



DRAFT AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
APRIL 18, 2007
5:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

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

6:02 P.M. PUBLIC COMMENTS

6:05 P.M. CLOSED SESSION

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

One (1) potential case

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

**Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899**

**Charles W. King III and Leslie King v. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461513**

C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (*Continued from the City Council Closed Session meeting of February 21, 2007.*)

**City Attorney
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

☛ 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

April 18, 2007

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

7:00 P.M. 1.

PLEDGE OF ALLEGIANCE

7:03 P.M. 2. ROLL CALL Janz, J. Carlson, Marsala, A. Carlson, McKeithen

7:05 P.M. 3. PRESENTATIONS

Proclamation Declaring April 21, 2007, as Earth Day

**Proclamation Declaring April 23 -29, 2007, West Nile Virus and
Mosquito and Vector Control Awareness Week**

**7:10 P.M. 4. PUBLIC COMMENTS (only for items which are not on the agenda –
limit of three minutes per person)**

7:25 P.M. 5. STAFF REPORTS

**7:35 P.M. 6. COMMUNITY ORGANIZATION ROUNDTABLE REPORT (Directed
by Resolution No. 99-6)**

Mid-Peninsula Community Media Center

7:45 P.M. CONSENT CALENDAR (Items 7 – 19)

**7. APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL
CLOSED SESSION AND REGULAR MEETINGS OF FEBRUARY 21,
2007; SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR
MEETING OF MARCH 21, 2007**

**8. APPROVAL OF BILLS AND CLAIMS FOR FEBRUARY 2007 IN THE
AMOUNT OF \$ 1,750,655**

**9. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR MARCH
2007**

10. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING TITLE 12 AND 13 OF THE ATHERTON MUNICIPAL CODE RELATIVE TO REQUIREMENTS FOR VIDEO SERVICE PROVIDERS

Recommendation: Adopt ordinance amending Title 12 and 13 of the Atherton Municipal Code. This ordinance was introduced at the regular City Council meeting on March 21, 2007.

11. PERFORMANCE OF TOWN LANDSCAPING CONTRACT WITH COMMERCIAL ENVIRONMENTAL LANDSCAPE

Recommendation: Retain the services of Commercial Environmental Landscape (CEL) to continue performing landscaping duties in various locations in the Town of Atherton.

12. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION, AND APPROVAL OF CONTRACT CHANGE ORDERS FOR THE SELBY LANE RECONSTRUCTION PROJECT, PROJECT NO. 04-004

Recommendation: Accept the work, authorize recording of a Notice of Completion, and approve contract Change Orders in the amount of \$164,523.79 for the Selby Lane Reconstruction Project, Project No. 04-004.

13. AWARD OF CONTRACT FOR THE CAPE SEAL AND SLURRY SEAL PROJECT, PROJECT NO. 06-003

Recommendation: Award the contract for the 2007 Street Microsurfacing Project, Project No. 06-003, to Valley Slurry Seal, Inc., the low bidder on the March 9, 2007, bids, for \$68,863.43, with a 10% construction contingency of \$6,886.34, for a total authorization of \$75,749.77; and to authorize the Mayor to sign the contract on behalf of the Town.

14. ADOPTION OF RESOLUTION ADDING THE POSITION OF PERMIT TECHNICIAN TO THE TOWN'S JOB CLASSIFICATION LISTING

(Continued from the City Council meeting of March 21, 2007.)

Recommendation: Adopt the attached Resolution adding the position of Permit Technician to the Town's classification listing and setting the salary and benefits for this position.

15. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR MUNICIPAL CIVIL ENGINEERING SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS, IN AN AMOUNT NOT TO EXCEED \$30,000.**

Recommendation: Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$30,000.

16. **APPROVAL OF A CONTRACT WITH EL DORADO TOWING TO BE ADDED TO THE ATHERTON POLICE DEPARTMENT TOW ROTATION LIST**

Recommendation: Approve the contract for El Dorado Towing and add this company to the tow rotation list for the Atherton Police Department.

17. **ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR APPOINTMENTS TO THE PLANNING COMMISSION**

Recommendation: Accept and approve the recommendation of the City Council Screening Committee to appoint Mr. Phil Lively and Mr. Herman Christensen as members to the Atherton Planning Commission and to serve four year terms effective May 1, 2007.

18. **CONSIDERATION AND POSSIBLE APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RE-NAMING THE WASTE REDUCTION COMMITTEE TO THE ENVIRONMENTAL PROGRAMS COMMITTEE, INCREASING MEMBERSHIP TO TEN RESIDENT ADVISORS, INCREASING TERM LIMITS, AND DESIGNATING ITS FUNCTIONS**

Recommendation: Approve the attached Resolution re-naming the Waste Reduction Committee to the Environmental Programs Committee, increasing membership to ten resident advisors, and increasing term limits and designating its functions.

19. **AWARD OF CONTRACT FOR HOLBROOK-PALMER PARK E EMERGENCY WATER WELL PROJECT NUMBER 06-004**

Recommendation: Pass a motion to award the contract for the Holbrook-Palmer Park Emergency Water Well Project, project 06-004 to the low bidder to be determined by informal bids to be received on or before April 18, 2007, for an amount to be

number

determined by
informal bid
authorize the

Council based on the bid results, to authorize the use of an
process, to authorize the Mayor to sign the contract, and to
City Manager to execute the contract on behalf of the Town.

PUBLIC HEARINGS (Items 20 - 24)

8:00 P.M. 20. APPEAL REGARDING 370 AND 384 ATHERTON AVENUE

Recommendation: Conduct the public hearing, deny the appeal, and uphold the decision of the Building Official for the reasons outlined in this report.

8:15 P.M. 21. APPEAL REGARDING 70 BARRY LANE

Recommendation: Conduct the public hearing and deny appeal.

8:30 P.M. 22. APPEAL REGARDING 55 BELBROOK WAY

Recommendation: Conduct the public hearing and deny appeal.

8:45 P.M. 23. APPEAL REGARDING 94 TALLWOOD

Recommendation: Conduct the public hearing and deny appeal.

9:00 P.M. 24. DISCUSSION, POSSIBLE DECISION TO RECONSIDER THE DENIAL OF AN APPEAL REGARDING THE ALTERATION OF A NONCONFORMING STRUCTURE AT 84 WALNUT AVENUE (ASSESSOR'S PARCEL NUMBER 060-332-230)

Recommendation: Conduct the public hearing on the reconsideration of the denial of the appeal at 84 Walnut. If the Council wishes to approve the appeal, the Council should provide direction to the City Attorney to prepare findings for approval for adoption by Council at its next regular meeting.

REGULAR AGENDA (Items 25 - 29)

9:15 P.M. 25. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE CHAPTER 17.44 REGULATING NONCONFORMING USES WITHIN THE TOWN OF ATHERTON

Recommendation: Adopt the ordinance amendment regulating nonconforming uses in Chapter 17.44 in the Town of Atherton Municipal Code.

9:30 P.M. 26. **CONSIDERATION OF REQUEST FROM ATHERTON DISASTER PREPAREDNESS COMMITTEE TO PURCHASE A LAP TOP AND SOFT WARE.**

Recommendation: Consider and provide appropriate direction to staff regarding the purchase of a lap top computer and software for the Atherton Citizens Disaster Preparedness Committee.

9:40 P.M. 27. **CONSIDERATION AND POSSIBLE APPROVAL OF RESPONSE TO SAN MATEO COUNTY CIVIL GRAND JURY FEBRUARY 7, 2007 INTERIM REPORT REGARDING TOWN OF ATHERTON BUILDING DEPARTMENT.**

Recommendation: Consider and possibly approve City Council subcommittee proposed response to Civil Grand Jury Interim Report .

10:10 P.M. 28. **CONSIDERATION AND POSSIBLE APPROVAL OF ALLOCATION OF FUNDS TO CONTRACT WITH JILL BOONE TO ASSIST TOWN IN ESTABLISHING CO2 BASELINE**

Recommendation: Approve the allocation of funds in the amount not to exceed \$3,000 for the purpose of contracting with Jill Boone to assist the Town in establishing a CO2 baseline and setting goals to reduce CO2 emissions.

10:20 P.M. 29. **CONSIDERATION AND POSSIBLE ACTION REGARDING THE TOWN OF ATHERTON ENVIRONMENTAL PROGRAMS COMMITTEE REQUEST TO REDUCE THE SOLAR PERMIT FEE TO ZERO**

Recommendation: Consider the recommendation of the Atherton EPC to reduce the Solar Permit fee to Zero and provide appropriate action to staff.

10:30 P.M. 30. **COUNCIL REPORTS**

10:45 P.M. 31. **PUBLIC COMMENTS**

11:00 P.M. 32. **ADJOURNMENT**

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TOWN OF ATHERTON
CLAIMS LIST
 March, 2007

Payroll Checks	9321 - 9457	\$ 24,251
Electronic Transfers		390,738
A/P Checks	23633 – 23841	1,335,666
TOTAL		\$ 1,750,655

I, James H. Robinson, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers (payroll) and (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers (payroll) and 23633 - 23841 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$743,205; are true and correct, and are authorized for payment.

Alan Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$984,575
105	Tennis Fund	215
201	Special Parcel Tax	731,604
202	Transportation	-
203	Gas Tax Fund	-
210	Road Construction Impact Fees	7,239
211	Park Grants Fund	17,535
213	Library Special Revenue Fund	1,113
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	-
406	Facilities Construction	-
610	Vehicle Replacement	-
611	Computer Maint. & Replacement	2,075
612	Administrative Services	6,299
715	Evans Estate	-
740	Tree Committee	-
TOTAL		\$1,750,655



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF APRIL 18, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, MARCH 2007

RECOMMENDATION:

Receive the Monthly Financial Report for March 2007.

INTRODUCTION:

The attached schedules show revenues, expenditures and fund balance for all funds as of March 31, 2007.

HIGHLIGHTS

General Fund expenditures for the nine months ended March 31, 2007, have amounted to \$6,775,355 or 71% of the \$9,480,065 budgeted for the fiscal year. For the nine months ended March 31, 2007, General Fund revenues amounted to \$5,356,214 or 67% of the \$8,018,670 estimated for the year.

By comparison, General Fund expenditures amounted to 69% of appropriations for the nine months ended March 31, 2006. Additionally, General Fund revenues amounted to 70% of estimated revenues for the nine months ended March 31, 2006.

FISCAL IMPACT:

None

Prepared by:

Approved by:

John P. Johns
Finance Director

James H. Robinson
City Manager

TOWN OF ATHERTON
Revenue Summary
For the Month ended March 31st, 2007

Fund	Revenue Source	2006-07 Estimate	Current Period Revenues	Year to Date Revenues	% Received
	Property Tax	\$ 4,135,402	-	2,356,235	57%
	Sales and Use Tax	157,500	-	118,002	75%
	Other Taxes	1,111,546	121,503	689,732	62%
	Licenses & Permits	1,466,200	121,495	967,709	66%
	Fines & Forfeitures	35,000	2,290	38,981	111%
	Revenue from Other Agencies	395,215	16,917	580,198	147%
	Charges for Services	176,500	26,961	233,638	132%
	Investment & Rental Income	307,852	8,754	285,224	93%
	Other Revenues	229,000	60,538	86,495	38%
	Total General Fund Revenues	8,014,215	358,458	5,356,214	67%
	Interfund (Operating) Transfers In	4,455	-	-	0%
101	General Fund Total	8,018,670	358,458	5,356,214	67%
	Special Revenue Funds:				
105	Tennis	8,000	650	5,638	70%
201	Special Parcel Tax	1,858,000	-	1,139,263	61%
202	Transportation	265,000	-	190,896	72%
203	Street Improvement (Gas Tax)	150,000	-	123,580	82%
209	Law Enforcement	100,000	-	100,702	101%
210	Road Construction Impact Fees	1,100,000	31,733	(71,539)	-7%
211	State Park Grants Fund	313,910	-	-	0%
213	Library	200,000	-	71,617	36%
	Total	3,994,910	32,383	1,560,157	39%
	Capital Project Funds:				
401	Capital Improvement	-	-	5,586	
402	Storm Drainage	20,000	-	918	
403	Channel Drainage District	50,000	221	36,889	74%
406	Facilities Construction	-	-	1,438	
	Total	70,000	221	44,831	64%
	Internal Service Funds:				
610	Vehicle Replacement	120,919	12,169	64,953	54%
611	Information Technology	104,670	-	55,528	53%
612	Administrative Services	303,221	-	157,333	52%
	Total	528,810	12,169	277,814	53%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500	-	4,136	29%
740	Tree Committee	1,400	250	25,328	
	Total	15,900	250	29,464	185%
	Total Revenues	12,628,290	403,481	7,268,480	58%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended March 31st, 2007

Fund	Description Department	2006-07 Budget	Current Period Expenditures	Year to Date Expenditures	% Spent
101	General Fund				
	11 City Council	\$ 21,749	\$ -	\$ 21,537	99%
	12 City Manager	504,360	48,845	352,607	70%
	16 City Attorney	188,337	51,041	260,253	138%
	18 Finance	448,576	42,072	334,559	75%
	25 Building	1,364,503	111,251	911,341	67%
	40 Police	4,696,248	507,876	3,376,913	72%
	50 Public Works	2,036,292	197,056	1,518,145	75%
	Disaster Preparedness	120,000			0%
	Contingency	100,000			0%
	Total General Fund Expenditures	<u>9,480,065</u>	<u>958,141</u>	<u>6,775,355</u>	<u>71%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	General Fund Total	<u>\$ 9,480,065</u>	<u>\$ 958,141</u>	<u>\$ 6,775,355</u>	<u>71%</u>
Special Revenue Funds:					
105	Tennis	5,522	215	3,670	
201	Special Parcel Tax	1,910,535	164,687	2,204,778	115%
202	Transportation	444,500	-	15,000	3%
203	Street Improvement (Gas Tax)	150,000	-	23,234	15%
208	Police on the Street				
209	Law Enforcement	100,000	19,391	113,478	113%
210	Road Impact Fees	1,470,000	-	1,523,736	104%
211	State Park Grants	277,040	17,535	82,167	30%
213	Library Fund	78,326	1,113	37,402	48%
	Total	<u>4,435,923</u>	<u>202,941</u>	<u>4,003,465</u>	<u>90%</u>
Capital Project Funds:					
401	Capital Improvement	-	-	-	
402	Storm Drainage	21,394	-	2,963	14%
403	Channel Drainage District	60,000	-	10,644	18%
	Total	<u>81,394</u>	<u>-</u>	<u>13,607</u>	<u>17%</u>
Internal Service Funds:					
610	Vehicle Replacement	76,000	-	45,688	60%
611	Information Technology	116,120	-	44,100	38%
612	Administrative Services	288,342	-	244,303	85%
	Total	<u>480,462</u>	<u>-</u>	<u>334,091</u>	<u>70%</u>
Trust and Agency Funds:					
715	Evans Creative Design	11,500	-	1,175	10%
740	Tree Committee	-	-	3,334	
	Total	<u>11,500</u>	<u>-</u>	<u>6,668</u>	<u>58%</u>
	Total Expenditures	<u>14,489,344</u>	<u>1,161,082</u>	<u>11,133,186</u>	<u>77%</u>

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2006-07
As of March 31st, 2007

Fund	Description	Beginning Fund Balance July 1, 2006	Revenues to Date	Transfers to Date	Expenditures To Date	Ending Fund Balance to Date
101	General Fund	9,344,474	5,356,214	-	6,796,892	7,903,796
	Special Revenue Funds:					
105	Tennis	23,692	5,638		3,670	25,660
201	Special Municipal Tax	1,005,832	1,139,263		2,204,778	(59,683)
202	Transportation	527,577	190,896		15,000	703,473
203	Street Improvement (Gas Tax)	102,874	123,580		23,234	203,220
209	Law Enforcement	10,437	100,702		113,478	(2,339)
210	Road Construction Impact Fees	1,373,559	(71,539)		1,523,736	(221,716)
211	State Park Grants	-	-		82,167	(82,167)
213	Library Special Revenue Fund	1,947,286	71,617		37,402	1,981,501
	Sub Total	4,991,256	1,560,157	-	4,003,465	2,547,948
	Capital Projects Funds:					
401	Capital Improvement	258,424	5,586		-	264,010
402	Storm Drainage	43,455	-		2,963	40,492
403	Channel Drainage District	36,039	36,889		10,644	62,284
406	Facilities Construction	-	1,438		-	1,438
	Sub Total	337,919	43,913	-	13,607	368,225
	Internal Service Fund					
610	Vehicle Replacement	440,370	64,953		45,688	459,635
611	Information Technology	89,739	55,528		44,100	101,167
612	Administrative Services	198,175	157,333		244,303	111,205
	Sub Total	728,284	277,814	-	334,091	672,007
	Trust and Agency Funds					
715	Evans Creative Design	117,345	4,136		1,175	120,306
740	Tree Committee	24,558	250		3,334	21,474
	Sub Total	141,903	4,386	-	4,509	141,780
	Grand Total	\$ 15,543,837	\$ 7,242,484	\$ -	\$ 11,152,564	\$ 11,633,757



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: AMENDMENTS TO TITLE 12 AND 13 OF THE ATHERTON MUNICIPAL
CODE RELATIVE TO REQUIREMENTS FOR VIDEO SERVICE
PROVIDERS**

RECOMMENDATION

Adopt ordinance amending Title 12 and 13 of the Atherton Municipal Code. This ordinance was introduced at the regular City Council meeting on March 21, 2007.

EXECUTIVE SUMMARY

The amendments proposed to Title 12 and 13 of the Atherton Municipal Code by the attached ordinance are necessary in order to enable the Town to continue receiving revenues from cable service providers seeking encroachment permits from the Town in order to conduct business operations. The revisions will also allow for continuance of the existing franchise to TCI Cablevision of California, Inc. (COMCAST).

BACKGROUND AND ANALYSIS

In 2000, the Town entered into a Joint Exercise of Powers Agreement in which the City of Palo Alto, as administering agency, oversees a cable television franchise to TCI Cablevision of California, Inc. (Comcast). The Town also added Chapter 13.08 to the Atherton Municipal Code relative to franchises for cable television and video systems at the time of entry into the Joint Powers Agreement. Comcast is the only cable operator under franchise. The franchise is scheduled to expire in 2010.

In the fall of 2006, Assembly 2987 was signed into law. Entitled "the Digital Infrastructure and Video Competition Act of 2006" ("DIVCA"), this law removes the authority of the Town to issue franchises in this area. In return, however, DIVCA provides a five percent (5%) franchise revenue to the local agency, even though the franchise is now held with the State.

Chapter 13.08 mirrored Chapter 2.10 of the City of Palo Alto Municipal Code. As the City of Palo Alto is the administering agent for the Joint Powers Agreement between the Town and the cities of Palo Alto, Menlo Park, East Palo Alto, and the Counties of San Mateo and Santa Clara, and TCI Cablevision of California, Inc. (Comcast), it is appropriate for the Town to bring its regulations into conformance with the changes that the City of Palo Alto is making amending Chapter 2.10 of the Palo Alto Municipal Code and adding a new Chapter 2.11 on the subject of Video Service Providers, as well as some revisions to encroachment permit regulations. A proposed new Chapter 13.10 to the Atherton Municipal Code will provide the necessary match to the City of Palo Alto's Chapter 2.11.

In connection with State video service franchises, DIVCA also requires local agencies issuing construction permits to take action within a 60 day time period and provide for appeal in the event encroachment permits are denied, or the franchise holder desires to challenge conditions attached to an encroachment permit. In order to meet the State requirements, revisions are proposed to Title 12 which include the addition of a new Chapter 12.07 entitled "State Video Service Franchise", Chapter 12.09 entitled "Regulation of Permittees and of Other Right of Way Users". These Chapters and other amendments have been adapted from similar provisions being considered by the City of Palo Alto relative to its encroachment permit practices.

CITY ATTORNEY REVIEW

The City Attorney has prepared and reviewed the ordinance which is attached. The ordinance is approved as to form.

FISCAL IMPACT

Adoption of this ordinance will protect the Town's ability to receive revenues from cable service providers seeking encroachment permits from the Town in order to conduct business operations. It will also provide for continuation of the existing Comcast franchise.

COUNCIL ACTION

I move to adopt an ordinance of the City Council of the Town of Atherton entitled: Ordinance of the Council of the Town of Atherton Amending Sections 12.060.030 – 12.06.050 and Adding chapters 12.07 and 12.09 to Title 12 of the Atherton Municipal Code; Adding Section 13.08.600 to Chapter 13.08 and Chapter 13.10 [Video Service Providers – Applicable Requirements] to Title 13 of the Atherton Municipal Code to Conform to the California Digital Infrastructure and Video Competition Act of 2006.

Prepared by:

Marc G. Hynes
City Attorney

Approved by:

James H. Robinson
City Manager

Attachment

Assuming we have the whole ordinance, include that in an email as well . send staff report and the ordinance to Wende Protzman who will be doing the packet for the Town.

ORDINANCE NO.
ORDINANCE OF THE COUNCIL OF THE TOWN OF
ATHERTON AMENDING SECTIONS 12.06.030 – 12.06.050
AND ADDING CHAPTERS 12.07 AND 12.09 TO TITLE 12 OF
THE ATHERTON MUNICIPAL CODE; ADDING SECTION
13.08.600 TO CHAPTER 13.08 AND CHAPTER 13.10 [VIDEO
SERVICE PROVIDERS – APPLICABLE REQUIREMENTS] TO
TITLE 13 OF THE ATHERTON MUNICIPAL CODE
TO CONFORM TO THE CALIFORNIA DIGITAL
INFRASTRUCTURE AND VIDEO COMPETITION ACT OF
2006

A. By Ordinance No. 515, the City Council of the Town of Atherton added Chapter 13.08 of the Atherton Municipal Code (“Chapter 13.08”) governing franchising and licensing requirements for cable television systems and open video systems occupying the public rights-of-way within the Town's jurisdictional boundaries;

B. Pursuant to Chapter 13.08, the Town, on behalf of itself and five other signatories to the Joint Exercise of Powers Agreement, granted a cable television franchise to TCI Cablevision of California, Inc. (“Comcast”), the terms of such franchise being set forth in the Cable Television Franchise Agreement by and between the City of Palo Alto, California, on behalf of the Joint Powers, and TCI Cablevision of California, Inc., effective as of July 25, 2000 (“Comcast Franchise”);

C. On September 29, 2006, the Governor signed into law Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (CH 700, Stats. 2006) (“DIVCA”), which intends, among other things, to protect local government revenues and control of public rights-of-way; require that video service providers comply with all applicable consumer protection laws; continue access to and maintenance of public, educational and governmental access (“PEG”) channels; promote widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status; and create a fair and level playing field for all market participants that does not disadvantage or advantage one service provider or technology over another;

D. The Comcast Franchise is scheduled to expire on July 25, 2010, and Comcast is the only “Incumbent Cable Operator” within the meaning of DIVCA and the rules of the California Public Utilities Commission (“Commission”) implementing DIVCA within the Town's jurisdictional boundaries;

E. DIVCA substantially changed California law with respect to the franchising of cable television and other video service providers, among other things assigning franchising authority to the California Public Utilities Commission while preserving local governments’ authority to impose franchise fees, provide for PEG capacity and support, enforce customer service requirements, and manage use of local public rights-of-way by cable and other video service providers; and

F. The provisions of Chapter 13.08 relating to cable television and open video service providers need to be amended, and a new Chapter 13.10 needs to be added to Title 13 of the Atherton Municipal Code to conform to DIVCA and the Commission's General Order, implementing and construing DIVCA;

G. It is also appropriate to amend Sections 12/06.030 through 12.06.050 of chapter 12.04 and to add new Chapters 12.07 and 12.09 to Title 12 of the Atherton Municipal Code to confirm the Town's authority to regulate the public right of way;

NOW, THEREFORE, the City Council of the Town of Atherton does hereby ORDAIN as follows:

SECTION 1. Section 12.06.030 of the Atherton Municipal Code is hereby amended to read as follows:

"Section 12.06.030. Definitions.

As used in this chapter:

A. "Lot frontage strip" means that portion of the public right-of-way between the property line and the paved street.

B. "Utility or utilities or public utilities means and includes any water, gas, sewer, electrical or communications service and all persons supplying the same."

C. "Communications services or communications service" means and includes telephone, cable and video services as defined in the Public Utilities Code of the State of California."

SECTION 2. Section 12.06.040 of the Atherton Municipal Code is hereby amended to read as follows:

"Section 12.06.040 Compliance required.

It is unlawful for any person, firm or corporation to store materials or vehicles, or maintain, erect, construct, alter, repair, raise, building or move any building, structure, sign, fence, wall, culvert, bridge, paving or portion thereof, or landscaping upon any easement, right-of-way or parcel of land conveyed, granted or dedicated in any way to the Town, or owned in any manner by the Town **or to perform any work on poles or overhead lines and associated structures above any public street or sidewalk** for any purpose or purposes whatever, except in compliance with the provisions of this chapter."

SECTION 3. Section 12.06.050 A. of the Atherton Municipal Code is hereby amended to read as follows:

"Section12.06.050 Permit – Required.

"A. No person shall maintain, erect, construct, alter, repair, raise, build or move any building, structure, sign, fence, wall, culvert, bridge, paving or portion thereof, or store materials, or vehicles or perform grading and filling, or plant or place any landscaping, upon any easement, right-of-way or parcel of land conveyed, granted or dedicated in any way to the Town or owned in any manner by the Town, **or perform any work on poles or overhead lines and associated structures above any public street or sidewalk**, for any purpose or purposes whatever, without first having obtained from the Town an encroachment permit in current force and effect. All such encroachments are subject to limitations outlined in Section 12.06.100."

SECTION 4. Chapter 12.07 is hereby added to the Atherton Municipal Code to read as follows:

"Chapter 12.07 STATE VIDEO SERVICE FRANCHISEES

Sections:

- 12.07.010 Definitions.**
- 12.07.020 Purpose and interpretation.**
- 12.07.030 State video franchise permit application procedures.**
- 12.07.040 Appeals.**

12.07.010 Definitions.

(a) For purposes of this Chapter, the term "state video franchisee" shall mean any cable operator or video service provider that, pursuant to Division 2.5 of the Public Utilities Code of the State of California, has been granted a state franchise to provide cable or video service by the California Public Utilities Commission and whose video service area includes all or any part of the Town.

(b) For purposes of this Chapter, the term "encroachment permit" shall mean any permit for which a state video franchisee is required to apply under this Title.

12.07.020 Purpose and interpretation.

(a) The purpose of this Chapter is to comply with Section 5885(c) of the Public Utilities Code of the State of California. The provisions of this Chapter that impose requirements or obligations on the Town shall be construed to apply, and shall only be applied, to the extent necessary to comply with Section 5885(c) of the Public Utilities Code of the State of California.

(b) Except as provided in this Chapter, all of the provisions of this Title shall apply fully to state video franchisees as if they were a "utility" within the meaning of this Title.

12.07.030 State video franchisee permit application procedures.

(a) The particular Town official designated under this Chapter to act on an encroachment permit application by a state video franchisee shall approve or deny such application within 60 days of receiving a completed application from the state video franchisee. An application for an encroachment permit is complete when the applicant has complied with all applicable requirements of this Title concerning such application and all other statutory requirements, including the California Environmental Quality Act

(Division 13 (commencing with Section 2100) of the Public Resources Code of the State of California).

(b) The 60-day time period set forth in subsection (a) may be extended on mutual agreement by the applicant and the Town official designated under this Title to act on the encroachment permit application.

(c) If the Town official designated under this Title to act on a state video franchisee's encroachment permit application denies the application, the official shall, at the time of notifying the applicant of the denial, furnish the applicant a detailed explanation of the reasons for the denial.

12.07.040 Appeals.

Any state video franchisee whose encroachment permit application is denied under Section 12.07.030 may, within 30 days of receiving the explanation of the denial required by Section 12.07.030(c), file an appeal pursuant to Chapter 17.64 of this Code. In determining such appeal, the City Council shall consider whether the denial of the encroachment permit is consistent with this Title and other applicable city, state and federal law. If the City Council denies the state video franchisee's appeal, it shall issue a written decision setting forth the reasons for the denial.

SECTION 5. Chapter 12.09 is hereby added to the Atherton Municipal Code to read as follows:

"Chapter 12.09 REGULATION OF PERMITTEES AND OTHER RIGHT-OF-WAY USERS

Sections:

12.09.010 General regulations applicable to permittees and other right-of-way users.

12.09.020 Maps and improvement plans.

12.09.010 Regulations applicable to right-of-way permittees.

(a) The construction, operation, maintenance and repair of facilities in the public rights-of-way shall be performed in compliance with all laws and practices affecting such facilities. This shall include, but not be limited to, applicable zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by such facilities construction, and such directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Any person engaged in the construction, operation, maintenance or repair of facilities in the public rights-of-way shall exercise reasonable care in the performance of all of its activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

(b) Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a facilities permitted under this Title by or on behalf of a permittee shall be promptly repaired by the permittee at its expense. Public property and public rights-of-way shall be restored to the satisfaction of the Town or to a condition as good as that which existed before the disturbance or damage occurred.

(c) A person with facilities in the public rights-of-way shall, by a time specified by the Director of Public Works protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City in the exercise of its governmental or proprietary powers by reason of traffic conditions; public safety; public rights-of-way construction and repair (including, but not limited to, regrading, resurfacing or widening); public rights-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the person's right-of-way facilities. Collectively, such matters are referred to below as the "public project".

(1) The Director of Public Works shall provide written notice describing where the public project is to be performed at least one week prior to the deadline by which a person must protect, support, temporarily disconnect, relocate or remove its facilities in the public rights-of-way.

(2) In an emergency, or where a person's right-of-way facilities create or are contributing to an imminent danger to health, safety, or property, the Town may protect, support, temporarily disconnect, remove, or relocate any and all parts of the person's facilities without prior notice, and charge that person for costs incurred.

(d) To accommodate the construction, operation, maintenance or repair of the facilities of another person authorized to use the public rights-of-way or public property, a permittee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The permittee must be given written notice describing where the construction, operation, maintenance or repair is to be performed at least fifteen days prior to the time by which its work must be completed. The Director of Public Works may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the public rights-of-way or on public property if such entities are unable to do so themselves.

(e) A permittee shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A permittee shall be given not less than seven days' advance written notice to arrange for such temporary wire changes. The expense of such temporary removal or the raising or lowering of wires shall be paid by the person requesting the same.

(f) A permittee shall remove its facilities in the public rights-of-way that it intends to abandon within ninety days after it gives written notice to the Town of its intention to abandon. However, if, within ninety days of the receipt of written notice of abandonment, the Town determines that the safety, appearance, function or use of public rights-of-way and facilities in public rights-of-way will be adversely affected, the permittee may abandon its property after receipt of appropriate notice from the Town. A permittee that abandons its property must, upon request, transfer ownership of the property to the Town at no cost, and execute necessary quitclaim deeds and indemnify the Town against future costs associated with the mitigation or elimination of any environmental hazard associated with the abandoned property.

(g) Each permittee and any other person that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) as may be required by California Government Code §§ 4216 et seq., and

shall field mark the locations of its underground communications facilities upon request. Such permittee or person shall locate its facilities for the Town at no charge.

12.09.020 Maps and improvement plans.

Each person with facilities in the public rights-of-way shall maintain accurate maps and improvement plans which show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps and improvement plans shall be based upon post-construction inspection to verify location. Each such person shall provide a map to the Director of Public Works showing the location of its facilities, in such detail and scale as may be directed by the Director of Public Works and shall update the map at least annually, and whenever the facility expands or is relocated. Copies of maps and improvement plans shall be provided in 3 mil Mylar format and on disk, in a commercially available electronic format specified by the Director of Public Works.

SECTION 6. Section 13.08.600 is hereby added to Chapter 13.08 of Title 13 of the Atherton Municipal Code to read, as follows:

“13.08.600. Applicability and Sunset.

(a) This Chapter 13.08 shall apply to any person that was a franchisee in the Town on January 1, 2007, through the later of (1) January 2, 2008, or (2) the date of the granting to that franchisee of a state franchise by the California Public Utilities Commission after one of the conditions in Cal. Pub. Util. Code § 5840(o) has been satisfied.

(b) This Chapter 13.08 shall apply to any person that was not a franchisee in the Town on January 1, 2007, and that wishes to apply, on or before December 31, 2007, for a local franchise from the Town. After December 31, 2007, this Chapter shall not apply to any person that was not a franchisee in the Town on January 1, 2007.

(c) This Chapter 13.08 shall sunset in its entirety and no longer be effective on the date that all cable operators and video service providers operating in the Town have state franchises granted by the California Public Utilities Commission.”

SECTION 7. Chapter 13.10 of Title 13 of the Atherton Municipal Code is hereby added to read, as follows:

“Chapter 13.10

**VIDEO SERVICE PROVIDERS –
APPLICABLE REQUIREMENTS**

Sections:

13.10.010	Purpose
13.10.020	Definitions
13.10.030	State Franchise Required
13.10.040	Administration and Regulations
13.10.050	Construction, Operation, Maintenance and Repair
13.10.060	Franchise Fee
13.10.070	Public, Educational and Governmental Access Channel Capacity and Support
13.10.080	Audits and Records
13.10.090	State Franchise Service Obligations
13.10.100	Customer Service and Protection
13.10.110	Emergency Alert System
13.10.120	No Exclusivity
13.10.130	Notices
13.10.140	Miscellaneous Provisions

13.10.010 Purpose.

It is the purpose of this Chapter to implement within the Town the provisions of DIVCA and the rules of the Commission promulgated thereunder that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA. Consistent with that purpose, the provisions of this Chapter are to be construed in a manner that is consistent with DIVCA and the applicable rules of the California Public Utilities Commission promulgated thereunder.

13.10.020 Definitions.

For the purposes of this Chapter, the following words, terms, phrases, and abbreviations and their similar formulations shall have the meanings given them in this Chapter or, as appropriate, in other chapters of the Atherton Municipal Code as may be amended from time to time, unless the context indicates otherwise. Words not defined in this Chapter or other Chapters of the Atherton Municipal Code shall have the same meaning as established in (1) DIVCA, and, if not defined therein, (2) Commission rules implementing DIVCA, and, if not defined therein, (3) Title VI of Title 47 of the United States Code, and, if not defined therein, (4) their common and ordinary meaning. References to governmental entities (whether persons or entities) shall refer to those entities or their successors in authority. If a specific provision of law referred to in this Chapter should be renumbered, then the reference shall be read to refer to the renumbered

provision. References to any law shall be interpreted broadly to cover government actions, however nominated, including any law now in force or subsequently enacted or amended.

(a) “Access,” “PEG access,” or “PEG use” means the availability of cable system or video service provider network capacity for public, educational or governmental use by various agencies, institutions, organizations, groups, and individuals, including the Town and its designated access providers, to acquire, create and distribute programming not under a cable operator’s or video service provider’s editorial control, including, but not limited to:

(1) “Public access” or “Public use” means access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

(2) “Educational access” or “Educational use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

(3) “Governmental access” or “Governmental use” means access where governmental institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

(b) “Cable Coordinator” means the City Manager or the individual or individuals designated by the City Manager to administer oversight of state franchisees in the Town.

(c) “Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system or the network of a video service provider and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals.

(d) “Town” means the government of the Town of Atherton, a municipal corporation duly organized and validly existing under the laws of the state of California, and all departments, divisions, and offices thereof.

(e) “Council” means the City Council of the Town of Atherton.

(f) “Commission” means the California Public Utilities Commission.

(g) “Comcast Franchise” means the Cable Television Franchise Agreement by and between the City of Palo Alto, California, on behalf of a Joint Powers Agreement of which the Town is a signatory, and TCI Cablevision of California, Inc., effective as of July 25, 2000.

(h) “DIVCA” means the Digital Infrastructure and Video Competition Act of 2006, Assembly Bill 2987 (CH 700, Stats. 2006), and as that Act may hereafter be amended.

(i) “EAS” means Emergency Alert System.

(j) “FCC” means the Federal Communications Commission.

(k) “Person” includes any natural person, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the Town.

(l) “PEG” means public, educational and governmental access.

(m) “Public rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the Town which may be properly used for the purpose of installing, constructing, operating, maintaining, and repairing a cable system or a video service provider’s network; and any other property that a state franchisee is entitled by California or federal law to use by virtue of the grant of a state franchise.

(n) “Public property” means any property that is owned or under the control of the Town that is not located in the public rights-of-way, including, for purposes of this Chapter, but not limited to, buildings, parks, and pole structures, such as utility poles and light poles, or similar facilities or property owned by or leased to the Town.

(o) “State franchisee” means any video service provider that has been granted a state franchise by the Commission whose video service area includes all or any part of the incorporated limits of the Town.

(p) “Video service provider” has the meaning set forth in DIVCA and, in addition, refers collectively to any cable operator, video service provider or OVS operator as defined in DIVCA.

13.10.030 State Franchise Required.

(a) No person may construct, operate, maintain or repair a cable system or video service provider’s network in the Town without first obtaining a state franchise therefor.

(b) A state franchise shall not convey rights other than as specified in this Chapter or in DIVCA or other applicable law; no rights shall pass by implication.

(c) Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

(1) Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the Town, including, but not

limited to, compliance with the conditions that the Town may establish before facilities may be constructed for, or providing non-video services;

(2) Any permit or authorization, other than a state franchise, required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, pole attachment permits and street cut permits; and

(3) Any permit, agreement or authorization for occupying any other property of the Town or private persons to which access is not specifically granted by the state franchise.

(d) Except as otherwise provided in DIVCA, a state franchise shall not relieve a franchisee of its duty to comply with all laws, including laws of the Town, and every state franchisee shall comply with the same. The Town reserves its rights to the lawful exercise of police and other powers the Town now has or may later obtain.

(e) The Town reserves the right to construct, operate, maintain or repair its own cable system or video service provider network.

13.10.040 Administration and Regulations.

(a) The Town may from time to time adopt rules and regulations to implement the provisions of this Chapter consistent with DIVCA.

(b) The Cable Coordinator is hereby authorized to administer this Chapter and to provide or cause to be provided any notices (including noncompliance notices) and to take any action on behalf of the Town that may be required under this Chapter, DIVCA, or under applicable law.

(c) The failure of the Town, upon one or more occasions, to exercise a right or to require compliance or performance under this Chapter or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing or its exercise by the Town is not permitted by DIVCA.

(d) The Town may designate one or more entities, including itself, to control and manage the use of PEG access channels, and any PEG facilities and equipment owned, controlled or used by the Town or the designated entity or entities.

13.10.050 Construction, Operation, Maintenance and Repair.

A video service provider within the Town shall, in its use of public rights-of-way and public and private property, be considered to be a “utility” within the meaning of the Atherton Municipal Code.

13.10.060 Franchise Fee.

(a) Every state franchisee operating within the boundaries of the Town shall pay a franchise fee to the Town in the amount of five percent (5%) of that state franchisee's gross revenues derived from the operation of its network to provide cable or video services within the Town.

(b) For purposes of this Chapter, "gross revenue" shall have the meaning set forth in Cal. Pub. Util. Code § 5860.

(c) A state franchisee shall remit the franchise fee to the Town quarterly, within 45 days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee.

(d) If a state franchisee fails to pay the franchise fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at an annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

13.10.070 Public, Educational and Governmental Access Channel Capacity and Support.

(a) PEG Channel Capacity.

(1) A state franchisee shall designate and activate seven (7) PEG channels on its network. The state franchisee shall designate and activate the seven (7) PEG channels within three (3) months from the date that the state franchisee receives a state franchise to provide video service in an area including the Town, provided, however, that this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee's ability to designate or provide such PEG capacity is technically infeasible, as provided in Cal. Pub. Util. Code § 5870(a).

(2) A state franchisee shall provide an additional PEG channel when the standards set forth in Cal. Pub. Util. Code § 5870(d) are satisfied by the Town or any entity designated by the Town to be responsible for PEG.

(b) PEG Support.

(1) Amount of PEG support fee.

(A) Except as provided in subparagraphs (B) and (C), every state franchisee operating within the boundaries of the Town shall pay a PEG support fee to the Town in the amount of 88 cents (\$0.88) per month per subscriber in the Town.

(B) Upon the expiration of the Comcast Franchise, the Town shall, by ordinance, establish a new PEG fee equal to either (i) the amount set forth in paragraph (b)(1)(A), or (ii) one percent (1%) of a state franchisee's gross revenue.

(C) The PEG fee established by the Town pursuant to paragraph (b)(1)(B) shall expire with respect to a particular state franchisee upon the expiration of that state franchisee's state franchise, and the Town shall by ordinance reauthorize the PEG fee for that state franchisee upon such expiration.

(2) The PEG support fee shall be used by the Town for PEG purposes consistent with state and federal law.

(3) A state franchisee shall remit the PEG support fee to the Town quarterly, within 45 days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the PEG support fee.

(4) If a state franchisee fails to pay the PEG fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at an annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

(c) PEG Carriage and Interconnection.

(1) State franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels on the state franchisee's lowest cost tier of service unless the PEG signal is provided to the state franchisee at a lower quality or with less functionality.

(2) If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the Town shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to the PEG channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

(d) Institutional Network and Other In-Kind PEG Facilities and Cable Service Support Obligations.

The incumbent cable operator's obligation to provide and support PEG channel facilities and institutional networks and to provide free cable service to schools and other public buildings as provided in the Comcast Franchise shall continue until July 25, 2010.

13.10.080 Audits and Records.

(a) Not more than once annually, the Town or its designee may examine and audit the business records of a state franchisee to ensure compliance with the franchise fee payment obligations of Section 13.10.060 and the PEG fee payment obligations of Section 13.10.070(b).

(b) A state franchisee shall keep all business records reflecting any gross revenues, even if there is a change in ownership of the state franchisee, for a least four (4) years after such gross revenues are recognized by the state franchisee on its books and records. In the case of subscriber numbers used for calculating the PEG fee, a state franchisee shall keep data on the number of its subscribers in the Town, even if there is a change in ownership of the state franchisee, for at least four (4) years after the close of each calendar quarter on which the PEG fee is to be paid.

(c) To the extent consistent with DIVCA and other applicable law, the Town may request, and a state franchisee shall provide, information and books and records to the extent necessary to monitor a state franchisee's compliance with this Chapter.

13.10.090 State Franchise Service Obligations.

The Town may bring complaints to the Commission that a state franchisee is not offering video service as required by Cal. Pub. Util. Code § 5890.

13.10.100 Customer Service and Protection.

(a) A state franchisee shall comply with Cal. Govt. Code §§ 53055, 53055.1, 53055.2 and 53088.2; the FCC customer service and notice standards set forth in 47 C.F.R. §§ 76.309, 76.1602, 76.1603 and 76.1619; Cal. Penal Code § 637.5; the privacy standards of 47 U.S.C. § 551; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) The Cable Coordinator shall monitor the compliance of state franchisees with respect to the state and federal customer service and consumer protection standards set forth in paragraph (a). The Cable Coordinator will provide a state franchisee with written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the state franchisee 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the Town:

(1) For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.

(2) For a second violation of the same nature within 12 months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.

(3) For a third or further violation of the same nature within 12 months, a fine of \$2,500.00 shall be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.

(c) A state franchisee may appeal a penalty assessed by the Cable Coordinator to the City Council within 60 days of the initial assessment. The City Council shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

13.10.110 Emergency Alert System.

(a) A state franchisee shall comply with the EAS requirements of the FCC in order that emergency messages may be distributed over the state franchisee's network.

(b) A state franchisee's EAS shall be remotely activated by telephone and shall allow an authorized representative of the Town to override the audio and video on all channels on the state franchisee's network that may be lawfully overridden, without the assistance of the state franchisee, for emergency broadcasts from a location designated by the Town in the event of a civil emergency or for reasonable tests. Testing of a state franchisee's EAS shall occur at times that will cause minimal subscriber inconvenience.

(c) The Town shall permit only appropriately trained and authorized persons to operate the EAS equipment. Except to the extent expressly prohibited by applicable law, the Town shall hold the state franchisee, its employees and officers harmless from any claims arising out of the emergency use of its facilities by the Town.

(d) Paragraphs (b) and (c) of this section shall expire and no longer be effective after July 25, 2010.

13.10.120 No Exclusivity.

A state franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing, or continuing to provide, cable or video service to that subscriber or building owner's premises. However, nothing herein prevents a state franchisee from entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial subscriber.

13.10.130 Notices.

All notices and copies of documents that DIVCA requires to be provided to the Town, as a local entity or a local franchising entity, shall be addressed to the City Manager, Attention: Cable Coordinator.

13.10.140 Miscellaneous Provisions.

(a) The captions to sections throughout this Chapter are intended solely to facilitate reading and reference to the sections and provisions of this Chapter. Such captions shall not affect the meaning or interpretation of this Chapter.

(b) Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

(c) If any term, condition, or provision of this Chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency of competent jurisdiction, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law that renders valid the provision that had been held invalid, that provision shall thereupon return to full force and effect without further action by the Town and shall thereafter be binding on the state franchisee and the Town.

SECTION 8. When the date set forth in Section 13.08.600(c) of the Atherton Municipal Code occurs, Chapter 13.08 of Title 13 of the Atherton Municipal Code shall be repealed in its entirety.

SECTION 9. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 10. The City Council hereby finds that this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of this ordinance.

SECTION 10. This ordinance shall become effective thirty (30) days after the date of its adoption.

Introduced this day of , 2007.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the day of , 2007, by the following vote:

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

Alan B. Carlson
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
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: PERFORMANCE OF TOWN LANDSCAPING CONTRACT WITH
COMMERCIAL ENVIRONMENTAL LANDSCAPE**

RECOMMENDATION:

Retain the services of Commercial Environmental Landscape (CEL) to continue performing landscaping duties in various locations in the Town of Atherton.

BACKGROUND:

CEL was hired as the lowest bidding contractor in August 2002, to perform Landscaping duties in/around 23 different locations in Atherton. Recently it was brought into question as to whether the company was successfully performing the duties as required by contract. The Town's Public Works Superintendent was asked to closely monitor their contracted agreement of spot performance and to report on those findings.

ANALYSIS:

After discussions by the Superintendent with senior CEL representatives, CEL adequately performed up to its scheduled maintenance patterns during the timeframe of December 5, 2006 to April 5, 2007. There were times that some areas received delayed maintenance for a week or two due to a storm, or the need to spray herbicides over the entire area of the town's landscape because of timing/window of opportunity issues. This is, and has always been, the case for a landscape contract. During this timeframe, staff is not aware of a single complaint about the level of maintenance in any of the areas under contract.

FISCAL IMPACT:

CEL is performing the duties at the same price in April 2007 as they did when they received the contract as the low-bidder in August 2002. This amounts to \$30,686.22 annually, or \$2,555.85 per month for the care and maintenance of approximately 12.27 acres of landscaped area.

Prepared by:

Approved by:

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

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES ROBINSON, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE
OF COMPLETION, AND APPROVAL OF CONTRACT CHANGE
ORDERS FOR THE SELBY LANE RECONSTRUCTION PROJECT,
PROJECT NO. 04-004**

RECOMMENDATION

Accept the work, authorize recording of a Notice of Completion, and approve contract Change Orders in the amount of \$164,523.79 for the Selby Lane Reconstruction Project, Project No. 04-004.

INTRODUCTION

In June 2005, the Council awarded a contract to Interstate Grading & Paving, Inc., for \$1,337,621.50, with a \$133,762.15 construction contingency, for a total authorized amount of \$1,471,383.65. In April 2006, the Council approved an increase in the contract amount due to utility delays in the amount of \$320,808.51, with an added contingency of \$32,080.85 for a total contract amount of \$1,658,430.01, with a total contingency of \$165,843.00, bringing the total authorization to \$1,824,273.01. Work under the contract has been completed.

ANALYSIS

The revised contract price was for \$1,658,430.01, with a \$165,843.00 construction contingency, for a total authorized amount of \$1,824,273.01. There were six field directive change orders totaling \$164,523.79. The contract changes were as follow:

1. Original Contract	\$1,337,621.50
2. Change Order No. 1 - Delay costs due to utilities	\$1,563.10
3. Change Order No. 2/contract revision - Delay costs due to utilities	\$320,808.51
4. Change Order No. 3 - Change striping detail	\$8,296.50
5. Change Order No. 4 - Change design details	\$17,784.73
6. Change Order No. 5 - AC cost increase	\$49,077.10
7. Change Order No. 6 - Increased disposal cost due to contamination	\$53,810.31
8. Change Order No. 7 - AC for grade correction to match driveways and miscellaneous extra work reports	<u>\$33,992.05</u>
TOTAL	\$1,822,953.80

FISCAL IMPACT

Funding for this project in the amount of \$1,500,000 was included in the FY 03/04 budget. The budget was increased by Council action in April 2005 by \$325,000 to \$1,825,000. The final cost of this segment of work is \$1,822,953.80, less than the approved budget estimate.

CONCLUSION

It is appropriate for the Council to accept the work and authorize recording a Notice of Completion at this time.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachment: Notice of Completion
Certificate of Completion

RECORD REQUESTED BY:

TOWN OF ATHERTON
AND WHEN RECORDED MAIL TO:

CITY CLERK, TOWN OF ATHERTON

91 ASHFIELD ROAD
(Street Address)
ATHERTON, CALIFORNIA 94027
(City, State and Zip Code)

No fee pursuant to Government Code Section 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TOWN OF ATHERTON
NOTICE OF COMPLETION

SELBY LANE RECONSTRUCTION PROJECT
PROJECT NO. 04-004
ATHERTON, CALIFORNIA

NOTICE IS HEREBY GIVEN THAT Duncan L. Jones, Engineer of Work for the Town of Atherton, County of San Mateo, California, on the 18th day of April 2007 did file with the City Clerk of said Town a Certificate of Completion for the work described in the construction contract awarded to Interstate Grading & Paving, Inc. on the 15th day of June 2005, said contract being executed on the 5th day of July 2005.

That said work and improvements were accepted as completed on the 15th day of March 2007 and that acceptance for completion of said work was ordered by Motion of the City Council of said Town, adopted on the 18th day of April 2007, and that the name of the surety on the Contractor's bond for performance, labor and materials on said project is Safeco Insurance Company of America, 400 Taylor Blvd., Pleasant Hill, CA 94523.

That said work and improvements consisted of layout of work, removal and replacement of asphalt concrete pavement on Selby Lane (approximately 5,300 liner feet), replacement of concrete valley gutters, installation of concrete drain inlet box and pipe and installation of curbs, gutters and rock swales as described in the plans and specification approved by the City Council of the Town of Atherton pursuant to motion, adopted the 16th day of February 2005.

That I, Duncan L. Jones, City Engineer of the Town of Atherton, am authorized by said Motion to execute and file this notice with the County Recorder of the County of San Mateo.

BY: _____
City Engineer

Date

ATTEST: _____
City Clerk

Date

'I declare under penalty of perjury that the foregoing is true and correct.'

(Date and Place) (Signature)

CERTIFICATE OF COMPLETION

TOWN OF ATHERTON

PROJECT NAME: SELBY LANE RECONSTRUCTION PROJECT
PROJECT NUMBER: 04-004
LOCATION: Selby Lane from West Selby Lane to El Camino Real

NOTICE IS HEREBY GIVEN:

1. That on March 15, 2007, the Public Works project known as the Selby Lane Reconstruction Project was completed in accordance with the plans and specifications as required by the Town of Atherton.

2. That the name and address of the party filling this notice is:

Town of Atherton
91 Ashfield Road
Atherton, California 94027.

3. That the name and address of the Contractor responsible for the construction of the project is:

Interstate Grading & Paving, Inc.
128 Maple Ave.
So. San Francisco, CA 94080

4. That the name and address of the Contractor's surety is:

Safeco Insurance Company of America
400 Taylor Blvd.
Pleasant Hill, CA 94523.

5. Layout of work, removal and replacement of asphalt concrete pavement on Selby Lane (approximately 5,300 liner feet), replacement of concrete valley gutters, installation of concrete drain inlet box and pipe and installation of curbs, gutters and rock swales as more particularly described in the plans and specification approved by the City Council of the Town of Atherton pursuant to Motion, adopted the 16th day of February 2005.

BY:

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

Date

ATTEST:

Kathi Hamilton
Acting City Clerk

Date



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: AWARD OF CONTRACT FOR THE CAPE SEAL AND SLURRY
SEAL PROJECT, PROJECT NO. 06-003**

RECOMMENDATION:

Award the contract for the 2007 Street Microsurfacing Project, Project No. 06-003, to Valley Slurry Seal, Inc., the low bidder on the March 9, 2007, bids, for \$68,863.43, with a 10% construction contingency of \$6,886.34, for a total authorization of \$75,749.77; and to authorize the Mayor to sign the contract on behalf of the Town.

INTRODUCTION:

This project is for preventive maintenance on a specified group of streets in Atherton. The 2005 MTC Street Condition Survey was used along with staff field inspections to identify the appropriate streets for this type of application.

The streets that will receive this treatment are as follows:

STREET	FROM	TO	LENGTH	WIDTH	SQ '	SQ YDS
EDGE	OAK GROVE	RINGWOOD	592	20	11,840.00	1,315.56
AMADOR	TUSCALOOSA	ALMENDRAL	1066	20	21,320.00	2,368.89
GREEN OAKS	OAK GROVE	FREDERICK	1070	24	25,680.00	2,853.33
MIDDLEGATE	PARK	ALMENDRAL	250	20	5,000.00	555.56
TOYON	OAK GROVE	RINGWOOD	814	20	16,280.00	1,808.89
ELENA	ATHERTON	FAXON	1320	20	26,400.00	2,933.33
LINDA VISTA	ATHERTON	CAMINO AL LAGO	1816	20	36,320.00	4,035.56
FREDERICK	OAK GROVE	RINGWOOD	1336	20	26,720.00	2,968.89
PARKWOOD	RINGWOOD	CUL DE SAC	1049	24	25,176.00	2,797.33
POLHEMUS	EUCLID	SELBY	2184	24	52,416.00	5,824.00

FAXON STREET	ELENA FROM	END TO	1402 LENGTH	24 WIDTH	33,648.00 SQ '	3,738.67 SQ YDS
FAXON FOREST	FAXON	BARRY	891	24	21,384.00	2,376.00
JAMES AVE.	MIDDLEFIELD	MAGNOLIA	1702	24	40,848.00	4,538.67
BERGESSEN	STOCKBRIDGE	END	390	20	7,800.00	866.67
CAROLINA	STOCKBRIDGE	CUL DE SAC	402	20	8,040.00	893.33
NORTHGATE	PARK	ALMENDRAL	220	20	4,400.00	488.89
MERCEDES	ATHERTON	CUL DE SAC	586	20	11,720.00	1,302.22
EUCLID	POLHEMUS	STOCKBRIDGE	1358	24	32,592.00	3,621.33
LABURNUM	MAGNOLIA	CATALPA	908	20	18,160.00	2,017.78
CATALPA (N-1)	CATALPA	CUL DE SAC	336	20	6,720.00	746.67
CATALPA (N-2)	CATALPA	CUL DE SAC	223	20	4,460.00	495.56
LLOYDEN	ECR	FAIR OAKS	1636	20	32,720.00	3,635.56
VICTORIA	VALPARIASO	END	976	20	19,520.00	2,168.89
TOTALS			22527		489,164.00	54,351.56

ANALYSIS:

Three bids were received for the 2007 Street Microsurfacing Project as follows:

<u>CONTRACTOR</u>	<u>LOCATION</u>	<u>BID</u>
1. Graham Contractors, Inc.	San Jose	\$84,788.43
2. Valley Slurry Seal	Sacramento	\$68,863.43
3. Bond Blacktop	Union City	\$88,049.53

It was estimated that this job would be bid at \$1.65 per square yard of treatment as per current oil pricing and directly from supplier sources. The low bid price came in substantially lower at \$1.267 per square foot.

FISCAL IMPACT:

Gas Tax and Road Impact Fee funds in the amount of \$150,000 are budgeted for this project in FY 2006-07. Valley Slurry Seal, Inc. was the low bidder at \$68,863.43. This bid was 23% below the engineer's estimate prepared by staff of \$89,680.07. A 10% construction contingency of \$6,886.34 would bring the total authorization to \$75,749.77, which is within the FY 2006-07 budget.

Prepared by:

Approved by:

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

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR, CITY COUNCIL, AND JAMES H. ROBINSON,
CITY MANGER**

FROM: WENDÉ C. PROTZMAN, ASSISTANT TO THE CITY MANAGER

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: ADOPTION OF RESOLUTION ADDING THE POSITION OF PERMIT
TECHNICIAN TO THE TOWN'S JOB CLASSIFICATION LISTING**

RECOMMENDATION

Adopt the attached Resolution adding the position of Permit Technician to the Town's classification listing and setting the salary and benefits for this position.

INTRODUCTION:

One of the recommendations provided by the Building Department assessment conducted by former interim Building Administrator Gary Binger was to create and recruit for a Permit Technician position.

Currently, there is one Building Official, one Senior Building Inspector/Plan Checker, two Building Inspector/Plan Checkers, and one Office Assistant within the Building Department. The assessment report recommends that a Permit Technician classification be created in order to provide coverage at the permit counter, assist in maintaining permit tracking and other records, issue minor permits and plan reviews, and respond to general questions from realtors, contractors, and residents. The attached resolution would add a new classification and a new employee to Town staff. If the attached resolution is adopted, staff will begin the recruitment.

ANALYSIS:

Staff is recommending authorization of the position description and salary range (see attachments). The salary range is set between the Office Assistant's and Building Inspector/Plan Checker's salary schedule and is consistent with the Town's salary setting formula described in the Memorandum of Understanding.

As is required by the Town's Municipal Code, Town personnel staff reviewed this matter with representatives of the affected employee association (Teamsters Union Local 856) March, 2007, and received a favorable response to the proposal.

FISCAL IMPACT:

Funding was not budgeted for this position in the Fiscal Year 2006-07 Adopted Budget. The total approximate fiscal impact for Fiscal Year 2006-07, based on filling this position by June 25, 2007, is \$1,740. This amount reflects salary and all roll-up costs, including PERS contribution.

Prepared by:

Approved by:

Wendé C. Protzman
Assistant to the City Manager

James H. Robinson
City Manager

Attachments: Job Description
Resolution

PERMIT TECHNICIAN**Salary Range \$4887.79 - \$5621.00****Definition**

Under general supervision of senior building staff, provides customer service at the permit counter, accepts applications, reviews building permits, tracks projects through to completion, calculates and collects fees, issues over-the-counter permits, and provides procedural and policy information to the public.

Class Characteristics

The class has responsibility for serving the public at the permit counter, receiving plans, processing permits, scheduling inspections, inputting data, and providing information to the public. This class is distinguished from the Building Inspector/Plan Checker position in that the latter performs combination inspections of building sites to enforce all applicable laws and codes and performs non-structural plan checking on a variety of residential construction and modification. **This position is distinguished from the Office Specialist position in that it is an entry level position for the building/planning services career path with specialized knowledge and certification. The Office Specialist position is in the office support classification and provides general office administrative and technical office support to a department.**

Examples of Duties (Illustrative Only)

- Assists in processing building applications and enters new permit data.
- Serves the public at the permit counter; accepts plans for plan check and verifies accuracy and completeness of information; calculates permit fees based on type of construction and use of building.
- Explains ordinances and procedures to owners, contractors, developers, and general public.
- Processes requests for refunds
- Compiles and reports on statistical information and data regarding building, zoning, sign, and related permits.
- Compiles weekly and monthly reports.
- Performs recordkeeping and filing of data.
- Performs related duties and responsibilities as required.
- Efficiently processes building permits and miscellaneous permits; ensures all necessary approvals are obtained.
- Performs elementary plan checking duties at the counter, reviewing for completeness and for conformance to building and other appropriate policies and procedures as assigned.
- Responds to inquiries and confers with builders, engineers, contractors, architects, and the public concerning submitted requirements, building codes, and permit regulations at the counter and over the phone.
- Calculates various valuations, plan checks fees and permit fees, collects and processes various fees; and balances the cash.

- Sorts and files documents and records, maintaining alphabetical, index, and cross-reference files; maintains complex office records related to building inspection and code enforcement.
- Organizes, maintains, and upkeeps Building Department files and reports any problems to the Building Official.
- Schedules inspections and checks documentation when a final inspection is requested.
- Performs other related duties as required.

Qualifications

Knowledge of:

- Responsibilities and services provided by the Building Department.
- Processes and procedures associated with permits.
- Records management practices; general office practices and procedures.
- Organization and departmental procedures and processes.
- Basic business mathematics and business English.
- Basic terminology and symbols of maps and construction plans and specifications.
- Report preparation.
- Building terms and codes.
- Construction practices and materials.
- Computer applications related to work.

Skill in:

- Communicating effectively to developers, engineers, architects, property owners and others.
- Explaining complex laws, codes, regulations, and ordinances.
- Reading and interpreting maps, plans, and specifications.
- Preparing clear and concise reports, correspondence, and other written materials.
- Maintaining accurate records and files.
- Organizing and prioritizing work and meeting critical deadlines.
- Using tact, initiative and independent judgment within established procedural guidelines.
- Establishing and maintaining effective working relationships with those contacted in the course of the work.

Education and Experience:

Education equivalent to completion of the twelfth grade, supplemented by courses and/or seminars in planning, building inspection, construction technology, blueprint reading, civil engineering, and business. Fifteen semester units of college coursework in drafting, building construction, engineering or a closely related field is desirable, as is possession of a Building Permit Technician certificate from ICC. Must be able to obtain certificate within one year of hire if one is not current.

License:

Specified positions may require a valid California class C driver's license and a satisfactory driving record. Must possess or obtain within one year of employment the Permit Technician certification through ICC.

Physical Demands:

Must possess mobility to work in a standard office setting and to use standard office equipment, including a computer; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone.

RESOLUTION NO. 07-_____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING THE POSITION OF PERMIT TECHNICIAN TO THE TOWN'S CLASSIFICATION LISTING AND SETTING SALARY AND BENEFITS FOR THE POSITION

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

WHEREAS, the City Council has determined that it is in the best interests of the Town to create the position of Permit Technician; and

WHEREAS, Attachment A to this Resolution specifies the job classification and salary range for this position; and

WHEREAS, this job classification will be allocated to the Miscellaneous Employees Unit pursuant to Atherton Municipal Code Section 2.52.090 and will be afforded the benefits available to the employees in the Miscellaneous Employees Unit.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the Town of Atherton that the position of Permit Technician is hereby added to the Town's classification listing.

* * * * *

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 21st day of March, 2007, by the following vote.

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

Alan B. Carlson, Mayor
Town of Atherton

ATTEST:

Kathi Hamilton, City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes

Marc Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH CSG
CONSULTANTS, INC. FOR MUNICIPAL CIVIL ENGINEERING
SERVICES FOR THE REVIEW OF DEVELOPMENT PROJECTS, IN AN
AMOUNT NOT TO EXCEED \$30,000.**

RECOMMENDATION:

Accept the proposal and authorize the Mayor to sign a Professional Services Agreement with CSG Consultants, Inc. for Municipal Civil Engineering services for the review of development projects, in an amount not to exceed \$30,000.

BACKGROUND:

At the City Council meeting of March 21, 2007, the Council approved issuance of a Request for Proposals (RFP) for Municipal Engineering Services. Four proposals were received, two from firms and two from individuals. A selection committee consisting of Jim Robinson, Mike Wasmann and Duncan Jones reviewed the proposals and conducted interviews on April 3, 2007.

ANALYSIS:

The following firms/individuals submitted proposals:

Firms

CSG Consultants, Inc., San Mateo
Willdan, Oakland

Individuals

Pat Stone, Mountain View
Frank Addiego, San Carlos

CSG Consultants, Inc. (CSG) is recommended by the selection committee as the best qualified consultant to provide the services needed. The primary qualifications that set CSG above the others was their depth of resources and direct local experience and knowledge, as well as the qualifications of the staff to be assigned to the work.

An additional benefit to our residents is that a more junior engineer will do most routine reviews and prepare comments and conditions of approval (many of which are routine), with oversight by a senior engineer and by the Town's City Engineer. This will reduce costs compared to a senior engineer preparing the entire review. Senior CSG engineers will review more complex sites.

FISCAL IMPACT:

The cost of these consultant services will be offset by building permit fees. However, the consultant will be compensated according to the rate chart attached to the Professional Services Agreement based on hours worked by their staff. The fees may initially be insufficient to cover the cost of the consultant because those fees were set at the cost for Town staff to prepare the reviews. One of the initial tasks for the consultant to perform is to review the Town's permit fees and compare to other cities in order to develop full cost recovery. At a later date, adjustments to the permit fee structure may be necessary to fully recover these costs.

Currently the plan check fee for a normal building site is \$350 for grading for each 500 cubic yards, plus \$250 each for the on-site drainage and NPDES, for a total collection of \$850 for the plan checks the consultant will perform. The Building Department reviews from 30 to 50 sites per year, with many coming in the spring in preparation for the summer construction season.

The consultant is also tasked to be at the permit center two days per week for four hours each day to interface with developers, residents, and Town staff. Reviews can also be performed during this time. The consultant will also have tasks to upgrade and standardize the conditions of approval, incorporating the criteria from the BKF drainage study into the Town's permit process.

The initial purchase order for these services will be in the amount of \$30,000 for the remainder of the 2006-07 fiscal year. This amount will cover the reviews during this period, as well as the tasks required to initiate the contract and evaluate the Town's fee structure. The amount will be subject to annual renewal as a part of the annual budget preparation.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachments: Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT FOR
MUNICIPAL ENGINEERING SERVICES

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and CSG Consultants, Inc., 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 Municipal Engineering Services in connection with the reviews of private development projects.

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. This agreement will expire on June 30, 2007 unless extended by the issuance of a new purchase order by the City. Each new purchase order issued will extend the termination of this agreement for one year.

Consultant shall perform all services and provide all work product required pursuant to this agreement within the calendar days designated on the written notice to proceed for each task assigned, 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 the amount shown on the purchase order without express written modification of the purchase order signed by the City. The initial purchase order for FY 2006-07 will be for \$30,000.

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. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.

c. 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.

d. 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.

(a) 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.

(b) The Consultant shall not perform any work whatsoever as an independent contractor for a client, public or private, in connection with any project located or to be located in whole or in part within the City. It is understood and agreed that neither Consultant, nor any of its principals, shall have any legal or equitable interests in sub-dividable land, nor engage in any speculative development located or operating within the City.

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:

Gordon Siebert, Vice President, Operations
CSG Consultants, Inc.
1700 South Amphlett Blvd., 3rd Floor
San Mateo, CA 94402

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 _____, 2007.

Town of Atherton

Consultant

By _____
City Manager

By _____

EXHIBIT "A"
SCOPE OF SERVICES
MUNICIPAL ENGINEERING SERVICES

- Review of Tentative Maps and similar private subdivision and/or development applications
- Preparation of Engineering-specific Conditions of Approval related to Tentative Maps and similar private subdivision and/or development applications
- Review of final Subdivision Maps, Lot Line Adjustments, or Lot Merger applications for conformance with the Subdivision Map Act
- Review of private subdivision and/or development improvement plans for both on-site improvements and public right-of-way improvements for compliance with grading, drainage, NPDES, and encroachment standards
- Review of hydrology maps and hydraulic calculations for private and public storm drain systems for compliance with Town standards and State water laws
- Review of Engineer's Estimates for public and private improvements that are subject to bonding requirements, verification of quantities and preparation of fee calculations
- Proactively communicating with private developers and associated design professionals by telephone, e-mail, written correspondence, and face-to-face meetings at the Town or consultant offices, whichever is requested by the applicant, to discuss plan check review comments
- Review of CEQA documents, geotechnical investigations, traffic studies, and similar engineering reports to understand issues that may impact the design of private subdivision or development improvements, and/or public streets or utility infrastructure.
- Preparation of reports to the City Council recommending approval of final subdivision maps and improvement agreements
- Other assignments not specifically listed above, but required during the engineering review of development applications
- The selected consultant may be asked to have a representative present at the Town Offices for up to two days per week for up to four hours per day, to perform said services. If an assignment cannot be completed while the representative is present at the Town Offices, said assignment shall be completed at the consultant's office such that deadlines for deliverable are met. Firms and individuals shall demonstrate sufficient depth of resources to assure timely service delivery and redundant capability.

EXHIBIT "B"
PAYMENT

1. Consultant shall be paid up to \$30,000 as per Exhibit B-1 to complete the scope of work as outlined in Exhibit "A" for services during FY 2006-07. Compensation for future years under this agreement shall be as shown on the annual purchase order and any amendments thereto.
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. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Compensation shall be paid at the rates shown on Exhibit "B-1".

EXHIBIT "B"
STANDARD ENGINEERING FEES

Professional Engineering Services – Hourly Rates

Senior Principal Engineer	\$175
Principal Engineer	\$160
Senior Engineer	\$140
Associate Engineer	\$125
Assistant Engineer	\$110
Construction Inspector	\$110
Design Engineer	\$110
Engineering Technician	\$90
Administrative Support	\$75
Land Surveyors: 2-person crew	\$200
Expert Witness Services	\$250

CSG's Inspection and Construction Management Services are available for overtime at time and one half compensation; holidays and Sundays at double time compensation; differential pay for night work to be negotiated.

CSG invoices monthly for services provided the previous month. Clients will receive a detailed account of work performed and cost.

Additional Costs

Reimbursables: Cost + 15%
Mileage (if applicable): \$0.50/mile
Inspection Vehicle: \$8.00/hour
Subconsultants: Cost + 15%



CSG Consultants, Inc.

Effective January 1, 2007



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES ROBINSON, CITY MANAGER**

FROM: ROBERT J. BRENNAN, CHIEF OF POLICE

DATE: APRIL 18, 2007

**SUBJECT: APPROVAL OF A CONTRACT WITH EL DORADO TOWING TO
BE ADDED TO THE ATHERTON POLICE DEPARTMENT TOW
ROTATION LIST**

RECOMMENDATION:

Approve the contract for El Dorado Towing and add this company to the tow rotation list for the Atherton Police Department.

INTRODUCTION:

A representative of El Dorado Towing approached the Atherton Police Department, asking they be added to the Police Department's Rotation Tow List. The representative was given an application form, as well as a contract, to review and sign. Both of these items have been returned and reviewed by Staff, who has given initial approval for the addition of this company, pending Council approval.

In addition, this company will obtain a business license with the Town and will provide Staff with evidence of current Liability Insurance upon contract approval. Workers Compensation Insurance is not needed for El Dorado Towing since it is a family (father/son) owned and operated business with no outside employees.

The Police Department currently has one opening on the Rotation Tow List, and the addition of this company would fill the current vacancy.

ANALYSIS:

El Dorado Towing has been in business for three (3) years in Redwood City. They are currently on the rotation lists of the California Highway Patrol, Redwood City PD, Menlo Park PD, and the San Mateo County Sheriff's Department.

This tow company will be subject to a probation period of 3 months, at which time their performance will be evaluated to determine whether their contract will be continued. Approving the contract of El Dorado Towing will allow for an additional resource to be available to the Atherton Police Department.

FISCAL IMPACT:

None.

Prepared by:

Approved:

Robert J. Brennan
Chief of Police

James Robinson
City Manager

Attachments:

Tow contract
Application
Insurance



83 Ashfield Road
Atherton, CA 94027

Town of Atherton DEPARTMENT OF POLICE



BUS (650) 688-6500
FAX (650) 323-1804

www.ci.atherton.ca.us

Robert J. Brennan
Chief of Police

TOWN OF ATHERTON

ROTATION TOW CONTRACT

This agreement made and executed in duplicate the 7TH day of APRIL, 2007, by and between the TOWN OF ATHERTON, a California Municipal Corporation, hereinafter "TOWN" and whose address is 83 Ashfield Road, Atherton, California 94027 and EL DORADO TOWING whose address is 786 DOUGLAS AVENUE, REDWOOD CITY, CA 94063 hereinafter "TOW COMPANY".

WITNESSETH

For valuable consideration, the parties hereto agree as follows:

1. Subject to all of the terms and conditions of this Agreement, and based upon the representation by TOW COMPANY that it meets all of the eligibility requirements as set forth in the policies established by the Atherton Police Department and that it has and it will maintain all necessary licenses from all other authorities having jurisdiction thereof, the TOWN agrees to place and maintain TOW COMPANY on the Rotation Tow List of the Atherton Police Department.
2. TOW COMPANY shall have, and at all times that this contract is in effect, maintain a valid business license issued by the Town of Atherton.
3. TOW COMPANY shall take out and maintain in the name of TOW COMPANY and the TOWN during the life of this Agreement such public liability insurance as shall protect the TOW COMPANY, the TOWN, its officials, officers, directors, employees and agents from claims which may arise from operations under this Agreement, whether such operations be by TOW COMPANY, the TOWN, its officials, officers, directors, employees and agents and any subcontractors, or by anyone directly or indirectly employed by any of them. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property resulting from TOW COMPANY'S, TOWN'S or subcontractor's operations, use of owned or non-owned automobiles and vehicles,

products and completed operations. The amounts of insurance shall be not less than the following:

Single Limit Coverage applying to Bodily and Personal Injury, Liability and Property Damage: \$2,000,000.00

Or such other, higher limits as may be required by the Chief of Police on behalf of the TOWN. The following endorsements must be attached to the policy:

- (a) The insurance policy must provide coverage on the basis of an "occurrence", and not of the basis of any "accident."
 - (b) The policy must cover personal injury as well as bodily injury.
 - (c) The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated from the basic policy endorsements.
 - (d) Broad Form property damage liability must be afforded. Permission is granted for deductible which shall not exceed \$500 without express, written approval of the TOWN.
 - (e) Deletion of explosion, collapse, and underground property damage (XCU) exclusion.
 - (f) Cross liability and Severability of Interest clause.
 - (g) The TOWN must be named as a named insured under the coverage afforded with respect to the work being performed under the Agreement.
 - (h) An Endorsement shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance in effect in the TOWN will be called upon to contribute to a loss under this coverage.
 - (i) A contractual liability endorsement shall be provided which states that the coverage includes each and all of the obligations set out in paragraph 9 of this agreement.
4. TOW COMPANY shall provide and maintain a professional level of service that serves the needs of the community and the Town of Atherton, an average response time to the Town of Atherton of not more than 20 minutes, and equipment and standards that comply with all applicable laws including the laws of the State of California. TOW COMPANY shall be based within ten (10) miles of the city limits of TOWN, and shall maintain a secure storage facility. The TOW COMPANY must have trucks that can transport most passenger vehicles and pick-up trucks. One of these tow trucks must be a car carrier (flatbed).
5. When TOW COMPANY is activated on the Rotation Tow List, it will be on probation for the first three (3) months. During that time, the performance of TOW COMPANY and its ability to meet the needs of the Town of Atherton will be closely evaluated. At the end of the probation period, the Tow Liaison Officer will determine whether, in his sole discretion, TOW COMPANY has performed in the best interests of the TOWN and whether or not it shall be placed on the permanent Tow List.

6. Failure by TOW COMPANY to maintain any of its obligations under this Agreement shall be grounds for immediate suspension from the Rotation Tow List. TOW COMPANY will not be reactivated on the list unless and until it complies with all requirements. If TOW COMPANY does not comply with all requirements within ten (10) days following notice of suspension, it will be permanently removed from the Rotation Tow List. Having once been removed from the Rotation Tow List for breach of the requirements of this Agreement, TOW COMPANY may not be reinstated unless, in the sole discretion of the Tow Liaison Officer of the Atherton Police Department, TOW COMPANY is permitted to reapply for listing.
7. TOW COMPANY before commencing any work as herein provided shall take out and at all times during the course of such work shall maintain Workers' Compensation Insurance and Employer's Liability insurance for TOW COMPANY'S employees as required by the Labor Code of the State of California, and, in case any of the work is sublet, TOW COMPANY shall require each contractor or subcontractor similarly to take out and at all times maintain during the course of such work Workers' Compensation Insurance and Employer's Liability Insurance for his employees as required by the Labor Code of the State of California. No work shall commence, nor shall any work be maintained, by TOW COMPANY or any contractor or subcontractor except under full compliance with the requirements of this paragraph.
8. Neither the TOWN nor any of its officers, employees or agents shall be liable to TOW COMPANY or its contractors or subcontractors or agents for any error or omission arising out of or in connection with any work or other obligation to be performed under this agreement.
9. TOW COMPANY shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to it, to any subcontractor, to the TOWN, to TOWN'S employees, or to parties designated in any special Provisions, on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes predicated on active or passive negligence of the TOWN, except for sole negligence of the Town, or of parties designated in any Special Provisions. TOW COMPANY shall assume the defense of and shall indemnify and hold harmless the TOWN, its officers, officials, directors, employees and agents from and against any or all loss, liability, expense, claim, costs, suits, and damages of every kind, nature and description occurring in, on, or about, or resulting directly or indirectly from the performance of the work or other obligation to be performed under this Agreement. Approval of this insurance contract does not relieve the TOW COMPANY or subcontractors from liability under this clause.
10. In the event any party brings suit upon this Agreement, the prevailing party shall recover court costs and reasonable attorneys' fees from the losing party or parties.
11. Except for storage charges for vehicles impounded by the Atherton Police Department, TOW COMPANY shall look solely to the owner(s) of the vehicle for

collection of towing and/or storage charges. Once the TOW COMPANY has been notified by the Atherton Police Department that an impound order has been released, the TOWN shall have no further liability or responsibility for storage charges for that impounded vehicle.

12. The provisions of this Agreement shall bind and inure to the benefit of the heirs, beneficiaries, successors, and assigns of the parties hereto.
13. (a) All notices which are required to be given, or which may be given, by either party hereunder, shall be in writing and may be served by personal delivery or mail as hereinafter specified. Notices hereunder shall be deemed to have been served when deposited in the United States mail, postage prepaid, registered or certified, addressed as follows, or to such other address as from time to time may be designated by either party by giving notice to the other party, to wit:

TOWN

Town of Atherton
Attention: Chief of Police
83 Ashfield Road
Atherton, CA 94027

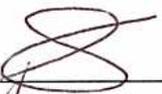
TOW COMPANY

El Dorado Towing
786 Douglas Avenue
Redwood City, CA 94063
650-369-4029

(b) If a notice given hereunder is served by mail, and within a given number of days after such service a right may be exercised or an act is to be done by the person receiving notice, the time within which such right may be exercised or act be done is extended five (5) days if the place of address is within the State of California ten (10) days if the place of address is outside the State of California but within the United States of America, and twenty (20) days if the place of address is outside the United States of America.

(c) Failure to receive or to receipt for notice served by mail shall not invalidate the notice.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

 GILBERTO A MEDINA

 GILBERTO MEDINA

TOW COMPANY

TOWN OF ATHERTON, a Municipal Corporation

BY: _____
Mayor

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

Application for Rotation Tow Listing with the Atherton Police Department.

Business Name: El Dorado Towing
(as it appears on business license):

Business address: 786 Douglas Ave ZIP 94063

Contact person: Gilbert A. Medrano

Telephone numbers: Business (650) 369-4029 Fax (650) 361-1547

Dispatcher (day) 369-4029 (night) 369-4029

List any automobile club affiliations (i.e., AAA, National, etc.).

Do you provide 24 hour a day service? Yes No

How many years have you been in the towing business? 3 yrs
(This is for statistical purposes and does not affect your application)

Have you or anyone with financial interest in your company ever been convicted of a felony involving stolen or embezzled vehicles, fraud related to the towing business, stolen property, or moral turpitude?

No Yes Explain: _____

List your primary storage address and whether owned, leased, or rented

786 Douglas Ave Redwood City CA 94063 (leased)

List any secondary storage addresses.

Are all the storage yards fenced? Yes No Is inside storage available? Yes No

List the legal owner(s). If the owner is a Firm, Company, Association, or Corporation, list all persons having financial interest. (attach additional pages if necessary)

Gilberto Medrano 3722 Page St Redwood City 94063
(name) (address)

Gilbert A. Medrano 3722 Page St Redwood City 94063
(name) (address)

(name)

(address)

Do you or any legal owners of your tow company have any financial interest in any other tow company within APD jurisdiction, or on APD's rotation tow list? Yes No

Application for Rotation Tow Listing with the Atherton Police Department.....Continued

Do you have any family members who own or have financial interest in any other tow company within APD jurisdiction, or on APD's rotation tow list? Yes [] No []
(Family members are any person or persons related by blood or marriage)

Do you share any facilities with ANY other tow company? Yes [] No []

Which facilities? _____

Name of Company _____

List the license numbers of trucks you will have in service. Use additional pages if necessary

Truck # 1. 7F60247

Truck # 2. 7P43614

Truck # 3. 8B19272

Truck # 4. _____

Truck # 5. _____

Truck # 6. _____

Truck # 7. _____

Truck # 8. _____

Truck # 9. _____

Is at least one truck either a Wheel Lift or a Car Carrier? Yes [] No []

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/3/2007

PRODUCER
 Sea Crest Insurance Agency, Inc.
 25255 Cabot Road Suite 206
 Laguna Hills, CA 92653
 949-951-5900

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
 Gilbert Medrano
 El Dorado Towing
 2575 C Middlefield
 Redwood City, CA 94063
 650-369-4029

INSURERS AFFORDING COVERAGE
NAIC#

INSURER A: United Financial Casualty Company	11770
INSURER B: TOPA Insurance Company	18031
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L TR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$								
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALLOWED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	03460758-1	04/03/07	04/03/08	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE DEDUCTIBLE \$ RETENTION \$	To Follow	04/03/07	04/03/08	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER												
E.L. EACH ACCIDENT	\$												
E.L. DISEASE - EA EMPLOYEE	\$												
E.L. DISEASE - POLICY LIMIT	\$												
A	OTHER On Hook	03460758-1	04/03/07	04/03/08	\$ 50,000 Ded 1000								
A	Garagekeepers	03460758-1	04/03/07	04/03/08	\$ 50,000 Ded 500/2500								
A	Physical Damage	03460758-1	04/03/07	04/03/08	Comp&Coll Ded 1000								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

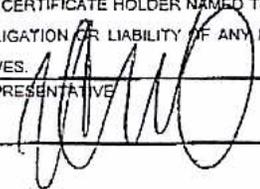
"The Town of Atherton, the agency, it's elected or appointed officials, employees and volunteers"

CERTIFICATE HOLDER

Additional Insured
 Town of Atherton
 Department of Police
 83 Ashfield Road
 Atherton, CA 94027

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL ³⁰ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE 



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF APRIL 18, 2007

SUBJECT: ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR APPOINTMENTS TO THE PLANNING COMMISSION

RECOMMENDATION

Accept and approve the recommendation of the City Council Screening Committee to appoint Mr. Phil Lively and Mr. Herman Christensen as members to the Atherton Planning Commission and to serve four year terms effective May 1, 2007.

BACKGROUND

Each April, the City Council Screening Committee interviews applicants and makes recommendations to the City Council to fill vacancies created when terms expire. The Town of Atherton solicited applications for the Atherton Planning Commission to fill two positions that are set to expire April 30, 2007. Applications were solicited in the Athertonian, Almanac, and on the Town's website.

The Screening Committee consisting of Council members Jerry Carlson and Kathy McKeithen interviewed five potential applicants for the two vacancies this past week. Following the interviews the Screening Committee has recommended Phil Lively and Herman Christensen to serve on the Planning Commission. The terms would be effective from May 1, 2007 to April 30, 2011.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
CITY MANAGER, JAMES ROBINSON**

FROM: KATHY HUGHES ANDERSON, TOWN ARBORIST

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: CONSIDERATION AND POSSIBLE APPROVAL OF A RESOLUTION
OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RE-NAMING
THE WASTE REDUCTION COMMITTEE TO THE ENVIRONMENTAL
PROGRAMS COMMITTEE, INCREASING MEMBERSHIP TO TEN
RESIDENT ADVISORS, INCREASING TERM LIMITS, AND
DESIGNATING ITS FUNCTIONS**

RECOMMENDATION:

Approve the attached Resolution re-naming the Waste Reduction Committee to the Environmental Programs Committee, increasing membership to ten resident advisors, and increasing term limits and designating its functions.

BACKGROUND:

The City Council, at their February 21, 2007 meeting, approved the name change from the Waste Reduction Committee to the Environmental Programs Committee, the increase to ten resident advisor members and the increase in term limits for half the members to two-year terms and half to four-year terms. At that meeting, it was suggested by Vice Mayor Janz that the EPC develop a mission statement and goals and objectives for the City Council to consider.

The EPC, at their April 4, 2007 meeting, voted to approve the attached resolution and Mission Statement. The Resolution officially recognizes the changes previously approved by the City Council and under Section 4, Functions and Responsibilities, outlines the purpose and the objectives of the EPC. The Mission Statement states the mission and goals of the EPC. The

Environmental Programs Committee is seeking City Council's consideration and approval of the Resolution and Mission Statement.

Prepared by:

Reviewed by:

Kathy Hughes Anderson

Jim Robinson, City Manager

Attachments:

Environmental Programs Committee Mission Statement
Environmental Programs Committee Resolution

Town of Atherton Environmental Programs Committee

MISSION STATEMENT

As an advisory Committee to the Atherton City Council, the mission of the Environmental Programs Committee is to:

1. Educate residents about environmental issues and promoting the responsible use of the Earth's resources.
2. Assist residents and other Town entities in making choices that can lead to reduced particulate pollution, increased recycling and use of post-consumer goods, reduced solid waste, use of alternative energy sources, water conservation, green building techniques, and the use of less toxic products.
3. Make recommendations to the City Council in matters relating to recycling, waste reduction and diversion, air pollution, global warming and CO2 emissions, green building standards, reduction of energy usage, alternative energy and pollution prevention.
4. Seek to improve the overall environmental performance of the Town in the areas of enhanced energy efficiency and consumption, CO2 reduction, solid waste reduction and water conservation.
5. Help the community to create and/or maintain local solutions for a sustainable, healthy environment for Atherton residents and the community at large.

RESOLUTION 07-__

RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON RE-NAMING THE WASTE REDUCTION COMMITTEE TO THE ENVIRONMENTAL PROGRAMS COMMITTEE, INCREASING MEMBERSHIP TO TEN RESIDENT ADVISORS, INCREASING TERM LIMITS AND DESIGNATING ITS FUNCTIONS

WHEREAS, the City Council desires to re-name the Waste Reduction Committee to the Environmental Programs Committee to assist in the formulation and implementation of Town environmental policies and programs; and,

WHEREAS, the City Council desires to acknowledge such a committee in order to evaluate the performance and benefit accruing as a result of such a committee;

NOW, THEREFORE, THE CITY COUNCIL OF THE TOWN OF ATHERTON RESOLVES AS FOLLOWS:

SECTION 1. RE-NAMING OF COMMITTEE. The City Council hereby changes the name of the Waste Reduction Committee to the Environmental Programs Committee of the Town of Atherton. The Environmental Programs Committee shall continue in existence for an indefinite time.

SECTION 2. COMMITTEE MEMBERSHIP. The Environmental Programs Committee shall consist of up to, but not exceeding, ten (10) resident advisor members and two City Council members, appointed by the City Council. Every person appointed to the Environmental Programs Committee shall, at the time of his or her appointment, be a registered voter of the Town and shall maintain his or her principal place of residence within the Town. Should any person so appointed cease to be an elector of the Town or cease to maintain his or her principal place of residence within the Town, that person shall be ineligible to continue to serve as a member of the Committee. The members of the Environmental Programs Committee shall have a demonstrated interest in environmental issues in the Town.

SECTION 3. TERMS; MEETINGS. Each member of the Environmental Programs Committee shall serve at the pleasure of the City Council for either a two or a four year term. The Committee will hold meetings monthly on the first Wednesday of the month. The Environmental Programs Committee shall prepare and recommend to the City Council, for adoption, a mission statement and goals for the Committee. All meetings of the Committee shall be in accordance with the Ralph M. Brown Act.

SECTION 4. FUNCTIONS AND RESPONSIBILITIES. The function and purpose of the Environmental Programs Committee is to assist the City Council in matters that pertain to environmental programs, Town policies, regulations and contracts pertaining to solid waste and recycling, green building guidelines and workshops, participation in Earth Day activities, CO2 emissions and reduction, energy strategy development, sustainability and other environmental activities, as may be directed by the City Council. In order to carry out its function, the Environmental Programs Committee will do the following:

- A. Study, evaluate and recommend Town policies relating to environmental activities such as, but not limited to:
 - 1. Waste Reduction and Recycling
 - 2. Pollution Prevention
 - 3. Construction and Demolition Debris Diversion
 - 4. Green Building Guidelines
 - 5. Establishing baseline of CO2 emissions
 - 6. Developing a partnership with ICLEI to reduce global warming pollution
- B. Provide a forum for citizen comments on environmental issues and educate residents about environmental issues and seek to improve the overall environmental performance of the Town in areas that include reducing waste and pollution, enhancing energy efficiency and increased use of alternative energy.
- C. Host an annual Earth Day event to promote public awareness and increase recycling, reduce pollution, encourage greener alternatives for energy efficiency, promote the use of less toxic products, reducing CO2 and particulate pollution, and the use of post consumer products.
- D. Partner with other governmental and non-profit organizations to carry out the goals of the Committee and form alliances to benefit the Town and the greater community.
- E. Attend appropriate meetings, workshops and conferences, and represent the Town when requested by the City Council and/or City Manager.
- F. Suggest and help secure outside funding sources for environmental programs.
- G. Study and make recommendations regarding the establishment of an operating budget and funding for the Environmental Programs Committee.

NOW THEREFORE BE IT RESOLVED that Resolution 07- is hereby adopted.

* * * * *

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 April 18, 2007 by the following roll call vote:

*AYES: 5 COUNCILMEMBERS: Carlson, Carlson, Janz, Marsala,
McKeithen*
NOES: 0 COUNCILMEMBERS: None
ABSENT: 0 COUNCILMEMBERS: None
ABSTAIN: 0 COUNCILMEMBERS: None

Alan B. Carlson, MAYOR

ATTEST:

Kathi Hamilton, City Clerk



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: AWARD OF CONTRACT FOR HOLBROOK-PALMER PARK
EMERGENCY WATER WELL PROJECT NUMBER 06-004**

RECOMMENDATION:

Pass a motion to award the contract for the Holbrook-Palmer Park Emergency Water Well Project, project number 06-004 to the low bidder to be determined by informal bids to be received on or before April 18, 2007, for an amount to be determined by Council based on the bid results, to authorize the use of an informal bid process, to authorize the Mayor to sign the contract, and to authorize the City Manager to execute the contract on behalf of the Town.

INTRODUCTION:

The Town of Atherton determined that a source of emergency drinking water is necessary for residents and staff to use during an emergency where water and power are cut off. A preliminary study explored storage of emergency water at the park, operating the existing well with an emergency generator, and sinking a new well capable of running with Public Works' existing portable generator.

ANALYSIS:

It was determined in the study that significant additional space would be required for the storage of sufficient water, that such space is not available in the park, and that stored water would need to be replaced periodically, at significant time and expense. It was also determined by chemical testing that the existing well could provide potable water, but that it would require a significant power source to operate the well. A generator

sufficient to run the existing 280-foot deep well pump (240-volt, 3-phase power) would cost in excess of \$50,000.

The most economical solution was to sink a shallower well (approximately half the depth of the existing well) that would require significantly less power because of the lesser head it would require to reach the surface, and because it would need a much lower flow rate. The pump need only be enough to supply a manifold of 4-6 spigots for filling residents' water jugs.

The location of the well was dependent on the redesign of the park corporation yard. That design has progressed sufficient to site the well, and the project is now ready to proceed.

Staff determined from previous experience with small dollar value projects and from discussions with well contractors that we were unlikely to receive competitive sealed bids by standard public works contracting methods. There are very few well drilling contractors in the area capable of providing the type of well required. Also due to the complexity of the well drilling process for this type of well, significant discussion of methods and results with the contractors in preparation of bids is necessary. For these reasons an informal bid process was used. Due to difficulty in obtaining bids from three contractors for the exact same project specifications, it turns out this was an advisable course of action. Pursuant to Section 3.16.110(7) of the Atherton Municipal Code, Council is asked to approve the purchase by majority vote, with the above reasons for dispensing with competitive sealed bidding per section 3.16.150.

FISCAL IMPACT:

This project was budgeted in 2006-2007 with a budget of \$17,575 based on the best information available at the time of budget preparation. The most recent estimate for the project is \$30,000 based on extensive discussions with well-drilling contractors. The additional cost is primarily due to additional drilling work (to tap an appropriate source water layer) and testing (potable rather than agricultural testing) required for a well to be used for drinking purposes, and additional electrical equipment required to connect an emergency generator.

Final bids will be received for the project on or before April 18, 2007. A separate staff report will be prepared for distribution at the City Council meeting to convey the bid results.

Prepared By:

Approved:

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

James H. Robinson
City Manager

**Interface between Nos. 370 & 384 Atherton Avenue
Actions Taken by Michael Cully with Commentary**

RECEIVED
TOWN OF AHERTON
2007 MAR 13 A 5:54
March 12, 2007

Summary prepared for Council

Background: During 2005 and 2006, five Zoning Code infractions were committed by the landscape contractor at 384 Atherton Avenue. Efforts made to resolve these directly with the owner and the contractor were unsuccessful. On August 22nd, 2006, a request for correction was submitted to the Acting Building Official, Michael Cully (MC). In addressing each of these five requests, MC has chosen not to apply the relevant provisions of the Town of Atherton Zoning Code but has, in each instance, allowed the non-conforming construction by the contractor to remain in place.

1. Water flow and seepage onto drive at 370 in sector PQ¹.

MC has failed to require the contractor to comply with the Town's current Grading and Drainage Criteria.

Since 1993 there had been a functioning, albeit non-conforming, drainage system at 384. With this system in place there was no seepage or flow from 384 onto or along the 370 drive. In 2006, the landscape contractor replaced the existing arrangement, with a completely new and more nonconforming arrangement. This arrangement does not comply with the current Grading and Drainage Criteria. Immediately upon commissioning, seepage and later flows started along the 370 drive. The new configuration included a sump, and later a well, both built within the setback. Instead of requiring the contractor to remove the non-conforming construction and make an effective repair, MC in November approved a further modification.

Notwithstanding this modification, the sump remains in service collecting water. From there it continues to seep onto the 370 drive. During and after rain there is free flowing water visible at the area immediately downstream of the sump and well. With time these drainage paths will be further eroded and the flow will increase. At the recent Staff Meeting, MC's decision to permit these structures to remain inside the setback was affirmed.

The only solution to eliminate this flow will be to backfill the nonconforming sump and well with impermeable material. The previous drainage arrangement – if the Town Engineer approves – should be reinstated or another system, fully compliant with the current Criteria, constructed.

¹ Refer to attached key plan for location convention.

2. Discharge from Pipe at about 56ft East of K
3. Discharge from Pipe at about 8ft East of L²

MC has failed to implement the provisions of the Grading and Drainage Criteria: "The Town does not permit... "hard line" piping... of site drainage ... off of the property" - in this case onto 370. He has ruled that two recently laid pipes (2005) that do just that may remain in place. These discharge part of the runoff from the pre-existing pool house (1940's) and tennis court (1990/1) onto 370. During the construction in June, 2005, the neighbor at 370 questioned the legitimacy of these pipes.

MC has accepted the contractor's assertion that previously all this runoff was directed into a single pipe leading to 370. The contractor claims incorrectly to have reconnected to such a pipe. In addition, he now states that some of the flow has been diverted east to the street, having previously stated (August, 2006) that this was impossible for lack of adequate fall.

There is no reason or basis for the contractor to have laid these two new pipes discharging directly to 370. They should be removed and a conforming system installed.

4. Rock Retaining Wall in Sector MN.

MC has failed to implement the provisions of Clauses 17.20.040 I and 17.36.195 which require that retaining walls be located outside a five foot set back from the property line. This "rockery"³ retaining wall" was specified and shown with a five foot setback from the property line on the approved permit drawing. Disregarding the approved plans, the contractor continued constructing this wall even after receiving a protest about its location from the neighbor at 370.

This is a wall effectively over six feet in height which mandates an engineering design. MC has not required that this be provided by the contractor.

Earlier and in his December letter, MC ruled that this construction is a "landscape feature" not a retaining wall and thus may remain inside the prescribed setback. Earlier, in November, MC ruled that it could remain because it represented no threat to 370. Neither assertion has any merit.

The California Building Code defines a retaining wall as "... a wall designed to resist the lateral displacement of soil or other materials." At the March Staff meeting, it was concluded that the dirt behind the rock facing will pass through the facing i.e. the dirt will be "laterally displaced." The Staff thus reasoned that the wall did not fall within the CBC definition of a retaining wall. Using this analysis, MC continues to define the retaining wall as a "landscape feature." In reality, there can be no question that the fundamental purpose of the wall is to resist lateral displacement in order to retain the new grade upon which a new patio was installed. Nevertheless, MC ruled that the wall is not required to meet the setback requirement of the Code.

² A third pipe discharges a part of this runoff onto 91 Mandarin Way.

³ Neither "rockery" nor "landscape" is a word used in the California Building Code.

Further, the Staff's findings that the wall is constructed to allow soil to pass through is further evidence of the poor construction practices of the contractor. Good construction practice mandates the provision of a transition layer – usually graded open gravel – between dirt fill and large rock to prevent any migration or “lateral displacement” of the fine material into and through the rock. This was omitted at 384 by the landscape contractor among other deficiencies. As has been stated elsewhere, the poor and inadequate construction of the retaining wall will lead to its progressive settlement and movement onto 370. The analysis by the Staff meeting has in fact confirmed this will occur.

Nevertheless, MC with his characterization of the structure as a “landscape feature” has allowed the contractor to benefit from his poor construction techniques. A retaining wall holding back over seven feet of soil has been built inside the prescribed setback.

MC has substituted his own engineering assessment of this inadequately constructed work. He has unilaterally granted a special privilege to the contractor and the owner of 384 Atherton Avenue by allowing the construction within the setback in violation of the Code.

The wall should be relocated outside the setback and meet proper engineering specifications.

5. Rock Retaining Wall in Sector KL.

MC has again failed to implement the provisions of Clause 17.20.040 I and 17.36.195. This “rockery retaining wall” was also specified and shown with a five foot setback from the property line on the approved permit drawing. MC has ruled this construction may remain inside the prescribed setback. Although this wall is of less height than that in sector MN, it has been built even closer to the fence which is already showing signs of stress. As with the wall identified in 4 above, there can be no question that the fundamental purpose of the wall is to resist lateral displacement in order to retain the new grade upon which, in this instance, a putting green was installed. Nevertheless, MC ruled that the wall is not required to meet the setback requirements of the Code.

This wall should also be relocated outside the setback and meet proper engineering specifications.

6. Curb Detail at Rolled Gutter at Street (For information only, not an MC issue)

In July, 2006, at the conclusion of the landscape project, the contractor modified the curb detail at the rolled gutter. The result is unsightly, hazardous and encroaches onto the 370 bellmouth. The Town Engineer has directed that it be reconstructed. This work is on hold pending resolution of the five issues described above.

Michael D. and Sandra L. MacGregor

370 Atherton Avenue

Atherton

CA94027 6404

RECEIVED
TOWN OF ATHERTON

December 28, 2006

2006 DEC 28 A 9:54

City Manager,
Town of Atherton
91 Ashfield Road
Atherton CA 94027

Dear Mr. Robinson,

Five Zoning Code Infractions at 384 Atherton Avenue

On Saturday, December 23rd, 2006 we received from the Acting Building Official, Michael Cully (MC), a letter dated December 14th. The postmark was December 20th. You were copied on this letter.

The letter from MC letter commenced by accepting our summary of the meeting with MC on November 22nd as being correct. However, in his letter MC continues on to make significant alterations to the record. In several areas his letter is totally misleading. As residents, we feel MC has completely disregarded our complaints about the infractions knowingly made by the landscape contractor at 384. Instead, in each case, MC has failed to enforce code requirements and, in effect, has provided the contractor and thus the neighboring homeowner with an unjustified and unwarranted special privilege of non-compliance. We are still reviewing this letter. In due course we will forward our Commentary on it to you and the City Attorney.

We have retained an attorney, Stephen S Fry (SSF), to represent and advise us in this matter. On December 13th, when we had received no reply to our letter of November 28th to MC, SSF contacted the City Attorney, Marc Hynes (MH). SSF described to MH the setback violations and violations of the Town's Drainage Criteria which have occurred at 384 Atherton Avenue. SSF further explained to MH that neither the owner of 384 Atherton Avenue nor his contractor had followed proper application procedures for variances with respect to said violations. Lastly, SSF said that MC was apparently taking the position that said variance applications were not necessary and that the violations would be permitted, a position which is outside the scope of MC's authority. MH said that he expected to see MC at a Council Meeting that evening and would get back to SSF after talking with him.

MH did not get back to SSF before going on vacation through January 2nd. It is anticipated that when these discussions resume in the New Year, MH will confirm that the actions taken by MC are in direct conflict with the Code and are hence

null and void (Code §17.68.010.). It is not clear to us if or when you will become personally involved in these discussions. We would welcome this.

However, should this not proceed as anticipated, we may wish at a later date to appeal this matter to the city council. Code § 17.64.020 sets a time limit for making appeals from the decisions of "...any city official..." Even though we maintain that MC's failure to enforce the Code requirements falls within the purview of Code §17.64.020 and does not trigger said time limits, as an exercise in caution, one purpose of this letter is to reserve our rights under Chapter 17.64 of the Code to appeal to the city council at some future time if we are unable to resolve our disagreements with the actions taken by MC through the City Attorney and yourself.

Given the date of receipt of MC's letter (December 23, 2006), we calculate that our appeal deadline, if applicable, would be January 2, 2007. If the Town intends to deny any such application to the city council by invoking Code §17.64.020, please let us know immediately so that we can promptly submit an appeal to the city council. In the absence of such notification, providing us with the ten day time frame from receipt, we shall hold our submission in abeyance with the hope and expectation that we can resolve this matter short of formal action. If it appears that we can not informally resolve this matter, then we shall provide you with notification that we intend to take it to the next level.

Sincerely

A handwritten signature in cursive script, appearing to read "M.D. Manly", with a horizontal line underneath it.

cc: M.Hynes, City Attorney



Town of Atherton
Building Department

91 Ashfield Road
Atherton, California 94027
Phone: (650) 752-0523
Fax: (650) 614-1212

December 14, 2006

Michael D MacGregor
370 Atherton Ave
Atherton, CA. 94027

Mr. MacGregor,

I am in receipt of your letter dated November 28, 2006 and the attached meeting minutes of November 22, 2006 as well. In general, your letter does summarize the discussion that you and I had at the Permit Center, however I am puzzled as to why you choose to write your correspondences in the "third person" vernacular.

As I indicated, I had met with the contractor, Jon Singley of Blue Spruce Landscape, and discussed possible options he could explore to reduce, or eliminate, the runoff of storm drainage to your property along the front portion of your property access.

Mr. Singley proposed utilizing the existing drywell, he had created, concrete it in fully – thereby creating but a junction box and divert the collected water to the discharge point. The discharge point is at the west side of 384 Atherton's driveway. This would direct water collected from the hardscape (at the patio and pool area) indirectly to the gutter located at the street. This junction box no longer has any inter-connection with the adjacent well. The well, was constructed solely for the purpose of diverting excess storm drainage away from your property. And, while less than 10 feet from the property line, will be allowed to remain in place to aid in the collection of any natural subsurface waters. There is a pump located at the bottom of this well which also discharges to the same outlet at the west side of your neighbor's driveway.

The area with the "key-stone" type retaining wall does have backfill of course material. If any further natural subsurface waters are present this area would provide a collection point, and due to the construction method of that wall, by design, does allow water to flow through it. In realization of the fact that your property is located downhill from 384 it would seem that this would be the Historic Natural Course for subsurface water flows. And, as I had discussed with you on a previous occasion, the Town has commissioned a study of the changing water tables throughout the vicinity. This is something you may wish to research further. And, as you indicated to me, this fence and retaining wall were constructed by the previous owner, and the current contractor was not involved with that project.

In regard to your concerns of other issues, the piping you have indicated as perforated pipe is, in fact, solid non-perforated SDR 35 pipe as per the contractor. While laid in a gravel bed, this piping does not contribute to any additional subsurface water flows, but only conveys water from one area to another. However, if in fact it had been perforated pipe it would aid in additional relief as any subsurface waters would enter into the pipe as it offers less resistance to flow, but...not the case here

You have expressed concerns about a "Rockery Retaining wall," which in fact is not more than a landscape feature, and I have chosen to treat it as such. Your concerns of its failure during a major seismic event will not contribute any substantial damage to your property other than possibly the landscaping in a limited area, and my priorities following such an event will be to first consider threats to life-safety and the structural failure of the community's housing stock.

On Wednesday of this week both I and Senior Inspector, Michael Wasmann, met with Jon Singley at the 384 Atherton site. In consideration of the rainfall that morning, and my previous viewing of photos you provided - taken during the dry weather season - I was expecting to see standing water in those same places, but observed a consistent degree of moisture along the entire length of the landscaping, on both your and the neighbors property. It would appear that the corrections that were made to the drainage system have resulted in diverting the collected waters away from your property.

It is of my opinion that the contractor, Blue Spruce Landscape has attempted to be more than reasonable in accommodating your concerns. They are in the process of completing some minor work, un-related to your issues, and once completed I will authorize the Final Sign-off of their permit. Unfortunately, the Town of Atherton has exhausted all avenues in helping to mediate issues between yourself and the neighbor's contractor.

Respectfully,



Michael Cully
Acting Building Official

Cc: M. Hynes, City Attorney
J. Robinson, City Manager
Blue Spruce Landscape
File

Chapter 8.54 GRADING, EROSION AND SEDIMENT CONTROL

Sections:

8.54.010 Title, purpose and general provisions.

8.54.020 Permit application procedures.

8.54.030 Review standard and procedures.

8.54.040 Implementation and enforcement.

8.54.010 Title, purpose and general provisions.

A. Chapter. This chapter shall be known as the town of Atherton Grading, Erosion and Sediment Control Ordinance, and may be so cited.

B. Purpose. The purpose of this section is to provide minimum standards to safeguard life and limb, to protect property and property values, preserve natural beauty, promote public welfare, protect and enhance water quality of watercourses, water bodies and wetlands, and control erosion, sedimentation, and increases in surface runoff and related environmental damage caused by construction-related activities, by regulating and controlling the design, construction, quality of materials, use, location and maintenance of grading, excavating and fill, land disturbances, land fill and soil storage in connection with the clearing and grading of land for construction within the town of Atherton.

C. Definitions. When used in this chapter, the following words shall have the meanings ascribed to them in this subsection:

1. "Administrator" means the public works director/city engineer and duly authorized agents and employees of the town departments of public works or building and zoning.

2. "Applicant" means any person, corporation, partnership, association of any type, public agency or any other legal entity who submits an application to the administrator for a permit pursuant to this chapter.

3. "Best management practice (BMP)" means a technique or series of techniques which, when utilized in a designated manner is proven to be effective in controlling construction-related runoff, erosion and sedimentation (see subsection (C)(10) of this section).

4. "Chapter" means Ordinance 494 in its entirety.

5. "Erosion" means the action or process of wearing away of earth or soil by the action of water.

6. "Final erosion and sediment control plan" means a set of measures designed to control surface runoff and erosion and to retain sediment on a particular site after all other planned final structures and permanent improvements have been erected or installed. The plan shall include a description of and specifications for sediment retention devices, surface runoff and erosion control devices, vegetative soil stabilization measures, and a graphic representation of the location of all devices and/or measures.

7. "Interim erosion and sediment control plan" means a set of measures designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which preconstruction and construction-related land

disturbances, fills and soil storage occur. The plan shall include a delineation and brief description of the measures to be undertaken to retain sediment on the site, the surface runoff and erosion control measures to be implemented, the vegetative soil stabilization measures to be taken (including but not limited to seeding methods), and a graphic representation of the location of all devices and/or measures.

8. "Land disturbance" and "land disturbing activities" mean any human activity moving or removing the soil mantle or top six inches of soil whichever is shallower.

9. "Land fill" means any human activity depositing soil or other earth materials.

10. "Manual of standards (Manual)" means a compilation of technical application standards and design specifications adopted by the administrator as being proven methods of controlling construction-related surface runoff, erosion and sedimentation (see subsection (C)(3) of this section).

11. "Permittee" means the applicant in whose name a valid permit is duly issued pursuant to this chapter and his/her/its agents, employees and others acting under his/her/its direction.

12. "Sediment" means material deposited by water.

13. "Site" means a parcel or parcels of real property which is being or is capable of being developed as a single project.

14. "Wet season" means the period from October 15th to April 15th.

15. "Watercourse" means a natural stream, creek or man-made uncovered channel through which water flows continuously or intermittently. (Ord. 494 (part), 1996)

8.54.020 Permit application procedures.

A. Scope. No person may grade, fill, excavate, store or dispose of soil and earthen materials or perform any other land-disturbing or land-filling activity without first obtaining a permit as set forth in this chapter. All land-disturbing or land-filling activities or soil storage shall be undertaken in a manner designed to minimize surface runoff, erosion and sedimentation.

B. Exemptions.

→ 1. General Exemptions. A person performing such activities need not apply for a permit pursuant to this chapter, if all the following criteria are met:

→ a. The land area disturbed or filled is one-fourth acre or less;

→ b. Natural and finished slopes are less than ten percent. However, finished slopes created primarily by the grading of small, localized landscaping mounds that are greater than ten percent shall also be deemed to be exempt;

→ c. Volume of soil or earth materials stored is fifty cubic yards or less;

→ d. Rainwater runoff is diverted, either during or after construction, by the activities from an area smaller than five thousand square feet;

→ e. An impervious surface, if any, of less than five thousand square feet is created;

→ f. No drainage way is blocked or has its stormwater carrying capacities or characteristics modified;

→ g. No land-disturbing or filling activities occur within one hundred feet of a watercourse.

2. Special Exemptions. Subsection (A)(1)(a) of this section notwithstanding; a person performing the following activities need not apply for a permit pursuant to this chapter:

a. Routine agricultural crop management practices;

b. Work to correct or remedy emergencies posing an immediate danger to life or property, or substantial flood or fire hazards.

C. Application. An applicant for a grading permit shall first file an application therefor in writing on a town application form with the administrator. Applications must include all of the following items:

1. Site map and grading plan;
2. Interim and, where required, final erosion and sediment control plan;
3. Work schedule;
4. Application fees;

5. Any supplementary material or performance security, if required by the administrator.

D. Work Schedule. The applicant must submit a master work schedule showing the following information:

1. Proposed grading schedule;
2. Proposed conditions of the site on each July 15th, August 15th, October 1st and October 15th during which the permit is in effect;
3. Proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures on each of the dates set forth in subsection (D)(2) of this section;

4. Schedule for construction, if any;

5. Schedule for installation of permanent erosion and sediment control devices where required.

E. Security. The applicant may be required to provide security for the performance of the work described and delineated on the approved grading plan in an amount set by the administrator. The amount will not exceed the estimated cost of the grading and the costs to mitigate any impacts attributable to the grading operation.

F. Fees. Permit and inspection fees are to be paid pursuant to a schedule of fees adopted, and amended from time to time by the city council.

G. Permit Duration. Permits issued under this chapter shall be valid for the period during which the proposed land-disturbing or filling activities and soil storage takes place or is scheduled to take place, whichever is shorter. Permittee shall commence permitted activities within sixty days of the scheduled commencement date for grading or the permittee shall resubmit all required application forms, maps, plans, schedules and security to the administrator.

H. Permit Denial. Any person aggrieved by a determination of the administrator may appeal that administrative decision to the city council pursuant to the provisions of Chapter [17.64](#) of this code. (Ord. 494 (part), 1996)

8.54.030 Review standard and procedures.

A. Review Policy. The administrator shall issue a permit, provided the submitted plans protect the quality of receiving waters, and minimize surface runoff, erosion and off-site sedimentation.

B. Work Schedule. The administrator shall review the work schedule for overall coherence. Any modifications to the site map and grading plan, and interim and final erosion and sediment control plans shall be noted on the work schedule and the schedule modified, as necessary. (Ord. 494 (part), 1996)

8.54.040 Implementation and enforcement.

A. Permits. The administrator shall issue a grading permit upon approval of a site map and grading plan, interim plan, final plan (where required), soil report (where required), deposit of appropriate security (where required), and payment of fees. The administrator may impose such reasonable conditions or restrictions including, but not limited to, time limits, review of performance and performance standards, as deemed necessary to secure the purpose of this title, and may require guarantees and evidence that such conditions are being, or will be, complied with. Permits shall be issued subject to the following conditions:

1. The permittee shall maintain a copy of the permit, approved plans and any required reports on the work site and available for public inspection during all working hours;

2. The permittee shall, at all times, be in conformity with the approved site map and grading plan, and the interim and final erosion and sediment control plans.

B. Suspension or Revocation of Permit. The administrator shall suspend the permit and issue a stop-work order, and permittee shall cease all work on the work site, except work necessary to remedy the cause of the suspension, upon notification of such suspension when the administrator determines that the permittee has substantially deviated from the terms and conditions of the permit.

C. Violations. Unless otherwise specified by this code, the failure to comply with any provision or any of the mandatory requirements of this chapter shall constitute a misdemeanor, and shall be punishable as such pursuant to Chapter 1.20 of this code. It shall be considered a separate violation for each and every day during any portion of which:

1. Permittee continues working in violation of a stop-work order issued pursuant to Section 8.54.040B;

2. Permittee is not in compliance with the interim or final erosion and sediment control plans at the onset of the wet season; or

3. There is any other deviation of the terms and conditions of the permit.

D. Nuisance Abatement. Neither this chapter, nor any administrative ruling made under it, limits:

1. The power of the town to declare, prohibit and abate a violation of this chapter as a public nuisance pursuant to Chapter 8.20 of this code, or

2. The right of any person to maintain, at any time, any appropriate action for relief against any private nuisance, or for relief against any contamination or pollution.

E. Cumulative Enforcement Procedures. The procedures for enforcement of a permit, as set forth in this section, are cumulative and not exclusive. (Ord. 494 (part), 1996)

PERMIT NO 36805 APPLY 6-15-2005 ISSUE 6-15-2005 EXPIRE 6-15-2006

NUMBER 384 STREET ATHERTON AVENUE APN 070031320

OWNER BART WOYTOWICZ ADDRESS 384 ATHERTON AVENUE
 CITY ATHERTON, CA. 94027 PHONE
 CONTRACTOR BLUE SPRUCE LANDSCAPE ADDRESS 450 DRAKE STREET
 CITY SAN JOSE, CA. PHONE 4082987811 LIC 437250 TOWN
 ENG/ARCH MICHAEL CALLAN ADDRESS 63 BOVET ROAD #314
 CITY SAN MATEO, CA, 94402 PHONE

TYPE PERMIT NEW ACC LANDSCAPE STRUCTURES
SPA, DECK, FIREPLACE, SEAT WALLS, RETAINING WALLS, FOUNTAIN

CLASS	SQUARE FOOT	VALUE	\$122000.00	PERMIT FEE	\$1116.9
PLAN FEE	\$726.02	SMIP	\$12.20	MICRO	TOTAL \$3160.57
ROAD FEE	\$866.20	DEPOSIT		TYPE	
SUB LIST	NOTES				
	NOTES				

REQUESTED INSPECTION	DATE REQUESTED	STAT
DATE FINALED		

PERMIT NO 36805	NUMBER 384	STREET ATHERTON AVENUE	
NAME	DATE	TYPE	RESULT
TCB	7-5-2005	STEEL	NO
TCB	7-15-2005	FOOTINGS	OK
TCB	7-26-2005	COLUMN FOOTINGS	OK
TCB	7-28-2005	FIRST LIFT CMU WALL	OK
MCW	8-1-2005	PATIO WALLS	OK TO POUR
TCB	9-29-2005	FOUNDATION FOOTINGS	NO
TCB	10-3-2005	WALL FOOTINGS	NO
TCB	10-6-2005	PARTIAL FOUNDATION FOOTINGS	OK
KAC	10-14-2005	PRE GUNITE	PLUMBING, BONDING OK
TCB	10-19-2005	WATER FEATURE BONDING	OK
TCB	10-26-2005	PARTIAL REBAR-WALL	OK
TCB	10-26-2005	PARTIAL UNDERGROUND GAS	OK
TCB	10-26-2005	UNDERGROUND ELECTRIC	NO
TCB	11-2-2005	UNDRGROUND ELECTRIC	OK
TCB	12-22-2005	PARTIAL REBAR RET. WALL	OK
tcb	1-18-2006	REBAR	RETAINING WALL FIREPL
MW	2-1-2006	2ND LIFT CMU FIREPLACE	OK
HUO	2-24-2006	BBQ CMU WALL	OK 1ST TIER
HUO	5-8-2006	UNDERGROUND GAS	OK TO BBQ

ITEM 21

APPEAL REGARDING 70 BARRY LANE

MATERIALS ARE AVAILABLE AT TOWN HALL AND THE
LIBRARY

ITEM 22

APPEAL REGARDING 55 BELBROOK WAY

MATERIALS ARE AVAILABLE AT TOWN HALL AND THE
LIBRARY

ITEM 23

APPEAL REGARDING 94 TALLWOOD

MATERIALS ARE AVAILABLE AT TOWN HALL AND THE
LIBRARY



Town of Atherton

CITY COUNCIL STAFF REPORT

DATE: CITY COUNCIL MEETING OF APRIL 18, 2007

TO: THE CITY COUNCIL

FROM: MIKE WASMANN, BUILDING OFFICIAL
LISA COSTA SANDERS, DEPUTY TOWN PLANNER

SUBJECT: RECONSIDERATION OF THE DECISION TO DENY AN APPEAL – 84
WALNUT AVENUE (APN 060-332-230)

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing on the reconsideration of the denial of the appeal at 84 Walnut. If the Council wishes to approve the appeal, the Council should provide direction to the City Attorney to prepare findings for approval for adoption by Council at its next regular meeting.

BACKGROUND

The City Council considered the appeal filed by Amanda and Alan Miller of the Building Official's decision relating to a nonconforming structure at 84 Walnut Avenue. At the March 21, 2007 meeting, the City Council denied the appeal, thereby upholding the decision of the Building Official that the nonconforming portion of the structure was removed and that it cannot be rebuilt with the nonconforming setbacks.

At the April 9, 2007 Special Meeting of the City Council, the Council voted to reconsider the denial of the Appeal. The Council requested staff provide copies of the staff report and findings for approval for 172 Austin for consideration.

ANALYSIS

Reference is made to the March 21, 2007 staff report to Council for the analysis of 84 Walnut and to the January 17, 2007 staff report to Council for the analysis of 172 Austin as attached to this staff report.

Reference is made to the Council Resolution dated February 21, 2007 for the findings for approval for 172 Austin.

CONCLUSION

It is Staff’s professional opinion that the non-conforming structure has been removed from the site and no longer exists. The request to utilize non-conforming setbacks for the construction of a new residence is not consistent with the Atherton Municipal Code and the Atherton General Plan.

ALTERNATIVES

The Council could deny the appeal and uphold the decision of the Building Official.

If the Council determines the code interpretation of the Building Official is incorrect and that the applicant has the ability to demolish a non-conforming structure and build a new residence with the previous non-conforming setbacks, the Council should approve the appeal and provide direction to the City Attorney to prepare findings for approval.

FISCAL IMPACT

The cost of the appeal process is paid for by the appellant.

ENVIRONMENTAL IMPACT

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303, Class 3(a) (construction of a new single-family residence).

FORMAL MOTION:

I move that the City Council deny the appeal and uphold the decision of the Building Official.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

1. City Council staff report for 84 Walnut from the March 21, 2007 meeting
2. City Council staff report for 172 Austin from the January 17, 2007 meeting
3. Resolution granting Appeal for 172 Austin
4. City Council staff report for 172 Austin from the April 9, 2007 meeting



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

**FROM: MIKE WASMANN, BUILDING OFFICIAL
LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

DATE: FOR THE CITY COUNCIL MEETING OF MARCH 21, 2007

SUBJECT: APPEAL – 84 WALNUT AVENUE (APN 060-332-230)

RECOMMENDATION:

Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Building Official for the reasons outlined in this report.

INTRODUCTION:

The property owners of 84 Walnut Avenue, Amanda and Alan Miller, have filed an appeal of the decision of the Building Official regarding alterations to a nonconforming structure at 84 Walnut Avenue.

The subject site is located within the R-1B zoning district and is approximately 6,550 square feet in area. The site is 50' wide by 131' deep. The applicant indicates that the original residence was constructed in 1921. The original residence was considered legally nonconforming as it was located 7'-1" from the front property line and 8'-8" from the left side property line. The front-yard setback requirement for this site is 23'-7" and the side-yard setback requirement is 10'-0".

The applicant applied to the Planning Commission for a use permit to allow conversion of the nonconforming portion of the original residence into a garage, which included alterations to external openings in a nonconforming structure. The Planning Commission, at its October 7, 2004, meeting denied the request based on the finding that "the proposed use will not be located and conducted in a manner in accord with the

General Plan and the purposes of that Plan and the Zoning Code based on the fact that the request is for a new structure and not modifications to an existing structure.”

The applicant then met with former Building Official Mike Hood on options to retain the nonconforming portion of the building with construction of a new residence. The applicant states that Mr. Hood advised that they could use the nonconforming area as long as they did not increase the degree of nonconformity. The applicant also states that Mr. Hood indicated that they should keep the two nonconforming walls as placeholders until the new foundation is poured, and that at that point they could replace the nonconforming walls.

A building permit was issued on June 14, 2006, by former Building Official Mike Hood to allow construction of the residence with a basement and retaining the nonconforming room from the original residence. All other portions of the original residence were to be removed. The approved plans clearly indicate “original walls and nonconforming area to be kept.” This includes retaining the front wall and the left side wall. The right side wall was approved to be removed and reconstructed inward. The new basement is located entirely under the new portion of the residence and does not extend into the nonconforming portion of the original residence.

During the course of construction, the deconstruction contractor accidentally knocked down most of the nonconforming walls and removed them from the site. In November, the applicant met with Acting Building Official Mike Cully and was advised that they should not have removed the nonconforming area.

Staff met with the applicant on several occasions to discuss design alternatives. In a letter dated February 14, 2007, Building Official Mike Wasmann formalized the Town’s position on the status of the project at 84 Walnut. Mr. Wasmann stated, “the approved plans clearly notated original walls and nonconforming area to remain. Since the structure has been removed we no longer have a nonconforming structure and cannot be rebuilt with nonconforming setbacks.”

ANALYSIS:

Atherton Municipal Code 17.44 regulates nonconforming uses and structures. Section 17.44.050 states that “no nonconforming structure shall be moved, altered, enlarged or reconstructed so as to increase the discrepancy between the existing conditions and the standards of lot coverage, front yard, side yard, rear yard, parking, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. This section is prohibitory only, and shall not be interpreted as authorizing any actions not specifically mentioned herein.”

The code allows reconstruction of nonconforming structures which are damaged or destroyed by fire, explosion, earthquake or other accidental occurrence (section 17.50.050(B)).

The code allows minor repairs and maintenance and allows major repairs and alterations which will not increase the degree of nonconformity, provided that if they involve changes to external openings, a conditional use permit is required (section 17.44.050(D)(1) and (3))

The code does not allow voluntary demolition and reconstruction of nonconforming structures. Ordinary maintenance and minor repairs are permitted.

General Plan policy 1.335(F) indicates that “proposals to replace existing homes shall be designed in accordance with the density, floor area ratio, height, bulk and other standards established by the Town.” It is the Town’s objective for conformity with current regulations rather than retaining long term nonconforming situations.

At the time the nonconforming walls were removed from the site, the legally non-conforming status of the structure was removed and no longer exist. The applicant is requesting the City Council allow “alteration that reduces the degree of nonconformity” of the structure. The applicant is offering to further reduce the degree of nonconforming by moving the front wall back 3’ farther from the street. This would result in a 10’-1” front yard setback where a minimum 23’-7” front yard setback is required. It is Staff’s opinion that there is no longer a nonconforming structure at this site and therefore cannot permit “alteration” of a structure that does not exist. Staff advised the applicant to redesign the front portion of the residence entirely within the current setback requirements. The new window that was ordered to be placed within the nonconforming front wall could be utilized in the new front wall for the residence (now labeled guest bedroom).

CONCLUSION:

It is Staff’s professional opinion that the nonconforming structure has been removed from the site and no longer exists. The request to utilize nonconforming setbacks for the construction of a new residence is not consistent with the Atherton Municipal Code and the Atherton General Plan.

ALTERNATIVES:

The Council could deny the appeal and uphold the decision of the Building Official. If the Council determines the code interpretation of the Building Official is incorrect and that the applicant has the ability to demolish a nonconforming structure and build a new residence with the previous nonconforming setbacks, the Council should approve the appeal.

FISCAL IMPACT:

The cost of the appeal process is paid for by the appellant.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303, Class 3(a) (construction of a new single-family residence).

Prepared by:

Approved by:

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

1. Letter of Appeal from Alan and Amanda Miller
2. Letter from Michael Wasmann, Building Official dated February 14, 2007
3. Atherton Municipal Code section 17.44
4. Photos (submitted by the applicant)
5. Site plan, floor plan, elevations (submitted by the applicant)



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: FOR THE CITY COUNCIL MEETING OF JANUARY 17, 2007

SUBJECT: APPEAL – 172 AUSTIN AVENUE (APN 059-293-060)

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing, deny the appeal and uphold the decision of the Building Official for the reasons outlined in this Report.

INTRODUCTION

The property owners of 172 Austin Avenue, Mr. and Mrs. Epstein, have filed an appeal of the decision of the Building Official regarding plans for a new residence at 172 Austin Avenue.

The appellants indicate that they met with former Building Official Mike Hood and their architect on several occasions. The appellants state that Mr. Hood informed them that the Town prefers reconstruction rather than have old, out-of-code walls left standing and reattached to new walls provided that the rebuilt house stayed within the envelope of the existing nonconforming portion of the house; total window area in the setback area also needed to be the same or less. Based on this information, the appellants instructed their architect to proceed with detail plans and engineering for the house.

The Epsteins submitted plans to the Building Department for the new residence. The proposed plans placed a new residence on the lot with the existing nonconforming side-yard setbacks. They were informed by Acting Building Official Michael Cully that the proposed plans are in violation with the Town's setback requirements.

On November 28, 2006, Mr. and Mrs. Epstein and their architect met with City Manager Jim Robinson, City Attorney Marc Hynes, and Deputy Town Planner Lisa Costa Sanders.

Staff concurred with the current Interim Building Official's interpretation and stated that the nonconforming structure cannot be rebuilt with nonconforming setbacks and provided the Epsteins with options to retain the nonconforming walls and construct an addition within the current setbacks or construct a new residence within the current setbacks. Staff also informed the Epsteins of their appeal rights.

ANALYSIS

Atherton Municipal Code 17.44 regulates nonconforming uses and structures. Section 17.44.050 states, "no nonconforming structure shall be moved, altered, enlarged or reconstructed so as to increase the discrepancy between the existing conditions and the standards of lot coverage, front yard, side yard, rear yard, parking, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. This section is prohibitory only, and shall not be interpreted as authorizing any actions not specifically mentioned herein."

The code allows reconstruction of nonconforming structures which are damaged or destroyed by fire, explosion, earthquake or other accidental occurrence (section 17.50.050(B)).

The code allows minor repairs and maintenance and allows major repairs and alterations which will not increase the degree of nonconformity, provided that if they involve changes to external openings, a conditional use permit is required (section 17.44.050(D)(1) and (3))

The code does not allow voluntary demolition and reconstruction of nonconforming structures. Ordinary maintenance and minor repairs are permitted. As stated above, the code requires a conditional use permit for changes to external openings.

The subject site at 172 Austin Avenue is located within the R1-A zoning district and is approximately 37,875 square feet in area. The site is approximately 125' wide by 309' deep. The existing home is single story with 24' setback on the west side yard and 15' on the east side yard. The current setback requirement for the lot is 35' side-yard setbacks and 60' front and rear-yard setbacks. The applicant proposes to completely demolish the existing residence and construct a new residence with the current nonconforming side-yard setbacks of 24' on the west side and 15' on the east side. The new building is proposed to encompass the same building envelope within the nonconforming setback area as the existing residence. The residence is currently considered to be legally non-conforming as it encroaches into the current side yard setback requirement (legally constructed in accordance with the regulations in effect at that time, however, no longer in compliance due to changing regulations).

General Plan Policy 1.335(F) indicates that "proposals to replace existing homes shall be designed in accordance with the density, floor area ratio, height, bulk and other standards established by the Town." It is the Town's objective for conformity with current regulations rather than retaining long-term nonconforming situations.

The applicants have the option to retain the legally nonconforming portion of the structure and construct an addition within the current setback requirements. Once the nonconforming portion of the structure is removed, any new construction must meet current setback requirements. The applicant also has the option to remove the nonconforming structure entirely and construct a new residence within the current setback requirements.

CONCLUSION

It is Staff’s professional opinion that the request to utilize nonconforming setbacks for the construction of a new residence is not consistent with the Atherton Municipal Code and the Atherton General Plan.

ALTERNATIVES

The Council could deny the appeal and uphold the decision of the Building Official. If the Council determines the code interpretation of the Building Official is incorrect and that the applicant has the ability to demolish a nonconforming structure and build a new residence with the previous nonconforming setbacks, the Council should approve the appeal.

FISCAL IMPACT

The cost of the appeal process is paid for by the appellants.

ENVIRONMENTAL IMPACT

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303, Class 3(a) (construction of a new single family residence).

Prepared by:

Approved by:

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

Letter of Appeal from Suzanne and Allan Epstein, dated December 14, 2006
Letter from Michael Cully, Acting Building Official dated December 4, 2006
Atherton Municipal Code section 17.44

RESOLUTION NO. 07-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
UPHOLDING APPEAL OF BUILDING OFFICIAL DETERMINATION
FOR 172 AUSTIN AVENUE, ATHERTON**

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

The City Council of the Town of Atherton having considered the matter, in accordance with the provisions of Chapter 17.44 and particularly Sections 17.44.010 and 17.44.050 of the Atherton Municipal Code hereby makes the following findings and determinations in the appeal from the decision of the Acting Building Official dated December 4, 2006, regarding previously approved building plans for property known as 172 Austin Avenue, Atherton, California.

1. Allan and Suzanne Epstein ("the Epsteins"), owners of property located at 172 Austin Avenue, Atherton, California, timely appealed the decision of the Acting Building Official regarding plans for a new residence proposed by them at 172 Austin Avenue.
2. The Epsteins were present at the appeal hearing and presented the matter on their behalf, along with their architect Mr. Gary Kohlstaat, who also spoke on their behalf.
3. Written and documentary evidence was presented and considered by the City Council, along with testimony from members of the public, all of which testimony and evidence was received without objection and considered and discussed by the City Council members during the public hearing and thereafter in making their determination.
4. The City Council determines that based upon substantial evidence the appeal should be granted and the Epsteins allowed to proceed with approved plans for their residence at 172 Austin Avenue, Atherton, for the following reasons:
 - A. Over a period of several years, the Epsteins relied upon advice received from the Building Official regarding construction of a new home on their property.
 - B. The Epsteins believed that they would be allowed to build a new residence within the existing "envelope" of the structure located on the property at the time they acquired it in 2002. That building and its related "envelope" do not comply with setback requirements for the R1-A Zoning District in which the property is located. However, plans were approved for a new residence which would not further encroach into the setback areas on the property other than as exists with the non-conforming structure.
 - C. The determination of the Acting Building Official that the Town's ordinance pertaining to non-conforming uses set out in Chapter 17.44 of the Atherton Municipal Code and particularly the provisions of Section 17.44.050 is a correct reading of the provisions of Section 17.44.050 of the Atherton Municipal Code.

D. Recognizing this, however, because there are no objections from adjacent neighbors allowing the conclusion of no adverse impact from development of the property in accordance with the approved plans, and in view of the significant expenditure of money by the Epsteins in reliance upon the approved plans, fairness to them, coupled with the absence of any apparent adverse impact to the community supports a determination that for this case only based upon its unique facts, the determination of the Acting Building Official is reversed.

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 21st day of February, 2007, 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>

ATTEST:

Alan B. Carlson
Mayor, Town of Atherton

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc Hynes

Marc Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: SPECIAL CITY COUNCIL MEETING OF APRIL 9, 2007

**SUBJECT: RECONSIDERATION OF ACTION
APPEAL OF BUILDING OFFICIAL DETERMINATION
84 WALNUT AVENUE**

Recommendation

Consider request to reconsider City Council action denying the appeal of the property owner from the determination of the Building Official regarding application of the Town's non-conforming use ordinance to the home being planned for construction at 84 Walnut Avenue. Should the Council agree to reconsider this matter, action on the reconsideration will be placed on the regular City Council Agenda for April 18, 2007.

Background

At the regular City Council meeting on Wednesday, March 21 2007, the City Council heard an appeal from the property owner of 84 Walnut Avenue regarding a decision of the building official which had determined that the structure located at 84 Walnut Avenue no longer came within protections of the Town's non-conforming use ordinance. The reason for this was that in the course of work on the project, existing walls which created the non-conformity had been removed.

Mayor Carlson has asked that this matter be reconsidered. As one of the Councilmembers who voted on the prevailing side in denying the appeal, the Mayor may appropriately make a motion for reconsideration.

Because the appeal was heard at a public hearing and proceeds under the Town Zoning Ordinance, Title 17, any further action should take place at a noticed public hearing. For this reason, while the matter of reconsideration has been placed on the Special City Council Meeting

Agenda for April 9, 2007, should the Council decide to reconsider the matter, other than directing placement of the matter on the Agenda for the regular City Council meeting on April 18, 2007, it is recommended that no further action be taken relative to the appeal until the regular City Council meeting.

Fiscal Impact

None.

Prepared By:

Approved By:

Marc Hynes
City Attorney

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: FOR THE MEETING OF APRIL 18, 2007

**SUBJECT: ADOPTION OF AN ORDINANCE AMENDING ATHERTON
MUNICIPAL CODE CHAPTER 17.44 REGULATING
NONCONFORMING USES WITHIN THE TOWN OF ATHERTON**

RECOMMENDATION

Adopt the ordinance amendment regulating nonconforming uses in Chapter 17.44 in the Town of Atherton Municipal Code.

BACKGROUND

The General Plan Committee, at their January 10, 2007 meeting, discussed this item and voted to recommend the Planning Commission consider an amendment to the non-conforming regulations to allow additions to non-conforming structures in the R1-A zone.

The Planning Commission, at its February 28, 2007 meeting, reviewed the attached Ordinance and recommended the City Council adopt as proposed.

The City Council, at its March 21, 2007 meeting reviewed the Ordinance as recommended by the Planning Commission. The Council requested some modifications to the Ordinance as follows;

- In section 17.44.050(G) in the first sentence add “may be permitted so long as the addition or alteration is”...
- In section 17.44.050(G), at the end of the first sentence add a time limit of five years.

ANALYSIS

Staff has incorporated the revisions discussed at the City Council meeting in the attached Ordinance.

The changes to the non-conforming section of the code will not allow the current practice of leaving a non-conforming wall in tact and constructing a new residence without meeting current setback requirements. Recent examples reviewed by the City Council at 172 Austin (removing and rebuilding non-conforming structure) and 84 Walnut (left a portion of a non-conforming wall with the construction of a new residence) would not be allowed with the proposed revisions to the code. The recommendation from the General Plan Committee and Planning Commission was to not allow this practice to continue. At the point of major renovation to a non-conforming structure, the entire structure should be brought up to current code requirements, including meeting current setbacks.

The proposed code amendment does allow some flexibility to add on to existing non-conforming structures as is currently allowed in the R-1B zoning district.

CONCLUSION

It is Planning Staff’s professional opinion that the proposed Ordinance Amendment is consistent with the General Plan and will allow some continued use of non-conforming structures and upon major alteration of a structure, require conformance to current code requirements.

FORMAL MOTION

I move that the City Council adopt the Ordinance amending Atherton Municipal Code section 17.44.

Prepared by:

Approved by:

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachment:

1. draft Ordinance

ORDINANCE NO. ____
AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING CHAPTER 17.44 REGULATING NONCONFORMING USES WITHIN
THE TOWN OF ATHERTON

The City Council of the Town of Atherton does ordain as follows:

SECTION 1: Chapter 17.44 of the Atherton Municipal Code is hereby amended to read as follows:

17.44.010 Discontinuance of nonconforming use.

The use of any land, structure or building which does not conform to the regulation specified for the district in which such use, structure or building is located shall be discontinued within six months of the adoption of the ordinance codified in this title, except as provided in this chapter.

17.44.020 Preexisting nonconforming land use.

The lawful use of land, structures or buildings existing at the time of adoption of the ordinance codified in this title may be continued, although such use becomes nonconforming by adoption of the ordinance codified in this title.

17.44.030 Expansion or alteration.

- A. Lawful nonconforming uses shall not be:
1. Enlarged or increased;
 2. Changed to any other nonconforming use;
 3. Extended to occupy greater land area;
 4. Moved to another portion of the lot.
- B. A building or structure housing a lawful nonconforming use shall not be enlarged, reconstructed or structurally altered.

17.44.040 Cessation of lawful nonconforming use.

If any lawful nonconforming use ceases for any reason for a period of more than thirty days, any subsequent use of such land shall conform with the regulations of this title.

17.44.050 Nonconforming structures.

A. No nonconforming structure shall be moved, altered, enlarged, reconstructed *or voluntarily removed, except in conformity with all current zoning and building regulations unless specifically permitted by this section.* ~~so as to increase the discrepancy between the existing conditions and the standards of lot coverage, front yard, side yard, rear yard, parking, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. This section is prohibitory only, and shall not be interpreted as authorizing any actions not specifically mentioned herein.~~

B. Any nonconforming primary dwelling structure which was conforming at the time of its construction, and which is damaged or destroyed by fire, explosion, earthquake, or other

accidental occurrence, may be restored within the building envelope which existed immediately prior to the accidental occurrence; provided, that all such reconstruction must meet current building codes. The burden of proving the extent of the building envelope existing immediately prior to the accidental occurrence shall be upon the party seeking to reconstruct the structure.

C. No nonconforming accessory structure which is damaged or destroyed by fire, explosion, earthquake, or other accidental occurrence, or which is voluntarily removed, may be reconstructed except in conformity with all current zoning and building regulations.

D. The following rules shall apply to all nonconforming structures:

1. Ordinary maintenance and minor repairs are permitted;
2. Alterations, structural or not, which will increase the degree of nonconformity are prohibited;
3. Major repairs and alterations which will not increase the degree of nonconformity are permitted. ~~provided, that if they involve changes to external openings of the building, a conditional use permit therefor shall first have been obtained pursuant to the provisions of Chapter 17.52.~~

E. Additions to main buildings in the R1-B zoning district shall not be deemed as increasing the degree of nonconformity if meeting all of the following:

1. Shall not increase the degree of nonconformity of the existing side yard setback and any proposed new construction shall not be less than ten feet from the property line;
2. Shall not encroach into current front and rear setbacks;
3. Shall be limited to a single story with vertical sidewalls not exceeding twelve feet;
4. Shall have a roof height not exceeding eighteen feet.

F. Additions to main buildings in the R1-A zoning district shall not be deemed as increasing the degree of nonconformity if meeting all of the following:

- 1. Shall not increase the degree of nonconformity of the setback and any proposed new construction shall not encroach more than 20% into the required setback;***
- 2. The new construction shall be no taller than the height of the existing nonconforming structure.***

G. Alterations or additions to nonconforming main buildings may be permitted so long as the addition or alteration is limited to not more than fifty (50%) of the floor area and not more than fifty (50%) of nonconforming exterior walls are rebuilt, either as a single project or cumulatively over time, which means a series of project beginning with the first alteration within a period of five years. Alterations or additions of more than fifty (50%) are required to entirely meet current zoning and building code requirements.

SECTION 2: CEQA Exemption. This ordinance is categorically exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code (California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines Section 15305, minor alterations and land use limitations of the CEQA Guidelines as an action that assures the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The City Council further finds that adoption of this ordinance does not require review under the California Environmental Quality Act (CEQA) because it is not a project (CEQA guidelines section 15378), and there is not possibility that the ordinance may have a significant effect on the environment (CEQA guidelines section 15.61.b).

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions on this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not effect the validity of the remaining parts of this Ordinance.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this ___ day of March, 2007

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the ___ day of _____, 2007, by the following vote

AYES:	COUNCILMEMBERS	_____
NOES:	COUNCILMEMBERS	_____
ABSTAIN:	COUNCILMEMBERS	_____
ABSENT:	COUNCILMEMBERS	_____

Alan Carlson
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, CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF APRIL 18, 2007

SUBJECT: CONSIDERATION OF REQUEST FROM ATHERTON DISASTER PREPAREDNESS COMMITTEE TO PURCHASE A LAP TOP AND SOFTWARE.

RECOMMENDATION

Consider and provide appropriate direction to staff regarding the purchase of a lap top computer and software for the Atherton Citizens Disaster Preparedness Committee.

BACKGROUND

The Atherton Disaster Preparedness Committee has requested that the Town purchase for its use a Lap Top computer and software for their use in maintaining a member base and contact. This request was considered by the Finance Committee but referred to the City Council for its consideration.

Ultimately, in the event of a disaster, the Disaster Preparedness Committee will be reporting to the Menlo Park Fire Protection District and receiving instructions for appropriate response and support. The Menlo Park Fire Protection District is not requiring the Disaster Preparedness Committee to maintain its own lap top/software. In discussion with the Fire District staff it was stated that other disaster committees within the MPFPD district have kept their own data and statistics as does Menlo Oaks in Menlo Park. Menlo Oaks keeps data of all disabled residents, HAM radio operators, CERT trained, and more according to the MPFPD

An additional issue is the security of the information and the necessity of maintaining confidentiality of the CERT members names, and that Fire, Police, or the Town would be liable

if the information is made public. It is for this reason the MPFPD currently maintains its own data base at the Fire District Offices.

Section 1798.24 of the Civil Code, information Privacy Act of 1972 restricts the disclosure of personal information unless it is relevant and necessary in the course of official duties. Section 1798.55 provides penalties of violation by officers, employees etc of a fine of up to \$5,000 or one year in prison or both.

In light of the above it may be more appropriate for the Committee to purchase its own lap top and software if they feel it is essential to do so.

FISCAL IMPACT

It is estimated that the Lap Top and software would cost approximately \$2500.00.

ITEM 27

**CONSIDERATION AND POSSIBLE APPROVAL OF
RESPONSE TO SAN MATEO COUNTY CIVIL GRAND
JURY FEBRUARY 7, 2007 INTERIM REPORT
REGARDING TOWN OF ATHERTON BUILDING
DEPARTMENT.**

This report will be available next week.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
CITY MANAGER, JAMES ROBINSON**

FROM: KATHY HUGHES ANDERSON, TOWN ARBORIST

DATE: FOR THE SPECIAL MEETING OF APRIL 18, 2007

SUBJECT: CONSIDERATION AND POSSIBLE APPROVAL OF ALLOCATION OF FUNDS TO CONTRACT WITH JILL BOONE TO ASSIST TOWN IN ESTABLISHING CO2 BASELINE

RECOMMENDATION:

Approve the allocation of funds in the amount not to exceed \$3,000 for the purpose of contracting with Jill Boone to assist the Town in establishing a CO2 baseline and setting goals to reduce CO2 emissions.

BACKGROUND:

The City Council, at their February 21, 2007 meeting, adopted Resolution No. 07-03, endorsing the U.S. Mayors' Climate Protection Agreement action plan. In order to set and achieve measurable goals in striving to reduce CO2 emissions and global warming, the Town first has to set a baseline for CO2 emissions. The first step we have taken is the partnership we have established with the ABAG Energy Watch program. They are currently in the process of collecting data and reviewing the Town's facilities. After they have finished their assessment, we will be in a position to start establishing a baseline for the entire Town. Jill Boone, former manager of San Mateo's Countywide Energy Strategy Development Project and Program Manager of Recycle Works, has submitted a proposal to the Environmental Programs Committee to perform the analysis to establish a CO2 baseline and to assist us in establishing goals. At their March 7, 2007 meeting, the Environmental Programs Committee voted to recommend to the City Council to approve allocation of funds to hire Jill Boone as a consultant to perform the tasks of

establishing a CO2 emission baseline and assisting the Town in setting goals and developing an action plan.

ANALYSIS

Jill Boone is uniquely qualified to perform this task for the Town. She has worked with Energy Watch, has performed these same calculations for the County, has a good understanding of our community, and is willing to do this work for much less than what other cities are paying for the same service. In her proposal, she outlines in a very clear and concise manner the steps the Town needs to take and the steps she will take to perform the analysis. Once our ICLEI membership is complete, we will have access to their software that will enable us to use their formulas for calculating our 1990 emission levels. While Jill feels she can perform the task without their software, she is certainly qualified and willing to work with ICLEI and the Town to examine all sources of data. Jill is recommending that we set a baseline for 2005 or 2006 and then set an estimated baseline for 1990 as being between 20-25% below current levels.

FISCAL IMPACT

In her proposal, Jill Boone estimates it will take 10-25 hours to set the baseline and recommend goals, at a per hour rate of \$85. Assuming 25 hours at \$85/hour equals \$2,125. If she spends an additional ten hours meeting with the Environmental Programs Committee and preparing a draft staff report, the total will be \$2,975. At that point in time the EPC can determine if there is any additional work that would be required of Jill. If it takes less than 25 hours to do the initial assessment, we can use the remaining funds to have Jill work on an action plan for new programs to be implemented, attend City Council meetings at an additional \$50/meeting, or not use the remaining funds.

The EPC is asking for an amount not to exceed \$3,000 to hire Jill Boone to perform the analysis and make recommendations. There is approximately \$40,000 in C&D recycling deposits that have been forfeited. Contractors did not recycle the material, lost their tags, or did not submit the tags in the time specified. Some of these un-refunded deposits date back to 2001. As a courtesy, I contacted many of the contractors, and some did bring in their weight tags and did receive their refunds, but many that were contacted have not responded. The EPC is proposing that money from these un-refunded deposits could be used to contract with Jill Boone.

Prepared by:

Reviewed by:

Kathy Hughes Anderson

Jim Robinson, City Manager

Attachments:

Proposal from Jill Boone

Minutes from the March 7, 2007 EPC minutes

From: Jill Boone

To: Town of Atherton Environmental Programs Committee

Date: February 28, 2007

Re: Global Warming and Energy Initiative

I am delighted to hear of Atherton's progress on signing the Mayors' Accord and taking steps to reduce the impact of the Town's energy and fuel use on the environment. In my former role of managing RecycleWorks programs and leading the County's efforts at CO₂ emissions reduction and green building, I enjoyed assisting Atherton staff and council and developed many creative ideas on how Atherton can move forward. I think that Atherton has the opportunity to demonstrate the same leadership it showed by developing the first Construction and Demolition Recycling Ordinance and Program.

This memo is to offer my assistance in setting and achieving the goals that relate to the Global Warming Initiative.

Establishing a CO₂ Emissions Baseline for the Town as an agency

Since Atherton has signed on with Energy Watch (EW), most of the work at calculating a baseline will be done by them. EW can get information directly from PG&E and work out a few years of electricity and natural gas usage for Atherton's 10 buildings, traffic lights and pumps. Changing this data into CO₂ metric tons requires (1) knowing the conversion factors for natural gas; (2) knowing the PG&E conversion numbers, which change each year as they are based on where PG&E buys their electricity, and (3) doing the calculations. These calculations can be done in Excel or by using the free emissions tool, which includes conversion data (by Sustainable Silicon Valley) at <http://cf.valleywater.org/ssv/> or through other programs.

In addition to the impact of the built environment, the city might want to consider establishing a baseline for transportation impacts. This step would include gathering data, if available, on the gasoline used in town vehicles or the mileage driven on a yearly basis and the miles per gallon (MPG) for each vehicle. Atherton could be a leader by calculating the effects of staff commuting. This could be estimated easily if we can access the following data: number of employees, zip codes of residences, mode of transportation to work, type of car driven (mpg). Since Atherton is small, this data may not be difficult to obtain from all employees.

Establishing a baseline for the entire Town – government, businesses and residences

Atherton has an opportunity in this area to demonstrate leadership by expanding its program beyond just the municipal buildings and fleet. The Town also has a unique place in the County as the highest per household use of electricity and natural gas. This would be the obvious place to start! If you would like more information on how Atherton is doing in relation to other cities and to understand the impact from the overall built environment, check out these two reports I wrote when I was managing the Countywide Energy Strategy development project:

<http://www.ccag.ca.gov/pdf/USTF/reports/SMC%20Energy%20Snapshot.pdf>

<http://www.ccag.ca.gov/pdf/USTF/reports/USTFwaterenergyreport.pdf>

The reports show trends for the jurisdictions; I have the backup numbers that generated the graphs. This data can be used to calculate the baseline for the built environment in Atherton. Another report:

<http://www.ccag.ca.gov/pdf/documents/projected%20energy%20demand.pdf>

discusses projected increases in consumption according to ABAG's projections.

Please note that these reports were done using regular tons rather than metric tons, before I discovered that CO₂ emissions are commonly reported in metric tons.

From the data we already have, calculations can easily be made to set a baseline for the Town. Calculating the effects of traffic consumption is more difficult and would require some research into the commute patterns of residents. Some estimates could possibly be made from census data if the Town wants to explore this possibility, although this might be time consuming. My recommendation is to do the built environment calculations and then spend time on implementing programs that address these impacts.

Setting Goals

The baselines are easy if we use a recent year, within the PG&E data window. Once the baseline is set, we can make a good guess as to the usage in 1990, based on the common knowledge of 1990 being between 20 and 25% below current levels (depending on who you ask). Therefore, we establish a baseline for 2005 or 2006 and a goal of reducing that by 25%. This is a hefty goal and will require some significant actions by the Town. Since Atherton is fairly small, it may also be possible to retrieve from financial files the amount of electricity and gas used in 1990 and set an actual goal rather than estimate 1990 usage.

The goal relating to commuting or the Town fleet might be difficult to set if the data is not reliable. We circumvented this problem in setting the County's goals by doing an analysis on the MPG per each vehicle in the fleet (each vehicle that had an official MPG) and set the goal to raise the published MPG by 5 MPG by 2010. (The baseline was 22 MPG in 2005).

Action List

Energy Watch, as part of their service, will make recommendations and help prioritize the work on the built environment they have analyzed. They do an excellent job on this; there is no reason to do anything besides work with them to incorporate their recommendations into the action plan.

The Town might also consider doing a renewable energy project after implementation of the EW energy efficiency recommendations.

Other actions by the Town to reduce emissions would be to consider commute alternatives, fleet alternatives, alternative work schedules, educating staff about simple actions that save energy and considering water usage, as water and energy conservation are related.

Ideas that could be considered for the Town residents and businesses might include incentives or cost reductions for installing photovoltaics or solar hot water heaters, ensuring that no counter-incentives exist in code or process, building green, developing public information campaigns and looking at some new, creative ideas for energy reduction in relation to large homes. The workshop that RecycleWorks did a few years ago called: Size Matters: Reducing the Environmental Impacts of Big Houses could be recreated.

In developing the approach for a Countywide Energy Strategy, we established a process for looking at actions or strategies in this order:

- (1) What can a city do within its own agency? (build green, reduce energy and water use, offer staff incentives for carpooling etc.)
- (2) What can a city do that would require residents or businesses to be more energy efficient or provide their own? (Ordinances limiting energy use, Green Building requirements, permits etc.)
- (3) What can a city do to influence or encourage people to change how they do things? (Green Building Program information, incentives, outreach, get them involved...) and
- (4) What can be done collaboratively to achieve the objectives?

The staff reports that I did for the County's CO₂ emissions reduction resolution are downloadable from: <http://www.recycleworks.org/co2/index.html>

Go to the bottom of the web page to the section on reports and download the first three items to see these documents. The staff report includes a list of actions for the County to take to achieve the goals.

Time & Money

I would love to help Atherton set goals and create an action plan to reach these goals. I have a good understanding of Atherton based on working with the Town on recycling and green building issues over the years. I have done this type of CO₂ work for the County, which is a much more complicated government agency due to size and distribution of buildings. This experience and my knowledge of Atherton make this a fairly straightforward bit of analysis.

Therefore, I am willing to do this project for either \$85/hour or a flat fee to be negotiated with a specific scope of work. My estimates follow:

- (1) 10 – 25 hours: Setting the baselines and recommending goals, including goals for the Town Municipal buildings, commute/fleet goals if data is available, and the entire town's built environment. (This includes one meeting with town and Energy Watch). (Time: one week after EW finishes their assessment).
- (2) 10 – 25 hours: Establishing recommendations for how to achieve the goals and drafting a staff report. (Dependent on meetings with staff and/or EPC but about two weeks after baseline work is done, if agreements are easily reached.)
- (3) TBD: meeting attendance as needed. Meetings would be charged at the hourly rate with an additional \$50/meeting fee for travel time and expenses to offer an incentive for setting up productive and clumped meetings.

My suggestion would be to do this first step quickly and include a recommendation for more development of ideas by a Town Task Force made up of residents. This way, the Town can make decisions regarding retrofits and other efficiency actions but the actions that will involve or impact residents will have a broader hearing and opportunity for input. The Action Plan can be written to include the inclusion of this committee in appropriate recommendations or projects.

Implementation

After the baselines and goals are set and the action plan is agreed on, the important work begins. At this point, staff time (or a contractor or agency) will be required to implement the programs in order to realize the success of what you are setting out to accomplish. The amount of staff time needed to implement or run a program can be considered in creating the action plan, but it is unlikely that the plan will not stretch the current capabilities of staff, if the goals are as ambitious as the State of California's goals.

Conclusion

Setting the goals and baselines is not difficult work and the road has been paved for the cities and towns in San Mateo County to travel along. The hard work will come after the Action Plan is adopted and ready to be implemented.

I would love to help Atherton set and achieve its goals on any environmental issue, so please give my proposal some consideration. In addition to the CO₂ work, I wrote the County's Green Building Policy, developed the Countywide Sustainable Buildings Program and helped with the Environmental Purchasing Policy. If you choose a different avenue for analysis, I hope the documents that I have shared will be of use as they were written to inspire and help the cities and towns in the County move forward.

Contact Information:

Jill Boone
4795 Lage Drive
San Jose, CA 95130

408-379-6835
ecojill@gmail.com

changes in the program for this year. She explained that the funding comes from the PG&E rate payers and is only available to PG&E rate payers. The solar installation program is a performance based incentive buy down program measured by the size of the system installed and the output rating of the panels. The incentive payments are \$2.95/kilowatt for cities and non-profits, \$2.20/kilowatt for residential and \$2.50/kilowatt for commercial. The average single family home uses 5 kilowatts per year and a large Atherton home may use 17,00-18,000 kilowatts per year, but both would see a one time payment as soon as the system is installed and a 5-10 kilowatt system could see a \$12,00-\$25,000 payback. Caitlin stated that energy efficiency audits and energy conservation is also important. She also noted that PG&E will soon be rolling out their Climate Action Protocol program that gives homeowners a personal choice to participate in a tariff rate program that may be used to fund reforestation programs. Discussion followed among the Committee regarding how the Town should be involved in promoting solar to residents, educating homeowners, and the possibility of discounts or tiered discounts for Atherton residents.

B. Review of ICLEI Membership Application

Charles Marsala reported on the City Council action taken to approve the Town's membership in ICLEI and the adoption of the resolution approving the US Mayor's Climate Action Protection Agreement. Kathy Anderson reported that membership to ICLEI requires the Town to adopt ICLEI's resolution. She asked the Committee to review the membership application and sample resolution. Staff received comments from the Committee and was directed to put the ICLEI Resolution on the next City Council consent agenda.

Recommendation/Action taken: Recommend to the City Council to approve adopting the ICLEI Resolution.

M/S Gardener/Beardsley

C. Consider Proposal/Letter from Jill Boone

Kathy Anderson asked the Committee to consider the proposal from Jill Boone to assist the Town in establishing a CO2 emissions baseline for both the Town facilities and the entire Town, setting goals and an action plan. Until recently, Jill was the Recycle Works Program Manager and led the County's efforts in CO2 emissions reduction. She has a great deal of expertise in this area and has worked with PG&E and Energy Watch and would be able to work with the ICLEI software as well. Discussion followed regarding possible funding sources for contracting with Jill Boone and other EPC programs. It was suggested that the Finance Committee be approached and the City Council should be asked to allocate some funds to contract with Jill Boone.

Recommendation/Action taken: Recommend to the City Council to allocate funds in the amount of \$3,000 to hire Jill Boone to perform the baseline CO2 emission study for the Town.

M/S: Janz/Jenkins



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANGER

DATE: FOR THE MEETING OF APRIL 18, 2007

SUBJECT: CONSIDERATION AND POSSIBLE ACTION REGARDING THE TOWN OF ATHERTON ENVIRONMENTAL PROGRAMS COMMITTEE REQUEST TO REDUCE THE SOLAR PERMIT FEE TO ZERO

RECOMMENDATION

That the City Council consider the recommendation of the Atherton EPC to reduce the Solar Permit fee to Zero and provide appropriate action to staff.

BACKGROUND

The City Council at its regular meeting of May 17, 2006 considered a request to reduce the building inspection permit fee to encourage solar installations. It was estimated at that time that a solar permit for the installation of a \$27,000 system would cost \$970.49. The City Council at that meeting took action to reduce the solar building permit fees to a flat fee of \$250.00.

The Atherton Environmental Programs Committee recently met and is recommending to the City Council that the existing fee be reduced to zero to help encourage the installation and use of Solar Energy systems.

FISCAL IMPACT

The Building Department estimates approximately 12 solar permits are processed each year so the loss of revenue would not be substantial. With the increased awareness and interest in Solar, the numbers of potential permits in the future could increase.

ALTERNATIVES

1. Reduce the current Solar Permit Fee to a no fee or zero fee.
2. Maintain the current flat fee of \$250.00 for Solar energy systems.
3. Take no action and consider as part of the comprehensive Building Department Fee. schedule which is planned to be presented next month.

Attachments:

City Council staff report on Solar Panel fees from the May 17, 2006 Council meeting



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
CITY MANAGER JAMES H. ROBINSON**

FROM: MICHAEL A. HOOD, BUILDING OFFICIAL

DATE: FOR THE CITY COUNCIL MEETING OF MAY 17, 2006

SUBJECT: SOLAR PANEL FEES

Mr. Kurt Newick is requesting the City Council reduce the building inspection permit fee schedule to encourage solar installation. Currently, a solar permit for the installation of a \$27,000 system would cost \$970.49. The breakdown of the fee is as follows:

Building permit	411.45
Plan check fee	267.44
Earthquake Tax	2.70
Road Impact Fee	191.70
Business License	97.20

Total	<u>970.49</u>
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A typical solar installation requires about 1.5 hours of plan checking and about 1.0 hours of inspection time. Currently, the cost of an inspector or plan checker, including support personnel and Town overhead, is approximately \$100.00 per hour.

The attached list shows solar permits and the associated fees that have been issued in the last 30 years. Most permits have been issued for swimming pool solar water heating. Also attached is a summary of permit fees collected for cities within San Mateo and Santa Clara Counties.

At the direction of the City Council, staff will provide additional information or make appropriate changes to the Town's fee resolution.

Prepared by:

Michael A. Hood
Building Official

Attachments

Approved by:

James H. Robinson
City Manager



SIERRA
CLUB
FOUNDED 1892

Loma Prieta Chapter

March 22, 2006

Re: Request a review of permit fees for rooftop photovoltaic (PV) solar panels

Dear Jim Robinson (city manager):

Mayor Charles Marsala wanted me to contact you to request that Atherton consider changing the permit fees for solar energy systems. He will be putting this issue on the city council agenda sometime in April 2006.

We are writing to inform you that Atherton might be inadvertently stifling its own supply of renewable energy. Our study on solar permit fees in 40 jurisdictions (in San Benito, San Mateo, and Santa Clara counties) indicates that Atherton is one of the eight most expensive for homeowners who wish to install rooftop solar panels (see the comparative chart on the next page). For a 3kW solar panel system valued at \$27,000 before the California Energy Commission rebate, your staff informed us that Atherton charges \$970.45 for the permit as of Summer 2005, compared to \$50 in Portola Valley. (This assumes a professionally installed system that is mounted flush to the roof, is 320 square feet, and has a weight load of 3 pounds per square foot.)

The importance of renewable, locally produced energy is self-evident in light of recent events. Consider PG&E's 71% increase in natural gas rates as of October 1, 2005, California's rolling blackouts in 2001, etc. California generally, and our region specifically, faces rising energy demand, diminishing in-state/regional generation, and increasing dependence on fossil fuel imports from unstable sources. Citizens are increasingly aware that rooftop solar panels are an obvious means to alleviate these problems. A Field Research Institute poll of 954 Californians done in June 2005 found that 77% support increasing the state's investment in solar energy.

Several municipalities in our region are contributing their part to promote the installation of solar systems. Palo Alto, San Jose, and Saratoga issue solar permits over-the-counter, and are among nine jurisdictions in our survey with fees under \$300. At least a dozen cities are taking action to lower solar permit fees to make them more affordable including: San Carlos (was \$922, now \$0), Los Altos Hills (was \$340, now \$0), Campbell (was \$687, now \$311), Los Gatos (was \$890 proposed fee \$428), Los Altos (was \$869, now \$250), South San Francisco (was \$825, proposed fee \$300), Morgan Hill (was \$1,188, now \$300), Burlingame (was \$1,022 proposed fee \$300), San Mateo City (was \$1,280 proposed \$219), Cupertino (was \$1,002, on 4/4/06 council will consider change), Milpitas (was \$680, now \$141), San Juan Bautista (was \$867, now \$404). We ask that you consider the recommendations in our study to reduce permit fees and permitting delays—not just for solar contractors and customers, but for the city itself.

You can download a full copy of the study from:

http://lomaprieta.sierraclub.org/global_warming/pv_permit_study.pdf

A web site has more details: http://lomaprieta.sierraclub.org/global_warming/gwec.htm

NOTE: click on "interest around the CA bay area" for the solar permit fee update status

Our recommendations in brief are as follows:

- Reduce solar permit fees to \$300 or less for standard residential PV installations because this will encourage more solar power.
- Use the flat-fee method instead of the valuation-based method to assess solar permit fees (this provides a financial incentive for citizens to install larger systems).
- Send relevant staff to a one-day solar workshop to learn how to process solar applications and inspect solar installations more efficiently. (reword prior sentence to come from a position of respect for their permitting/inspection expertise). Organizations that sponsor these workshops include solar contractors/manufacturers, building departments, the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC).
- Revise permit fees downward to account for the new California Solar Rights Act, which makes prohibitions based on aesthetic concerns illegal.

We appreciate your consideration of our request and welcome the opportunity to meet with you to discuss implementation of our recommendations. If you have any questions about the report, please feel free to contact me (408-370-9636) or Stan Van Velsor (650-390-8441). I look forward to commenting on this issue in April 2006 at the City Council meeting.

Your attention to this matter is sincerely appreciated.

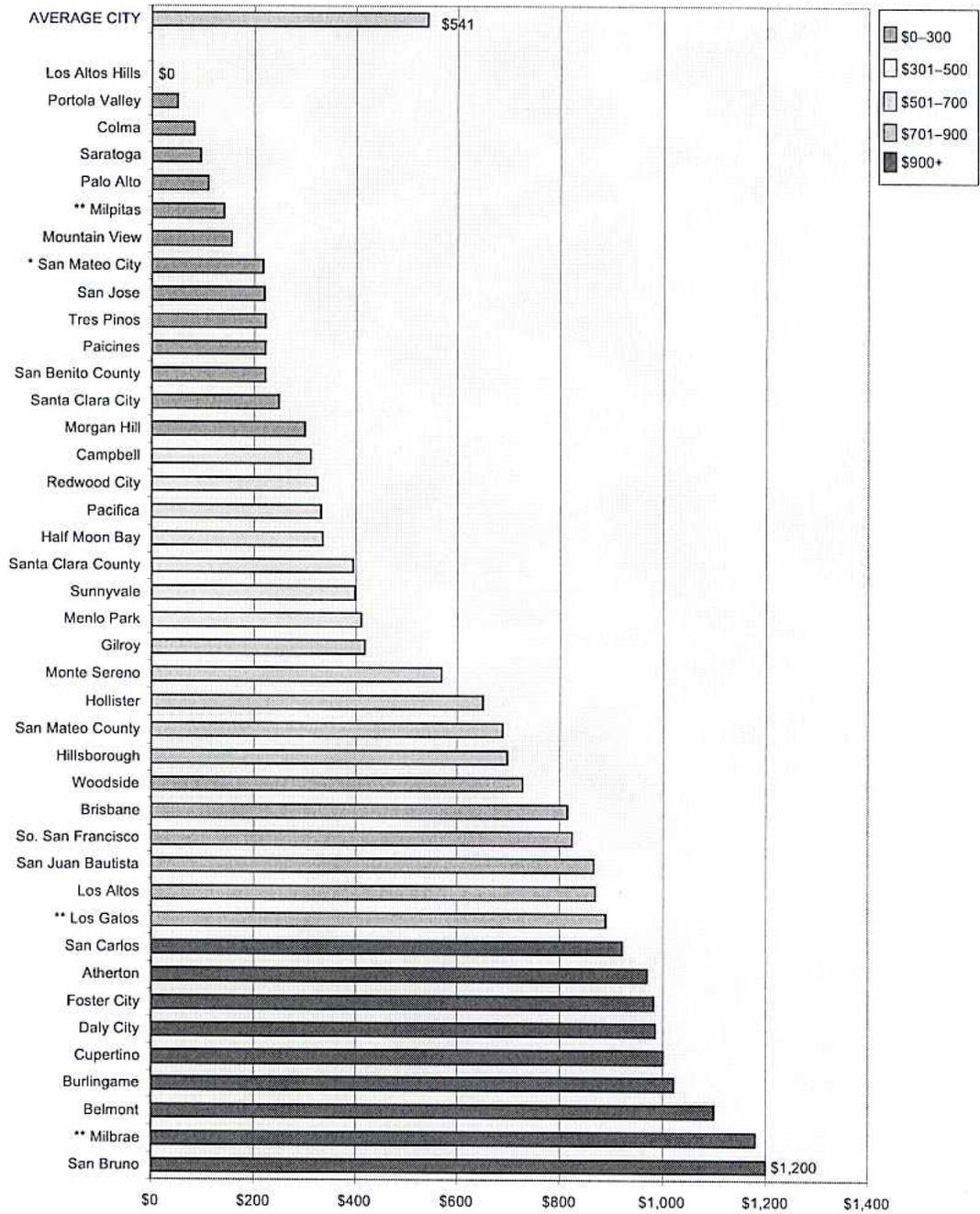
Sincerely,

Kurt Newick
Global Warming & Energy Committee Chairman

Sierra Club, Loma Prieta Chapter
3921 E. Bayshore Road
Palo Alto, CA 94303

cc: Charles Marsala, Mayor
Mike Hood, Head Building Official

PV Permit Fees in Silicon Valley as of 02/03/2006



ACTION: Approved an initial code enforcement needs assessment to be performed by CSG Consultants, Inc., in an amount not to exceed \$5,000. The initial motion was amended to include direction to staff to perform a cost analysis with respect to utilizing staff vs. an outside service, including a resource analysis in terms of availability of staff/time of staff.

- 8:45 P.M. 20. CONSIDERATION OF A REQUEST TO REDUCE SOLAR PANEL FEES TO ENCOURAGE SOLAR INSTALLATION

ACTION: Approved a request to reduce solar panel building permit fees to a flat fee of \$250.

- 9: 00 P.M. 21. ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO GUIDELINES: CONSTRUCTION, OPERATIONS AND PARKING PLANS (COP Plans)

Recommendation: Consider revised Guidelines for Construction, Operation and Parking Plans and, if desired, rescind Resolution No. 03-28 and adopt the revised Guidelines.

ACTION: Rescinded Resolution No. 03-28 and adopted Resolution No. 06-03, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING GUIDELINES FOR CONSTRUCTION OPERATION AND PARKING PLANS AND RESCINDING RESOLUTION NO. 03-28.

- 9:15 P.M. 22. SECOND READING AND ADOPTION OF AN ORDINANCE REGARDING TIME LIMITS FOR COMPLETION OF CONSTRUCTION

Recommendation: Adopt an Ordinance establishing time limits for completion of construction projects.

ACTION: Reintroduced an ordinance, as modified, for first reading, "AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ESTABLISHING TIME LIMITS FOR COMPLETION OF CONSTRUCTION AND AMENDING CIVIL PENALTY PROVISIONS AND RENUMBERING CODE SECTION PERTAINING TO VIOLATIONS OF CHAPTER 15.40 PERTAINING TO CONSTRUCTIONS REGULATIONS

- 9:30 P.M. 23. FIRST READING AND INTRODUCTION OF AN ORDINANCE ADDING ATHERTON MUNICIPAL CODE SECTION 15.40.157 REGARDING CONSTRUCTION SITE SCREENING

Recommendation: Conduct the hearing, waive reading of the Ordinance beyond the title, and introduce the Ordinance based on the following