



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

February 21, 2007

5:30 P.M.

Meeting Room

Town Administrative Offices

91 Ashfield Road
Atherton, California

Special Meeting

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

5:32 P.M. PUBLIC COMMENTS

5:35 P.M. CLOSED SESSION

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

Seven (7) potential cases

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.

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: Albert Feaster

Agency Claimed Against: Town of Atherton

Claimant: Kerry Enzensperger

Agency Claimed Against: Town of Atherton

D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

City Attorney

City Manager

RECONVENE TO OPEN SESSION

Report of action taken.

ADJOURN

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

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

12. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF PAVILION WINDOWS AND DOORS PROJECT, PROJECT NO. 05-001

Recommendation: Accept work, authorize recording of a Notice of Completion and approve contract change orders in the amount of \$25,829.00 for the Holbrook-Palmer Park Pavilion Door and Window Replacement Project, Project No. 05-001.

13. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE COMPLETION AND APPROVAL OF STREET RECONSTRUCTION PHASE II PROJECT, PROJECT NO. 04-002

Recommendation: Accept work, authorize recording of a Notice of Completion and approve contract change orders in the amount of \$32,138.8 for the Street Reconstruction Phase 2 Project, Project No. 04-002.

14. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE VALPARAISO AVENUE OVERLAY PROJECT, PROJECT NO. 06-001

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Valparaiso Avenue Overlay Project, Project No. 06-001.

15. APPROVAL OF AGREEMENT - RAPID ENFORCEMENT ALLIED COMPUTER TEAM REACT TASK FORCE

Recommendation: City Council authorize the Mayor to execute the agreement entitled a Memorandum of Understanding Among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force.

16. CONTRACT ENGINEERING SERVICES FOR THE PURPOSE OF GRADING AND DRAINAGE PLANS

Recommendation: Consider revisions to the Professional Services Agreement for consultant municipal engineering services to assist in the Town of Atherton review of plan check of development applications related to grading, drainage and other possible engineering fields. If satisfactory, authorize Request for Proposals

17. CONSTRUCTION, OPERATION PARKING PLANS – STATUS OF IMPLEMENTATION AND ENFORCEMENT

Recommendation: Review and accept the report.

18. APPROVAL FOR THE TOWN OF ATHERTON TO JOIN ICLEI, LOCAL GOVERNMENTS FOR SUSTAINABILITY, AS RECOMMENDED BY THE ENVIRONMENTAL PROGRAMS COMMITTEE

Recommendation: City Council approve the Town of Atherton's membership in ICLEI as recommended by the Atherton Environmental Programs Committee.

19. APPROVAL TO CONTINUE CONTRACT SERVICES PROVIDED BY CSG CONSULTANTS, INC., FOR INTERIM SR. BUILDING INSPECTION SERVICES

Recommendation: Retain the services of CSG, specifically to provide contract Sr. Building Inspector services in the Building Department and approve the expenditure of funds for this purpose.

20. ADOPTION OF A RESOLUTION SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE

Recommendation: City Council adopt a Resolution Supporting Expansion and Safety Enhancements to Transit Service.

21. APPROVE A CONTRACT EXTENSION FOR JENSEN LANDSCAPE FOR PARK LANDSCAPING SERVICES FOR THREE YEARS AT \$26,700 PER YEAR

Recommendation: Approve a three-year contract extension to Jensen Landscape for weekly park maintenance.

PUBLIC HEARINGS (Item 22)

7:50 P.M. 22. APPEAL OF THE BUILDING OFFICIAL'S DECISION REGARDING 233 PARK LANE – (APN 070-343-010)

Recommendation: The City Council conduct the public hearing, deny the appeal and uphold the decision of the Building Official.

REGULAR AGENDA (Items 23-31)

- 8:20 P.M. 23. **CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF A MAJOR ALTERATION PERMIT FOR 51 LABURNUM ROAD(CHAPTER 8.14 OF THE MUNICIPAL CODE)**
- Recommendation: Consider attached resolution making findings and, if appropriate, adopt the resolution by majority vote**
- 8:30 P.M. 24. **CONSIDERATION OF ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 172 AUSTIN AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)**
- Recommendation: Consider attached Resolution making findings and, if appropriate, adopt the Resolution by majority vote.**
- 8:40 P.M. 25. **CONSIDERATION AND DIRECTION TO STAFF REGARDING THE CIVIL GRAND JURY REPORT RELATING TO THE CALIFORNIA HEALTH & SAFETY CODE AND THE 2001 CALIFORNIA BUILDING CODE (TITLE 24, CALIFORNIA CODE OF REGULATIONS, PART 2)**
- Recommendation: Discuss Grand Jury Interim Report and provide direction to the City Staff regarding development of the Town's response.**
- 8:50 P.M. 26. **LANDSCAPE MAINTENANCE AGREEMENT – 12 SELBY LANE**
- Recommendation: Authorize the Mayor to sign Landscape Maintenance Agreement between Chien Ching Chiu and the town of Atherton regarding 12 Selby Lane, Atherton.**
- 9:00 P.M. 27. **DISCUSSION AND POSSIBLE ACTION REGARDING THE ENVIRONMENTAL PROGRAMS COMMITTEE** (*Continued from the City Council meeting of January 17, 2007*)
- Recommendation: The City Council consider the composition and role of the Environmental Programs Committee and provide appropriate direction to the committee and staff.**

- 9:20 P.M. 28. **RECOMMENDATION FROM THE ENVIRONMENTAL PROGRAMS COMMITTEE TO ADOPT A RESOLUTION APPROVING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT**
- Recommendation: Consider the recommendation from the Environmental Programs Committee to adopt a Resolution endorsing the U.S. Mayors' Climate Protection Agreement**
- 9:40 P.M. 29. **MID-YEAR BUDGET PROPOSAL FOR MOBILE DATA COMPUTERS**
- Recommendation: Approve the expenditure of \$66,225.60 to purchase 10 laptop computers, necessary software, and hardware to fully implement a Mobile Data Computer (MDC) program.**
- 10:00 P.M. 30. **DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE COMMITTEE/COMMISSION APPOINTMENT PROCESS** *(Continued from the City Council meeting of January 17, 2007)*
- Recommendation: Council to review existing policies regarding the Committee-Commission appointment process and possibly give direction to staff on any changes the Council wishes to make regarding the recruitment process, selection/appointment process, terms of office, duties, membership, etc.**
- 10:30 P.M. 31. **DISCUSSION OF COUNCIL PROCEDURES (NO WRITTEN REPORT)**
- 11:00 P.M. 32. **PUBLIC COMMENTS**
- 11:10 P.M. 33. **ADJOURNMENT**

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DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
January 17, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

The meeting was called to order by Mayor Alan Carlson at 6:00 p.m.

ROLL CALL

PRESENT: James R. Janz
Jerry Carlson
Charles E. Marsala
Alan B. Carlson
Kathy McKeithen

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

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

Town of Atherton vs. Sequoia Union High School District, et al.

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

One (1) potential case

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

Seven (7) potential cases

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported that there were no reportable actions taken on Items A, B, or C.

ADJOURN

The meeting was adjourned by Mayor Alan Carlson at 6:58 p.m.

Respectfully submitted,

Alan B. Carlson
Mayor

Minutes Prepared by:
Kathi Hamilton



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

January 17, 2007

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Alan Carlson called the meeting to order at 7:00 p.m.

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

PRESENT: James R. Janz
Jerry Carlson
Charles E. Marsala
Alan B. Carlson
Kathy McKeithen

City Manager Jim Robinson was absent due to illness (excused) and City Attorney Marc Hynes was present.

3. PRESENTATIONS

New Explorer Scouts

Police Chief Bob Brennan introduced three new Police Explorer Scouts, Ms. Jessica Gutterrez, Troy Wickett, and Kelli DeVlugt, and administered the Oath of Office.

4. COUNCIL REPORTS

- **Council Member McKeithen said the Town's Emergency Preparedness Subcommittee met earlier that evening where a discussion took place regarding the interaction between the community groups and the Atherton Police Department and the Menlo Park Fire Protection District during an emergency. The subcommittee would be meeting with the new Fire District Chief, Harold Schapelhouman. In February, a proposal for laptop computers in police cars, an update of the electrical analysis for the Police Department generator to possibly serve the Emergency Operations Center (EOC), and the Disaster**

Preparedness manual for Atherton would be coming before the subcommittee. The Transportation/Traffic Subcommittee met and discussed Selby Lane, which was almost completed. The traffic study for Holbrook Lane determined there were approximately 120 more vehicles on that block as compared to parallel blocks. Rather than installing signs, speed bumps, or traffic detours, the light at the intersection of Middlefield and Marsh Roads would be adjusted. The issue would be revisited in two months.

- Council Member Jerry Carlson attended various League of California Cities activities: the Peninsula Division dinner in Colma where the revised by-laws were passed; the Peninsula Division reception for new Council Members in Mountain View; and a Boot Camp for new Council Members in Sacramento. He would like to implement some of the suggestions he heard: 1) a weekend workshop for goal setting in a casual atmosphere with an outside facilitator; 2) a Council “Tune-up” to discuss procedures and how to make council meetings more efficient, as well as the performance evaluation of the City Manager/City Attorney that might include performance measures and what should be assessed. He noted there was a League of California Cities meeting in Monterey, July 25-28, 2007, where small workshops were offered on various topics.
- Vice Mayor Janz attended the General Plan Committee last week where the basement ordinance and the issue of garages in basements were discussed. Direction was given to staff to prepare the ordinances to go first to the Planning Commission and to the Council in March. He attended the Legislative Committee meeting of the San Mateo County Housing Endowment and Regional Trust (HEART). Together with the Board of HEART, the Cities/County Association of Governments (C/CAG), and the Association of Bay Area Governments (ABAG), the Legislative Committee would work to have a unified approach to legislation it wanted passed in Sacramento, e.g., pro housing legislation. He attended a meeting of the Regional Housing Allocation Policy Advisory Committee. All the cities and the County of San Mateo formed a sub-region to deal with the state mandated housing allocation requirements. The plan was to produce a methodology by June 2007 to use for allocation within the County. Over the next year, a process of appeals and approvals would take place whereby ABAG and all the cities within the County, and ultimately the state would approve the methodology.
- Council Member Marsala attended the Environmental Programs Committee meeting where the U.S. Mayors’ Climate Protection Agreement was unanimously approved and would come before the Council in February. The Committee began planning for Earth Day, which would be expanded to include displays on environmental energy reduction, energy awards for home construction and home retrofit, etc. He attended the “swearing in” of Harold Schapelhouman, Fire Chief, of the Menlo Park Fire Protection District. The City of Menlo Park built a new EOC, and the Town of Atherton needed to assign someone to the EOC in the event of a disaster, which would improve the ability of the Town to receive resources. He hosted an event for those who completed CERT training. There were 60 people trained within the Town. He attended the League of California Cities meeting and was assigned to represent

San Mateo County on the Employee Relations Subcommittee. The Governor created a task force to work on pension issues. He attended the Grand Blvd Task Force meeting, Council Member Marsala asked staff for clarification regarding construction parking on one particular site. He suggested that staff develop an email list for residents to be informed about General Plan Committee meetings. He believed the Town would need to review the Non-School Event Guidelines in the future as some of the rules were overly restrictive.

- **Mayor Alan Carlson wanted to review how the Council did business. He requested a general item called, “Council Procedures,” be added to the next agenda to discuss items such as a standardized format for staff reports, Council Committee Assignments, etc. He requested that all agendas of all committees be included in Council’s packet. As the Mayor, he would be more procedurally oriented in an attempt to make meetings more efficient.**

5. PUBLIC COMMENTS

There were no public comments.

6. STAFF REPORTS

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

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

Town of Atherton vs. Sequoia Union High School District, et al.

No reportable action.

B CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

One (1) potential case

No reportable action.

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:

Seven (7) potential cases

No reportable action.

City Attorney Hynes responded to Council Member Janz that under the penalty provisions of the Atherton Municipal Code, section 15.40, relative to parking plans, the Police Department was authorized to cite and the Building Official was authorized to issue a "Stop Work" order if the parking plan was not observed.

- Public Works Director Duncan Jones said the paving of Selby Lane was completed and the stripping would be completed as weather permitted. Valparaiso Avenue paving would begin the next day. Federal funds for the Holbrook-Palmer Park bridge were approved, as well as the matching funds from the Atherton Dames. A grant for alternative matching funds might be forthcoming which would enable the project to be expanded into some Atherton Channel restoration. The Pavilion projects were completed with the exception of minor "touch-up" work.
- Deputy Town Planner Lisa Costa Sanders noted that the Environmental Programs Committee and the General Plan Committee scheduled a Joint Meeting for February 7, 2007, to discuss green buildings.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

None

CONSENT CALENDAR (Items 8 – 11)

MOTION - to approve the Consent Calendar as presented.

M/S McKeithen/Janz

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

8. APPROVED MINUTES OF THE SPECIAL CLOSED SESSION MEETING OF DECEMBER 11, 2006, AND THE SPECIAL CLOSED SESSION AND SPECIAL MEETINGS OF DECEMBER 13, 2006

9. APPROVED BILLS AND CLAIMS FOR DECEMBER 2006 IN THE AMOUNT OF \$ 1,402,996

10. ACCEPTED MONTHLY FINANCIAL REPORT FOR DECEMBER 2006

11. APPROVED MAYOR'S 2007 CITY COUNCIL COMMITTEE ASSIGNMENTS

PUBLIC HEARINGS (Items 12, 13)

12. APPEAL OF THE DECISION OF THE PLANNING COMMISSION REGARDING A MAJOR ALTERATION PERMIT AT 51 LABURNUM ROAD UNDER ORDINANCE NO. 567, THE ARTIFACT ORDINANCE

Deputy Town Planner Lisa Costa Sanders presented the staff report. The City Council adopted an ordinance to protect artifacts and structures within the Town that were associated with the early development of the Town before 1930 or associated with the

Flood estate prior to 1937. The ordinance required a Major Alteration Permit, approved by the Planning Commission, to relocate an artifact or structure within the Town. The Planning Commission granted a Major Alteration Permit to relocate the urns from the Laburnam site to Park Lane. An appeal was submitted by Phil Lively, individually and on behalf of the Lindenwood Homes Association, requesting the City Council overrule the Planning Commission decision and deny the permit based on three points: 1) The Planning Commission had the authority to deny the permit; 2) the relocation of the artifacts were inconsistent with the Secretary of the Interior's Standards and Codes; and 3) the Planning Commission was unable to consider the general welfare and balance the interests of the community with those of the property owners. There was no evidence that the urns were in their original location and maintained integrity of setting. Laura Jones, historic consultant, indicated that the applicants' proposal was consistent with the Secretary of the Interior Standards (SIS) and with the Town's ordinance. Staff evaluated the request for relocation against the SIS and the ordinance and determined that the application met the purpose and intent of the ordinance. Staff's and Ms. Jones' professional opinion was that the relocation of the urns in Atherton would not be contrary to the purpose and intent of the General Plan and was consistent with the intent of the ordinance. Staff recommended that the Council conduct the public hearing and make the findings to deny the appeal and approve the Major Alteration Permit.

Laura Jones, historic consultant, said the critical issue regarding the urns was the setting, i.e., how significant was the setting. The urns had been moved at least once and possibly more. The urns currently existed in isolation in the backyard of a modern home and did not have a relationship with any other artifact from the Flood estate. She found it difficult to say their setting had any relationship to what was left of the historic landscape of Linden Towers. The period of significance for the Flood estate ended in 1937. The issue was whether the urns had a relationship to Linden Towers, not whether they were inside or outside Lindenwood. Since the urns were not in their historic setting, there was no historic setting that needed to be preserved.

Mayor Alan Carlson said the public hearing was a matter that could result in action reviewable by a Writ of Mandate in the California Superior Court. He asked if any Council Member had a conflict or disclosure. He disclosed that he spoke with both the appellant and the property owners regarding the procedure to be followed that evening and clarified his residence was not within 500 feet of the subject property.

Council Member McKeithen said she was contacted by a resident of the Lindenwood Homes Association but indicated she would not discuss the issue until the hearing.

Council Member Jerry Carlson initiated a telephone contact with each of the Planning Commissioners. The president of the Lindenwood Homes Association and the owner of the artifacts contacted him. He visited the site.

Vice Mayor Janz received a voicemail from Mr. Lamb inviting discussion or questions. He replied by voicemail that he had reviewed the materials and did not need to discuss the issue.

Council Member Marsala received a call from Mr. Lamb but did not discuss the issues. He placed a call to Mr. Lively on other related issues.

Mayor Carlson asked the members of the Council, based on the their disclosures that evening, if anyone would not be able to make a fair and/or impartial decision. No one replied. He clarified the hearing that evening was legally called a “*de novo*” hearing, which meant the City Council was reviewing the matter as if it were one of first impression. The Council was not reviewing the action of the Planning Commission and was not bound by the decision of the Planning Commission. The Council was bound by the evidence in the record and any additional evidence received in the public hearing. The Council would request the City Attorney to draft any findings at the conclusion.

In response to Council questions, Ms. Jones said the urns were included on the original Atherton Heritage Association list as an object of study in the inventory and were associated with the Flood estate. There were two categories of objects included in the inventory: those for which owner’s consent was received and detailed evaluations were prepared, and those objects that were included in the original list, were not studied, but were presumed to be potentially significant because they met at least the local criteria. The urns were not studied because the property owner did not give consent. Ms. Jones said there was evidence that the urns were associated with Linden Towers. The historical inventory document established the relationship with the Flood estate. She continued to clarify questions of the Council regarding aspects of the inventory, the ordinance, the historic significance of the Flood estate, historic preservation practices, historic districts, etc. The Lindenwood area was not found to be historic by the inventory because it did not exist before 1937. As a district, Lindenwood only had local significance and did not meet the national or state criteria because it lacked integrity. It tied together a set of objects that had a historical association with one another.

After further discussion and questions, Mayor Carlson clarified that through the procedures of the ordinance, Atherton Municipal Code section 8.14.070, the intent was that an inventory of historical artifacts would be created. Staff had not taken action to create an inventory by exercising the procedures of section 8.14.070 before the Planning Commission. The way an artifact became listed on the inventory was by initiation of the Planning Commission, by any resident of the Town who filed an application with the Planning Commission, or by the owner of the artifact. None of these had occurred with respect to the urns. The property owner had no ability to object to including an artifact on the inventory; however, the property owner could request non-disclosure on the “official” inventory to which the public had access.

Mayor Carlson opened the public hearing.

Philip Lively, Hawthorne Drive, appellant, read from a publication that described Lindenwood as a historic district. He noted that the Town’s ordinance was passed to: “Balance concerns of property owners with the community’s interest in preserving

artifacts of the Town's past and to foster civic pride and beauty and character of the Town and accomplishments of its past." He believed the urns met all three criteria of the ordinance, i.e., historical artifacts of local significance to the Town of Atherton and the Lindenwood Historic District, and should not be removed from their site. Additionally, he believed that the removal of the artifacts was not consistent with the SIS and should have been denied by the Planning Commission. He took exception to staff's recommendation to the Planning Commission that the ordinance required approval of a Major Alteration Permit. The ordinance stated, "approve or deny." In drawing an analogy with the Heritage Tree Ordinance, he noted that a replacement tree could ultimately grow to heritage size; once an artifact was removed, the historic line was lost forever. He believed the Planning Commission was given bad advice that resulted in the 2-1 vote for approval. He quoted from the Town's General Plan and noted that approval of the permit was contrary to and violated the Land Use Element, Goals and Objectives, Paragraph 1.210, Paragraph 1.223, and Paragraph 4.232. Approval of the appeal would follow the wording and intent of the General Plan. Additionally, under the ordinance, Council recognized as locally significant the Lindenwood Historic District and its artifacts. He stated that the urns were historical artifacts that were linked to the Flood estate and Linden Towers and met the criteria for local significance. For these reasons, he urged Council to approve the appeal and deny the Major Alteration Permit.

Timothy Hopkins, Esq., Groom & Cave, LLP, represented the property owners, believed the point of the discussion was that the artifacts were significant for what they were, not where they were. The reality was that the ordinance was trying to protect artifacts within the Town. His clients requested moving the artifacts from one place in Town to another place in Town. They wanted to preserve the artifacts and spent money to restore them. They were willing to have the artifacts added to the inventory as a condition of the Major Alteration Permit. The staff report stated that the request was consistent with the ordinance and consistent with the SIS and an expert was present who explained why that was correct and who recommended the appeal be denied and the permit be upheld. The Planning Commission exercised discretion and the staff's recommendation was just that, a recommendation not an edict. He believed the record was very clear, and he urged the Council to deny the appeal.

The following Atherton residents spoke in support of approving the appeal and denying the Major Alternation Permit:

Gerda Ungermand
Herman Christensen
Malcom Dudley
George Shaheen
Ron Peyton
Marion Oster
Bob Oster

Kristi Waldron, Planning Commissioner, noted the first opportunity she had to review the ordinance was when she had to enforce it. The Planning Commission had not been given the opportunity to review or discuss the ordinance due to the expiration of the

moratorium. She urged Council to send the ordinance to the Planning Commission for the proper procedural review. She stated the City Attorney advised her she did not have discretion to deny the Major Alteration Permit; therefore, she voted to approve the relocation of the urns. However, her comments for the record indicated she did believe the urns or other historic artifacts linked to the Flood estate should not be relocated from Lindenwood. Had she voted her conscience, she would have denied the permit. She urged Council to preserve the Lindenwood artifacts and approve the appeal.

Robert Andrews, Planning Commissioner, had recused himself from the Planning Commission discussion of the matter. He urged Council to deny the removal of the urns from Lindenwood. If the urns were removed, they would be taken out of their historical context and the visual history would be destroyed. He believed the statement made by the City Attorney biased the decision process and might have influenced the vote of the Planning Commission. Additionally, he believed moving the urns would be counter to the intent of the ordinance to be consistent with the SIS. He urged the Council to approve the appeal.

Mayor Carlson closed the public hearing.

Mayor Carlson was strongly in favor of a historic ordinance and believed it to be a product of compromise; however, he was initially concerned whether or not the Town had jurisdiction over the urns. Based upon the concession of the property owners' representative, he was satisfied that the Town did have jurisdiction over the urns. He asked the City Attorney, whatever the vote might be, to make a specific finding that the urns were subject to the ordinance. He believed the ordinance did contemplate movement of artifacts within the Town, which was one of the compromises in the ordinance resulting from the General Plan Committee meetings. Several facts were not in question: 1) the urns were not in their original location; 2) the urns were not in public view; and 3) the urns were repaired by the property owners. The City Council was being asked to exercise its powers to take, in essence, what was private property. Due process was required which meant going by what was written in the ordinance. A criterion of the ordinance for a Major Alteration Permit which included relocation within the Town, was for the Planning Commission to review the request for consistency with the SIS for the treatment of historic properties and the California Historic Building Code. He asked Ms. Jones why she viewed the relocation of the urns as not consistent with the SIS.

Ms. Jones said the underlying assumption of the SIS was that the setting was historic. Because the urns had been relocated behind a 1990s house, she could not find that the setting was historic. She also could not find that the Lindenwood neighborhood, in its entirety, was historic, and it did not meet the standards at a national or state level. She did recognize that Lindenwood was a special place and contained a collection of artifacts. She applied a high standard to her practice and tried to remember the conversations that took place to not make the ordinance burdensome, to allow flexibility, and the compromises that were reached to move the ordinance forward. The SIS were guidelines and were meant to be interpreted. The SIS were not specific

regarding artifacts that had been moved nor the moving of objects from landscapes that had been significantly altered.

Council Member Carlson noted there were competing values. He respected the Lambs' efforts to restore and safeguard the objects and there was a fairness aspect if the permit was denied. He empathized with the Lindenwood neighborhood wanting to keep the artifacts in the Lindenwood area. He believed there was a local interpretation and the fact that Lindenwood and the Flood estate were overlaid. He saw both sides of the issue. He believed his responsibility was to serve the interests of the public as a whole.

Vice Mayor Janz agreed with Council Member Carlson's comments. He asked the City Attorney what latitude the City Council had in making a determination of the appeal.

City Attorney Marc Hynes stated the City Council was given authority in the Atherton Municipal Code, Chapter 17, relative to appeals, to uphold, reverse, or modify the decision of the Planning Commission. The ordinance required that the Council make findings to support the determination. If the Council were to find in favor of the appeal, written findings would need to be prepared to justify that. The purpose of the findings was to show what the Council relied on to conclude that keeping the artifacts in Lindenwood was more important to their preservation than allowing them to be moved.

Vice Mayor Janz believed the Council could make a determination that the value of the urns was greater where they were presently located than if they were moved and kept within the spirit and intent of the General Plan and the ordinance. On the other hand, the ordinance clearly contemplated moving an object within the Town. He suggested the ordinance be rewritten to state the artifacts needed to stay in Lindenwood regardless of the outcome that evening.

Council Member Marsala had great appreciation for all the artifacts in Lindenwood and viewed it as a loss if the urns were moved. He again suggested creating a foundation to solicit funds to purchase objects on a voluntary basis as opposed to creating divisiveness within the Town. If the urns were moved, they might be able to be reacquired into Lindenwood at another time.

Council Member McKeithen agreed with the property owners' attorney when he said the staff report was merely a recommendation to the Planning Commission and not a mandate; it could either follow the recommendation or not. She agreed with Ms. Jones that the issue was difficult and there were differences of opinion. However, the Lindenwood Historic District had meaning, i.e., there was local significance given to the property in that district. She quoted from the SIS regarding neighborhoods and settings and concluded the Flood estate was a historic setting, and the critical aspect was the urns proximity to the Flood estate.

Mayor Carlson questioned if Council granted the appeal and the urns could not be moved, whether that was, in essence, taking property without compensation.

City Attorney Hynes responded if Council granted the appeal, the urns did not become the property of the Town or the public. All that was being said was that the urns could not be moved.

Mayor Carlson listed the points that were of concern to him: 1) the ordinance contemplated the movement of historic artifacts within the Town, which was an express compromise under the ordinance where people were concerned about property rights vs. the competing interests of the public; 2) allowing the urns to be moved was not precedent setting since each request would be heard on a case-by-case basis; 3) the urns were not on public display; and 4) there were lesser standards that could find the movement inconsistent with the SIS.

Vice Mayor Janz believed if the Council decided that the urns could not be moved, findings could be made to substantiate that decision. The property owners would need to decide what they would do next, perhaps donate them to the Town or the Lindenwood Homes Association or sell them to either. He disagreed that the Town would lose tract of the urns if they were moved. He suggested that a memorandum be recorded that stated where the urns were and that there was an obligation under the ordinance that they could not be moved out of the Town.

MOTION – to approve the appeal, and deny the Major Alteration Permit for the relocation of two historical artifacts from 51 Laburnam Road to 224 Park Lane in Atherton

Mayor Carlson offered an amendment to the motion that the property owners receive fair compensation for the artifacts from the Town of Atherton. There was not second to the amendment; therefore, the amendment failed.

M/S McKeithen/J.Carlson Ayes: 4 Noes: 1 (Marsala) Absent: 0 Abstain: 0

City Attorney Marc Hynes said he would return at the next meeting with findings for the Council to adopt.

Mayor Carlson called for a recess at 10:30 p.m. The meeting was reconvened at 10:35 p.m.

13. APPEAL OF THE DECISION OF THE BUILDING OFFICIAL REGARDING HOUSE CONSTRUCTION – 172 AUSTIN AVENUE (APN 059-293-060)

Deputy Town Planner Lisa Costa Sanders presented the staff report. The property owners filed an appeal regarding a proposed new residence at 172 Austin Avenue. The appellants asserted that the former Building Official advised them they could remove the nonconforming structure and construct a new residence utilizing the nonconforming setbacks. Based on that information, the property owners submitted

plans to the Building Department. The current Acting Building Official informed the property owners that the proposed plans were in violation of the setback requirements. The existing home was single-story, constructed with a 24 foot setback on the west and a 15 foot setback on the east side yards. The current setback requirements for the lot were 35 feet, and the existing home encroached 11 feet into one side and 20 feet into the other side. The appellants proposed to completely demolish the existing home and construct a new residence with the nonconforming setbacks. The new structure would encompass the same building envelope within the nonconforming area. Staff's interpretation of Municipal Code section 17.44 did not allow continued use of a nonconforming setback once the nonconforming structure was removed. Staff indicated the nonconforming walls could be completely retained and an addition could be constructed within the current setback requirements. The property owners could not completely remove the walls and rebuild within the nonconforming setbacks. They had an option to remove the existing residence and build a new structure within the conforming setbacks. Staff recommended that the Council conduct the public hearing, deny the appeal, and uphold the Building Official's decision.

Mayor Alan Carlson asked the City Attorney whether the Council would, in essence, be granting a variance if it granted the appeal.

City Attorney Marc Hynes said he did not believe there was the ability to seek a variance on the lot. Under the appeal provisions of the Zoning Code, Council had the power to consider an appeal of any action taken by the Building Official. If Council granted an appeal, findings would need to be made to support the rationale.

Mayor Carlson opened the public hearing.

Suzanne Epstein, 172 Austin Avenue, appellant, stated she and her husband had designed their house in compliance with everything told to them by the former Building Official. They began the process three years prior and had several meetings with the former Building Official and their architect. The appellants were initially planning to retain the existing walls in the nonconforming setbacks but were advised to tear down the old walls and foundation and replace them with new built-to-current Building Code walls and foundation because it would be better for them and for Atherton. They were told inspections would be easier and the department would save time and money by not having to post an employee at the site to monitor the demolition. In May 2006, the former Building Official told the Epsteins their final plans and design were fine and to submit the package for the building permit. The final plans were submitted to the Town in September 2006. The plans were not reviewed for two months and when the appellants called, they were told the plans were rejected because they were building a new home in the setbacks. Ms. Epstein said they acted in good faith, doing everything they were told to do by the former Building Official. They had spent \$88,000 to date for the project. She cited Municipal Code section 17.44.050, which did not specifically state that a building could not be intentionally torn down and rebuilt. If the Council denied the appeal, she requested reimbursement of the \$88,000 by the Town. Ms. Epstein respectfully requested that the Council approve the appeal.

Allan Epstein, 172 Austin Avenue, appellant, stated there were a number of errors and misstatements and requirements in the Acting Building Official's letter and the staff report that were not supported by the Municipal Code. He said the nonconformity would not be increased, but would be reduced. Staff agreed that the Municipal Code specifically allowed for nonconforming structures to be maintained while allowing an addition within the current setbacks. Section 17.44.050 stated major repairs and alterations that would not increase the degree of nonconformity were permitted. When the house was completed, it would look the same whether the old walls remained or were completely rebuilt, it was a distinction without a difference. The neighbors were supportive. He urged the Council to approve the appeal.

Gary Kohlsaas, architect, responded to a Council question regarding compliance with the guidelines and leaving the existing nonconforming walls. His concern, and that of the appellants, was that there were conflicting opinions. There were statements that only the wall framing needed to remain, the foundation and the roof could be removed, and the windows and doors could be reframed. If that were true, they could achieve a very good, well-constructed building. If the foundation were required to be maintained, as well as all the other structural members, then the home would be quite different. There would be problems with "settlement" of the home and other issues down the road.

Acting Building Official Michael Cully clarified that the foundation and wall would need to remain. If the existing foundation were a problem with the new foundation, it could be reinforced and supported by various means.

Mr. Kohlsaas, said if they were allowed to take the foundation down and support the walls, they could achieve their goal.

Acting Building Official Cully said routine visits to monitor and verify the wall was not removed would be necessary.

Mr. Movassate, Santiago Avenue, was a builder within the Town and spoke in support of the appeal.

Mayor Carlson closed the public hearing.

Council Member Jerry Carlson said there was the fairness test vs. the goodness of the community test. The appellants relied on the previous Building Official's advice, they paid the fees to Town, met all the conditions, and the "Town" said okay. When he considered whether any harm would be done if the appeal were granted, he believed the fairness test was more heavily weighted.

Vice Mayor Janz shared Council Member Carlson's opinion. He also believed keeping two walls or one wall was rather ridiculous to enable one to rebuild the entire house. He was encouraged to hear a revision to require 50% of the structure remain might be considered in the future. Nevertheless, he had a problem with the project because the

language said, “no nonconforming structure shall be moved, altered, enlarged, or reconstructed so as to increase the discrepancy.” He did not see the construction of a two-story building as a replacement of an existing structure. He viewed it as building a new construction and believed the law should be followed.

Council Member Marsala was in favor of allowing the project. The appellants were so far into the process and he did not believe they should be penalized by having to spend more money to redo the plans. He concurred with Council Member Carlson regarding fairness.

Mayor Carlson said if someone came before him with unapproved plans, the appellants would need to pass the credibility test, i.e., that he was convinced that the representation made to them indeed was made. He was convinced and was in favor of granting the appeal.

Vice Mayor Janz said he disagreed with the point made by the appellants that whatever the former Building Official said was correct and the law did not apply to their situation. He believed the law did apply. If it were true that by retaining the walls, the rest of the home could be built new and the nonconformity could remain, he did not see what difference it made to leave the walls up or take them down. Under those circumstances, he would approve the appeal.

Council Member McKeithen said she was leaning toward the human side. Because the neighbors were not objecting and the appellants had met with staff, followed up, were actually reducing the nonconformity, and had acted in good faith, she was in favor of granting the appeal

MOTION – to approve the appeal of the property owners of 172 Austin Avenue and overturn the decision of the Building Official

M/S J.Carlson/Marsala

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

The City Attorney would draft findings to be returned to the Council at its February 21, 2007, meeting.

Mayor Carlson called for a recess at 11:53 p.m. The meeting was reconvened at 11:56 p.m.

REGULAR AGENDA (Items 14 -20)

14. AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH CRW SYSTEMS FOR DEVELOPMENT OF A PURCHASE AGREEMENT FOR SUBSEQUENT CONSIDERATION AND APPROVAL BY THE COUNCIL

Assistant to the City Manager Wendé Protzman presented the staff report. The recommendation met both the needs of the Town and the desire of staff. Staff reviewed various permit tracking systems, spoke with colleagues, and believed the

CRW system would meet their needs. She indicated that Senior Building Inspector, Mike Wassman, and the Building Official from the Town of Hillsborough, John Mullins, were present to answer questions. The Town of Hillsborough had recently purchased a system from CRW and had begun training on the system.

John Mullins, Town of Hillsborough Building Official, responded to Council Member McKeithen that the Town of Hillsborough purchased all of the modules. The system allowed for coordinating with other departments. The permit tracking system was implemented first and plans to implement the code track and project track would begin in March. He emphasized that CRW was on site to help with the implementation process.

In response to Council Member Jerry Carlson, City Attorney Marc Hynes clarified the Town was purchasing a consultant, in effect, so there was no need to go out to bid.

MOTION – to authorize staff to enter into negotiations with CRW Systems for a Building Department Permit Tracking System and to develop a purchase agreement for further consideration

M/S McKeithen/J.Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

15. REQUEST FOR PROPOSALS FOR CONSULTANT SERVICES TO REVIEW THE ZONING CODE IN TERMS OF CONTINUITY, AMBIGUITIES, EXISTING INTERPRETATIONS, AND INDUSTRY STANDARDS

Mayor Alan Carlson suggested two items be added to the Scope of Work and Work Products, Required tasks to be undertaken, listed on Page 2 of the RFP: 1) Determine inconsistencies between provisions which might require Council action to be corrected; and 2) Make recommendations for provisions that are not currently in the code that might be considered industry standards.

Jeff Wise, Linden Avenue, said previously reference had been made that staff was preparing a list of interpretations or questions in the current Zoning Code to be submitted to Council for approval to provide consistency when responding to the public. He asked what the status was.

City Attorney Marc Hynes said there were some interpretation questions that had been documented that the consultant would look at in connection with finding internal inconsistencies.

Acting Building Official Michael Cully said he informally prepared some interpretations and had a better understanding that evening regarding how the department should be operating, i.e., following the general guidelines of the General Plan and the intent of zoning regulations to restrict and reduce building size.

Mr. Wise said everyone began the process of building a new home by meeting with the Building Official to ascertain how the plans would be received in the end. They were

looking for consistent interpretations that could be relied upon in order to make plans and move forward.

MOTION – to authorize the release of the RFP for consultant services to review the zoning code in terms of continuity, ambiguities, existing interpretations, and industry standards with two items to be added to the Scope of Work and Work Products – Required tasks to be undertaken – listed on Page 2 of the RFP: 1) Determine inconsistencies between provisions which might require Council action to be corrected; and 2) Make recommendations for provisions that are not currently in the code that might be considered industry standards.

M/S Janz/McKeithen

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

Mayor Carlson moved Item No. 18 forward to be heard before Item No. 16.

18. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING COMMERCIAL ENVIRONMENTAL LANDSCAPE’S (CEL) LANDSCAPE MAINTENANCE AGREEMENT FOR TOWN HALL AREA AND DISCUSSION OF OPTIONS FOR RESTORING OR UPGRADING THESE LANDSCAPE AREAS

Public Works Director Duncan Jones presented the staff report and indicated there were two parts: 1) the level of maintenance that CEL was providing to the Town; and 2) the two landscape areas at the entrance to Lloyd Park. Options for the Lloyd Park area were to restore the previous landscape plan or upgrade it to a more manicured plan by hiring a landscape architect to redesign it.

Council discussion ensued regarding CEL’s failure to live up to the terms of the agreement. Recently, there was an improvement in service with the oversight of Public Works Superintendent Steve Tyler. Further discussion related to hiring a landscape architect and soliciting public input, especially in the Lloyd Park area, for the areas needing landscaping. With respect to the CEL agreement, Council suggested reviewing CEL’s service in three months.

Council Member McKeithen said there was a 15-day termination clause and suggested incorporating the new CEL Work Schedule into the agreement.

Rosemary Maulbetsch, Atherton, said her major concern was one of time. She did not think CEL had been very reliable in the past and recommended staff meet with CEL every week to ensure the work was completed as promised. Additionally, she suggested that someone from the Public Works Department should meet with a specific person in Caltrain who was responsible for the area around the train depot to ensure Caltrain cleaned up the area.

MOTION – to continue with the Commercial Environmental Landscape Maintenance Agreement with the understanding of continuous oversight and progress evaluations on a 3-month basis

M/S McKeithen/Janz

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

MOTION – to develop an RFP for a landscape architect to help facilitate the design of the area north of Town Hall from Fair Oaks Avenue (from the rear of the Police Department to the Lloyd Park Gates) and to facilitate the conduct of public meetings

M/S McKeithen./Janz

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

16. REQUEST FOR PROPOSALS FOR CONTRACT ENGINEERING SERVICES FOR THE PURPOSE OF REVIEWING GRADING AND DRAINAGE PLANS

Council Member McKeithen said a critical element was missing from the professional services agreement, a conflict of interest provision that stated, “The engineer 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 Town. It is understood and agreed that neither engineer nor or any of its principals shall have any legal or equitable interest in subdividable land or engage in any speculative development located or operating within the city.” She asked the City Attorney to review the agreement and determine what would be appropriate to augment it.

Staff briefly responded to Council questions.

MOTION – to authorize the release of the Request for Proposals for consulting municipal engineering services to assist the Town in the review of plan checks and development applications related to grading, drainage, and other possible engineering fields; Further, to withhold circulating the professional services agreement until Council has an opportunity to review the agreement as revised to include a Conflict of Interest clause

M/S McKeithen/Janz

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

17. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE COMMITTEE/COMMISSION APPOINTMENT PROCESS

MOTION – to continue the item to the City Council meeting of February 21, 2007

M/S J.Carlson/Janz

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

19. DISCUSSION AND POSSIBLE ACTION REGARDING THE ENVIRONMENTAL PROGRAMS COMMITTEE

MOTION – to continue the item to the City Council meeting of February 21, 2007

M/S Janz/J.Carlson

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

20. DISCUSSION AND POSSIBLE ACTION REGARDING THE SAN MATEO COUNTY CITY SELECTION COMMITTEE SELECTION OF REPRESENTATIVES

Mayor Alan Carlson asked Vice Mayor Janz to represent the Council on the City Selection Committee.

MOTION – to appoint Vice Mayor Janz to attend the San Mateo County City Selection Committee meeting on January 26, 2007, and to authorize Council Member Janz to vote for city representatives to certain county commissions on behalf of the Council

M/S Marsala/J.Carlson

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

21. PUBLIC COMMENTS

There were no public comments.

22. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting at 1:00 a.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**

TOWN OF ATHERTON
CLAIMS LIST
 January, 2007

Payroll Checks	9057 - 9133	\$ 20,415
Electronic Transfers		452,451
A/P Checks	23326 - 23484	1,155,231
TOTAL		\$1,628,097

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 9057 - 9133 (payroll) and 23326 - 23484 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,628,097; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers 9057 - 9133 (payroll) and 23326 - 23484 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$1,628,097; are true and correct, and are authorized for payment.

Alan Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$807,178
105	Tennis Fund	239
201	Special Parcel Tax	803,513
202	Transportation	-
203	Gas Tax Fund	-
210	Road Construction Impact Fees	-
211	Park Grants Fund	-
213	Library Special Revenue Fund	3,662
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	1,240
406	Facilities Construction	-
610	Vehicle Replacement	-
611	Computer Maint. & Replacement	7,250
612	Administrative Services	5,015
715	Evans Estate	-
740	Tree Committee	-
TOTAL		\$1,628,097



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 February 21, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, JANUARY 2007

RECOMMENDATION:

Receive the Monthly Financial Report for January 2007.

INTRODUCTION:

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

HIGHLIGHTS

General Fund expenditures for the seven months ended January 31, 2007, have amounted to \$5,172,585, or 55% of the \$9,480,065 budgeted for the fiscal year. For the seven months ended January 31, 2007, General Fund revenues amounted to \$4,798,033, or 60% of the \$8,018,670 estimated for the year.

By comparison, General Fund expenditures amounted to 53% of appropriations for the seven months ended January 31, 2006. Additionally, General Fund revenues amounted to 60% of estimated revenues for the seven months ended January 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 January 31st, 2007

Fund	Revenue Source	2006-07 Estimate	Current Period Revenues	Year to Date Revenues	% Received
	Property Tax	\$ 4,135,402	191,111	2,339,081	57%
	Sales and Use Tax	157,500	14,144	98,114	62%
	Other Taxes	1,111,546	21,576	523,613	47%
	Licenses & Permits	1,466,200	72,816	789,748	54%
	Fines & Forfeitures	35,000	3,224	31,736	91%
	Revenue from Other Agencies	395,215	435,194	535,703	136%
	Charges for Services	176,500	23,718	192,233	109%
	Investment & Rental Income	307,852	108,513	267,715	87%
	Other Revenues	229,000	7,546	20,090	9%
	Total General Fund Revenues	8,014,215	877,842	4,798,033	60%
	Interfund (Operating) Transfers In	4,455	-	-	0%
101	General Fund Total	8,018,670	877,842	4,798,033	60%
	Special Revenue Funds:				
105	Tennis	8,000	2,739	3,813	48%
201	Special Parcel Tax	1,858,000	196,802	1,139,263	61%
202	Transportation	265,000	25,775	165,897	63%
203	Street Improvement (Gas Tax)	150,000	25,202	123,580	82%
209	Law Enforcement	100,000	414	100,702	101%
210	Road Construction Impact Fees	1,100,000	28,317	(123,381)	-11%
211	State Park Grants Fund	313,910	-	-	0%
213	Library	200,000	21,438	71,617	36%
	Total	3,994,910	300,687	1,481,491	37%
	Capital Project Funds:				
401	Capital Improvement	-	-	2,745	
402	Storm Drainage	20,000	-	462	
403	Channel Drainage District	50,000	23,601	29,661	59%
406	Facilities Construction	-	-	707	
	Total	70,000	23,601	33,575	48%
	Internal Service Funds:				
610	Vehicle Replacement	120,919	60,460	62,877	52%
611	Information Technology	104,670	52,335	53,080	51%
612	Administrative Services	303,221	151,611	152,140	50%
614	Workers Compensation Insurance	-	-	-	
	Total	528,810	264,405	268,096	51%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500	-	2,346	16%
740	Tree Committee	1,400	-	24,886	
	Total	15,900	-	27,232	171%
	Total Revenues	12,628,290	1,466,535	6,608,427	52%

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

Fund	Description Department	2006-07 Budget	Current Period Expenditures	Year to Date Expenditures	% Spent
101	General Fund				
	11 City Council	\$ 21,749	\$ 853	\$ 21,362	98%
	12 City Manager	504,360	31,299	288,760	57%
	16 City Attorney	188,337	38,290	180,849	96%
	18 Finance	448,576	28,292	261,792	58%
	25 Building	1,364,503	86,650	731,971	54%
	40 Police	4,696,248	333,257	2,515,049	54%
	50 Public Works	2,036,292	152,686	1,172,802	58%
	Disaster Preparedness	120,000	-	-	0%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>9,480,065</u>	<u>671,327</u>	<u>5,172,585</u>	<u>55%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	General Fund Total	<u>\$ 9,480,065</u>	<u>\$ 671,327</u>	<u>\$ 5,172,585</u>	<u>55%</u>
	Special Revenue Funds:				
105	Tennis	5,522	651	3,455	
201	Special Parcel Tax	1,910,535	803,513	1,390,936	73%
202	Transportation	444,500	-	15,000	3%
203	Street Improvement (Gas Tax)	150,000	-	23,234	15%
209	Law Enforcement	100,000	13,913	94,086	94%
210	Road Impact Fees	1,470,000	-	1,523,736	104%
211	State Park Grants	277,040	4,947	53,625	19%
213	Library Fund	78,326	3,818	35,124	45%
	Total	<u>4,435,923</u>	<u>840,794</u>	<u>3,195,128</u>	<u>72%</u>
	Capital Project Funds:				
401	Capital Improvement	-	-	-	
402	Storm Drainage	21,394	-	2,963	14%
403	Channel Drainage District	60,000	1,240	10,644	18%
	Total	<u>81,394</u>	<u>1,240</u>	<u>13,607</u>	<u>17%</u>
	Internal Service Funds:				
610	Vehicle Replacement	76,000	-	45,688	60%
611	Information Technology	116,120	9,356	29,414	25%
612	Administrative Services	288,342	14,292	210,801	73%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>480,462</u>	<u>23,648</u>	<u>285,903</u>	<u>60%</u>
	Trust and Agency Funds:				
715	Evans Creative Design	11,500	-	1,175	10%
740	Tree Committee	-	-	2,159	
	Total	<u>11,500</u>	<u>-</u>	<u>3,334</u>	<u>29%</u>
	Total Expenditures	<u>14,489,344</u>	<u>1,537,009</u>	<u>8,670,557</u>	<u>60%</u>

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2006-07
As of January 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	4,798,033	-	5,172,585	8,969,922
	Special Revenue Funds:					
105	Tennis	23,692	3,813		3,455	24,050
201	Special Municipal Tax	1,005,832	1,139,263		1,390,936	754,159
202	Transportation	527,577	165,897		15,000	678,474
203	Street Improvement (Gas Tax)	102,874	123,580		23,234	203,220
209	Law Enforcement	10,437	100,702		94,086	17,053
210	Road Construction Impact Fees	1,373,559	(123,381)		1,523,736	(273,558)
211	State Park Grants	-	-		53,625	(53,625)
213	Library Special Revenue Fund	1,947,286	71,617		35,124	1,983,779
	Sub Total	4,991,256	1,481,491	-	3,195,128	3,277,619
	Capital Projects Funds:					
401	Capital Improvement	258,424	2,745		-	261,169
402	Storm Drainage	43,455	-		2,963	40,492
403	Channel Drainage District	36,039	29,661		10,644	55,056
406	Facilities Construction	-	707		-	707
	Sub Total	337,919	33,113	-	13,607	357,425
	Internal Service Fund					
610	Vehicle Replacement	440,370	62,877		45,688	457,559
611	Information Technology	89,739	53,080		29,414	113,405
612	Administrative Services	198,175	152,140		210,801	139,514
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	739,155	268,096	-	285,903	721,348
	Trust and Agency Funds					
715	Evans Creative Design	117,345	2,346		1,175	118,516
740	Tree Committee	24,558	-		2,159	22,399
	Sub Total	141,903	2,346	-	3,334	140,915
	Grand Total	\$ 15,554,708	\$ 6,583,079	\$ -	\$ 8,670,557	\$ 13,467,230



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 FEBRUARY 21, 2007

**SUBJECT: QUARTERLY INVESTMENT REPORT, FOR THE QUARTER ENDED
DECMEBER 31, 2006**

RECOMMENDATION:

Note, receipt and file.

INTRODUCTION:

This is the quarterly status report of the Town's investments in the Local Agency Investment Fund (LAIF) and the San Mateo County Investment Pool (SMCIP) for the quarter ending December 31, 2006.

DISCUSSION

As of December 31, 2006, the Town had a total investment of **\$14,719,852**. The total interest earning for the quarter ending December 31, 2006, amounted to **\$153,049**. The funds are invested in the San Mateo County Investment Pool (SMCIP) and the Local Agency Investment Fund (LAIF).

For the quarter ended December 31, 2006, interest earnings on funds invested with LAIF amounted to an annual rate of 4.93 percent of the average daily cash balance of funds invested. This compares to an annual interest earnings of 4.02 percent of the average daily cash balance of funds invested with San Mateo County Investment Pool.

The interest income credited to Atherton's investment account by the San Mateo County Treasurer and by the State of California Treasurer include interest payments on fixed income securities held by these entities as well as any gains or losses realized on securities sold during the reporting interval. Calculations of interest income earned or reported yields do not reflect any changes in the market value of the fixed income securities held by either the San Mateo County Pool or the State of California Local Agency Investment Fund.

Investment at SMCIP: San Mateo County Investment Pool is created and managed by the County Treasurer.

As of December 31, 2006, the County's investment pool carried investments with a total value at cost of \$2.3 billion and an average duration of 256 days. The Town's investment with the San Mateo County Investment Pool as of June 30, 2006, amounted to \$10,943,374, or 74 percent of the Town's total investment holdings.

Attachment 1 to this staff report provides a summary of the investment earnings and investment holdings for the San Mateo County Investment Pool as of December 31, 2006.

Investment in LAIF: Local Agency Investment Fund (LAIF) is created and managed by the California State Treasurer as part of the Treasurer's Pooled Money Investment Account (PMIA). According to the State Treasurer, 2,733 local government agencies and special districts participate in LAIF with total investments amounting to approximately \$18.3 billion or roughly 34 percent of the \$54.5 billion that the State Treasurer manages in the PMIA. (Since LAIF investments are combined with PMIA, the Treasurer does not report the results for LAIF separately).

The Town's investment with LAIF as of December 31, 2006, amounted to \$3,776,478, or 26 percent of the Town's total investment holdings. The average duration to maturity of PMIA as of December 31, 2006, was 183 days.

Attachment 2 to this report provides a summary of investment holdings for the PMIA as of December 31, 2006.

FISCAL IMPACT:

Informational only.

Prepared by:

Approved by:

John P. Johns
Finance Director

James H. Robinson
City Manager

ATTACHMENTS:

1. Quarterly investment summary as of December 31, 2006, San Mateo County Investment Pool
2. State of California Treasurer, Pooled Money Investment Account Portfolio Analysis as of December 31, 2006

Attachment 1

COUNTY OF SAN MATEO
ESTIMATED SUMMARY OF POOL EARNINGS
FOR THE 2ND QUARTER ENDED DECEMBER 31, 2006

	12/31/06 <u>Par Value</u>	<u>Gross Earnings</u>
<u>Fixed Income Investments</u>		
U S Treasury Notes	\$450,000,000	\$2,372,682
Federal Agencies	\$155,000,000	\$1,132,816
Corporate Notes	\$142,000,000	\$1,128,320
Floating Rate Securities	\$284,000,000	\$1,589,594
Asset Backed Securities	\$2,873,397	\$5,542
<u>Short Term Investments</u>		
Federal Agencies	\$347,000,000	\$2,576,002
Corporate Notes	\$55,000,000	\$405,708
Floating Rate Securities	\$135,000,000	\$475,211
Commercial Paper	\$564,000,000	\$836,945
Certificate of Deposit	\$220,000,000	\$1,498,634
Repurchase Agreement	\$373,750,000	\$147,943
LAIF	\$37,000,000	\$475,577
SUBTOTAL - ACCRUED INCOME	<u>\$2,745,623,397</u>	<u>\$12,843,972</u>
<u>Realized Gain/Loss & Interest Received</u>		
U S Treasury Notes		\$1,218,295
Federal Agencies		\$1,402,416
Corporate Notes		\$322,092
Floating Rate Securities		\$2,215,471
Asset Backed Securities		\$41,576
Commercial Paper		\$1,978,205
Certificate of Deposit		\$585,465
Repurchase Agreement		\$4,368,798
LAIF		\$5,433
Securities Lending Income		\$85,561
GROSS POOL RATE/EARNINGS*	4.33%	<u>\$24,865,284</u>

<u>POOL BREAKDOWN</u>	<u>Pool 1</u>	<u>Pool 2</u>	<u>Pool 3</u>	<u>TOTAL</u>
Average Balance	331,725,871	506,274,539	1,437,902,620	2,275,903,031
Gross Earnings	3,624,267	5,531,281	15,706,745	24,865,284
Admin Fees	(104,516)	(159,511)	(453,038)	(717,065)
Bank Fees	(5,878)	(3,786)		(9,464)
Net Earnings	<u>3,514,063</u>	<u>5,367,985</u>	<u>15,256,707</u>	<u>24,138,755</u>
Net Earnings %	4.20%	4.21%	4.21%	4.21%

Earnings %'s are based on Q2 06-07 average daily balance of investment pools.
Pool 1 and Pool 2 are charged with bank fees associated with their disbursement/depository activity.

Attachment 2

PHIL ANGELIDES
TREASURER
STATE OF CALIFORNIA

INVESTMENT DIVISION SELECTED INVESTMENT DATA
ANALYSIS OF THE POOLED MONEY INVESTMENT ACCOUNT PORTFOLIO
(000 OMITTED)

<u>TYPE OF SECURITY</u>	<u>AMOUNT</u>	<u>PERCENT OF PORTFOLIO</u>	<u>DIFFERENCE IN</u>
			<u>PERCENT OF PORTFOLIO FROM PRIOR MONTH</u>
Government			
Bills	\$ 3,634,185	6.36	+1.58
Bonds	0	0.00	0
Notes	0		0
Strips	0	0.00	0
Total Government	<u>\$ 3,634,185</u>	<u>6.36</u>	<u>+1.58</u>
Federal Agency Coupons	\$ 9,542,202	16.70	-0.75
Certificates of Deposit	11,668,292	20.43	+1.16
Bank Notes	1,115,028	1.95	+0.60
Bankers' Acceptances	0	0.00	0
Repurchases	0	0.00	0
Federal Agency Discount Notes	5,579,459	9.77	+4.53
Time Deposits	8,525,995	14.93	-0.19
GNMAs	225	0.00	0
Commercial Paper	7,738,589	13.55	-2.52
FHLMC/Remics	967,880	1.69	-0.08
Corporate Bonds	554,148	0.97	-0.07
AB 55 Loans	7,604,132	13.31	-0.76
GF Loans	190,600	0.34	-3.50
Reversed Repurchases	0	0.00	0
Total (All Types)	<u>\$ 57,120,735</u>	<u>100.00</u>	

INVESTMENT ACTIVITY

	<u>DECEMBER 2006</u>		<u>NOVEMBER 2006</u>	
	<u>NUMBER</u>	<u>AMOUNT</u>	<u>NUMBER</u>	<u>AMOUNT</u>
Pooled Money	634	\$ 30,236,268	531	\$ 25,025,221
Other	55	1,254,835	30	543,621
Time Deposits	173	3,380,500	193	4,364,800
Totals	<u>862</u>	<u>\$ 34,871,603</u>	<u>754</u>	<u>\$ 29,933,642</u>
PMIA Monthly Average Effective Yield	5.129		5.125	
Year to Date Yield Last Day of Month	5.025		5.004	



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

**SUBJECT: ACCEPTANCE OF WORK AND AUTHORIZATION TO RECORD
NOTICE OF COMPLETION OF HOLBROOK-PALMER PARK
PAVILION DOOR AND WINDOW REPLACEMENT PROJECT
PROJECT NO. 05-001.**

RECOMMENDATION

Accept work, authorize recording of a Notice of Completion and approve contract change orders in the amount of \$25,829.00 for the Holbrook-Palmer Park Pavilion Door and Window Replacement Project, Project No. 05-001.

INTRODUCTION

The Council awarded a contract in February 2005 to Rodan Builders, Inc. for \$149,524, with a \$14,952.40 construction contingency, for a total authorized amount of \$164,476.40.

ANALYSIS

The original contract price was for \$149,524.00. There were five field directive change orders totaling \$25,829.00. The contract changes were as follow:

1. Replace kitchen window with door for catering access without using new doors and walking on new carpeting \$7,856.00
2. Upgrades to Pella Windows for blackout blinds, custom color and matching design of ADA compliant emergency exit doors \$5,665.00
3. Stain interior of doors & windows \$5,024.00
4. Change door panic hardware to allow for window cleaning \$3,271.00

5. Relocate gas line from existing door location (interior ceiling) to outside of new doors	\$4,013.00
TOTAL	\$25,829.00

FISCAL IMPACT

Funding for this project in the amount of \$170,000 was included in the FY 05/06 budget. The final cost of this segment of work is \$175,353.00, 3% more than the budget estimate. The State Park Grant for the Pavilion Rehabilitation project is \$220,000. The total of this contract and the Pavilion Carpet Replacement contract is \$219,876.08.

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

HOLBROOK-PALMER PARK
PAVILION DOOR AND WINDOW REPLACEMENT PROJECT
PROJECT NO. 05-001
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 21ST day of February, 2007, did file with the City Clerk of said Town a Certificate of Completion, for the work described in the construction contract awarded to Rodan Builders, Inc. on the 15th day of February, 2006, said contract being executed on the 2nd day of March, 2006.

That said work and improvements were accepted as completed on the 15th day of February, 2007, and that acceptance for completion of said work was ordered by Motion of the City Council of said Town, adopted on the 21st day of February, 2007, and that the name of the surety on the Contractor's bond for performance, labor and materials on said project is Contractors Bonding and Insurance Company, 1200 Bayhill Drive, Suite 120, San Bruno, CA 94066.

That said work and improvements consisted of replacement of doors and windows as described in the plans an specification approved by the City Council of the Town of Atherton pursuant to motion, adopted the 15th day of February, 2006.

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: HOLBROOK-PALMER PARK PAVILION DOOR AND WINDOW REPLACEMENT PROJECT

LOCATION: HOLBROOK-PALMER PARK PAVILION, 150 WATKINS AVENUE, ATHERTON, CA

NOTICE IS HEREBY GIVEN:

1. That on February 15, 2007, the Public Works project known as the Holbrook-Palmer Park Pavilion Door and Window Replacement 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:

Rodan Builders, Inc.
1625 El Camino Real, Suite #3
Belmont, CA 94002

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

Contractors Bonding and Insurance Company
1200 Bayhill Drive, Suite 120
San Bruno, CA 94066

5. Replacement of doors and windows as more particularly described in the plans and specification approved by the City Council of the Town of Atherton pursuant to Motion, adopted the 15th day of February, 2006.

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
CITY MANAGER, JAMES ROBINSON**

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

**SUBJECT: ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE
OF COMPLETION AND APPROVAL OF CONTRACT CHANGE
ORDERS IN THE AMOUNT OF \$32,138.80 FOR THE STREET
RECONSTRUCTION PHASE 2 PROJECT NUMBER 04-002.**

RECOMMENDATION

Accept work, authorize recording of a Notice of Completion and approve contract change orders in the amount of \$32,138.8 for the Street Reconstruction Phase 2 Project, Project No. 04-002.

INTRODUCTION

The Council awarded a contract in July 2005 to Interstate Grading & Paving, Inc. for Street Reconstruction Phase 2. The authorized contract amount was \$776,560.00. The Notice of Substantial Completion was issued March 7, 2006. The various punch list items were recently completed and work under the contract has now been completed.

ANALYSIS

The original contract price was for \$776,560.00, with a \$77,656.00 construction contingency, for a total authorized amount of \$854,216.00. There were seven authorized change orders totaling \$32,138.80. The contract changes were as follows:

- | | |
|--|--------------|
| 1. Original Contract | \$776,560.00 |
| 2. Change Order No. 1 - Remove Excess AC Beyond Limits | \$3,028.00 |
| 3. Change Order No. 2 - Lower Magnolia Storm Drain | \$5,643.88 |

4. Change Order No. 3 - Reset Magnolia/James Valley Gutter	\$1,287.90
5. Change Order No. 4 - Additional Paving @ Property Conforms	\$10,496.87
6. Change Order No. 5 - Additional Survey	\$3,862.00
7. Change Order No. 6 - Grade Changes, AC removal and trimming	\$4,257.75
8. Change Order No. 7 - Driveway & Drainage Adjustments	\$3,562.40
	<hr/>
TOTAL	\$808,698.80

FISCAL IMPACT

Funding for this project in the amount of \$900,000 was included in the FY 05/06 budget. The final cost of this segment of work is \$808,698.80, less than the 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

STREET RECONSTRUCTION PHASE 2
PROJECT NO. 04-002
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 21st day of February, 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 20th day of July, 2005, said contract being executed on the 22nd day of July, 2005

That said work and improvements were accepted as completed on the 21st day of February, 2007, and that acceptance for completion of said work was ordered by Motion of the City Council of said Town, adopted on the 21st day of February, 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 reconstruction of street paving 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

ATTEST: _____
City Clerk

Date

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: Street Reconstruction Phase 2
PROJECT NUMBER: 04-002
LOCATION: Various Locations

NOTICE IS HEREBY GIVEN:

1. That on February 1, 2007, the Public Works project known as Street Reconstruction Phase 2 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 and Paving, Inc.
128 South Maple Avenue
South San Francisco, CA 94080

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

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

5. Reconstruction of streets, 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 FEBRUARY 21, 2007

**SUBJECT: APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION
TO ADVERTISE VALPARAISO AVENUE OVERLAY PROJECT, PROJECT
NO. 06-001**

RECOMMENDATION:

Approve the plans and specifications and authorize advertisement for bids for the Valparaiso Avenue Overlay Project, Project No. 06-001.

INTRODUCTION:

The FY 2006-07 adopted Capital Improvement Program includes funds for constructing the Valparaiso Avenue Overlay Project. The need for this project resulted from a joint effort between Atherton and the City of Menlo Park to obtain grant funds and construct the final phase of the Valparaiso Rehabilitation as a joint project.

ANALYSIS:

Valparaiso Avenue has experienced pavement decay since it was last overlaid decades ago. Heavy traffic, including construction traffic at the private schools on Valparaiso Avenue and the residential construction in the area, has contributed to the deterioration of the roadway. Valparaiso Avenue has been overlaid several times since its original construction.

In 2006, Calwater replaced their water main along the entire length of Valparaiso Avenue within Atherton. After that project, Atherton began reconstructing the westbound side of the street. That project will be completed in March. The reconstruction project left off the final 2" lift of asphalt

needed for a complete pavement structure. Menlo Park is currently advertising a contract to perform digouts on the failed portions of the paving of the eastbound lanes.

Atherton and Menlo Park jointly applied for and were approved for \$470,000 from the Surface Transportation Program (STP) from the federal highway funding program. These funds would pay for an overlay of the entire roadway after the individual cities' projects are completed. This is estimated to be 50% of the total cost of the project. Menlo Park's share of the project cost, and of the STP funds, is estimated to be 63%, with Atherton's share at 37%.

The project will mill on the Menlo Park side to conform at the gutters, and will construct a two-inch overlay over the entire roadway, including bicycle and parking lanes. The overlay will be an open-graded asphalt for noise reduction and improved drainage. The project will also include thermoplastic traffic striping for long-lasting delineation of the lanes.

The Valparaiso Avenue Overlay Project is budgeted for construction in FY 2006-07. Town of Atherton staff prepared the design for the project. The Valparaiso Avenue Overlay Project plans and specifications are ready to be advertised for construction. The plans and specifications have been submitted to Caltrans for federal funding approval to advertise, and the project will be advertised as soon as this approval is received.

FISCAL IMPACT:

The Engineer's Estimate for the Valparaiso Avenue Overlay Project is \$856,808. In addition, a 10% construction contingency of \$85,681 would bring the total estimate to \$942,489. The Atherton portion of the project estimate would be \$351,137; \$360,000 from the Capital Improvements funds is budgeted for the project in FY 2006-07. The project is scheduled to receive bids in early April with award of the contract at the April 2007 City Council meeting.

Prepared By:

Approved:

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 MEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF FEBRUARY 21, 2007

**SUBJECT: APPROVAL OF AGREEMENT - RAPID ENFORCEMENT ALLIED
COMPUTER TEAM REACT TASK FORCE**

RECOMMENDATION

City Council authorize the Mayor to execute the agreement entitled a Memorandum of Understanding Among Participating Agencies and Designated Rapid Enforcement Allied Computer Team ("REACT") Task Force.

BACKGROUND

The Town is being requested to enter into an agreement with a number of participating agencies including the San Mateo County Sheriff's Office, the Internal Revenue Service and Federal Bureau of Investigation, as well as the California Department of Justice relating to protection from and prosecution of high technology/cyber crimes and identity thefts. The purpose of the agreement is described in more detail in paragraphs III and IV of the agreement that is attached as an exhibit.

The agreement envisions shared responsibility of the participating agencies. A regional supervisory committee composed of the Executive Board of REACT and members of prominent industries victimized by high technology crime and identity theft will be created to identify the most serious high technology and identity theft crimes in the San Francisco Bay Area. The Executive Board will be composed of 14 executive management designees described in paragraph V, subparagraph .C. of the agreement. Management Positions and their staffing are described in subparagraph D through G of paragraph V of the agreement.

As the REACT Task Force is principally established to coordinate applicable investigations, the agreement makes clear that employees of participating agencies are not employees of the Task Force. They remain subject to the direction and control of their respective agency (paragraph VI).

Provisions regarding management of information and standard operating procedures are set out in paragraph VII and paragraph IX, respectively.

Determinations regarding prosecutions are described in paragraph XI of the agreement. Your attention is invited to the provisions of paragraph XIII relative to asset seizure and forfeiture of funds and their use for Task Force operations. Also, please note the provisions of paragraph XIV regarding the deputizing of local law enforcement personnel assigned to the REACT Task Force with a grant of federal authority to make federal arrests in the execution of federal legal process.

In view of the Town's past commitment to the detection and prosecution of high technology crimes and identity theft issues, it is appropriate to enter into the agreement.

FISCAL IMPACT.

The Town has previously developed a cyber crime/identity theft function in the Police Department. By entering this agreement, no additional impacts are anticipated.

Prepared By:

Approved By:

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Rapid Enforcement Allied Computer Team (REACT) TASK FORCE

MEMORANDUM OF UNDERSTANDING

I. PARTIES

This Memorandum of Understanding (MOU) is entered into by the following "Participating Agencies":

1. California Department of Justice
2. California Highway Patrol
3. Federal Bureau of Investigation
4. Fremont Police Department
5. Hayward Police Department
6. Internal Revenue Service -Criminal Investigation
7. Menlo Park Police Department
8. Mountain View Police Department
9. Pacifica Police Department
10. San Bruno Police Department
11. San Francisco County District Attorney's Office
12. San Francisco Police Department
13. San Jose Police Department
14. San Mateo County Probation Department
15. San Mateo County Sheriff's Office
16. Santa Clara County District Attorney's Office
17. Santa Clara County Sheriff's Office
18. Santa Clara Police Department
19. Santa Cruz County Sheriff's Office
20. South San Francisco Police Department
21. United States Immigration and Customs Enforcement

This MOU may encompass other law enforcement agencies not enumerated above, which have been approved by the Executive Board for entry into the Rapid Enforcement Allied Computer Team (REACT) Task Force, and which enter into the MOU after November 1, 2006.

II. AUTHORITIES

The authority for the FBI to enter into this agreement is located at 28 U.S.C. § 533, 42

U.S.C. § 3771, and 28 C.F.R. § 0.85.

III. PURPOSE

This MOU delineates the responsibilities and commitments of the Participating Agencies in the REACT Task Force, a high technology/cyber crime and identity theft task force. The MOU also outlines the mission and objectives for the REACT Task Force.

IV. MISSION

The mission of the REACT Task Force is two-fold. The first mission is to apprehend and prosecute high technology criminals and to protect our communities from high technology crime and threats involving computers and computer networks. The second mission is to apprehend

and prosecute criminals who are engaged in the unlawful practice of identity theft. The REACT

Task Force was established on the premise that the capabilities of law enforcement agencies to investigate such crimes are enhanced in a task force setting involving the sharing of resources and expertise. The REACT Task Force is a partnership of federal, state, and local law enforcement agencies working together to identify and coordinate investigations where computers and related high technologies are a critical component of criminal activity.

The REACT Task Force will utilize its specialized resources to investigate criminal cases and significant threats when:

1. Computers and high technologies are the target of a crime;
 2. Computers and high technologies are the principal instrumentality of a crime; and
 3. Computers and high technologies are misused to facilitate violations of other criminal laws, and a specialized understanding of technology is required for investigation or prosecution.
- The types of cases meeting these criteria include, but are not limited to, the following:

1. The unlawful access, destruction of, or unauthorized entry into private or government computers or computer networks;
2. The dissemination of malicious software, often known as viruses and worms, that result in the criminal misuse of computers or computer networks;
3. Software piracy and other unlawful uses of intellectual property;
4. Large-scale identity theft wherein the majority of the fraud involved the Internet, network access, or other sophisticated computer technology, as well as large-scale multi-jurisdictional identity theft crimes where computers are not used;
5. All types of Internet fraud, where the substantive crime is principally conducted over the Internet; and
6. Threats made over the Internet.

V. ADMINISTRATIVE RESPONSIBILITIES

A.

Mission: All participants of the REACT Task Force acknowledge that this is a joint operation with all Participating Agencies acting as partners. Accordingly, the mission and objectives of the REACT Task Force will be a shared responsibility of the Participating Agencies. All missions and objectives will be provided by the

Executive Board.

B.

Private Industry Advisory Committee: The REACT Task Force will create a regional advisory committee, composed of the Executive Board and members from prominent industries victimized by high technology crime and identity theft.

This committee will meet on a regular basis, approximately every six (6) months, to

identify the most serious systematic high technology and identity theft crimes in the

San Francisco Bay Area. This committee will attempt to collect loss data to determine the most serious crimes committed and causing the most harm, as well as if criminals responsible for losses in the San Francisco Bay Area are responsible for other crime problems experienced elsewhere in the United States.

C.

Executive Board: The REACT Task Force Executive Board will be comprised of fourteen (14) executive management designees from the following agencies and entities:

.
Chief of Police for the Fremont Police Department;
.
Chief of Police for the San Jose Police Department;
.
Commander of the California Highway Patrol, San Jose Area ;
.
District Attorney, Santa Clara County;
.
Sheriff, San Mateo County Sheriff's Office;
.
Sheriff, Santa Clara County Sheriff's Office;
.
Special Agent in Charge of the Federal Bureau of Investigation;
.
Special Agent in Charge of United States Immigration and Customs
Enforcement;
.
Member at Large appointed from the Alameda County Police Chief's
Association;
.
Member at Large appointed from the San Francisco County Police Chief's
Association;
.
Member at Large appointed from the San Mateo County Police Chief's
Association;
.
Member at Large appointed from the Santa Clara County Police Chief's
Association;
.
Member at Large appointed from the Santa Cruz County Police Chief's
Association; and
.
A representative from the high technology industry.
The representative from the high technology industry shall be elected by the
Executive Board during the first quarter of every year.

The Executive Board members will work jointly to represent the interests of
their
agencies, communities, and jurisdictions. They will meet every two (2) months,
or
as needed, to provide policy oversight and direction, and to address issues
impacting upon the daily operation and effectiveness of the REACT Task Force.

D.
Task Force Manager: The Task Force Manager will be a Supervisory Special
Agent of the Federal Bureau of Investigation (FBI). This will be in addition to
his
duties as supervisor of the FBI's Cyber Crime Squad in the San Jose FBI Office.
The Task Force Manager will be responsible for the overall management of the
REACT Task Force and will advise the Executive Board of task force operations.
The FBI Supervisory Special Agent will not be a full-time member, but will
allocate

the necessary time to efficiently manage the Task Force.

E.

Task Force Project Manager: The Task Force Project Manager will be designated by the District Attorney for Santa Clara County, the REACT Task Force's current administrator for state grant funding. The Project Manager will be responsible for

expending, and accounting for the expenditure of REACT Task Force state grant funds, as approved by the Executive Board. The Project Manager will also serve as the REACT Task Force's primary liaison with grant funding organizations, including but not limited to the State of California, Department of Homeland Security.

F.

Task Force Team Supervisors: The REACT Task Force will utilize at least four (4) Team Supervisors. These Team Supervisors will be full-time Sergeants or above staffed by the San Jose Police Department, the Fremont Police Department, the San Mateo County Sheriff's Office, and the Santa Clara County Sheriff's Office.

The Team Supervisors will be responsible for the day-to-day operations of their respective Task Force Team. The Team Supervisors will provide direct supervision as a working member of the team.

G.

Task Force Members: The REACT Task Force shall be staffed by qualified investigators recommended by the participating agencies. Assignment to the Task Force shall be for a minimum of one year. Consideration for placement on the Task Force will be based upon past job performance, investigative experience and the ability to work with others in a close team relationship. Also, Task Force members, depending on their assignment, may be required to pass a rigorous FBI background investigation to determine whether they may be recommended for and granted a "Top Secret" security clearance. Upon successful completion of the background investigation, Task Force members will be recommended to be sworn in as federal agents and deputized as United States Federal Marshals. Any outside employment by Task Force members with any potential of a "Conflict of Interest," not authorized by the Executive Board, will result in the exclusion of that member from the Task Force.

H.

Personnel Management: Each employee of a Participating Agency assigned to the REACT Task Force will be subject to the personnel rules, personnel regulations, personnel laws, and personnel policies of their participating agency.

VI.

PERSONNEL

A.

Membership: The REACT Task Force shall consist of a combined body of investigators from the Participating Agencies.

B.

No Employment by the REACT Task Force of Law Enforcement Personnel: The REACT Task Force does not directly or indirectly employ any law enforcement personnel assigned to it. The REACT Task Force is established for the coordination of applicable investigations and does not establish employer-employee relationships with the law enforcement personnel assigned to the REACT Task Force from the Participating Agencies.

C.

Use of Contract Personnel: The REACT Task Force may employ contract personnel to assist with analytical and administrative tasks deemed necessary by the Project Manager, and approved by the Executive Board. These individuals will be non-law enforcement personnel including, but not limited to, secretaries, financial analysts, computer specialists, linguists, etc. These individuals may be required to pass an FBI background investigation and complete a non-disclosure agreement, as determined by the Task Force Manager.

D.

Responsibility for Conduct: All participants assigned to the REACT Task Force remain subject to the direction and control of their respective agency head or designee in all applicable professional and personal matters. The agency head or designee shall be responsible for the actions of their respective employees.

Each

REACT Task Force participant will continue to report to his or her respective agency head for non-investigative administrative matters not detailed in this MOU.

Responsibility for the conduct of the REACT Task Force members shall remain

with the respective agency heads.

E.

Assignment to the REACT Task Force: Personnel selections for the REACT Task Force are at the discretion of the Task Force Manager and each respective Participating Agency. Personnel will be selected based on the needs of the REACT Task Force and the Participating Agencies. Assignment to the REACT Task Force is discretionary and will be continued based on performance and the needs of the REACT Task Force.

VII.

Information Management

A.

Records and Reports: All REACT Task Force investigative files will be maintained at the REACT Task Force location or the local FBI Field Office. Under the direction

of the Task Force Manager, certain investigative documents will be stored on the FBI's electronic databases in order to enhance national information sharing among

task forces and other investigators. Classified information shall not be placed in a

non-Federal Participating Agency's files or maintained outside of an accredited REACT Task Force location unless approved in advance and in writing by an FBI Security Officer.

B.

Non-Disclosure Agreement. REACT Task Force information only may be disseminated on a need-to-know basis and as expressly permitted. No REACT Task Force information from FBI files may be disseminated outside of the REACT Task Force without the express permission of the FBI and in accordance with the applicable laws and internal regulations, procedures, or agreements between the FBI and other agencies that would permit such agencies, including REACT Task Force participants' employing agencies, to receive FBI information directly.

C.

Media: No member of the REACT Task Force will discuss or otherwise reveal information relating to REACT Task Force investigations to any media representatives, unless expressly authorized by either the Task Force Manager, the Project Manager, or one of the Team Supervisors. All media releases on REACT Task Force matters will be mutually agreed upon and coordinated jointly under the supervision of the Program Manager.

VIII.

FACILITIES AND EQUIPMENT

A.

Task Force Office Space: Appropriate office space for each team, centrally located, shall be identified by the Task Force Manager with the assistance of the

Project Manager, Team Supervisors, and the Executive Board.

B.

Vehicles: Each Participating Agency shall supply its assigned investigator(s) to the REACT Task Force a suitably equipped unmarked emergency vehicle. Said agencies will provide fuel and maintenance for that vehicle. Each agency, whether

providing a vehicle or not, will be responsible for any claims arising out of the

operation of any REACT team vehicle by the agency's team member. This will

include both liability and collision.

C.

Other Equipment: Investigators will be provided with computers, cellular

telephones, and most other needed electrical equipment to support on-going REACT Task Force investigations by their respective agencies or by the REACT Task Force. Agency supplied equipment on hand at the termination of the Task Force will be returned to the supplying agency or corporation. Investigations requiring specialized support, e.g., air support, surveillance vehicles, or other unique items will require cooperative assistance from the member departments or agencies.

IX.

STANDARD OPERATING PROCEDURES

All Task Force members shall abide by the standard operating procedures (SOP) which shall be prepared by the Team Supervisors with assistance of the Task Force members. The completed SOP must be reviewed and approved by the Executive Board and Task Force Manager. The SOP shall specify policies and procedures for the REACT Task Force. These policies and procedures shall include, but not be limited to the following specified articles.

A.

All federal agency participants and all federally deputized personnel will be subject to Attorney General Guidelines when acting on REACT Task Force operational matters. All REACT Task Force matters must be conducted pursuant to Attorney General Guidelines except for REACT Task Force investigations that are exclusively being pursued as a state/local matter in which state/local prosecution is anticipated, federal prosecution is considered unlikely, and a state/local law enforcement officer is the primary investigative officer for the case.

B.

The investigation of any officer-involved shootings and vehicle accidents shall be handled by the agency of jurisdiction where the incident occurs. Nothing precludes further investigation or concurrent investigation by the parent agency of the Task Force members;

C.

The Team Supervisors will supply the parent agency, upon their request, a fair and objective evaluation that reflects the Task Force member's performance while assigned to the Task Force;

D.

The Team Supervisors will be responsible for implementing a monthly reporting system of team activities and accomplishments. The monthly reports will be used to generate the quarterly reports given to the Executive Board at the end of each calendar quarter.

E.

Complaints against Task Force members will be forwarded to the parent agency

for investigation. Disciplinary action will be recommended and approved solely by the concerned parent agency.

X.

LIABILITY

No participant including the FBI makes any representation that the United States will provide legal representation or indemnification to any law enforcement officer or employee assigned to the REACT Task Force. Legal representation and indemnification by the United States is determined by the Department of Justice (DOJ) on a case-by-case basis pursuant to

legal standards and DOJ policy.

XI.

PROSECUTIONS

A determination will be made for each REACT Task Force investigation on whether the matter should be submitted for filing in federal or state court. This determination shall be based on the evidence obtained and a consideration of which method of prosecution will result in the greatest benefit to the overall objectives of the REACT Task Force and the community. The prosecutors will be available to provide legal review and will file Task Force cases warranting a criminal complaint.

The District Attorney's Office in participating counties will have prosecutors identified to work with Task Force members. The Supervisor of the Computer Hacking and Intellectual Property Unit (CHIP) at the United States Department of Justice, Office of the United States Attorney, Northern District of California, will be the liaison for cases involving federal prosecution. The Attorney General's Office, California Department of Justice, will assign a prosecutor to work with Task Force members. Additional prosecution staffing shall be provided as determined by the appropriate District Attorney's Office and/or the United States Attorney, based on case load developed.

XII.

SALARIES AND FUNDING

A.

Salary and Compensation: Salaries of REACT Task Force members will be paid by their respective agencies. In the event a subsidy is authorized by the Executive Board for reimbursement of salary, the terms and conditions of that subsidy will be defined by the Executive Board and administered by the Project Manager.

B.

Overtime: Overtime may be compensated to REACT Task Force members by their respective agencies in accordance with their applicable overtime provisions.

In the event that overtime payments are authorized by the Executive Board for payment by the REACT Task Force, the Team Supervisors will be responsible for authorization and management of paid overtime.

C.

Funding: This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds; this MOU is instead a basic statement of the understanding between the Participating Agencies and the methods required for a successful task

force. In the event that funding is received from the State of California, the Project Manager will be responsible for expending, and accounting for the expenditure of REACT Task Force funds, as approved by the Executive Board. In the event that funding is received by the United States Department of Justice, the Task Force Manager will be responsible for expending, and accounting for the expenditure of these funds.

XIII.

ASSET SEIZURE/FORFEITURE OF FUNDS

Any and all assets and funds received by the REACT Task Force as part of administrative or criminal forfeiture proceedings will be utilized for Task Force operations. The Project Manager

will be responsible for expending, and accounting for the expenditure of forfeiture funds, as approved by the Executive Board.

XIV. DEPUTATIONS

Certain local and state law enforcement personnel assigned to the REACT Task Force may be cross-deputized with a grant of federal authority for federal arrests and the execution of federal legal process. Deputation of non-federal task force members is necessary to engage in certain federal investigations and to comply with federal laws limiting actions to federal law enforcement officers.

Similarly, certain federal law enforcement agents may be cross-sworn as state peace officers so that they may engage in state investigations and to comply with State of California laws requiring the involvement of state peace officers.

Administrative and personnel policies imposed by the Participating Agencies will not be voided by deputation of their respective personnel.

XV. DURATION AND MODIFICATION OF THE MOU

The term of this MOU shall be for the duration of the REACT Task Force's operations, contingent upon approval of necessary funding, but may be terminated at any time upon the written mutual consent of the agencies involved. Upon the termination of the REACT Task Force's operations and the MOU, all equipment will be returned to the REACT Task Force for ultimate disbursement by the Executive Board. A Participating Agency retains the right to terminate its participation by giving 30 days written notice of its intent to terminate. Should a Participating Agency terminate its participation, it must return all assigned equipment to the REACT Task Force. Similarly, the REACT Task Force will return to a withdrawing agency any unexpended equipment the withdrawing agency may have supplied during its REACT Task Force participation.

XVII. AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING

The Executive Board may amend any portion of this agreement at any time by doing so in writing and having the proposed modifications signed by all parties.

The undersigned state they represent and have the authority to execute this Memorandum of Understanding on behalf of their respective agencies/departments and, in

signing this Agreement, concur with and support the Rapid Enforcement Allied Computer Team as set forth in this Agreement and for the period and purpose as stated herein.

XVIII. NO THIRD PARTY RIGHTS

This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the State of California, the United States, or the officers, employees, agents, or other associated personnel thereof.

SO AGREED:

REACT MEMORANDUM OF UNDERSTANDING

The undersigned has read the attached Memorandum of Understanding (MOU), consisting of this and nine (8) other pages, dated November 1, 2006, a revision to the MOU dated March 25, 2004, and states he has the authority to execute this MOU on behalf of his respective agency or department. In signing this document, the undersigned concurs with and agrees to support the Rapid Enforcement Allied Computer Team (REACT) Task Force mission as set forth in this Agreement and for the period and purpose as stated herein.

_____ Dated: _____

Name

Title

Agency



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF FEBRUARY 21, 2007

SUBJECT: CONTRACT ENGINEERING SERVICES FOR THE PURPOSE OF GRADING AND DRAINAGE PLANS

RECOMMENDATION

Consider revisions to the Request for Proposal and incorporated Professional Services Agreement for consultant municipal engineering services to assist in the Town of Atherton review of plan check of development applications related to grading, drainage and other possible engineering fields. If satisfactory, authorize issuance of the request for proposals.

BACKGROUND

At the City Council meeting on January 17, 2007, the Council considered a Request for Proposals for municipal and civil engineering services. The Staff Report included the RFP dated January 12, 2007, attached.

Attachment "A" to the RFP was a sample Town contract agreement form. The City Council directed the addition of a provision relative to avoidance of any conflicting loyalties by individuals and/or firms providing the professional services requested arising from doing related work in the Town for private clients.

Attached as an exhibit to this report is a revision to the Town's standard Professional Services Agreement. Paragraph 9 has been revised by adding a subparagraph (b) relating to the avoidance of conflicts of interest. It would be advisable to highlight this provision in the Request for Proposal. Language shown in **bold** can be added to Paragraph 3 "Attachment" of the RFP as follows:

3. ATTACHMENTS

"Attachment A is a sample blank Town Contract Agreement Form. Exceptions to the agreement shall be noted with the proposal and will not be entertained thereafter. **Please note provisions of Paragraph 9 of the Agreement regarding conflicts of interest.**"

If the City Council is satisfied with this revision, it would be appropriate to direct the Director of Public Works to proceed with the request for proposals.

FISCAL IMPACT

Funds generated from the plan check inspection fee should cover all costs.

Prepared By:

Approved By:

/s/Marc Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachments



Town of Atherton

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

February 21, 2007

REQUEST FOR PROPOSAL For Municipal Civil Engineering Services

The Town of Atherton is requesting proposals for the services listed herein, at Town Hall, 91 Ashfield Road, Atherton, CA 94027 by 2:00 p.m. on March 23, 2007.

INTRODUCTION:

The Town of Atherton is seeking proposals from qualified firms or civil engineers to assist with review and plan check of private development applications. The plan check services will focus on mapping, grading, drainage, road design, utilities, and related civil engineering fields. The plan check services will not involve ICBO plan checking, although coordination with the Town's Building Department plan-check staff and/or consultant will be necessary at times. The Town is seeking a consultant to provide these services on an "On-Call" basis through December 31, 2007, with annual renewal thereafter for four (4) additional one-year periods at the Town's discretion.

1. SCOPE OF SERVICES

The Town of Atherton is seeking a provider who can accomplish the following under the direction and supervision of the Town's Director of Public Works:

- 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.

2. BACKGROUND INFORMATION

The Town is largely developed but individual lots are being redeveloped in whole or in part. The Building Department issues all construction-related permits for private property improvements in the Town. The department issues about 1,000 – 2,000 permits a year with a valuation of \$75 million. The permits are almost exclusively for single-family residential uses. About 15 parcels are not classified as residential, including Town-owned properties, 5 public schools, a country club, 1 fire station, 1 public park, and 3 private schools. The Town has no commercial or industrial properties.

Currently Building is staffed with five (5) full time employees:

- Department Head/Building Official
- Senior Building Inspector/Plan Checker
- (2) Building Inspector 2/Plan Checkers
- Office Specialist

Two (2) contract staff assist with plan checks.

The public interacts with staff at a counter in Town Hall. Permits are issued over the counter from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.

The Public Works Department has two engineers primarily involved with capital projects delivery and maintenance issues and is therefore unable to provide the requested services at this time. Public Works issues all encroachment permits for improvements within the public right-of-way. These permits are issued by an Office Specialist and a Street Supervisor, with oversight

by the City Engineer. Review of these improvements by the selected firm in conjunction with the Building Department review of the related private improvements will be more efficient.

3. ATTACHMENTS

Attachment A is a sample blank Town Contract Agreement Form. Exceptions to the agreement shall be noted with the proposal and will not be entertained thereafter. **Please note provisions of Paragraph 9 of the Agreement regarding conflicts of interest.**

4. PROJECT SCHEDULE AND CONSULTANT SELECTION

Proposals shall be submitted in a sealed envelope and must be received by **March 23, 2007**, postmarks will not be accepted. Hand deliver or send proposals to:

James Robinson
City Manager
91 Ashfield Road
Atherton, CA 94027

A. Schedule for Vendor Selection:

- Proposals Due: **March 23, 2007**
- Interview Consultants: Week of April 2
- Negotiate contract: Week of April 9
- City Council approval: April 18
- Begin Service: May 1, 2007

The dates shown above are tentative. The consulting firm or engineer shall state in the proposal if the firm or individual can commit to the project schedule outlined above (including project staffing resources). The consulting firm or individual may propose an alternative project schedule for deliverables.

B. Proposal Guidelines and Requirements

Each proposal shall follow the structure and format set forth in this RFP:

- The name, address, and phone number of the person(s) who will respond to issues included in the proposal must be included.
- The firm selected must operate from an office located within a reasonable drive time as determined by the Town of Atherton.
- Staff proposed to work on this project must have prior experience with municipal or comparable government agency review similar to the scope of work being proposed. Profiles of the staff to be assigned to the project, references, and illustrative examples of similar work performed which clearly demonstrates the experience shall be included in the proposal.
- The vendor should disclose any past, ongoing or potential conflicts of interest which the vendor may have as a result of performing the work for this project.
- The vendors shall submit **seven copies** (one original and six copies) of their proposal.

Each proposal must contain the following sections in the order presented to be considered:

Section I - Executive Summary

Include a general description of the proposal, including key features of the services to be provided, and experience. Outline a brief history of the firm and its ownership structure.

Section II - Response to Requirements and Examples of Work

Describe how the proposed services will be provided. Include an example of plan and map review comments prepared for a client.

Section III- Service Initiation

Provide a brief discussion that describes the plan for initial efforts to determine Town requirements and current practices. In this section, include effort to develop alternatives for cost recovery for review by staff and consideration and adoption by the Town Council.

Section IV – Service Delivery

Include a description of how plans will be logged, tracked and reviewed, as well as proposed turn-around times for initial checks and re-checks.

Section VI - Project Staffing and Management Plan

Provide the name, title, and qualifications of each staff proposed for the project, and a proposed organization chart must be included.

Section VII – Statement of Qualifications

Provide a summary of the firm’s information, direct work experience, references, and the resumes of all team members. Include information on projects within the past 12 months, current and anticipated assignments for the next 12 months that may constitute conflicts of interest.

C. Cost Proposal and Payment

The cost proposal should be submitted separately within a sealed envelope, plainly marked, and shall include the following items:

- Fees paid to the consultant will be on a time-and-materials basis, based on proposed rates, up to the negotiated maximum amount per signed contract.
- Any extra work deemed necessary by the consultant must be pre-approved and authorized by the Town in writing. No payment will be made on any unauthorized work performed by the consultant or sub-consultants.
- It is the Town’s intent to utilize existing fees or adopt new fees, pursuant to Consultant recommendations, that will fully recover costs.

D. Billing

Completed reports are to be submitted monthly, together with invoice submittal, unless directed otherwise by the Town’s project manager. The invoice shall be accompanied by a cost breakdown showing specific person and classification being billed for the period by task.

5. INSURANCE REQUIREMENTS

The selected consultant will be required to furnish evidence of insurance in the amounts as listed below:

Professional Liability.....	\$2,000,000
General Liability.....	\$2,000,000/ occurrence
Automobile Liability.....	\$2,000,000
Worker's Compensation Insurance per State Law	

Umbrella coverage with a minimum amount of \$2 million will be considered as meeting the Town's requirements.

6. EVALUATION PROCESS

A. Methodology

A selection committee comprised of Town of Atherton staff will review and evaluate all proposals. This committee will identify firms who may be invited to submit more detailed proposals, deliver oral presentations and demonstrations, or a combination of all of these. The committee will have only the response to this solicitation for their review and selection of finalists. Therefore, it is important that each consultant emphasize specific information that is considered pertinent to this project.

B. Criteria

Evaluations will be based on the following criteria:

- Responsiveness - The extent to which the proposal meets the requirements of the solicitation and the extent to which the consultant is likely to be able to achieve the desired results.
- Qualifications - The capability, integrity, and reliability of the consultant including:
 - Experience and history of the firm in the disciplines covered by the solicitation
 - Positive feedback from reference sources about the consultant's credentials and integrity
 - Qualifications, experience, and availability of the assigned staff members
- Conflict of Interest - Evidence of a serious previous, ongoing or potential conflict of interest may disqualify the vendor.

After reviewing all proposals, the Town will interview the most qualified consultants. The Town will select the top most qualified consultant for the project and negotiate the contract. If unsuccessful, the next most qualified consultant will be contacted, and so on. A staff recommendation will be made to the City Council, which has the final approval authority.

PROFESSIONAL SERVICES AGREEMENT FOR
(type-in name of service or project)

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and _____, 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 _____ services in connection with the project designated as _____.

2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.

3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the City to the Consultant to proceed. Consultant receipt of a Purchase Order shall constitute said notice. Consultant shall perform all services and provide all work product required pursuant to this agreement within _____ calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the City.

4. Payment. The Consultant shall be paid by the City for completed work and for services rendered under this agreement as follows:

a. Payment for the work provided by Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Consultant shall not exceed \$ _____ without express written modification of the agreement signed by the City.

b. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date, up to 85% of total project costs. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.

c. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this agreement and its acceptance by the City.

d. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.

e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the City and state for a period of three (3) years after final payments. Copies shall be made available upon request.

5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the City whether the project for which they are made is

executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

7. Indemnification. Consultant shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees, or damage to property to the extent caused by a negligent act, omission or failure of the Consultant.

8. Insurance. The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.

9. Independent Contractor.

(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 subdividable 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:

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 _____, 200_.

Town of Atherton

Consultant

By _____
City Manager

By _____

EXHIBIT "B"
PAYMENT

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



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: KATHY HUGHES ANDERSON, TOWN ARBORIST

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

**SUBJECT: CONSTRUCTION, OPERATION PARKING PLANS – STATUS OF
IMPLEMENTATION AND ENFORCEMENT**

RECOMMENDATION:

Staff recommends that the City Council review and accept the report

INTRODUCTION:

At the May 17, 2006, City Council meeting, Council adopted Resolution No. 06-04, a resolution amending Guidelines for Construction Operation and Parking Plans and rescinding Resolution No. 03-28. Item No. 13 of the approved new Guidelines states that, "After implementation of the Guidelines, the Building Official shall report to the City Council on the effect and operation of these Guidelines on a quarterly basis for the first year and every six months thereafter." In the minutes of the May 17th meeting, it is stated, "staff would provide a format that would identify the primary construction sites within the Town and identify where variances existed and where citations occurred." Former Interim Planning Director Gary Binger asked me to prepare a report for the City Council to report on the Construction, Operation and Parking Guidelines.

ANALYSIS:

Due to the change in personnel in the Building Department that occurred shortly after the new Guidelines were adopted, a format for reporting violations has not been developed. Both the Police Department and the Building Department have been responding to complaints about construction parking, but no formal complaint tracking system has been implemented. I have attempted to collect data from the Building and Police Departments

in order to provide the Council with the most complete record of what violations have occurred since June of 2006. Police Chief Bob Brennan has provided the Council with some statistics at Council meetings over the past six months reporting on the community-policing project of construction activities on Park Lane. Chief Brennan has provided incident search results from the Police Department's computer database from July 1, 2005 through February 14, 2007. Attachment A.1 shows the construction site checks made by officers on a routine drive-by. Attachment A.2 indicates an officer responding to a complaint. These would include any construction-related violation, not necessarily just parking violations.

Bob Cushing of CSG Consultants has been handling many of the complaints received regarding construction parking since he has been working for the Town. At the December 13, 2006, City Council meeting, Mr. Cushing presented the City Council with a chart showing the number of code violations to which he responded. Of the 60 complaints submitted in the report, covering November and December 2006, 20 were construction-parking or construction-hours related.

In a discussion with Mike Cully, Interim Building Official, and Bob Cushing, they informed me that upon the first complaint they receive regarding a construction parking violation, they contact the contractor with an informal verbal warning. A second or third complaint will result in a written warning. If more than three complaints are received, a Stop Work order may be issued by the Building Official. They report that there has been one instance where they have issued an affidavit to the contractor. A construction site on Walsh Road was issued a Stop Work order until the contractor came in and had a meeting with the Building Official and the Police Chief to resolve the parking violation issues.

Bob Cushing recommended to the City Council that a formal complaint form be adopted. While he may visit a number of construction sites numerous times, there is no tracking system, and hence no data as to how many times he visited a site or whether there was a violation occurring at the time or not. I think it would be helpful to have some record of the complaints received and the number of times a particular site is inspected and the outcome of said inspection. The Police Department is now forwarding a copy of all complaints and action taken to Bob Cushing so that he has a record of all complaints/violations received by him or the Police Department.

As part of the discussion, the issue was raised as to how we should be handling complaints that are coming from residents who are not directly impacted by the parking violation. We recently received a call from a resident reporting a construction parking violation on Atherton Avenue. When Mike Cully responded to the complaint, the contractor told him that they had permission from the neighbors to park in front of their property. This raises some issues as to whether the ordinance is enforced across the board, or if the neighbor is willing to give written consent to park in front of their property, can exemptions be granted. Also, Mr. Cushing reported that often the complaining party does not live anywhere near the construction site being reported in violation.

Since November of 2006, and my transfer to the Building Department, I have begun reviewing the COP plans in conjunction with the Tree Protection Plans. I have reviewed and approved approximately 30 COP Plans. The majority of the plans submitted have been approved as submitted. Some have required modifications such as including the required notes on the plans or moving job trailers or sanitary facilities to within the required setbacks.

CONCLUSION

In order to monitor and track complaints regarding construction parking and other construction related activities, a complaint tracking system needs to be implemented. The new CRW permit tracking software that the Building Department will be acquiring will have this capability. In the interim, Mike Wasman and I have met with Bob Cushing and we are in the process of developing an excel spreadsheet system to record and track COP complaints/violations. (Attachment 2)

My personal observations from being out in the field are that there has been an improvement in compliance with the COP regulations. Three of the projects on Park Lane are nearing completion, so hopefully the residents in the neighborhood will be experiencing less disruption from construction vehicles. While most construction sites seem to be in compliance, the exceptions are and will continue to be, when the project is finishing up and the final hardscape and landscaping is going in and there is simply no where left on the site for workers to park. Building Department staff will continue to monitor the situation and report to the City Council on a quarterly basis.

Prepared by:

Approved by:

Kathy Hughes Anderson
Town Arborist

James H. Robinson,
City Manager

Attachments:

Atherton Police Department Incident Search Results; A.1, A.2

Sample Excel Spreadsheet Complaint Tracking System



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

SUBJECT: APPROVAL FOR THE TOWN OF ATHERTON TO JOIN ICLEI, LOCAL GOVERNMENTS FOR SUSTAINABILITY, AS RECOMMENDED BY THE ENVIRONMENTAL PROGRAMS COMMITTEE

RECOMMENDATION:

City Council approve the Town of Atherton's membership in ICLEI as recommended by the Atherton Environmental Programs Committee.

BACKGROUND:

The Atherton Environmental Programs Committee met and recommended approval of the Resolution endorsing the U.S. Mayors' Climate Protection Agreement. The Environmental Programs Committee also received a presentation from Susan Ode of ICLEI (International Council for Local Environmental Initiatives). ICLEI is an international association of local governments and nations and regional local government organizations that have made a commitment to sustainable development. ICLEI also provides technical consulting, training and information services to support local government in the implementation of sustainable development at the local level. Their premise is that locally designed initiatives can provide an effective and cost-efficient way to achieve local, national, and global sustainability objectives. ICLEI has also assisted local cities in the survey and methodology for measuring the CO₂ emissions by providing software and software support.

A packet of information is included in the agenda providing a summary of the benefits of joining and utilizing the services of ICLEI.

FISCAL IMPACT:

The cost of joining ICLEI is a \$600.00 annual membership



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

SUBJECT: APPROVAL TO CONTINUE CONTRACT SERVICES PROVIDED BY CSG CONSULTANTS, INC., FOR INTERIM SR. BUILDING INSPECTION SERVICES

RECOMMENDATION:

Staff recommends that the Town of Atherton continue to retain the services of CSG Consultants, Inc., specifically to provide contract Sr. Building Inspector services in the Building Department to assist the Building Official and provide contract services until the completion of the full-time Sr. Building Inspector recruitment and approve the expenditure of funds for this purpose.

BACKGROUND:

With the promotion of Mike Wasmann to the position of Building Official, a Sr. Building Inspector vacancy now exists within the Building Department. The Town has begun the recruitment to fill this vacancy. In the interim, it is recommended that the Town continue the services of Mike Cully of CSG to serve as the Interim Sr. Building Inspector and assist Mike Wasmann in this transition. Mike Cully would fill this position on an interim basis, report directly to the Building Official and assist in this transition. The Finance Committee has reviewed and approved this request.

FISCAL IMPACT:

It is recommended that an expenditure of up to \$70,000 be approved to accommodate this request. This anticipates a full-time contract Sr. Building Inspector at a rate of \$92.00 per hour on a full time basis covering the anticipated period of this transition through May if necessary.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

**SUBJECT: ADOPTION OF A RESOLUTION SUPPORTING EXPANSION
AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE**

RECOMMENDATION:

City Council adopt a Resolution Supporting Expansion and Safety Enhancements to Transit Service.

BACKGROUND:

Vice Mayor Jim Janz, who also serves as the chair of the Atherton Rail Committee, has requested the adoption of the attached Resolution. The Resolution recommends that Caltrain retain an outside consultant to develop and evaluate alternative train schedules that would provide additional local service within the County as well as complete pedestrian and vehicular quad gates and elimination of the hold-out status at four locations within the County including the Atherton station.

RESOLUTION 07-

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
SUPPORTING EXPANSION OF AND
SAFETY ENHANCEMENTS TO TRANSIT SERVICE**

WHEREAS, Caltrain service in San Mateo County has been reduced by more than 21 percent since 2003, far more than the approximate 10 percent reductions which have occurred in San Francisco and Santa Clara Counties; and

WHEREAS, transit service receives 50 percent of the funds collected under Measure A, which represents a contribution from the cities in San Mateo County and the County of approximately \$25 million annually from funds which would otherwise be available to localities for road and street repairs; and

WHEREAS, the City contributes approximately \$547,000 annually to Caltrain from Measure A funds which would otherwise be allocable to the City for road and street repairs; and

WHEREAS, the City has lost all week day Caltrain stops since 2003; and

WHEREAS, the substantial reduction of Caltrain service has had a significant negative economic impact upon properties near Caltrain stations; and

WHEREAS, increased Caltrain service is necessary to support and encourage transit-oriented development; and

WHEREAS, the growing senior population of San Mateo County will necessitate further dependence upon mass transit; and

WHEREAS, additional connections to Caltrain by shuttles and SamTrans buses are needed to encourage transit ridership; and

WHEREAS, the City desires to encourage greater availability and use of mass transit to address the climate change crisis and to facilitate the needs of its citizens.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the Town of Atherton hereby resolves:

1. That the City urges Caltrain to retain an outside scheduling consultant to develop and evaluate alternative train schedules that would provide additional local service within the County.
2. That the cities be provided the opportunity to review and comment on the alternative schedules so developed.

3. That Caltrain complete with all due diligence the safety improvements planned within the County, including right-of-way fencing, installation of pedestrian and vehicular quad crossing gates, and elimination of the hold-out status at the four locations within the County: South San Francisco, Burlingame, Broadway, and Atherton.

4. That Caltrain, SamTrans, and the cities work together to develop and evaluate additional and improved means of connectivity between transit services.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 21st day of February 2007, by the following vote:

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

ATTEST:

Alan B. Carlson, MAYOR
TOWN OF ATHERTON

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

**SUBJECT: APPROVE A CONTRACT EXTENSION FOR JENSEN
LANDSCAPE FOR PARK LANDSCAPING SERVICES FOR
THREE YEARS AT \$26,700 PER YEAR**

RECOMMENDATION:

Approve a three-year contract extension to Jensen Landscape for weekly park maintenance.

BACKGROUND:

After the retirement of a longtime worker (Joe Mercer) in the park, it was decided to try contracting out some of the more mundane park duties (mowing, edging, light pruning, blowing) in lieu of hiring on a new full-time park employee.

In February 2004, Jensen Landscape was awarded a contract for \$2,225.00 per month to perform various landscape duties in Holbrook-Palmer Park on a weekly basis. They were the low-bidder for this work among four other qualified bidders.

ANALYSIS:

Replacing a park employee with contracted services has been successful. Jensen has been dedicated to the tasks assigned, without being pulled for other services and emergencies. The amount paid for a supervised crew of workers one time per week is less than the cost of the park worker.

Jensen Landscape has agreed to a three-year continuation of the contract for the same price as their low bid in 2004 (\$2225.00 monthly, or \$26,700 annually). The park staff is currently satisfied with the agreed-upon duties currently being performed by the company.

FISCAL IMPACT:

There is no additional fiscal impact. There is no change from the past three years where the Town paid \$2225.00 per month, for a total of \$26,700 annually, and a contract extension total of \$80,100.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

**TOWN OF ATHERTON
HOLBROOK-PALMER PARK LANDSCAPE MAINTENANCE SERVICES
CONTRACT**

This Landscape Maintenance Services Contract is made and entered into this 18 day of January, 2004, by and between the Town of Atherton, a municipal corporation in the State of California, hereinafter referred to as "City", and Jensen Landscape Services, hereinafter referred to as "Contractor".

WHITNESSETH that City and Contractor have mutually agreed as follows:

1. Contents of Contract and Contract Documents. The Contract Documents for this Park Landscape Maintenance Contract include this Contract, Price Response Form (BID PROPOSAL) and PRICE PROPOSAL, submitted by Contractor, Exhibit "A," all attached hereto, and all statutory provisions referred to in Contract and Exhibit "A". All said specified documents, Exhibits and statutory provisions are hereby appended to and incorporated in the Park Landscape Maintenance Services Contract.
2. Contractor's Obligations. Contractor shall provide all labor, materials, tools, plant, equipment and incidentals required to perform landscape maintenance services in conformance with PRICE PROPOSAL and Exhibit "A."
3. City's Obligations. City shall pay to Contractor, as full consideration for the faithful performance by Contractor of the aforementioned work the amount of Two Thousand Two Hundred and Twenty Five Dollars (\$2225.00) per month, for services rendered in accordance with Contractor's accepted Proposal dated January 13, 2004, except for Change Orders as may be duly issued and approved by City and accepted by Contractor in accordance with the Documents.
4. Compliance with laws. Contractor 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.
5. Independent Contractor. The Contractor and the City agree that the Contractor 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 Contractor nor any employee of Contractor 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 Contractor, or any employee of Contractor.
6. Assignment. The Contractor shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.
7. 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.
8. Notices. Notices to the City of Atherton shall be sent to the following address:

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

Notices to Contractor shall be sent to the following address:

Jensen Landscape Services
10950 N. Blaney Ave.
Cupertino, Ca. 95014-0555

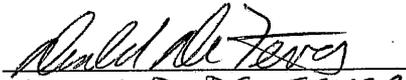
9. Integrated Agreement. This Agreement together with attachments or addenda, represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument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

DATED this 15th day of February, 2004.

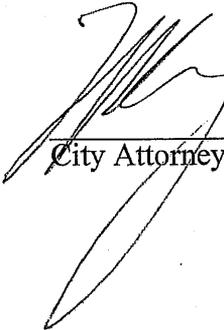
City of Atherton

Contractor

By 
Mayor

By 
DONALD DE FEVER, PRESIDENT
JENSEN LANDSCAPE SERVICES

APPROVED AS TO FORM


City Attorney

IV. General Terms and Conditions

A. GENERAL

All work to be performed shall be subject to the direct supervision of the *Director of Public Works* or his/her duly appointed representative, hereinafter referred to as the Contract Manager.

1. Successful contractor shall meet with the Contract Manager prior to starting the contract and coordinate his schedule around any other project under way that might interfere or be impacted.
2. Contractor shall supply a full time supervisor responsible for overseeing the contracted maintenance. Bidder shall furnish statements relative to the plan or procedure proposed and the organization and equipment necessary for the contemplated work. Supervisor shall be able to communicate with Town staff in both the written and verbal English language.
3. Contractor shall leave a 24-hour emergency phone number with the Public Works Director and the Atherton Police Department Communications Center, and shall provide the Town with emergency crews should it become necessary as a result of their work performance.
4. In accordance with the provisions of California Public Contract Code Section 3300, the Town has determined that the Contractor shall possess a valid Class C-27, Limited Specialty Contractor's license at the time that the contract is awarded. Failure to possess the specified license shall render the bid as non-responsive and shall act as a bar to award of the contract to any bidder not possessing said license at the time of award.
5. The selected bidder shall have or obtain an Atherton Business License prior to starting the work.
 - a. Any sub-contractors used shall have an Atherton Business License and provide proof of Worker's Compensation coverage.
6. You should be aware that all contractors performing the Holbrook-Palmer Park Maintenance Contract for the Town of Atherton are required to present evidence of Workers' Compensation and Employers' Liability Insurance coverage.
 - a. A certificate of insurance and copies of the information or declaration page(s) for Broad Form Comprehensive General Liability or Commercial General Liability, and Business Automobile Liability Insurance policies of not less than \$2,000,000 for bodily injury or death arising out of any one occurrence and property damage limits of not less than \$2,000,000 arising out of any occurrence for each type of coverage
 - b. Copies for said General Liability and Business Auto Liability Insurance policies of an endorsement naming the Town of Atherton, its Council, officers, boards, commissions, agents and employees as additional insured, a standard cross-liability endorsement, an endorsement precluding cancellation or reduction in coverage before the expiration of thirty (30) days after Town has received written notification by registered mail from the insurance carrier of such cancellation or reduction, and an endorsement stating that the insurance afforded thereby to Town, its officers, agents and employees shall be primary insurance to the full limits of the policy, and that if Town or its officers and employees have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

- c. The certificates of insurance and copies of information or declaration page(s) and of endorsements are to be reviewed and approved as to form by the Town Attorney before work commences.
7. Antitrust - By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Town of Atherton all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of California that relate to the particular goods or services purchased or acquired by the Town of Atherton under said contract.
 8. Applicable Law - The contract shall be governed in all respects by the laws of the State of California, and any litigation with respect thereto shall be brought in the courts of the State of California. The contractors shall comply with applicable federal, state, and local laws and regulations.
 9. Assignment - The contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein, without the prior written consent of the Town of Atherton.
 10. Certificates and Licenses - The Contractor shall provide copies of all valid licenses (C-27) and certificates required for performance of the work. The copies shall be delivered to the Town of Atherton no later than ten days after the contractor receives the notice of award from the Town of Atherton. Current copies of licenses and certificates shall be provided to the Town of Atherton within twenty-four hours of demand at any time during the contract term. Licenses and certificates required for this contract include, by way of illustration and not limitation, the following: professional licenses or certificates in the field of pest control application.
 11. Change in Scope of Work - The Town of Atherton may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the contractor that the scope of the contract or of the contractor's services has been changed, requiring changes to the amount of compensation to the contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Town of Atherton and the contractor.

If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the contractor, the contractor must immediately notify the Town of Atherton in writing of this belief. If the Town of Atherton believes that the particular work is within the scope of the contract as written, the contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

12. Cost Reimbursement - The contractor agrees that payment by the Town of Atherton to the contractor for materials used in the performance of any work under the contract on a cost plus a percentage of cost basis is specifically prohibited. The cost of all materials provided in the performance of the work is to be reimbursed to the contractor in the following manner: The Town of Atherton shall reimburse the contractor, on completion and acceptance of each assigned job, only for those materials actually used in the performance of the work that are supported by invoices issued by the suppliers of the contractor describing the quantity and cost of the

materials purchased. No surcharge shall be added to the suppliers' invoices or included in the contractor's invoice submitted to the Town of Atherton that would increase the dollar amount indicated on the suppliers' invoices for the materials purchased for the assigned job. All incidental costs, including allowances for profit and tools of the trade, must be included in the contract hourly labor rates.

13. Employment Discrimination - During the performance of the contract, the contractor agrees to the following:
 - a. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the contractor. The contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall state that such contractor is an Equal Opportunity Employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The Contractor shall include the provisions of the foregoing paragraphs (a), (1), and (c) in every subcontract or purchase order of more than \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
14. Failure to Enforce - Failure by the Town of Atherton at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Town of Atherton to enforce any provision at any time in accordance with its terms.
15. Immigration Reform and Control Act of 1986 - The contractor certifies that it does not and will not during the performance of the contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
16. Indemnification - Contractor shall indemnify and hold harmless Town and its officers, officials, employees, agents and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Town.
17. Independent Contractor - The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered employees of the Town of Atherton; and the Town of Atherton shall be at no time legally

responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The Town of Atherton shall not withhold from the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the Town of Atherton shall not provide to the contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Town of Atherton for its employees.

18. Non-appropriation - All funds for payment by the Town of Atherton under this contract are subject to the availability of an annual appropriation for this purpose by the Town of Atherton. In the event of non-appropriation of funds by the Town of Atherton for the services provided under the contract, the Town of Atherton will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the contractor on thirty days prior written notice, but failure to give such notice shall be of no effect and the Town of Atherton shall not be obligated under this contract beyond the date of termination.
19. Oral Statements - No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Town of Atherton.
20. Recovery of Money - Whenever, under the contract, any sum of money shall be recoverable from or payable by the contractor to the Town of Atherton, the same amount may be deducted from any sum due to the contractor under the contract or under any other contract between the contractor and the Town of Atherton. The rights of the Town of Atherton are in addition and without prejudice to any other right the Town of Atherton may have to claim the amount of any loss or damage suffered by the Town of Atherton on account of the acts or omissions of the contractor.
21. Requirements Contract - During the period of the contract, the contractor shall provide all the services described in the contract. The contractor understands and agrees that this is a requirements contract and that the Town of Atherton shall have no obligation to the contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Town of Atherton for the period of the contract. The amount is only an estimate and the contractor understands and agrees that the Town of Atherton is under no obligation to the contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirements in the past. The contractor further understands and agrees that the Town of Atherton may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.
22. Termination for Convenience - The performance of work under the contract may be terminated by the Town of Atherton in whole or in part whenever the Town determines that termination is in the Town of Atherton's best interest. Any such termination shall be effected by the delivery to the

contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective.

After receipt of a notice of termination, except as otherwise directed, the contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

23. Termination for Default - The contract shall remain in force for the full period specified and until the Town of Atherton determines that all requirements and conditions have been satisfactorily met and the Town of Atherton has accepted the work. Thereafter, applicable provisions of the contract shall remain in force until the Town of Atherton has determined that the contractor has met all requirements and conditions such as guarantees and warranties that relate to the work following the contract term. The Town of Atherton shall have the right to terminate the contract sooner if the Town of Atherton determines that the contractor has failed to perform satisfactorily the work required, as determined by the Town of Atherton. In the event the Town of Atherton decides to terminate the contract for failure to perform satisfactorily, the Town of Atherton shall give to the contractor at least fifteen (15) days' written notice before the termination takes effect. The fifteen-day period will begin upon the mailing of notice by the Town of Atherton.

If the Contractor fails to cure the default within the fifteen (15) days specified in the notice and the contract is terminated for failure to provide satisfactory performance, the contractor shall be entitled to receive compensation for all reasonable, allocable, and allowable contract services satisfactorily performed by the contractor up to the date of termination that were accepted by the Town of Atherton prior to termination. In the event the Town of Atherton terminates the contract because of the default of the contractor, the contractor shall be liable for all excess costs that the Town of Atherton is required to expend to complete the work covered by the contract.

After receipt of a notice of termination, except as otherwise directed, the contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

B. PUBLIC SAFETY AND CONVENIENCE

1. Contractor will be responsible for traffic diversion, safety, and traffic control, including flagman when necessary for public safety. The Contractor shall maintain control of traffic on the roadways at all times.
2. The contractor shall perform annually, at their own expense, a criminal background check for all personnel working in the park. This check is to be performed prior to employee working in the park. A list of checked personnel shall be submitted to the Park Superintendent prior to beginning work in the park and shall be updated as necessary. Due to the sensitive work nature of this contract, known felons or sex offenders shall be prohibited from working at Holbrook-Palmer Park by the contractor.

3. The Contractor is cautioned that all personal vehicles and construction equipment parking will be prohibited where it conflicts with safety, access, or flow of traffic. Personal vehicles and construction equipment parking will be prohibited on all private lots without the owner's permission. During non-construction periods (evenings, holidays, etc.), all work equipment, materials, and traffic control devices will be removed from the right-of-way and all traveled lanes shall be free of hazards and open to traffic unless a specific traffic control plan has been approved by the Contract Manager for use during these time periods.
4. Contractor shall conduct all operations so as to cause the least possible obstruction and inconvenience to traffic and the general public.
5. The Landscape contractor's personnel shall at all times wear clothing/overgarment that identifies them as a contractor's employee. This can be a tee shirt, vest or coveralls with the company name and/or logo placed on it.
6. Upon completion of all operations, the area shall be cleaned. Leaves, litter, clippings and debris shall be removed from the area and not blown into shrub lines, groundcovers or other areas.
7. The Contractor will be held responsible for all damage to surrounding vegetation, landscape and fixtures. The Contractor is responsible for promptly restoring any existing landscaping, repairing damaged sprinkler systems or replacing any existing improvements that were damaged or displaced as a result of his work. The Contractor shall field verify the amount of repair/restoration required as part of their bid. Any existing improvements damaged by the Contractor shall be replaced by the Contractor at his own expense.
8. Damage to any property shall be reported immediately to the Public Works Director and to the property owner involved if applicable.
9. Damage to any private property, utility lines, or Town owned property during the performance of the work shall be repaired or replaced to the satisfaction of the Public Works Director.

C. WORK CONDITIONS

1. Contractor's work equipment, work procedures and training practices shall comply with ANSI 2133.1.
2. The citizens of Atherton are used to high-quality service performed with respect to their needs, wishes and concerns. All employees working on this contract shall behave in a professional manner at all times. Discourtesy to or abusive treatment of residents or motorists will not be tolerated.
3. The Contractor shall prohibit the use of drugs or alcoholic beverages by all of his employees on the job. All employees shall be neatly and properly clothed.
4. No solicitation of private landscape or tree work by the Contractor or his employees while they are performing work under this contract will be allowed.
5. If any employee violates any of these provisions or appears to be incompetent, that person shall be discharged from working on the contract.

6. The Town does not assume any liability from fire, theft, accident or any other cause resulting in damage or loss of Contractors supplies, materials or equipment, or of personal property of employees.
7. Equipment shall be suitable to produce the quality of work required and be maintained at all times in a satisfactory condition.
 - a. All tools shall be clean, sharp, in perfect working order, and checked by the contractor for safety before each working day.
 - b. All trucks shall be in satisfactory operating condition, shall be professional in appearance, and in compliance with all applicable laws and regulations.

D. PERFORMANCE TIME AND NOISE CONTROL

1. The successful responsible low bidder must be prepared to have a signed contract and all required certificates and bonds within five (5) days from the date of award of contract.
2. Time for performance shall start running on the day after the date of the Notice to Proceed, and shall run continuously thereafter, excluding Saturdays, Sundays, and legal holidays, subject to such extensions and/or reductions as may from time-to-time during the course of the work be effectuated by change orders duly executed. No work shall be allowed on Saturdays, Sundays or the holidays of Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day or New Year's Day.
3. All work must be performed between 8:00 AM - 5:00 PM specifically on Thursdays and/or Friday, no weekends or holidays, unless authorized by the Public Works Director. All operations shall be conducted and all equipment constructed, maintained and operated in a manner that will not unduly disturb the public or violate Ordinance # 464 of the Atherton Municipal Code, relating to noise and hours of operation.
 - a. The contractor shall assume and plan for delays, such as inclement weather, and be prepared to complete work the next working day if feasible.
 - b. The contractor shall work with park staff to assure areas of needed service are attended to without disturbing park program engagements (meetings, weddings, activities). This may include some work done on a flexible basis (duties being done out of normal order).

E. STOP WORK ORDER

1. The Public Works Director shall have the authority to suspend work on the contract, either in whole or in part, for such period as he/she considers necessary for reasons including but not limited to the following:
 - a) Unsuitable weather.
 - b) Workmanship not in compliance with contract specifications.

c) Lack of Supervision

d) Contractor's failure to carry out or to perform any requirement of the Contract.

e) Conditions that may be considered unfavorable for the health, safety, or welfare of the public.

F. REJECTION/CORRECTION OF UNACCEPTABLE WORK

1. The Town reserves the right to reject all work that does not meet specifications. Correction of such work shall be made within seven (7) working days of notification, at no cost to the Town, to the satisfaction of the Public Works Director.
2. All work, and any corrective work required, shall include the provisions of all materials, equipment and apparatus not specifically mentioned in the specifications, but which are obviously necessary to complete the work hereunder.

V. Special Provisions for Park Maintenance

A. SCOPE OF SERVICE

The Contractor shall furnish all labor, materials, and equipment required to satisfactorily perform the landscape maintenance at Holbrook-Palmer Park required by the Town. Maintenance of the various areas shall include, but is not limited to turf maintenance, plant maintenance and hardscape maintenance.

The Contractor shall furnish, with his/her bid proposal, a work schedule showing the proposed dates and time of work for the locations shown on the proposal.

B. TERM OF SERVICE

The initial term of the contract will be from the date of the Notice to Proceed, which will be issued within 15 to 45 days of Award of Contract by the City Council to and extending for a period of two (2) years thereafter. The Town may cancel the contract or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving fifteen days written notice to the Contractor. The Town reserves the right to renew the contract annually, by mutual consent, for up to two (2) successive one-year periods.

C. WORKMANSHIP AND QUALITY LEVEL

All work shall be performed by experienced gardeners directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent lead persons as required to implement modern methods and newly developed horticultural procedures. The Contractor shall be responsible for the skills, methods and actions of their employees and for all work done.

The Contractor shall cooperate with the Town's Park Superintendent to enable them to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall give their personal supervision to the work and be available for consultation with the Park Superintendent or designated representative, a minimum of once per month, at a schedule mutually agreed upon.

D. CORRECTIVE WORK

The Contractor shall perform the work herein provided under the direction of and to the satisfaction of the Public Works Director or Park Superintendent. The Inspector may make inspections any time and request from the Contractor corrective work if required. If corrective work is required, the Town will provide written direction to the Contractor to correct deficiencies within a given time frame, not to exceed seven (7) working days. If deficiencies are not corrected, the Town may notify contractor that his contract is under default and may be terminated in as few as 15 days.

E. LANDSCAPE MAINTENANCE SPECIFICATIONS

The work at all locations shall consist of the following:

1. General

The contractor shall furnish all labor, materials, tools, services and special skills necessary for the provision of grounds and landscape maintenance services from beginning to the end of the contract. The work shall include, but is not limited to:

- a. Mowing of all turf areas on a weekly basis with a mulching lawn mower.
- b. Edging of all turf area borders (soft and hard) 1 time per month.
- c. Perennial, shrub and groundcover maintenance. This would include light pruning and manual weed control in identified planting beds under direction of the Park Supervisor and not to exceed 6 hours per week. This is a flexible requirement, and none of this type of work may be done for a few weeks and then only done by entire crew during an episode of rain.
- d. On a weekly basis, contractor shall blow and retrieve loose material from all hardscaped areas in park (Tennis Courts excluded). These include parking lots, paths and patio areas.

2. Perennial and Groundcover Maintenance

- a. Inspect planters weekly for dead or damaged plants and for signs of pest or disease damage.
- b. Groundcovers shall be edged back from paved areas, buildings and walkways.
- c. Areas should be maintained free of litter or trash.

3. Lawn Specifications

- a. Lawns shall be mowed to a height of 2.5 inches or as appropriate using sharp, adjusted, mulching mowing equipment, once each week unless weather conditions make it impractical.
- b. No large grass clipping clumps shall be left on the lawn that will dry up and fall below growing level within 24 hours. The use of a mulching mower is mandatory.
- c. All edges will be neatly trimmed. During baseball season, additional edging around backstop and dugouts will be required.
- d. Paper, trash, twigs, and other undesirable materials will be removed from lawn areas.
- e. Other lawn services such as aeration, over-seeding or power raking to remove thatch build-up shall be done as needed and may be paid for as a contract change order or may be performed by Town staff.

4. Tree and Shrub Maintenance (pruning staking etc.)

- a. All pruning cuts are to be made to lateral branches, buds and to the outside of the branch collar ridge. Stub Cuts will not be permitted. All pruning shall be done in accordance with the ANSI A300-1995 Tree, Shrub and other Woody Plant Maintenance-Standard Practices.
- b. The objectives of shrub and tree pruning are to thin, shape to maximize ornamental qualities and to attain a natural, healthy appearance. Shrubs shall not be sheared into balled or boxed forms. If previous maintenance practices have been to shear and ball, then a natural shape will be restored gradually. To prevent "legginess," shrubs shall be maintained with lower foliage wider than upper foliage, allowing more light to reach lower foliage, so as to prevent the loss of leaves due to shading.
- c. Dead plants and those in a state of decline shall be brought to the Park Superintendents attention immediately. Replacement plants shall be of a size, variety and condition acceptable to the Park Superintendent, to be paid for by the Town unless the dead and/or dying plants are due to negligence of the Contractor.

5. Materials and Equipment

The Contractor shall at all times furnish and maintain equipment necessary to perform work under this contract. If equipment breaks down, the Contractor is responsible to complete the work within 24 hours. The Contractor shall furnish all supplies and materials of good quality and in the amounts necessary to fulfill these specifications and to accomplish an acceptable and professional level of maintenance. These supplies and materials shall include, but are not limited to:

- a. All necessary gas, oil, and parts for all equipment
- b. All necessary horticultural supplies
- c. All necessary hand tools.

6. Irrigation

All damage done to irrigation systems due to Contractor's negligence shall be the responsibility of the Contractor and must be repaired within 24 hours at the Contractor's expense. If said repairs are not made, the Town will perform the work and deduct those costs from the payment to the Contractor.

7. Integrated Pest Management

The Town of Atherton has adopted a policy of Integrated Pest Management (IPM) as it pertains to the control of pests on the Town's right of way areas. IPM is a problem solving approach to landscape and grounds management designed to prevent and control undesirable weeds, insects, fungi and rodents. IPM relies on the use of site-specific information about environmental conditions and behavior to prevent, resist and control pests that interfere with the purpose and use of a particular site. When a pest has exceeded a predetermined threshold at a particular site, all appropriate strategies are employed including modifying the habitat, modifying maintenance practices, modifying user behavior, and if all else fails, using pesticides as a last resort, and only within specific guidelines for least toxic selection and use.

F. INTERPRETATION OF THE MAINTENANCE SPECIFICATIONS

Price proposals for activities listed on the *Bid Proposal* shall be based on the Contractor's estimate of annual worker hours necessary to complete the work. These estimated service levels will be evaluated to determine if the Contractor can realistically perform the work for the price proposed. The award of this contract will not be based on the lowest overall bid, but on the combination of the Contractor's qualifications and the level of service that will be provided.

The Town may, at its own discretion, advise the Contractor to increase or decrease service levels. Any adjustments will be made by written change order to the scope of work and shall include adjustments to the contract price and schedules.



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 MEETING OF FEBRUARY 21, 2007

SUBJECT: APPEAL – 233 PARK LANE (APN 070-343-010)

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 appellants, Mr. and Mrs. Ruehle, submitted plans to the Town's Building Department for a new residence at 233 Park Lane. The Building Official informed the applicant that the plans as submitted are in violation with the Town's basement regulations.

The appellants indicate that their architect met with former Building Official Mike Hood on several occasions. The appellants state that Mr. Hood informed them that a basement could be constructed under the raised patio area attached to the main residence. Based on this information, the architect proceeded with detailed plans and engineering for the house.

In October 2006, the applicants were informed that a basement could not be constructed under the patio area and is only permissible under the footprint of the "building" of the main residence. Mr. and Mrs. Ruehle and their architect met with City Manager Jim Robinson, City Attorney Marc Hynes and Deputy Town Planner Lisa Costa Sanders. Staff concurred with the Building Official's interpretation and discussed options to

proceed including: redesigning the basement area; covering the patio area; requesting the City Council consider changes to the basement ordinance; and of their appeal rights.

ANALYSIS

The subject site is located at the corner of Park Lane and Santiago Avenue and is 56,932 square feet in area. The allowed floor area for the lot is 10,248 square feet. The new two-story main residence is proposed at 8,476 square feet with a 9,964 square foot basement and 1,528 square feet of accessory structure floor area. The remaining floor area for the lot is 244 square feet. The basement area is not included in the floor area calculations.

Atherton Municipal Code 17.36.190 regulates basements as follows: “basements shall not exceed two feet in height above the surrounding average natural grade. Exceptions to the requirements of this section for hillside properties (where the average cross-slope is greater than twenty percent as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit. Basements are only permitted under the footprint of buildings located within the main building area. Areas for stairways and light wells may extend beyond the footprint of buildings, but shall be limited to the buildable area.” This section states that basements are only permitted under the footprint of buildings located within the main building area. A “building” is defined in Atherton Municipal Code section 17.08.060 as “a structure having a roof supported by columns or walls.”

The plans submitted for the new residence at 233 Park Lane places a basement under the main residence and extends the basement area to under three separate raised patios. The basement includes a three-car garage under the rear patio accessed from Santiago Avenue. The basement theater area is located under the raised patio at the north side yard and the basement pool room/storage is located under the raised patio at the front yard. The proposed plan also includes two sunken lightwells at the south side yard.

As indicated above, the current basement regulations only allow basements under the footprint of buildings and not under structures. The raised patios are considered structures, not buildings. Under the current regulations, the applicant has the option to modify the patio design to include a covered patio (supported by columns or walls) and could then construct a basement under this area. The covered patio area would be included in the floor area calculations for the lot.

The General Plan Committee, at its January 10, 2007, meeting, recommended several modifications to the current basement regulations. The following recommendations are applicable to this discussion:

- Allow basements under the area parallel to the exterior lines of buildings located within the main building area.
- Include the floor area of basement garages in the floor area calculations for the lot.

- Basement garages may be permitted when the driveway approach is screened from the public right-of-way by design, landscaping or a solid wall and gate and that basement and driveway approach will not negatively impact heritage trees.

The applicants and their architect spoke at the General Plan Committee meeting and reviewed their proposed plans. The recommendations from the General Plan Committee, if adopted by the City Council, would allow the basement as proposed at 233 Park Lane. Under the proposed regulations, the basement level garage area would be included in the floor area calculations and the driveway approach would need to be screened from view.

The changes to the basement regulations are scheduled for consideration by the Planning Commission at its February 28, 2007, meeting, and if approved, could be heard by the City Council at its March 21, 2007. The new basement regulations, if approved, could be effective as early as May 18, 2007.

The applicant has several options:

1. Modify the current patio area to meet the definition of a building by covering it with a roof supported by columns or walls.
2. Reduce the basement area and basement garage to under the main building and not extend to the patio area.
3. Hold the proposed plans pending the outcome of the Planning Commission and City Council deliberations on the changes to the basement regulations as recommended by the General Plan Committee. Some redesign would be necessary if the basement garage were included in the floor area calculations.

CONCLUSION

It is staff's professional opinion that the proposed basement located under the raised patio is not consistent with the Atherton Municipal Code section 17.36.190.

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 construct a basement under the raised patio structure, 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:

1. Letter of Appeal from Bill and Judi Ruele, received January 26, 2007
2. Letter from Mike Cully, Acting Building Official dated January 17, 2007
3. Site plans, floor plans and elevations prepared by KP a+d, dated May 19, 2006
4. Atherton Municipal Code sections 17.36.190 and 17.08.060

BY HAND DELIVERY

Honorable Alan B. Carlson, Mayor,
and Town Council Members
Atherton Town Council
91 Ashfield Road
Atherton, CA 94027



Re: Appeal of Bill and Judi Ruehle from Building
Official Decision Dated January 17, 2007

Dear Mayor Carlson and Council Members:

My wife and I hereby appeal from the decision of the Town's Building Official, dated January 17, 2007, that prevents us from building the home we have planned at 233 Park Lane, at the corner of Park Lane and Santiago. The home includes a large basement completely under it and attached patios, within the buildable area of the lot. A copy of the Building Official's decision letter to us is attached.

We originally began construction of our home, with all appropriate Town approvals, in December, 2003. At that time the home included a basement consistent with the Town Code.

By mid- to late-2004, however, we began to discover areas of concern in the home. We called in outside expert architects and engineers, and based on their preliminary reports stopped work in February 2005. Our subsequent forensic work then found hundreds of construction defects that were beyond our ability to repair. As a result, we began a new design process in early 2006, and then tore-down the partially completed home in mid-2006.

Our architect, Karin Payson, presented the new plans to the Town on March 24, 2006, and was then told by Mike Hood, then the Town Building Official, there were no problems with a proposed basement underneath the patios planned as components of the home.. (The retaining walls and framing for the patios are integral to the structural system and support of the main home structure.) Two other building officials (Tim Wulff, a plan-checker, and Mike Wasmann, the Town's Senior Building Inspector) told her the same thing in July, after reviewing the plans and the Town Code.

Karin was then told on July 19 by Mike Wasmann that the Acting Director and another staff planner had also reviewed the plans and that they all agreed the proposed patios with the basement below were in compliance with the Code. The Town's plan check comments which we faxed to her later also did not indicate any concerns with the basement

plans. As a result, we moved ahead and on October 2, 2006, resubmitted our architectural drawings with responses to the plan check comments.

However, in late October the Town changed its position and Karin was told for the first time that the basements were not permitted. On October 24, both Karin and Manou Movassate, our builder, met with Jim Robinson, the Town Manager, and Mark Hynes, the Town Attorney, and were then told that under the Town's new and changed interpretation of its ordinances the basement under the patios was impermissible. We were also told that a change in the Town's ordinances might be forthcoming, but that any adoption would take the greater part of the year.

We have spent approximately \$700,000 on architectural and engineering plans, plus an additional \$80,000 in permit fees to the Town in reliance on our understanding of the Code and the repeated assurances of Town officials that the basement underneath the proposed patios is permissible.

In addition, we repeatedly checked with the officials and employees who administer the Code in order to make sure our proposed home was permissible, and we were repeatedly told it was. Only when we were deep into the process were we suddenly told that the Town's rules were being interpreted differently, and the home would have to be redesigned to conform to the new interpretation of the basement rules. We thus have been trying to build our home for more than three years now.

We attended the meeting of the General Plan Committee on January 10, 2007. The Committee reviewed our situation and proposed home in the context of its discussion about the permitted location of basements in the Town. The Committee *unanimously* took action recommending to the Council that basements such as the one we are trying to build (completely under the proposed home and patios and within the buildable area of our lot) be permitted as appropriate within the Town. Indeed, a number of Atherton residents voluntarily spoke in favor of us after hearing about our situation.

We also attended the Town Council meeting of January 17, 2007, and spoke with regard to the appeal of the Epsteins, the owners of 172 Austin Avenue, and their reliance on similar assurances by Town officials that their proposed home met all City requirements. After that hearing, the Council voted unanimously to support the Epsteins' position, and we believe we should receive the same consideration and result.

Under these unique circumstances, we ask that our appeal be placed on the Council's agenda for its February 21, 2007, meeting.

We will shortly be submitting to staff reduced copies of our home plans with elevations, and we ask that staff provide a copy to each of you in advance of the February 21 meeting. We will also be prepared to more fully explain the situation to the Council at that time, Karin Payson will also be prepared to testify to the chronology and information set forth above, and to show large-scale plans of the home and the basement. We are not aware of any opposition by any neighbor or other Atherton resident to these plans.

At the Council's meeting, we ask that the Council conclude that the home is fully permitted and direct that we be allowed to resume construction and complete it. We believe this is the only fair outcome for this entire situation.

Yours very truly,

A handwritten signature in black ink, appearing to read "Bill Ruehle", written in a cursive style.

BILL RUEHLE

A handwritten signature in blue ink, appearing to read "Judi Ruehle", written in a cursive style.

JUDI RUEHLE

January 16, 2007

Ms. Karin Payson
Karin Payson architecture + design
17 Jack Kerouac Alley
San Francisco, CA 94133

RE: Ruehle Residence
233 Park Lane, Atherton, CA

Ms. Payson,

This letter is to formally notify you of the current status of the plans for the above referenced property and as a re-cap to our meeting of October 23, 2006 wherein we discussed the issue of the basement extending beyond the footprint of the main residence, and that I have determined that it creates a violation of the Zoning regulations.

Upon notification by Mr. Tim Wulff, plans examiner, of this condition I instructed him to halt all further review of the submitted plans, as the proposed basement created a non-conforming condition. And, as previously stated this condition will require the re-design of the plans, which may include a complete structural re-design.

As I understand you are considering filing an Appeal of my decision with the Council of the Town of Atherton. For clarification I have interpreted that your project is in violation of Atherton Municipal Code, Chapter 7, Section 17.36.190 which states, in part:

“Basements are only permitted under the footprint of buildings located within the buildable area.”

As we have previously discussed; the creation of a court, patio slab, or other covering over the basement does not satisfy the requirement for the basement construction to occur within the “footprint” of the building.

If you are successful in your appeal, and once I have received notification of the Council's decision in your favor, the review of your plans, as submitted will resume.

However, if the Council upholds my decision you will be required to re-submit revised drawings that are in compliance with the Town's Zoning Ordinances as well as the adopted State Building Codes.

If you have any questions or concerns regarding your project please feel free to contact me. I may be reached at 650.752.0560

Respectfully,

Michael Cully, CBO
Acting Building Official

Cc: J. Robinson, City Manager
M. Hynes, City Attorney
L. Costa Sanders, Town Planner
file

17.36.190 Basements.

Basements shall not exceed two feet in height above the surrounding average natural grade. Exceptions to the requirements of this section for hillside properties (where the average cross-slope is greater than twenty percent as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit. Basements are only permitted under the footprint of buildings located within the buildable area. Areas for stairways and light wells may extend beyond the footprint of buildings, but shall be limited to the buildable area. (Ord. 536 § 1, 2002; Ord. 497 § 10, 1998)

Chapter 17.08 DEFINITIONS

Page 1 of 1

17.08.060 Building.

"Building" means a structure having a roof supported by columns or walls. (Ord. 407 § 16-4, 1985)

February 16, 2006

Alan Carlson, Mayor
Atherton City Council Members
Lisa Costa Sanders
91 Ashfield Rd.
Atherton, CA 94027

Re: 233 Park Lane

Dear Atherton City Council:

I am writing with respect to my understanding that you are considering a special exception (in the form of an appeal to a prior rejection for exception) to the Building Codes for the construction project at 233 Park Lane, specifically with respect to the basement. I am vehemently opposed to any such exceptions.

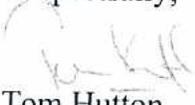
As you are all well aware, the current project at 233 Park Lane has been underway for a considerable period of time (three years or more), it has been a major focus of attention in prior controversies (parking of worker vehicles, basement size, time of construction, abandoned partially-built structure, to name a few). The fact that this situation has not resulted in lawsuits (other than the reputed situation between the owners and the original builders) is merely a reflection of the choice of current neighbors to avoid that particular course of action.

There is no plausible reason why, at this point, there should be any exceptions made to established Atherton codes, with respect to this project. The first attempt to build a home, which appeared to push many restrictions to the extreme if not to mock them, was a poor example of planning by the owner and builder. Having started over again, the owner and his new architects should now be aware of the regulations and should be fully capable of building a home that fits within the standards, including the new regulations requiring contractor vehicles to be parked on the property.

If you disagree with the perspective that I have outlined, and you do choose to grant an exception that results in a larger basement and other features that are outside of the established building code, I consider that you have a responsibility to provide the neighboring homeowners with a thorough justification of why it is necessary.

Thank you, for your consideration of my view.

Respectfully,


Tom Hutton
2 Santago Ave, Atherton (650-326-2366)

February 14, 2007

SENT VIA FAX/MAIL

Alan Carlson, Mayor
Atherton City Council members
Lisa Costa Sanders
91 Ashfield Rd.
Atherton, CA 94027

RE: 233 Park Lane basement ordinance appeal for February 21

Dear Atherton City Council:

I am writing to oppose any action that would grant a waiver to the owners of 233 Park Lane to construct a basement which is not in full and total compliance with Atherton's building codes. The building code requiring basements to conform to the housing footprint is essential to: 1) preserve adequate drainage for surrounding neighbors' yards and streets by limiting over-sized underground structures; 2) preserve adequate planting area to enable large heritage oaks trees to grow and thrive; and 3) reduce the nuisance effects of basement construction on neighbors.

As you well know, neighbors surrounding 233 Park Lane have dealt with this construction site and its impact for well over 6 years now. The owners have been immune to the impact of their ill-fated and over-sized 17,000 square foot house which included 1 year to build a 7,000 square foot basement. The noise, vibration, constant dirt and dust and truck damage to our property were significant. This project has been a nightmare. We have three more years of this construction to deal with. In total this construction will represent the time of our daughter's entrance into Kindergarten until the time she will drive. Please do not grant any waivers on basement square footage which would increase the level of nuisance to us beyond what is permitted by code.

Furthermore, our drainage during heavy rains has significantly been reduced since the 233 basement was first dug and built 5 years ago. We now have sitting water in our front yard after most rainstorms. Basements need to be limited in size for good reasons – it is why we have the building codes.

I am unable to attend this meeting in person due to family vacation plans. My letter should serve as a full proxy of my opposition to this appeal.

We need to have confidence that minimal building codes are upheld to protect the common good in this town. We have not seen these codes universally applied over the past 5-6 years. Please respect the wishes of the neighbors of this property and support your Building Officials to do their jobs and enforce the basement building codes.

Sincerely yours,



Wende Hutton 2 Santiago Ave. (directly across the street from 233 Park Lane)



Town of Atherton

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

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Atherton City Council will hold a public hearing to review an appeal pursuant to Atherton Municipal Code Section 17.64.

Description: An appeal of the decision of the Building Official regarding construction of a new basement with a new residence at 233 Park Lane (Assessor's Parcel Number 070-343-010).

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

NOTICE IS FURTHER GIVEN that said application is set for hearing by the City Council at its regular meeting on February 21, at 7:00 p.m., in the Town Hall of the Town of Atherton, at which time and place all persons interested may appear and show cause, if they have any, why the appeal should not be approved.

IF YOU CHALLENGE the Appeal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.

For further particulars, reference is made to the application on file.

Any attendee who wishes accommodation for a disability should contact the City Clerk at (650) 752-0500 at least 48 hours prior to the meeting.

Date Posted: February 9, 2007

L. Costa Sanders _____

Lisa Costa Sanders, Deputy Town Planner

/s/



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF FEBRUARY 21, 2007

SUBJECT: ADOPTION OF A RESOLUTION MAKING FINDINGS ON APPEAL OF A MAJOR ALTERATION PERMIT FOR 51 LABURNUM ROAD (CHAPTER 8.14 OF THE MUNICIPAL CODE)

RECOMMENDATION

Consider attached resolution making findings and, if appropriate, adopt the resolution by majority vote.

BACKGROUND

At the City Council meeting on January 17, 2007, the City Council conducted a public hearing on an appeal from a Major Alteration Permit approved to move two urns from property located at 51 Laburnum Road to 224 Park Lane in Atherton. The attached resolution sets out the findings in support of the City Council's action granting the appeal.

FISCAL IMPACT

None.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachment

RESOLUTION NO. 07-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
UPHOLDING APPEAL OF MAJOR ALTERATION PERMIT FOR
51 LABURNUM ROAD, 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 17.64 and particularly Section 17.64.060 of the Atherton Municipal Code hereby makes the following findings and determinations in the appeal from the decision of the Planning Commission at its December 6, 2006, meeting to approve a Major Alteration Permit for Randy and Lisa Lamb ("the Lambs"), owners of property known as 51 Laburnum Road, Atherton, California, relating to two historical artifacts on that property.

1. The Lambs applied to the Atherton Planning Commission for a Major Alteration Permit to remove and relocate two historical artifacts as defined in the Town's historical artifacts preservation regulations adopted by Ordinance No. 567, and codified as Chapter 8.14 of the Atherton Municipal Code, and specifically Sections 8.14.030G and 8.14.060C from their property at 51 Laburnum Road, Atherton, California, to their property at 224 Park Lane, Atherton, California. The historical artifacts are decorative urns originally belonging to the James Flood Estate known as Linden Towers.

2. The Planning Commission approved the permit at its regular meeting on December 6, 2006. The permit approval was timely appealed by the Board of Directors of the Lindenwood Homes Association on December 12, 2006, and the matter was considered at a public hearing conducted at the regular City Council meeting on January 17, 2007.

3. The Lambs were present at the appeal hearing and were represented by legal counsel who presented the matter on their behalf. Counsel for the Lambs recognized and conceded that the Lambs and the two historical artifacts were subject to the jurisdiction of Chapter 8.14.

4. Appellants, Lindenwood Homes Association, were represented by their President who presented the matter on their behalf and as an individual Town resident.

5. 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.

6. The City Council determines that based upon substantial evidence the appeal should be granted and the Major Alteration Permit denied for the following reasons:

A. The Lindenwood neighborhood is an historic district deemed significant within the terms of Chapter 8.14 and specifically Section 8.14.060C of the Atherton Municipal

Code. Evidence supporting this, includes, but is not limited to, the fact that the Lindenwood Historic District is largely defined by the walls and gates which enclosed the original James C. Flood estate; numerous artifacts relating to the estate are located within the Lindenwood Historic District including statuary, fountains, benches, street lamps and decorative urns; all of the artifacts are associated with the early development of the Town are well over 100 years old; some of these artifacts have been moved within the Lindenwood Historic District by James C. Flood and others in the course of its history to emphasize its design, settings, and feelings; the historic artifacts have been maintained and relate to one another as a collection of the Flood Estate gardens and represent a living museum which has been preserved over a period of time from the inception of Linden Towers to date.

B. The two urns are historical artifacts locally significant because of their association with the life of James C. Flood. They are important to local and California history and they embody the distinctive characteristics of a type and period which possess high artistic values, being constructed as part of the Flood Estate, Linden Towers, prior to 1937. The urns have been recognized by the Planning Commission as historical artifacts by virtue of acceptance of the Lambs' application for a Major Alteration Permit. Evidence shows that the urns have retained sufficient integrity of design, materials and association as part of the Lindenwood Historic District to be recognizable as artifacts of the historical period of their significance. They are an archaeological resource of the Town.

C. The urns as historical artifacts are a part of a collection, the integrity of which will be diminished by their removal from the Lindenwood Historic District.

D. The burden on the Lambs seeking a Major Alteration Permit to move historical artifacts from their property at 51 Laburnum Road to 224 Park Lane has not been met by them. Appellants have shown by substantial evidence that removal of the artifacts to property outside the Lindenwood Historic District would be contrary to both the letter and spirit of Chapter 8.14, and further would be inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties which, while neither technical nor proscriptive, weigh against removal or relocation from the Lindenwood Historic District because such action would destroy the historic relationship between the artifacts as part of a collection which should be retained and preserved so as to continue the identity of the Lindenwood Historic District and to maintain its historic character. Removal or relocating the artifacts from the Lindenwood Historic District will destroy their historic relationship within the setting of the Flood Estate and diminish the value of the artifacts as well as the remainder of the collection.

E. Appellants have further shown that removal of the artifacts from the Lindenwood Historic District would be contrary to the goals and objectives of the Town's General Plan and specifically the provisions of Section 4.232 which provide that the Town shall endeavor to protect significant archaeological resources both publicly and private held.

F. The Secretary of the Interior guidelines which serve as standards for interpreting Chapter 8.14 weigh against moving artifacts from their present location with respect to the Lindenwood Historic District. Artifacts which have been located and relocated again within the confines of Lindenwood form part of a unique collection which should be maintained as an

Archaeological Resource in the Lindenwood Historic District. The public interest and welfare compel the conclusion that the grant of a Major Alteration Permit would not merely result in movement from one property to another in the Town but would remove artifacts from the Lindenwood Historic District, to the detriment of the Town and must therefore be denied.

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:

Aland 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: CITY COUNCIL MEETING OF FEBRUARY 21, 2007

SUBJECT: ADOPTION OF A RESOLUTION MAKING ADOPTING FINDINGS ON APPEAL OF THE PROPERTY OWNERS AT 172 AUSTIN AVENUE FROM A DETERMINATION BY THE BUILDING OFFICIAL (CHAPTER 17.44 OF THE ATHERTON MUNICIPAL CODE)

RECOMMENDATION

Consider attached Resolution making findings and, if appropriate, adopt the Resolution by majority vote.

BACKGROUND

At the City Council meeting on January 17, 2007, the City Council conducted a public hearing on an appeal by the property owners of 172 Austin, from a determination by the Building Official that the proposed reconstruction of a residence on their property could not proceed under the provisions of the Town's nonconforming use regulations. Attached is a resolution setting forth the findings to support the grant of the appeal.

FISCAL IMPACT

None.

Prepared By:

Approved By:

/s/ Marc Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachment

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: CITY COUNCIL MEETING OF FEBRUARY 21, 2007

SUBJECT: GRAND JURY INTERIM REPORT RELATING TO THE CALIFORNIA HEALTH & SAFETY CODE AND THE 2001 CALIFORNIA BUILDING CODE (TITLE 24, CALIFORNIA CODE OF REGULATIONS, PART 2)

RECOMMENDATION

Discuss Grand Jury Interim Report and provide direction to the City Staff regarding development of the Town's response.

BACKGROUND

The Grand Jury in an interim report released on February 7, 2007, has recommended that the City Manager be directed by the City Council to request the Menlo Park Fire Protection District to examine all substantial construction projects with open building permits for potential health and safety violations and to examine all projects constructed during the tenure of the previous building official that were not reviewed for fire safety. The results of these examinations are to be published by April 1, 2007.

The report further recommends that the City Council adopt an ordinance that defines when a Menlo Park Fire Protection District approval of building construction plans is required before issuance of a permit (presumably a building permit). It is a City Council decision as to whether or not to delegate this authority. (California Health & Safety Code sections 13146, 17922; Title 24, California Code of Regulations, Parts 1 through 5, 9;).

A letter dated February 7, 2007, from the County of San Mateo provides that responses are due within 90 days of February 7, 2007. I believe this supercedes the April 1, 2007, dated referred to in the interim report.

The Building Department has reviewed a number of files relative to the Grand Jury Report. A report of the status of this review will be presented to the City Council at the meeting.

FISCAL IMPACT

Costs of staff time to examine Town records. The amount will be dependent upon the scope of the investigation.

Prepared By:

Approved By:

/s/Marc G. Hynes
Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachment



Superior Court of San Mateo County

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

RECEIVED
TOWN OF ATHERTON
2007 FEB -8 A 9: 37

John C. Fitton
Court Executive Officer
Clerk & Jury Commissioner

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

February 7, 2007

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

Re: Town of Atherton Building Department Report

Dear Councilmembers:

The 2006-2007 Grand Jury filed a report on February 7, 2007 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. John L. Grandsaert.

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

Hon. John L. Grandsaert
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655.

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

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

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

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

4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefor.

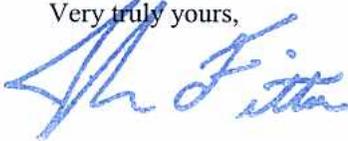
Please submit your responses as follows:

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

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

If you have any questions regarding these procedures, please do not hesitate to contact Thomas F. Casey III, County Counsel, at (650) 363-4756.

Very truly yours,



John C. Fitton
Court Executive Officer

JCF:mc
Enclosure

cc: Hon. John L. Grandsaert
Thomas F. Casey III

Information Copy: Town Manager



Interim Report: Town of Atherton Building Department

Health and Safety Issues Require Immediate Action

Issue

What steps should be taken immediately to address health and safety issues involving residential construction projects in the Town of Atherton?

Background

In response to growing dissatisfaction with the Building Department, the Town of Atherton (Atherton or Town) in 2006 initiated a series of internal investigations, including a three-phase study¹ by its Finance Department. These studies describe numerous organizational and procedural shortcomings in the Building Department and highlight problems that result from the concentration of power in the hands of the Building Official. (A Building Official is certified to oversee a Building Department and issue building permits.) The Building Official has the authority to approve all facets of construction projects, e.g., zoning issues, site drainage, building size and placement, and field inspection. The former Building Official interpreted and granted exemptions to zoning and building codes, often without the involvement of independent authorities, as is the usual practice in other cities. There are known problems with many homes for which building permits were issued during the tenure of the former Building Official.

The San Mateo County Civil Grand Jury (Grand Jury) is releasing this interim report because it is concerned that some projects in the Town were not covered by the above-mentioned Finance Department studies, and may violate the health and safety standards in the 2001 California Building Code² and the Health and Safety Code³.

¹ Town of Atherton, Building Permit and Process Audit, Phases I, II, & III, dated June 26, July 26, and October 18, 2006, respectively.

² California Code of Regulations, Title 24 (California Building Standards Code, 2001).

³ California Health and Safety Code.

Findings

- The Building Department maintains building permit records in a computerized database. The Phase III audit of the Building Department examined 6,647 records stored in this database and found 1,560 incorrect or incomplete records (23%).
- Suspect permit records for four properties were examined fully, and all were found to violate one or more requirements of the Atherton Municipal Code. The four affected properties are described in the Phase III Report.
- In the weeks following the publication of the Phase III Report, an additional four properties that violate the Atherton Municipal Code were discovered; two appear to present health and safety violations.
- Atherton contracts with the Menlo Park Fire Protection District (MPFPD) for fire protection services. In the past, the Town had no established procedure to ensure that construction plans were reviewed and approved by the MPFPD prior to issuance of a building permit. The permit applicant had been responsible for submitting the plans to the MPFPD. The Town has reported that they are currently working with the MPFPD to correct this loophole in the permitting process.
- The Grand Jury, together with the MPFPD, examined the list of open building permits in Atherton and found that fewer than one-half of the substantial building alteration and construction projects had been reviewed or approved by the MPFPD. Only 18 of 81 new residence permits and 45 of 108 accessory structure permits had been submitted to the MPFPD.
- As is the case in most communities, many older properties in Atherton do not meet the current requirements of the Health and Safety Code. In Atherton, alterations of any size to existing buildings (and new construction of less than 1,000 square feet) are exempt from the requirements of the Town sprinkler ordinance, and also from review and approval by the MPFPD. This policy has resulted in alterations to existing buildings that would not be allowed in new construction, e.g., inadequate access for fire trucks, undersized fire hydrant water supply pipes, basements with inadequate exits, and substantial additions to existing buildings without sprinklers.
- The Grand Jury surveyed seven other communities in San Mateo County (three of which are comparable to Atherton in terms of population and demographics) and found that all the communities surveyed require that permit applications be approved by the fire department before a building permit is issued.
- The Town has recently taken steps to implement some recommendations from the above-mentioned Building Department audits. The Grand Jury commends the Town for this action, and encourages it to continue efforts in this regard.

Conclusions

Phase I, II and III audits of the Building Department correctly assessed the deficiencies in the Department procedures and operations, and the recommendations for corrective action in the reports are appropriate and necessary.

The Grand Jury has encountered mounting evidence of irregular or improperly issued building permits that should motivate the Town to examine fully all open permits for health and safety problems.

Fire department approval of building construction plans prior to issuance of a building permit, a standard practice in other communities, should be required in Atherton. The Town should review all open substantial construction projects that have not been reviewed or approved by the MPFPD.

The practice of exempting alterations to existing buildings from MPFPD approval, regardless of the extent of the alteration, may put the health and safety of the building occupants at risk.

Recommendations

The Grand Jury recommends that the Atherton Town Council direct the Town Manager to:

1. Request that the MPFPD examine all substantial construction projects with open building permits for potential health and safety violations.
2. Request that the MPFPD examine all projects constructed during the tenure of the previous Building Official that were not reviewed for fire safety.
3. Publish the results of these examinations by April 1, 2007.

The Grand Jury further recommends that the Atherton Town Council:

4. Finalize and adopt an ordinance that defines when MPFPD approval of building construction plans is required prior to issuance of a permit.
5. Reconsider the current policy that exempts all alterations of existing structures from the requirements of the Town sprinkler ordinance and from the MPFPD approval.
6. Continue to implement the recommendations set forth in the Finance Department's audit of the Atherton Building Department.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF FEBRUARY 21, 2007

**SUBJECT: LANDSCAPE MAINTENANCE AGREEMENT
12 SELBY LANE, ATHERTON**

Recommendation. Authorize Mayor to sign Landscape Maintenance Agreement between Chien Ching Chiu and the Town of Atherton regarding 12 Selby Lane, Atherton.

Background. On or about July 5 2006, four pine trees and one walnut tree were damaged when their roots were cut by workers in the process of installing a wall on the property. The pine trees eventually had to be removed. The survivability of the walnut tree is doubtful.

The City Council authorized a lawsuit to be filed pursuant to the provisions of Chapter 8.10 of the Atherton Municipal Code. Case No. CIV 457574 was filed in the Superior Court of California, County of San Mateo on September 12, 2006. This case was settled by written agreement dated November 8, 2006. As part of the settlement, the owner agreed to plant five 15 gallon trees to be selected from a list provided by the Town Arborist and to plant seven evergreen shrubs to be selected by the owner and to enter into an agreement to maintain these plantings.

The agreement to maintain plantings is attached to this report. Upon execution by the Town it will be recorded with the San Mateo County Recorder.

Fiscal Impact. None.

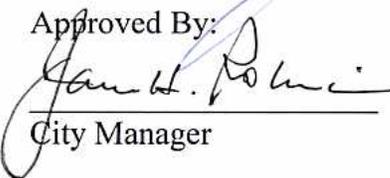
Respectfully,

MARC G. HYNES

MGH:cwb
Attachment
Prepared By:

City Attorney

Approved By:



City Manager

RECORDING REQUESTED BY:

Marc G. Hynes, Esq., City Attorney
Town of Atherton.

AFTER RECORDATION, MAIL TO:

Town of Atherton
91 Ashfield Road
Atherton, CA 94027

THIS SPACE FOR RECORDER'S USE

AGREEMENT

This Agreement is made and entered into by and between the Town of Atherton ("Town") and CHIEN CHING CHIU ("Owner"), whose address is 12 Selby Lane, Atherton, California, based upon the following:

W I T N E S S E T H

RECITALS

WHEREAS, the parties have entered into an agreement dated November 8, 2006, wherein Owner has agreed to plant five (5) 15-gallon trees to be selected from a list provided by the Town Arborist; to plant seven (7) evergreen shrubs to be selected by Owner; and to enter into an agreement to maintain said plantings among other things; and

WHEREAS, in consideration of the recited commitment and satisfaction of other obligations by Owner which have been satisfied, the Town has dismissed Case No. CIV 457574 in the Superior Court of California, County of San Mateo; and

WHEREAS, Owner is the record legal owner of certain real property located in the Town of Atherton and generally described as 12 Selby Lane, Atherton, California, 94027; Assessor Parcel No. 059-172-270.

NOW, THEREFORE, for consideration receipt of which is acknowledged, the parties agree as follows:

1. Owner acknowledges that prior to the final inspection or issuance of a certificate of occupancy (unless delay is authorized by the Building Official due to a drought emergency), all required landscape screening shall be installed in conformance with the approved plans and in strict accordance with the ordinances of Town.
2. Owner will maintain all required planting, new and existing, as shown on the approved plans, in a healthy growing condition and whenever necessary, replace said planting with plant materials approved by the Building Official to provide continued conformance with approved plans.
3. This Agreement shall be binding upon and inure to the benefit of the successors, heirs and assigns of the parties.

4 .This Agreement shall be effective upon execution by Town and thereafter remain in full force and effect until the parties hereto have signed an agreement to the contrary.

5. This Agreement shall be recorded with the Recorder of the County of San Mateo.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year indicated opposite their respective signatures.

Dated: Jan. 15, 2007.

Print Name: Lin Pyng Lu

Signature of Owner: Lin Pyng Lu

attorney-in-fact for
Chien Ching Chiu

State of California)
County of Santa Clara)
~~San Mateo~~)

On this 15th day of January, in the year 2007, before me Shirley Cheng, Notary Public, personally appeared Lin Pyng Lu, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Shirley Cheng
SIGNATURE OF NOTARY



TOWN OF ATHERTON

Dated: _____, 2007. By: _____

Its: _____



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

SUBJECT: DISCUSSION AND POSSIBLE ACTION REGARDING THE ENVIRONMENTAL PROGRAMS COMMITTEE

RECOMMENDATION:

Staff recommends that the City Council consider the composition and role of the Environmental Programs Committee and provide appropriate direction to the committee and staff.

BACKGROUND:

The Waste Reduction Committee (WRC) was formed in 1998 in response to the AB939 state diversion requirement of 50%. Council Members Chapman and Fisher were assigned to the Committee.

At that time, the stated purpose of the Committee was to:

- Develop a coordinated plan of action to achieve the state-mandated goal of 50% reduction in the waste going into our landfills by Dec 21, 2000;
- Develop a coordinated action plan for the administrative and other facilities owned by the Town with the goal of becoming a model for other institutions within the Town and, where appropriate, for the residents;
- Monitor our monthly progress towards achieving that goal and take appropriate action where warranted.

Various Town organizations were asked to appoint a member to serve on the Committee including the Tree Committee, the Atherton Dames, the Atherton Civil Interest League (ACIL), and the Holbrook-Palmer Park Foundation. Several sub-committees were formed including Green Waste, Construction Waste, and Town Facilities. The first major accomplishment was to start writing and then adopting the C&D Recycling Ordinance. The Town hired Joan Edwards, consultant, to set up and implement the C&D ordinance. Kathy

Hughes Anderson prepared the Town Administrative Procedures for Waste Prevention, Recycling, and Buy Recycled Procedures which should be revisited.

During this time, the Town of Atherton was put on a compliance order by the State of California. In addition, ESA was working with the SBWMA cities to establish new baseline year generation studies, and the SBWMA was purchasing the San Carlos transfer station. Over the next several years, the Town made good progress and started using ESA to prepare our annual reports using actual counted diversion. The Town then focused on getting some of our commercial accounts (Schools) to implement improved recycling programs

The Town of Atherton now has distinguished itself within the SBWMA as a result of our 65% diversion rate.

In October of 2005, the City Council set terms of office for the various Town Committees. As a result, letters were sent to the members serving on the WRC asking if they wanted to serve another term. The citizen members declined leaving the Committee with no resident members. Following that recruitment, Atherton resident Owen Hawkins was appointed. Council Members Charles Marsala and Jim Janz serve on the Committee.

Since that time the Committee has added three additional citizen members including Valerie Gardner, Bob Jenkins and Todd Beardsley, for a total of four citizen members.

At a meeting of the WRC in August of 2006, it was recommended that the Committee change its name from the Waste Reduction Committee to the Environmental Programs Committee. The Committee felt that the proposed name was more representative of the issues the Committee was currently dealing with and recognizing the need to consider other environmental issues beyond solid waste and recycling.

The Committee felt that these “other issues” should include but not limited to:

1. Global warming and CO2 emissions
2. Green Building
3. Earth Day events
4. ABAG/PG&E Energy Watch Partnership
5. E-Waste Collection Day
6. Mayors Agreement on Climatic Change
7. Energy Awards for Homeowners
8. Energy Consumption Reduction in Town and School Buildings.

Attachment: Environmental Programs Committee Roster Page



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

SUBJECT: RECOMMENDATION FROM THE TOWN OF ATHERTON ENVIRONMENTAL PROGRAMS COMMITTEE TO ADOPT A RESOLUTION ENDORSING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT

RECOMMENDATION:

The City Council consider the recommendation from the Town of Atherton Environmental Programs Committee to adopt a Resolution endorsing the U.S. Mayors' Climate Protection Agreement.

BACKGROUND:

At its regular meeting of November 15, 2006, The City Council considered the Resolution (see attached) endorsing the U.S. Mayors' Climate Protection Agreement. (See attached minutes.) Following discussion, the City Council referred this Resolution to the next meeting of the Atherton Environmental Programs Committee. The Environmental Programs Committee, at its January meeting, considered the Resolution endorsing the agreement and unanimously endorsed the Resolution and recommended that it be forwarded to the City Council for approval. The EPC also recommended that the committee develop a PowerPoint presentation to be presented to the City Council at its February meeting outlining the importance of the agreement and urging support by the City Council.

Attachments

- Resolution
- Staff Report from November 15, 2006
- Excerpt of the City Council Minutes of November 15, 2006

RESOLUTION NO. 07

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ENDORING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT

WHEREAS, the U.S. Conference of Mayors has previously adopted strong policy resolutions calling for cities, communities and the federal government to take actions to reduce global warming pollution; and

WHEREAS, the Inter-Governmental Panel on Climate Change (IPCC), the international community's most respected assemblage of scientists, has found that climate disruption is a reality and that human activities are largely responsible for increasing concentrations of global warming pollution; and

WHEREAS, recent, well-documented impacts of climate disruption include average global sea level increases of four to eight inches during the 20th Century; a 40 percent decline in Arctic sea-ice thickness; and nine of the ten hottest years on record occurring in the past decade; and

WHEREAS, climate disruption of the magnitude now predicted by the scientific community will cause extremely costly disruption of human and natural systems throughout the world including: increased risk of floods or droughts; sea-level rises that interact with coastal storms to erode beaches, inundate land, and damage structures; more frequent and greater concentrations of smog; and

WHEREAS, on February 16, 2005, the Kyoto Protocol, an international agreement to address climate disruption, went into effect in the 141 countries that have ratified it to date; 38 of those countries are now legally required to reduce greenhouse gas emissions on average 5.2 percent below 1990 levels by 2012; and

WHEREAS, the United States of America, with less than five percent of the world's population, is responsible for producing approximately twenty-five percent of the world's global warming pollutants; and

WHEREAS, the Kyoto Protocol emissions reduction target for the U.S. would have been 7 percent below 1990 levels by 2012; and

WHEREAS, many leading U.S. companies that have adopted greenhouse gas reduction programs to demonstrate corporate social responsibility have also publicly expressed preference for the U.S. to adopt precise and mandatory emissions targets and timetables as a means by which to remain competitive in the international marketplace, to mitigate financial risk and to promote sound investment decisions; and

WHEREAS, state and local governments throughout the United States are adopting emission reduction targets and programs and that this leadership is bipartisan, coming from Republican and Democratic governors and mayors alike; and

WHEREAS, many cities throughout the nation, both large and small, are reducing global warming pollutants through programs that provide economic and quality of life benefits such as reduced energy bills, green space preservation, air quality improvements, reduced traffic congestion, improved transportation choices, and economic development and job creation through energy conservation and new energy technologies; and

WHEREAS, mayors from around the nation have signed the U.S. Mayors' Climate Protection Agreement which, as amended at the 73rd Annual U.S. Conference of Mayors, is attached as Exhibit "A".

NOW, THEREFORE, the City Council of the Town of Atherton does **RESOLVE**:

1. To endorse the U.S. Mayors' Climate Protection Agreement, Attached Exhibit "A".
2. To authorize the Mayor to sign the U.S. Mayors' Climate Protection Agreement on behalf of the City Council.

* * * * *

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>

Alan B. Carlson, Mayor
Town of Atherton

ATTEST:

Kathi Hamilton, City Clerk

APPROVED AS TO FORM:

Marc Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE CITY COUNCIL MEETING OF NOVEMBER 15, 2006

SUBJECT: CONSIDERATION AND POSSIBLE ADOPTION OF A RESOLUTION APPROVING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT AND CONSIDERATION OF MEMBERSHIP IN ICLEI

RECOMMENDATION:

That the City Council consider the attached Resolution Endorsing the U.S. Mayors' Climate Protection Agreement. The City Council may also want to refer consideration of this Resolution to the Atherton Environmental Programs Committee for a recommendation to the City Council.

BACKGROUND:

Seattle Mayor Greg Nickels, in February 2005, initiated a project to encourage U.S. cities to endorse the standards of the Kyoto Agreement that would have cities pledge to reduce carbon dioxide pollution in their cities by 2012 to at least 7 percent below the 1990 levels. Several Peninsula cities have adopted Resolutions endorsing the U.S. Mayors' Climate Protection Agreement including Portola Valley, Los Altos Hills, Palo Alto, San Bruno, San Mateo, San Jose, and Sunnyvale. The attached resolution adopted by Portola Valley provides an example of their endorsement and an exhibit that identifies municipal actions that can be taken to meet the goals of the Agreement. Many of the examples including maintaining healthy urban forests and increasing recycling rates are examples of programs already under way in the Town of Atherton.

In addition to adopting a Resolution, Peninsula cities are seeking assistance in creating climate protection actions, plans, and policies with the assistance of an organization known as ICLEI. They also assist in creating initial measurements and a baseline for cities. Information regarding ICLEI is attached. The cost for membership is \$600.00.



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: ROBERT BRENNAN, CHIEF OF POLICE

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

SUBJECT: MID-YEAR BUDGET PROPOSAL FOR MOBILE DATA COMPUTERS

RECOMMENDATION:

City Council approves the expenditure of \$66,225.60 to purchase 10 laptop computers, necessary software, and hardware to fully implement a Mobile Data Computer (MDC) program.

INTRODUCTION:

The Atherton Police Department has investigated the use of MDC technology for use in all patrol vehicles and in a future Incident Command Post. Staff has determined the best purchases to support this program. The equipment listed below allows the Town and its employees to more efficiently conduct day-to-day operations as well as better prepare for unplanned events such as disasters and other emergencies.

ANALYSIS:

Careful consideration has been given to each of the below-listed items. Using direction given by the Atherton City Council, comments and recommendations from other law enforcement agencies, and using expertise and lessons learned from local, state, and federal response agencies, staff believes that we are well on our way to being better prepared for day-to-day law enforcement activities and disasters and other emergencies.

Disaster Response Application:

One stated concern of the Town is having the ability to communicate with residents and to be able to send and receive information in a variety of ways to and from Town employees who have responded to emergencies; Mobile Data Computers (MDC) can provide such a means. With the use of wireless technology, employees in the field can send and receive damage assessment

information, requests for resources, current situation status, and calls for service pending. All of those capabilities - and many more - will be possible in a manner which is confidential and secure and will allow for very detailed comments and concerns, photographs, and even audio and video recordings to help portray events that have occurred or may still be evolving. Patrol cars will be capable of being used as neighborhood information centers as events stabilize providing quick access to Town services when open access around the community has been limited due to uncontrollable circumstances.

Law Enforcement Application:

Law enforcement technology has changed dramatically over the last 20 years. Gone are the days of Mobile Data Terminals (MDT) which were only capable of sending and receiving limited information such as text messages between MDT units, license plate and driver's license records, and other non-secure text messages. Yesterday's MDTs have been replaced by more traditional notebook computers capable of using advanced operating systems and programs to create a Mobile Data Computer (MDC) *see attachment 1*. If the old MDT technology were still the current standard, the Atherton Police Department would have little use for such a system. However, MDCs have allowed law enforcement officers in the field to access department computer servers and files to act as extensions of the Police Department facility. Police units are dispatched to calls and given the ability to monitor the activities and whereabouts of other units without using what oftentimes is valuable radio time. Driver's licenses, vehicle registrations, sexual offender files (Megan's Law) complete with photographs, probation and parole data, and DMV photograph files are all available with a few key strokes to any law enforcement officer in the field; only a few years ago it took several days to obtain DMV photographs. Recently we have been able to have access to those same photos in a secure online system – only at the police station; MDCs allow users to access the same system in minutes from the front seat of a patrol car.

Our current police dispatch and report system, RIMS, has been recently linked to police departments around the county who use the same system. We have gained the ability to query the databases of those other departments to search and view incident records, photographs, crime reports, and other information that will greatly enhance the service our department provides to Town residents and the community at large.

A side-note worth mentioning is that the Atherton Police Department is the only law enforcement agency in San Mateo County, perhaps Santa Clara County, too, that has not been upgraded to the use of MDCs. This is mentioned only to help paint a picture of how valuable this tool has become, and will continue to be, to the future law enforcement community.

FISCAL IMPACT:

Funds for the MDCs will be utilized from the Contingency Fund allocated in the 2006-07 budget.

The equipment needs of the Town have been evaluated and the following recommendations are provided for approval:

Upgrading the Police Department's communications capability by purchasing 10 wireless Mobile Data Computers (MDC) for patrol vehicles and the Incident Command Post Vehicle.
Includes:

Item	Unit Price	Number of Units	Total
Dell Latitude D820 Notebook Computer	\$1,850.64	10 *	\$18,506.42
RIMS Mobile Software	\$39,749.00	1	\$39,749.00
<i>Mobile Software Includes:</i> RIMS Mobile Computer Software RIMS In Station Mapping Software RIMS Mobile Mapping Software Mnemonic Pooling Software Map Data Engineering Services Installation and Training (2 days) 1 Year of Support and Updates	\$17,000 \$9,000 \$2,500 \$1,400 \$2,500 \$2,864 \$4,485		Already Listed
Ledco Swingarm Notebook Stands including adapters, electronics, and installation	\$779.00 (avg.)	9 *	\$7,010.24
MapPoint 2006 Software	\$88.95	10	\$889.95
Norton Ghost 10.0 Back-up and Recovery Software	\$69.99	1	\$69.99
Sprint wireless "aircards"	0	10	0
Total			\$66,225.60

Recurring costs:

Expense	Cost	Annual/Monthly	Annual Total
RIMS Support and Update **	\$4,485.00	Annually	\$4,485.00
Unlimited Sprint Wireless Access for 10 Units***	\$50.00	Monthly	\$6000.00

It should be noted that tax and shipping costs have not been calculated due to the possibility that some of the above-listed items may change prices prior to their ordering.

* Includes computers for the vehicles: 3, 4, 5, 6, 7, 9, K9, SRO, CSO or Detective, and a spare; Stands are only required for above listed vehicles, not the spare computer

** Expenses for "RIMS Support and Update" are included in the initial bid for the first year.

*** Sprint agreed to provide two months of free airtime service at the beginning of the contract – however, since the original proposal was deferred Sprint has suggested that this benefit may not be available. A final agreement will have to be negotiated when service is purchased but it is likely that there will be no free service.

Prepared by:

Approved by:

Robert J. Brennan
Chief of Police

James H. Robinson
City Manager

Attachment 1

Mobile Digital Computers



Mobile RIMS by Sun Ridge Systems, Inc.

File Cases Functions Other Records Officer Field Reporting Help

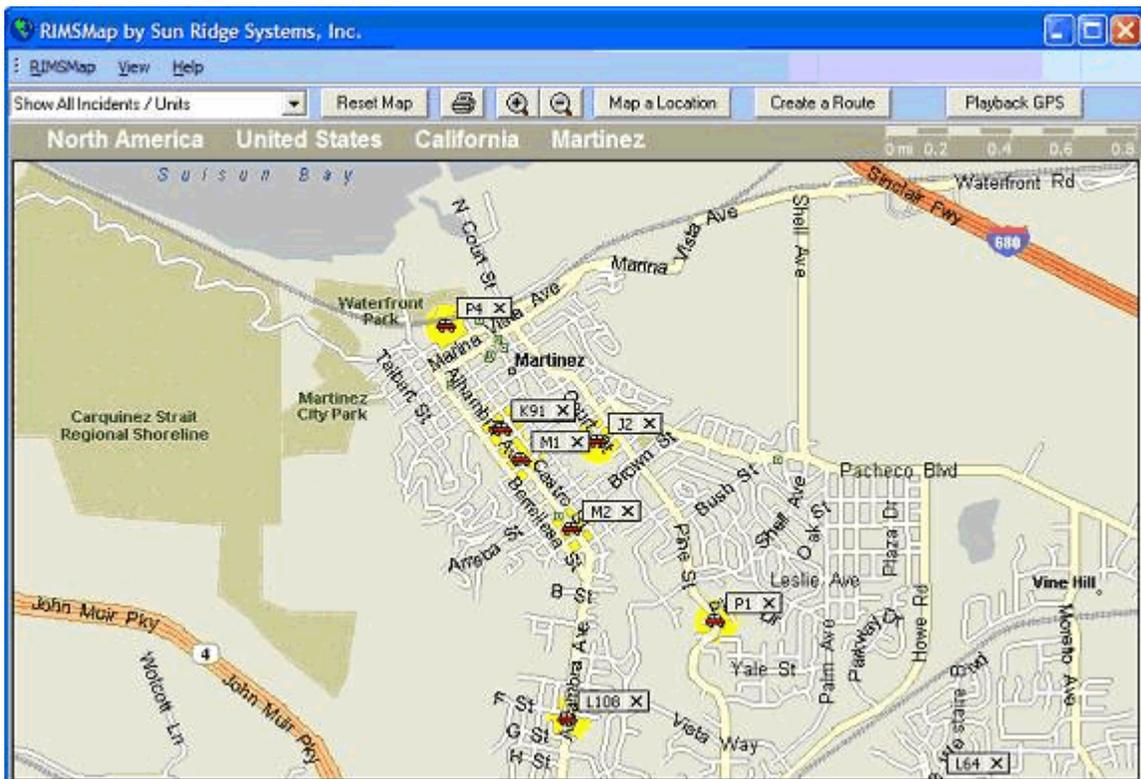
Messages Send Msgs Inc Info People Vehicles Location Hist Street Info Premises Property Sign Off

Unit	Beats	Stat	Inc	Type/Location	Unit	Beats	Stat	Inc	Type/Location
A1		MEAL		STARBUCKS	29S		10-8		
A3#		10-8			4R1		10-97		1 Birch, Latrobe
111		10-31		COMPLETING REPORT	4S#		10-8		
132		10-8			71S		10-8		
21S		10-8			3S		B.C		10-8
28S		ENRT		510 E Main St, Latrobe	S1		XTRA		10-8

Inch#	Time	Beat	Type	St	Location
1	12:10		BIKE	P	100 E F St, Latrobe
1	15:51	A	11-80	A	510 E Main St, Latrobe
1	09:22	A	488 PC	A	1 Birch, Latrobe

Enroute Arrived Clear Status Units Incidents Phone #

Connected



RIMS Mapping

Mobile RIMS by Sun Ridge Systems, Inc.

File Cases Functions Other Records Officer Field Reporting Help

Messages Send Msgs Inc Info People Vehicles Location Hist Street Info Premises Property Sign Off

Person MugShot

LATROBE POLICE DEPARTMENT - Local RIMS Return



ARIAS, RUDY (32)

100 E MAIN ST,
EL DORADO HILLS - 96845
503-889-7454

Date of Birth: 05/19/1956
Age: 48
Race: White
Sex: M
Height: 5' 10"
Weight: 200
Hair Color: Brown
Eye Color: Blue

Driver's License #: N3543667-CA
Assoc. Vehicle Lic: YHS952-CA
FBI #: A298U765 SSN: 568877654
State ID: CIIA209689

Comments: EX DEPUTY
Officer Safety: **CARRIES CONCEALED WEAPONS**

Outstanding Warrant On Probation

Previous Discard Keep Request Hi-Res Photo Next

Mobile RIMS by Sun Ridge Systems, Inc.

File Cases Functions Other Records Officer Field Reporting Help

Messages Send Msgs Inc Info People Vehicles Location Hist Street Info Premises Property Sign Off

Person

LATROBE POLICE DEPARTMENT - Local RIMS Return

Page 1 | Page 2 | Page 3 | Photos

Name	ARIAS, RUDY			Race	WHITE	FBI	A298U765
Adrs	100 E MAIN ST	Apt		Hair	BROWN	SSN	568877654
City	EL DORADO HILLS	Zip	96845	Eyes	BLUE	St ID	CIIA209689
Phone	503-889-7454	DOB	05/19/1956	Age	48	Dr Lic	N3543667 CA
Sex	M	5	10	Wt	200	ID	32
				Veh Lic	YHS952		CA

Cmt: EX DEPUTY Ofcr Safety: **CARRIES CONCEALED WEAPONS**

Date	Nature	Text	Inc/Cite	Case/FI
01/22/2003	M	12021(A) PC, 10802 VC, 13004(B) VC	1030122011	03-1
05/30/2003	SA	5150 WI: Mental Health Custody	1030123009	03-3
05/30/2003	CI	211 PC	1030530005	03-20
12/20/2004	CHG	Prev adrs: 222 3RD ST, EL DORADO HILLS by 1		
03/24/2005	CI	211 PC	W888	

Outstanding Warrant On Probation

Previous History Aliases Assc Prsns Discard Keep Assc Vehicle Next

Person/suspect files with photo



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: KATHI HAMILTON, ACTING CITY CLERK

DATE: FOR THE MEETING OF FEBRUARY 21, 2007

**SUBJECT: DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING
THE COMMITTEE-COMMISSION APPOINTMENT PROCESS**

RECOMMENDATION:

Council to review existing policies regarding the Committee-Commission appointment process and possibly give direction to staff on any changes the Council wishes to make regarding the recruitment process, selection/appointment process, terms of office, duties, membership, etc.

BACKGROUND:

At the City Council meeting of November 15, 2006, Council Member Jerry Carlson requested a discussion of the Committee/Commission appointment process be scheduled on a future City Council agenda.

Paragraph 9 of the City Council Rules of Procedure provides for appointment of Council Members to serve on various committees along with provisions for appointment of other individuals to those committees. At its October 19, 2005, meeting, Council revised Paragraph 9.2, Appointment of Voting Members to City Council Committees, which are identified in Paragraph 9.4, giving City Council Members on City Council-appointed committees authority to appoint one or more voting members to the committee. Appointed members serve a one-year term concurrent with the Council Members' term on the committee. (See attachment, Paragraph 9) If Council Members are unable to agree upon the appointment of any particular member, that issue will be brought before the entire City Council for final determination.

The Planning Commission is the subject of Chapter 3.26 of the Atherton Municipal Code; the General Plan Committee is the subject of Chapter 2.37 of the Municipal Code and the Parks and Recreation Commission is the subject of Chapter 2.40 of the Atherton Municipal Code. (see attachments) As such, the membership, terms of office, duties, etc., are outlined in the Municipal Code. Staggered terms all expire on April 30th of the year of expiration. The City Clerk solicits

applications for those terms expiring, and all applications are forwarded to the Steering Committee for review and to conduct interviews of prospective applicants. The Steering Committee then recommends appointment of members to the full Council at the April City Council meeting, and newly-appointed members begin new terms on May 1.

ANALYSIS

With regard to City Council Members on City Council-appointed committees, Council Members have the authority to appoint one or more voting members to the committee for a one-year term with terms expiring in January. Staff asked existing members whether they would like to be reappointed to their respective committees (see attachment). Paragraph 9 does not “spell out” how Council Members are to reappoint/appoint members, e.g., at a Council meeting or at the respective committee meeting.

With respect to the Audit Committee, Council decided that the current members could serve out their three-year terms. Three of the current terms expire on April 30, 2007. If new members are appointed and begin terms in May, those terms would expire in January 2008. Once again, the question is whether appointments are made at the committee level or approved by the full Council.

There are no Council Members appointed to the Arts Committee and it is governed by Resolution No. 98-06 (see attached). Staff recruits for this committee on a regular basis as the membership is for up to 10 members for indefinite terms. Currently, there are only three members on the committee.

CONCLUSION:

Having two recruitment processes has been challenging; however, if Council wishes to continue with the current system of concurrent terms with the Council Members appointed to the committees; staff needs clarification on the following:

- Recruitment process, e.g., ask current members if they want to continue their service, and/or recruit for new members. Recruiting for new members would need to begin in September/October.
- Reappointment/Appointment: at the committee level or with the full Council.
- Expiring terms on the Audit Committee: terms could be extended to January 2008 to coincide with the other committees.
- Arts Committee: Revisions to Paragraph 9 and Resolution No. 98-06 could be made relative to committee membership and terms, bylaws, and meetings.

Additionally, attached is a listing of all committees/commissions of the Town, along with the Local Appointment List (The Maddy Act) which was posted before December 31, 2006, as mandated by law. The list was posted in the Library (required), Town Hall Lobby, and Town Hall.

FISCAL IMPACT:

None

Prepared by:

Approved by:

Kathi Hamilton
Acting City Clerk

James H. Robinson
City Manager

Attachments: Paragraph 9, City Council Committees, City Council Rules of Procedure
Atherton Municipal Code Sections 2.36, 2.37, and 2.40
Resolution No. 98-06
A list of Town Committees/Commissions and the Local Appointment List



TOWN OF ATHERTON

The following is a listing and description of current local boards and commissions whose members are appointed by and serve at the pleasure of the City Council. Also attached is a list of scheduled Board and Commission vacancies for calendar year 2007:

Arts Committee

- Authority: Resolution No. 98-06
- Membership: Consists of up to ten residents who must be registered to vote within the Town of Atherton.
- Terms: Each member shall serve at the pleasure of the City Council for an indefinite term.
- Duties: The function and purpose of the Arts committee is to assist the City Council and the Park and Recreation Department in matters that pertain to arts programs, classes, workshops, performances and other arts activities, as may be directed by the City Council.
- Meetings: The committee meets on the fourth Tuesday of each month at 1:00 p.m., in the Town Administrative Offices Conference Room.

Atherton Channel Drainage District Committee

- Authority: City Council Minute Action – January 16, 2002
- Membership: Consists of three members, including two Council Members and one resident of the Town.
- Terms: In January, members are appointed to a one-year term concurrent with the Council Members' term on the committee.
- Meetings: Meets on an as-needed basis.

Atherton Rail Committee

- Authority: Created as an ad hoc subcommittee by the Atherton City Council at its November 19, 2003, regular meeting. On March 15, 2006, Council approved a name change (formerly the Caltrain Ad Hoc Subcommittee).
- Membership: Committee members are comprised of two Council Members and up to 11 Council-appointed residents of the Town.
- Terms: Members are appointed by the City Council Members assigned to the committee for a one-year term beginning in January 2007.
- Duties: The subcommittee, formed to act in an advisory capacity to the City Council, will research and address the specific impact that High-Speed Rail and other rail improvements may have on the Town of Atherton.
- Meetings: *The subcommittee routinely meets on the 1st Tuesday of the month at 6:00 p.m. in the Town Council Chambers, 94 Ashfield Road.*

Audit Committee

- Authority: The City Council authorized the creation of the Audit Committee at its regular meeting on May 17, 2000.

- Membership:** Consists of eight members, including the two Council Members of the Finance Committee, and six residents of the Town. The Committee was extended to six members by Council action April 21, 2004, and April 20, 2005.
- Terms:** Members are appointed by the City Council Members assigned to the committee for a one-year term beginning in January 2007. **Current members may serve the remainder of their three-year terms.**
- Duties:** Provides oversight of the annual audit, makes recommendations to the City Council on matters related to the annual audit, and provides guidance to Town staff on financial controls throughout the year.
- Meetings:** Meetings are held quarterly in the Conference Room of the Town Administrative Offices.

Environmental Programs Committee

- Authority:** The Atherton Civic Interest League (ACIL) began a “recycling task force” in 1994 which evolved into a Town committee in 1998, in conjunction with AB939 compliance (state recycling/diversion law).
- Membership:** Consists of two members of the Council, plus three resident members, along with staff: City Manager, Town Arborist, an SBWMA representative, and an Allied Waste (solid waste franchise) representative.
- Terms:** Members are appointed by the City Council Members assigned to the committee for a one-year term beginning in January 2007.
- Meetings:** Meets quarterly, the 1st Wednesday, at 10:00 a.m., Administrative Offices Conference Room, 91 Ashfield Road.

General Plan Committee

- Authority:** Atherton Municipal Code Section 2.37.
- Membership:** Consists of two Council Members, two Planning Commissioners, and up to five residents (“public members”), who are not members of the City Council or Planning Commission.
- Terms:** Four-year term, maximum of one, full four-year term. Public members are appointed by the City Council. The Council and Planning Commission select their own representatives to the Committee.
- Duties:** The General Plan Committee advises the City Council and Planning Commission on planning matters, reviews the General Plan and makes recommendations to the City Council, Planning Commission, and Town staff regarding the operation of the ordinances and policies in the community.
- Meetings:** Regular meetings are scheduled quarterly, the first Wednesday of the month, at 6:00 p.m., Town Council Chambers, 94 Ashfield Road. A quorum shall consist of a majority of the members of the Committee.

Mid-Peninsula Community Media Center

- Appointment:** Appointed by the City Council.
- Terms:** Three years.
- Duties:** Represents Atherton on the Midpeninsula Community Media Center Board.

Park and Recreation Commission

- Authority: Atherton Municipal Code Section 2.40.
- Membership: Seven members, each a resident of the Town, appointed by and serving at the pleasure of the City Council.
- Terms: Four years; no more than two, full four-year consecutive terms, with the exception of the two representatives of the Atherton Dames and the Holbrook-Palmer Park Foundation, who will each serve two-year terms; no more than two full consecutive terms.
- Duties: The Park and Recreation Commission advises the City Council on matters regarding Park and Recreation programs, develops and revises the master plan for the Park, reviews the annual budget for the Park, and makes recommendations concerning long-term capital projects.
- Appointment: The members of the Commission are appointed by the City Council.
- Compensation: The members of the Commission receive no compensation.
- Meetings: Regular meetings are scheduled the first Wednesday of each month, at 6:30 p.m., Holbrook-Palmer Park, 150 Watkins Avenue.

Planning Commission

- Authority: California Government Code Section 65100; Atherton Municipal Code Section 2.36.
- Membership: Five members, each a resident of the Town, appointed by and serving at the pleasure of the City Council.
- Terms: Four years; no more than two full consecutive terms.
- Duties: The Planning Commission of the Town of Atherton is authorized by the California Government Code. The powers and duties of the Planning Commission are as set forth in the Government Code. The Commission is the Town's administrative agency for zoning issues. Each Commissioner must file a public "Statement of Economic Interests" form annually.
- Appointment: The members of the Commission are appointed by the City Council.
- Compensation: The members of the Commission receive no compensation.
- Meetings: Regular meetings are scheduled every fourth Wednesday of each month, at 6:00 p.m., Town Council Chambers, 94 Ashfield Road.

Transportation/Traffic Subcommittee

- Authority: Created by the City Council, date unknown.
- Membership: Consists of five members including two Council Members and three residents of the Town.
- Terms: In January, members are appointed to a one-year term concurrent with the Council Members' term on the committee.
- Meetings: Regular meetings are scheduled quarterly, the second Tuesday of the Month, at 6:00 p.m., Town Council Chambers, 94 Ashfield Road.

Environmental Programs Committee

Bob Jenkins	First Appointed:	10/18/06
	Expires:	01/07
Owen Hawkins	First Appointed:	10/18/06
	Expires:	01/07
Todd Beardsley	First Appointed:	10/18/06
	Expires:	01/07
Valerie Gardner	First Appointed:	11/15/06
	Expires:	01/07

General Plan Committee

James Ransohoff	Appointed:	5/01/05
	Expires:	4/30/07
Barbara Shoor	Appointed:	5/01/05
	Expires:	4/30/07

Park and Recreation Commission

John P. Davey	Appointed:	5/01/03
	Expires:	4/30/07
Etta Mae Bauer <i>Dames Rep.</i>	Appointed:	7/16/03
	Expires:	4/30/07
Jim Massey <i>H-P Foundation Rep</i>	Appointed:	12/19/01
	Expires:	04/30/07
Mike McPherson	Appointed:	05/01/99
	Expires:	04/30/07
Paul Tonelli	Appointed:	5/01/99
	Expires:	4/30/07

Planning Commission

Robert Andrews	Appointed:	5/1/99
	Expires:	4/30/07
Rose Hau	Appointed:	5/1/99
	Expires:	4/30/07

Transportation/Traffic Subcommittee

John Ruggeiro	First Appointed:	01/19/05
	Expires:	01/07
Robert Huber	First Appointed:	01/19/05
	Expires:	01/07
Louis S. Paponis	Appointed:	01/19/05
	Expires:	01/07

9. City Council Committees

9.1 Establishment. At the regular meeting in January, the Mayor shall appoint Council Members to serve on various standing and ad hoc committees for a one year term.

9.2 Appointment of Voting Members to City Council Committees. City Council Members on City Council-appointed committees shall have the authority to appoint one or more voting members to the committee. All appointed members shall be registered voters in the Town of Atherton. If Council Members are unable to agree upon the appointment of any particular member, that issue will be brought before the entire City Council for final determination. Appointed members serve a one year term concurrent with the Council Members' term on the committee.

9.3 Committees shall be created and members appointed thereto in accordance with these rules and regulations.

9.4 Committees of City Council.

a. Standing Committees: Any standing committee of the Council shall be subject to the same rules of procedure as the City Council. Each standing committee is comprised of two Council Members appointed by the Mayor, and is staffed by the appropriate staff members. The standing committees are:

1. Atherton Channel Drainage District Committee. Consisting of three members including two Council Members, and one resident of the Town. The committee meets on an as needed basis in the City Council Chambers.

2. Audit Committee. Consisting of seven members, including two Council Members of the Finance Committee, and five residents of the Town. The committee meets quarterly in the Conference Room of the Town Administrative Offices.

3. Budget and Finance Committee. Consisting of two Council Members. The Members also serve on the Audit Committee. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.

4. Buildings and Facilities Committee. Consisting of two Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.

5. Transportation Committee. Consisting of five members including two Council Members and three residents of the Town. The committee meets quarterly on the second Tuesday of the month at 6:00 p.m. in the City Council Chambers.

6. Screening Committee. Consisting of two Council Members. The committee meets on an as needed basis in the Conference Room of the Town Administrative Offices.

7. Waste Reduction and Recycling Committee. Consisting of five members including two Council Members and three residents of the Town. The committee also includes the City Manager, Town Arborist, a SBWMA representative, and a representative of the franchise waste hauler. The committee meets quarterly on the first Wednesday of the month at 10:00 a.m. in the Conference Room of the Town Administrative Offices.

b. Ad Hoc Committees. Any ad hoc committee of the Council shall be subject to the same rules of procedure as the City Council. Each ad hoc committee is comprised of two Council Members appointed by the Mayor, and is staffed by the appropriate staff members. The ad hoc committees are:

1. Cal Train Corridor Committee. Consisting of thirteen members including two Council Members and up to eleven residents of the Town. The committee meets on the first Tuesday of each month at 7:00 p.m. in the City Council Chambers.

9.5 City Council Review of City Council Committee Decisions. City Council Members on City Council-appointed committees may bring any decision of the committee to the full City Council for final determination. Pending such action by the full City Council, any such decision shall be suspended.

RESOLUTION 98-6

**RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ESTABLISHING AN ARTS COMMITTEE AND
DESIGNATING ITS FUNCTIONS**

WHEREAS, the City Council desires to create an Arts Committee to assist in the formulation and implementation of Town arts policies and programs; and,

WHEREAS, the City Council desires to create 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. CREATION OF COMMITTEE. The City Council hereby creates the Arts Committee of the Town of Atherton. The Arts Committee shall continue in existence for an indefinite time.

SECTION 2. COMMITTEE MEMBERSHIP. The Arts Committee shall consist of up to, but not exceeding, ten (10) members appointed by the City Council. Every person appointed to the Arts 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 Arts Committee shall have a demonstrated interest in the arts and in the art program in the Town. Strong consideration shall be given applications with a background in the arts.

SECTION 3. TERMS; BY-LAWS; MEETINGS. Each member of the Arts Committee shall serve at the pleasure of the City Council for an indefinite term. The Arts Committee shall prepare and recommend to the City Council, for adoption, by-laws for the conduct of business by the Committee. All meetings of the Committee shall be in accordance with the by-laws adopted by the Committee and with the Ralph M. Brown Act.

SECTION 4. FUNCTIONS AND RESPONSIBILITIES. The function and purpose of the Arts Committee is to assist the City Council and the Park and Recreation Department in matters that pertain to arts programs, classes, workshops, performances and other arts activities, as may be directed by the City Council. In order to carry out its function, the Arts Committee will do the following:

- A. Study, evaluate and recommend Town policies relating to arts activities such as, but not limited to:

1. Facilities Use Policy
 2. Guidelines for Co-sponsorship of Arts Groups
 3. Fees and Charges
 4. License Agreements
- B. Provide a forum for citizen comments on needs, current services, facilities, and then report said citizen comments and the Arts Committee recommendations to the Park and Recreation Commission and City Council.
- C. Review the annual budget of the Park and Recreation Department that relates to the arts, as submitted to the Council by the City Manager, and make recommendations concerning the budget to the Park and Recreation Commission.
- D. Review and report on other specific service areas as requested by the City Council or City Manager.
- E. Review those portions of Master Plans of park or facility development or expansion which relate to the arts, for adequacy, appearance and other appropriate criteria, in an attempt to ensure good design and then make recommendations to the Park and Recreation Commission.
- F. Attend appropriate meetings, workshops and conferences, and represent the Town when requested by the City Council and/or City Manager.
- G. Prepare an annual Arts Committee work program for Park and Recreation Commission and City Council review and approval.
- H. Review and make recommendations regarding co-sponsored and directly funded groups in the area of arts.
- I. Suggest and help secure outside funding sources for the arts.
- J. Study the Regional and State Arts Master Plans and make recommendations thereon to the Park and Recreation Commission and the City Council.
- K. Examine alternatives for the yearly art event.
- L. Study and make recommendations regarding the establishment of a Fund for the Arts.
- M. Make recommendations regarding a public/private partnership for the arts.

NOW THEREFORE BE IT RESOLVED that Resolution 96-2 is hereby repealed.

* * * * *

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 March 18, 1998 by the following roll call vote:

<i>AYES:</i>	<i>5</i>	<i>COUNCILMEMBERS: Dudley, Chapman, Conwell, Fisher, Huber</i>
<i>NOES:</i>	<i>0</i>	<i>COUNCILMEMBERS: None</i>
<i>ABSENT:</i>	<i>0</i>	<i>COUNCILMEMBERS: None</i>
<i>ABSTAIN:</i>	<i>0</i>	<i>COUNCILMEMBERS: None</i>

Malcolm H. Dudley, MAYOR

ATTEST:

Susan P. Jankowski, City Clerk

Committee Member Responses

Staff asked current members of committees whether they would like to be reappointed. The following responses were received from those committees that have terms expiring in January 2007:

Atherton Channel Drainage District Subcommittee

Philip Lively – Yes

Atherton Rail Committee

Mike McPherson – Yes

Phil Mitchell – Job Relocation out of California – No

Philip Lively – Yes

Greg Conlon – Yes

Arthur (Jack Ringham) – Yes

Rosemary Maulbetsch – Yes

Malcolm Dudley – Yes

Environmental Programs Committee

Todd Beardsley – Yes

Valerie Gardner – Yes

Owen Hawkins – Yes

Robert Jenkins – Yes

Transportation/Traffic Subcommittee

Bob Huber – Yes

Lou Paponis – Yes

John Rugeiro – Yes