regarding the authority of elected Atherton officials regarding personnel issues. The City Council is invited to review the two findings appearing on pages 2 and 3 of the report, along with the recommendations appearing on page 4 of the report. A draft response has been prepared to both the findings and the recommendations as required by the letter.

#### **FISCAL IMPACT:**

None.

Prepared by:

Approved by:

/s/ Marc Hynes

Marc G. Hynes  
City Attorney

\_\_\_\_\_  
Jerome Gruber  
City Manager

Attachment: Exhibit A. Letter dated July 14, 2008.  
Exhibit B. Proposed response to letter



## Superior Court of San Mateo County

Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

John C. Fitton  
Court Executive Officer  
Clerk & Jury Commissioner

(650) 599-1711  
FAX (650) 363-4698

July 14, 2008

Town Council  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Re: Authority of Elected Atherton Officials Regarding Personnel Issues Report

Dear Councilmembers:

The 2007-2008 Grand Jury filed a report on July 14, 2008 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Joseph C. Scott.

As you are the public agency that has been commented upon by the Grand Jury, your comments are due no later than October 14, 2008 to:

Hon. Joseph C. Scott  
Judge of the Superior Court  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

For all findings, the responding person or entity shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Additionally, as to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time

frame for implementation.

3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefor.

Please submit your responses as follows:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
  - Prepare original on letterhead, address and mail to Judge Scott.
2. Responses to be placed at the Grand Jury website.
  - Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
  - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1711.

If you have any questions regarding these procedures, please do not hesitate to contact Michael P. Murphy, County Counsel, at (650) 363-4762.

Very truly yours,



John C. Fitton  
Court Executive Officer

JCF:mc  
Enclosure.

cc: Hon. Joseph C. Scott  
Michael P. Murphy

✓ Information Copy: Town Manager

# **Authority Of Elected Atherton Officials Regarding Personnel Issues**

## **Issue**

Should the Town of Atherton's Municipal Code be amended to clarify the respective duties of the Council and City Manager in personnel matters?

## **Background**

On April 10, 2008 the San Mateo County Civil Grand Jury (Grand Jury) issued an Interim Report on Government Effectiveness in the Town of Atherton (Town). As set forth in that report the Grand Jury found that although the Town of Atherton has a Council-Manager form of municipal government, there appears to be a considerable amount of involvement from the Atherton Town Council (Council) in the administration of the affairs of the Town that are the responsibility of the City Manager. This report is intended to supplement the Interim Report, and together with the Interim Report, constitutes the final report of the Grand Jury with respect to this matter.

## **Investigation**

The Grand Jury conducted 17 separate interviews with Atherton elected and appointed officials, management, employees and concerned citizens.

The Grand Jury requested and received from the Town numerous policy documents and copies of informal notes taken by various staff members. Those notes described various meetings, incidents and staff interviews. In addition to material provided by the Town, other documents and website resources relating to good management practices were analyzed. Local news reports and the reports from last year's 2006-2007 Grand Jury were also taken into account.

## **Findings**

By ordinance, the Town of Atherton in 1967 created "a city manager form of government and created the office of the city manager." (Atherton Municipal Code §2.12.010) Among other responsibilities, the city manager is the Town's personnel officer. (§2.12.020).

## 1. Powers of the City Manager

Atherton's Municipal Code provides broad powers to the City Manager.

### **"2.12.070 Powers and duties.**

The city manager shall be the administrative head of the government of the town under the direction and control of the city council, except as otherwise provided in this chapter. He shall be responsible for the efficient administration of all the affairs of the town which are under his control."

Section 2.12.070 further provides as follows (emphasis added in bold):

"In addition to his general powers as administrative head, and not as a limitation thereon, it shall be his duty and he shall have the powers set forth in the following subsections (*not all are listed*):

"B. To control, order and give directions to all heads of departments, except the city attorney, and to subordinate officers and employees of the town through their department head, and consolidate or combine offices, positions, departments or units under his direction;"

**"C. To appoint, remove and demote any and all officers and employees of the town except the mayor, councilmen, chairman and members of the planning commission and the city attorney;"**

**"K. To make investigations into the affairs of the town or any department or division thereof and any contract for the proper performance thereof;"**

"L. To investigate all complaints in relation to matters concerning the administration of the town government and in regard to the service maintained by public utilities in such town;"

## 2. Role of Individual City Council Members in Personnel Matters

In contrast to the broad role given the City Manager, the role of council members in administrative matters is much more constrained. In regards to the role of individual Town Council Members in personnel matters, the Atherton Code provides as follows (emphasis added):

### **"2.12.080 Cooperation of subordinate officers.**

**"A. The city council and its members shall deal with the administrative services of the town through the city manager, except for the purpose of inquiry; and neither the city council nor any**

**member thereof shall give orders to the subordinates of the city manager, except in the event of an emergency endangering life or property.”**

“B. It shall be the duty of all subordinate officers, including the city attorney, to cooperate with and assist the city manager in administering the affairs of the town most efficiently, economically and harmoniously, so far as may be consistent with their duties as prescribed by the law and ordinances of the town.”

“C. Upon appointment of the city manager, the terms of subordinate officers over whom he has power of appointment or removal shall cease unless they are reappointed by him. **All powers heretofore vested in the city council or in any other officer or employee of the town ordinance, resolution or other action of the council which are by this chapter vested in the city manager, shall be deemed to be transferred to the city manager as though all such ordinances, resolutions or other actions had been specifically amended.”**

## **Conclusions**

The Grand Jury concludes that:

The Atherton Municipal Code clearly vests in the City Manager the authority and responsibility to conduct the administrative operations of the Town. In fact, Atherton Municipal Code section 2.12.080 (A) allows individual city council members to directly “deal with the administrative services of the town” only for the “purpose of inquiry.” It is the Grand Jury’s view, given the overall structure of the “city manager form of government” adopted by the Town of Atherton, that this “purpose of inquiry” exception should be narrowly construed, to allow inquiry where appropriate to ensure that the City Manager is carrying out his or her duties, but not to undertake investigative activities of subordinate Town officials other than through the City Manager. While the Town did ultimately hire an outside investigator to investigate the activities of the Town’s finance director, it is evident that at least one Council member undertook independent investigative activities.

The Grand Jury questions the wisdom of giving council members independent investigative power. Allowing a member of the Council to initiate an investigation and to publicize those actions undermines the public’s perception of the integrity or, perhaps, competence, of the office of the Town Manager and is contrary to the intent of the Atherton Municipal Code. The Council as a whole should discourage members from acting as independent investigators, and encourage all members to work through the City Manager.

## Recommendations

The San Mateo County Grand Jury recommends that the Town Council of Atherton:

1. Seek guidance from the Town Attorney regarding appropriate separation of respective duties and powers of the Town Council and City Manager, and direct the Town Attorney to provide similar guidance to the City Manager, and
2. Clarify the powers and authority of the City Manager in personnel matters by amending the Town Municipal Code, as appropriate; to better delineate the authority of the City Manager, and the limitations on the authority of the Town Council in such matters.

**ATKINSON • FARASYN, LLP**

ATTORNEYS AT LAW

REPLY TO:  
MARC G. HYNES

660 WEST DANA STREET  
P.O. BOX 279  
MOUNTAIN VIEW, CALIFORNIA 94042  
TELEPHONE (650) 967-6941  
FACSIMILE (650) 967-1395

J.M. ATKINSON (1892-1982)  
L.M. FARASYN (1915-1979)

September 9, 2008 DRAFT

Hon. Joseph C. Scott  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Letter dated July 14, 2008  
Authority of Atherton Elected Officials Regarding Personnel Issues Report

Dear Judge Scott:

This letter responds to the July 14, 2008, letter from John C. Fitton, Court Executive Officer, regarding a Grand Jury Report entitled: "Authority of Elected Atherton Officials Regarding Personnel Issues."

The City Council has reviewed the report and has directed me to write the following response:

Findings

1. The report finds that the Town of Atherton created a city manager form of government and created the office of city manager in 1967. The findings recite the provisions of the Town's municipal code as it relates to broad powers given to the city manager citing section 2.12.070 of the Atherton Municipal Code and pertinent portions thereof. The respondent agrees with the finding.

2. The report cites to the role of city council members in administrative matters and particularly personnel matters citing Atherton Municipal Code section 2.12.080 and emphasizing paragraphs A and C. The respondent agrees with this finding.

Recommendations

1. The report recommends that the Town (sic) Council of Atherton seek guidance from the Town (sic) Attorney and City Manager and direct the Town (sic) Attorney to provide similar guidance to the City Manager.

This recommendation requires further analysis. The city council is in the process of scheduling a workshop at which time the matter can be prepared for discussion between the city council, the city manager, and city attorney. It is anticipated that this workshop shall be concluded before the end of 2008.

Hon. Joseph C. Scott  
Judge of the Superior Court

September 9, 2008  
Page 2

Re: Letter dated July 14, 2008  
Authority of Atherton Elected Officials Regarding Personnel Issues Report

2. The report recommends that the powers and authority of the city manager in personnel matters be clarified by amending the Town Municipal Code, as appropriate; to better delineate the authority of the city manager, and the limitations on the authority of the Town (sic) Council in such matters.

This recommendation will not be implemented because it is not warranted. The findings of the Grand Jury and the recitation of existing sections of the Atherton Municipal Code in Chapter 2.12 show that there is no further need for amending the municipal code. It is submitted that the reasonable and appropriate action is to proceed as described in paragraph 1 above.

Very truly yours,

MARC G. HYNES  
City Attorney  
Town of Atherton

MGH:cwb

**THERE IS  
NO WRITTEN  
REPORT FOR  
ITEM NO. 31**