



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

March 21, 2007

5:00 P.M.

Meeting Room

Town Administrative Offices

91 Ashfield Road
Atherton, California

Special Meeting

5:00 P.M. ROLL CALL Janz, J. Carlson, Marsala, A. Carlson, McKeithen

5:02 P.M. PUBLIC COMMENTS

5:05 P.M. CLOSED SESSION

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

**City Attorney
City Manager**

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

Three (3) potential cases

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

One (1) potential case

D. 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.

Town of Atherton v. Johnson Trust, et.al. Superior Court of California, County of San Mateo, CLJ 460946

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

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)



DRAFT MINUTES
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

The meeting was called to order by Mayor Alan Carlson at 5:35 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.

- 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.

City Attorney Marc Hynes reported with respect to Item A., three cases were discussed. In two matters, action was directed by unanimous vote of the City Council: 1) Regarding 94 Tallwood Court, the Town would commence abatement action relative to a Zoning Code violation; and 2) Regarding 55 Belbrook Way, the Town would commence abatement action relative to a Zoning Code violation.

Further, there was not reportable action regarding Item B.

With respect to Item C., Liability Claims, both claims were denied.

Item D was continued to the end of the Regular City Council Meeting that evening at 6:55 p.m.

***The Continued* Closed Session was reconvened at 12:10 a.m.**

D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

**City Attorney
City Manager**

Mayor Carlson adjourned the *Continued* Closed Session at 12:25 a.m. and continued Item D to the City Council Closed Session meeting of March 21, 2007.

Respectfully submitted,

**Alan B. Carlson
Mayor**

**Minutes Prepared by:
Kathi Hamilton**



DRAFT MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
February 21, 2007
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Alan Carlson called the meeting to order at 7:01 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 and City Attorney Marc Hynes were also present.

3. PRESENTATIONS

None

4. COUNCIL REPORTS

- Council Member Jerry Carlson attended two meetings of the Finance Committee where billing matters for contract services were discussed including clarification of formats and a better explanation of costs. The Building Department would need more funds for contract services. The committee requested that the City Manager provide an update on the progress of the Building Department audit at each Finance Committee meeting and proposed including funding for audits in next year's budget. The committee suggested that its members sit in on the last rounds of department budget discussions with the City Manager. He sought clarification regarding disaster preparedness and suggested that the operating roles between the Town and the Menlo Park Fire Protection District needed to be further defined. He noted there was confusion between the two emergency preparedness committees and clarified that the

citizens committee was not an arm of the Atherton Civil Interest League. The duties of the Town's Emergency Preparedness Committee needed to be defined. Council Member Carlson said representatives from the International Baccalaureate Program would be visiting Selby Lane School on March 12. If all went well, the program would become accredited this fall.

- Vice Mayor Janz updated the Council regarding Caltrain service. He and Council Member Carlson met with representatives from other cities on the Peninsula, mostly along the Caltrain line, with the intent and desire to obtain increased service on the Peninsula. They finally succeeded in getting a meeting with the representatives to the Joint Powers Board that administered Caltrain. A frank and helpful discussion took place and there was a possibility of getting some local weekday service restored.
- Council Member Marsala attended the Conference of Mayors in Washington, D.C., where he attended sessions on Climate Protection. The Parks for the Future met to review the status of Measure A, the ballot measure that failed in November. The measure could be put on the ballot in June 2008. He had dinner with the Sisters of the Sacred Heart where work on Valparaiso Avenue was discussed. He took a tour of the Menlo-Atherton High School radio station. He took a second tour of the Menlo Park Fire Protection District (MPFPD) Emergency Command Center with 25 residents, and they were working on the chain of command for CERT teams. He proposed a joint meeting with MPFPD and Council. The Environmental Programs Committee met twice, one meeting was a joint meeting with the General Plan Committee. A recommendation that the Council reduce solar fees to zero was proposed as an incentive for solar. A large Earth Day event was planned for April 21. He would be attending a Peninsula Division of the League of California Cities meeting the next evening to report on his subcommittee assignment to the State Pension Committee.
- Council Member McKeithen also attended the Finance Committee meetings. The question of upgrading the Menlo-Atherton High School radio station for announcements during emergencies was referred to the Emergency Preparedness Committee for further clarification. The Emergency Preparedness Committee meeting scheduled for that morning was cancelled due to the fact that Council Member McKeithen had jury duty. The County Operations of Emergency Services met. Stanford Linear Accelerator was hosting a "Hydrogen, Fueling the Future" seminar on February 27, 2007, from 7:30 to 8:30 p.m., at 2575 Sandhill Road.
- Mayor Alan Carlson attended the San Francisco Airport Roundtable meeting.

5. PUBLIC COMMENTS

Susan Goetz, Branch Manager for the Woodside, Portola Valley, and Atherton Libraries, distributed the 2005/2006 Annual Report for the San Mateo County Library System to Council and noted she would give City Manager Jim Robinson the Annual Reports for the other 12 libraries in the County. She announced some of the upcoming events at the Atherton Library.

John Ruggeiro, Stockbridge Avenue, asked for clarification regarding Council Member Marsala's attendance at the U.S. Conference of Mayors.

Council Member Marsala responded he attended the conference as an individual and used personal funds.

Council Member McKeithen reported that H.T. Harvey completed a study of the Phase I Upper Atherton Channel Reconstruction and determined the Red-legged frogs were alive and well and in the pool.

6. STAFF REPORTS

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

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

Seven (7) potential cases

Three cases were discussed. In two matters, action was directed by unanimous vote of the City Council: 1) Regarding 94 Tallwood Court, the Town would commence abatement action relative to a Zoning Code violation; and 2) Regarding 55 Belbrook Way, the Town would commence abatement action relative to a Zoning Code violation.

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.

There was not reportable action.

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: Albert Feaster

Agency Claimed Against: Town of Atherton

The claim was denied.

Claimant: Kerry Enzensperger

Agency Claimed Against: Town of Atherton

The claim was denied.

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

Accepted work, authorized recording of a Notice of Completion and approved 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 OF COMPLETION AND APPROVAL OF STREET RECONSTRUCTION PHASE II PROJECT, PROJECT NO. 04-002**

Accepted work, authorized recording of a Notice of Completion and approved 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**

Approved the plans and specifications and authorized 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**~~ *(Removed and placed on the Regular agenda for discussion.)*

~~**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**

Considered 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 and authorized Request for Proposals

17. ~~**CONSTRUCTION, OPERATION PARKING PLANS--STATUS OF IMPLEMENTATION AND ENFORCEMENT**~~ *(Removed and placed on the Regular agenda for discussion.)*

~~**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~~ *(Removed and placed on the Regular agenda for discussion.)*

~~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

Retained the services of CSG, specifically to provide contract Sr. Building Inspector services in the Building Department and approved the expenditure of funds for this purpose.

20. ~~ADOPTION OF A RESOLUTION SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE~~ *(Removed and placed on the Regular agenda for discussion.)*

~~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

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

PUBLIC HEARINGS (Item 22)

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

Interim Senior Building Inspector Mike Cully summarized the staff report. The appellants, Mr. and Mrs. Ruehle, submitted plans to the Building Department for a new residence at 233 Park Lane. The Ruehles were notified in writing that the plans, as submitted, were in violation of the Town's regulations. The proposed project had a basement that extended beyond the footprint of the building underneath some patio areas. The appellants had met with the former Building Official and various staff members and received approval under design concept. Subsequently, then Interim Building Official Cully reviewed the ordinances and found the project not in compliance with regulations regarding basements. The Ruehles requested a meeting with the City Attorney, the City Manager, and the Deputy Town Planner, who upheld the Interim Building Official's decision, and were appealing the decision to the City Council. In the interim, the General Plan Committee had meetings regarding basements; however, the Ruehles decided to appeal at the current time. Staff's opinion was that the proposed basement located under the raised patio areas was not consistent with Atherton Municipal Code section 17.36.190. Alternatives were suggested and

listed in the staff report. Staff requested that the Council deny the appeal and uphold the decision of the Building Official. Mr. Cully responded to Council questions.

Mayor Alan Carlson opened the public hearing.

Bill Ruehle, appellant and property owner at 233 Park Lane, gave a short history of the construction process. Original construction began on the property in December 2003. Work stopped in February 2005 due to structural concerns and the property was torn down. The new design process began in March 2006. He and the architect were in frequent contact with the former Building Official. In October, he was informed that the rules were being interpreted differently and a redesign would be necessary. Up to that time, over \$700,000 had been spent in design fees and \$82,000 for fees to the Town. Mr. Ruehle submitted a petition from his neighbors in support of the appeal. He requested that the City Council grant an appeal and allow completion of the project based on the rules as they were interpreted in 2003.

Karin Payson, Architect, clarified the square footage of various structures and patios. The project was the fourth project she had worked on in Atherton. On March 24, 2006, she met with the former Building Official and went through the plans in great detail. She was informed that changes in basement regulations were forthcoming and she should get the plans submitted. The building permit application was submitted on May 19, 2006. In July, she received a call regarding the basements extending beyond the footprint of the house. She gave a timeline of events and discussions with various members of the Building Department including formal comments that did not mention an issue with the basement. Plans were resubmitted in October based on the comments. Ms. Payson responded to Council questions.

Paul Woollomes, Park Lane, said many neighbors found the construction to be an eyesore for many years. Additionally, another home on the street was refused a basement. He urged the Council to deny the appeal.

Richard Zukin, Park Lane, said drainage on his property was perfect. He would like to see the construction continue in the spirit of fairness. He was in support of the appeal.

Herman Christensen, Park Lane, said Council had received a letter from the Huttons who voiced opposition to project. He also urged Council to deny the appeal.

Scott Feamster, Park Lane, spoke regarding a previous discussion with Council regarding drainage, did not believe the Ruehle property would cause drainage issues, thanked Council for not regulating aesthetics, and was in support of the appeal. Additionally, he spoke in support of underground basements.

Gary Lauder, Park Lane, agreed with the previous speaker regarding underground garages, believed drainage could be addressed by requiring all residences with underground structures to ensure all water drained within the property, and supported the appeal.

Melinda Teves, Tallwood Court, referred to the Zoning Code, which specified that dereliction or oversight of an employee of the Town of Atherton with the authority to issue permits or licenses was prohibited from legalizing, waiving, or authorizing the violation of any provisions of the ordinance. Whatever the former Building Official might have promised was irrelevant.

Mayor Carlson closed the public hearing.

Vice Mayor Janz thought the appellant should wait for the underground basement ordinance to be enacted which would solve 80% of the problem. Someone always had the right to level off the ground, excavate a lot of the ground, come in from the side, and put the ground level 12 or 14 feet below grade and build a three-story house; it was a way to get around the height limit in Atherton. He believed, by looking at the drawings at the elevations from the front, there was a three-story house and was something Council might want to address in the future.

Council Member Marsala was in favor of granting the appeal and believed Council justified the former appeal regarding 172 Austin Avenue based on information given by the previous Building Official. Over the past year, he received numerous calls regarding the basement ordinance questioning why basements were limited to the footprint of the building itself. The Ruehle's were far along in the process and followed the same pattern as 172 Austin Avenue.

Council Member McKeithen differed with Council Member Marsala regarding 172 Austin Avenue. The encroachment already existed. The Council removed the "legal fiction" because the foundation would not be as strong, it would add cost and impede construction, and the encroachment would be decreased by the new construction. Additionally, no neighbors complained. The current appeal was not an existing nonconforming use but was an enlargement of the Floor Area Ratio (FAR); in essence, the Council would be granting a variance. She sympathized with the appellants; however, she believed Council needed to uphold the Town's ordinances. She was in favor of denying the appeal.

Mayor Carlson said he was satisfied that the plans violated the ordinance and, currently, basements needed to be within the building footprint. He agreed with Vice Mayor Janz that there was a chance the ordinance would be changed. Clearly, the plans did not comply with the Zoning Codes. The important issue was if the City Council began to issue exceptions to the ordinances, the whole Zoning Code would become arbitrary and capricious. He was in favor of upholding the Interim Building Official's decision.

Council Member Jerry Carlson said Council had been faced with the realization of past interpretations of the ordinances. He knew \$700,000 was a lot of money and the property was very impressive; however, it did not meet the current rules. Staff recommended that the Council deny the appeal, and he believed the Council needed to

go along with the denial. The Council needed to uphold its ordinances. If they needed to be changed, the proper processes needed to be followed.

MOTION – uphold the decision of the Building Official and deny the appeal of 233 Park Lane

M/S J.Carlson/Jans

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

City Attorney Marc Hynes stated in accordance with the Atherton Municipal Code, he would prepare findings for denying the appeal and return the item to the City Council for approval at its meeting of March 21, 2007.

REGULAR AGENDA (Items 23-31)

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)

City Attorney Marc Hynes presented the staff report. In accordance with Atherton Municipal Code Chapter 17.64.060, he prepared written findings in the form of a resolution regarding a Major Alteration Permit for 51 Laburnum Road. He recommended the following revisions to the resolution: 1) Add the date of November 3, 2006, in Item No. 1; 2) on the second page, third line, add that the “...winding roads in Lindenwood, in many cases, track the original garden paths”; 3) on the fourth line from the bottom of that paragraph, change “feelings” to “feeling”; and 4) Item C, add a specific statement that “the Town of Atherton has jurisdiction over these artifacts in .”

Timothy Hopkins, attorney for the Lambs, commented on proposed Finding No. 3 and clarified he did not concede the artifacts themselves subject to the Historic Artifact Ordinance but that the Council had jurisdiction over the appeal. The Lambs filed the application because they believed they had no choice because the urns were listed on the Urgency Ordinance without their consent and without due process. The Lambs did not concede, and never conceded, the urns were subject to the jurisdiction of the Town.

Mayor Alan Carlson noted the record would reflect what was said in the public hearing of February 21, 2007.

Jay Ross, attorney with Hopkins and Carley in San Jose representing the Lambs, said his colleague, Joan Gallo, wrote two letters to the Council dated February 13, 2007, and February 20, 2007, which were distributed to the Council prior to the meeting. The key issue was that the resolution had to be supported by the record. Based upon the record, he did not believe Council had the facts in evidence to support the findings that were in the resolution. He encouraged Council not to adopt the resolution but to simply take the action that the matter was not properly before the Council.

Mayor Carlson clarified the only matter before the Council that evening was the adoption of the findings. There was no ability of the Council to take additional evidence because the public hearing was closed.

MOTION - to adopt Resolution No. 07-01, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF A MAJOR ALTERATION PERMIT FOR 51 LABURNUM ROAD, ATHERTON," supporting the findings and as modified by the City Attorney

M/S Janz/McKeithn Ayes: 4 Noes: 1 (Marsala) Absent: 0 Abstain: 0

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)

City Attorney Marc Hynes presented the staff report. In accordance with Atherton Municipal Code Chapter 17.64.060, he prepared written findings in the form of a resolution regarding the appeal of the property owners at 172 Austin Avenue.

Mayor Carlson clarified the only matter before the Council that evening was the adoption of the findings. There was no ability of the Council to take additional evidence because the public hearing was closed.

Council Member McKeithen said regarding Item No. 4B, she suggested language be added to the last sentence, "...the proposed structure actually diminished the encroachment into the setback area." Additionally, add that in as much as there was a legal fiction that the wall could be suspended in midair, due to cost and time that would be incur to enforce and foundation would not be as strong.

MOTION - to adopt Resolution No. 07-02, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON UPHOLDING APPEAL OF THE BUILDING OFFICIAL'S DETERMINATION FOR 172 AUSTIN AVENUE, ATHERTON," as amended

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

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)

City Attorney Marc Hynes said the interim report issued by the Civil Grand Jury made recommendations relative to actions that the Town might consider regarding inspections of homes for fire safety and actions to be taken in connection with the Fire Sprinkler Ordinance. A response was due within 90 days from February 7, 2007. He

suggested advising the Civil Grand Jury that the Town was underway to consider responses to the report by the date of April 1, 2007.

Mayor Alan Carlson welcomed members of the Civil Grand Jury to the meeting. He had several concerns and clarified two items: 1) Provisions of the Health and Safety Code allowed for delegation of plan checking with respect to single-family homes to either the Town itself or to the Menlo Park Fire Protection District (MPFPD) (The Town had not delegated the responsibility to the MPFPD.); and 2) having passed a Sprinkler Ordinance, under the law, the plans regarding sprinklers needed to be submitted to the MPFPD and the structure inspected by the MPFPD. He noted the City of Menlo Park did not send any of its plans to the MPFPD. He read from a press release from the MPFPD which concluded there was mounting evidence that there were irregular and improperly issued building permits and the Town's Building Department did not follow standard practices used in other communities requiring MPFPD approval of building plans. He noted the statement was completely inaccurate. Mayor Carlson was extremely concerned with reports of the issue. He also raised concerns regarding a fire citation procedure initiated by the MPFPD, responded to by the Town, yet nothing further had been done. MPFPD requested access to and regulation of water flow from hydrants in December 2006, which had never been an issue previously. He found the reporting on these matters very disturbing. He suggested that the Council meet with MPFPD to clarify issues of responsibility.

Discussion ensued regarding the Civil Grand Jury recommendations, such as clarification of jurisdiction, whether the MPFPD needed to examine all substantial construction projects with open building permits and what other jurisdictions with adopted sprinkler ordinances did, whether the MPFPD needed to review all projects constructed during the former Building Official's tenure for fire and safety, finalize and adopt an ordinance that defined approval of building constructions plans prior to issuance of permit, reconsideration of the current policy that exempted all alterations of existing structures from the sprinkler requirement, continued implementation of the Finance Department recommendations in the Phase I, II, and III Building Department audit, etc.

Mayor Carlson addressed inaccuracies regarding the editorial in the *Almanac*. The allegation that the Town's Building Department failed to submit hundreds of plans to the MPFPD for approval was based upon a false premise and was most disturbing. There was no requirement for the MPFPD to sign off on plans. He did not believe the Town of Atherton had a legal obligation to submit hundreds of plans to the MPFPD when the responsibility was never given to the MPFPD. Additionally, he did not have confidence in whether the MPFPD had anyone qualified to review the plans.

Council Member Jerry Carlson believed sending all the plans to the MPFPD would give the Building Department's new team a fresh start in terms of the expectations that health and safety was being done well under the old administration. If some real health and safety issues were discovered, the homeowners could be notified.

City Manager Jim Robinson clarified that staff met with the MPFPD the prior week to review the issues raised by the Civil Grand Jury and the MPFPD indicated it would contract with a fire protection engineer who would actually review the plans. He was concerned, if there were a review, to allow original documents out of the Town and suggested the review should occur in Town offices. There were a number of procedural issues, a number of policy issues, identified. Staff took the report seriously, had begun a review, but believed some of the information provided by the MPFPD to the Grand Jury needed some amendment.

Mayor Carlson proposed a meeting between the City Council and the MPFPD Board, preceded by staff discussions, to decide who would take jurisdiction for plan checking for health and safety issues. Discussion was needed for issues related to outside of the buildings, e.g., fire truck access and issues of water flow.

Jeff Wise, Linden Avenue, had experience in other jurisdictions where plans were submitted to the fire department, which resulted in an additional fee and a month to turn the plans around. He believed the MPFPD wanted the extra fees. He thought the Town did good job of checking health and safety issues and did not need to go to the MPFPD.

Vice Mayor Janz said the letter received that evening from the MPFPD made an assumption that there was no process in place to address infrastructure issues, which was not the case. If a project required sprinklers, steps were taken that triggered actions to be taken to ensure health and safety issues were met.

Members of the Council concurred that a meeting between the City Council and the MPFPD Board was in order. Discussion continued on the merit of notifying residents regarding new health and safety requirements they might want to implement on their own. Since November of 2004, Building Department records indicated all plans that required sprinklers were sent to the MPFPD for review.

City Attorney Marc Hynes clarified the Town was obligated to respond to the Civil Grand Jury report within 90 days of the date of the letter. With respect to the recommendations, the response was to be determined by the Town.

Mayor Carlson said staff should return to City Council meeting of March 21, 2007, with a proposed response. The big issue was whether to send all the plans to MPFPD for review. His view was no.

Council Member Jerry Carlson said the City Manager recommended that any review of plans be done in the Town. He believed there were legitimate issues raised regarding questions of facts. Additionally, he believed there might be value in having an expert in MPFPD take a look at records that were available to determine what would make sense in terms of a review.

Council Member McKeithen agreed the records should remain in the Building Department to be reviewed, perhaps a cross section of some of files, by an engineer hired at MPFPD expense.

MOTION – to propose a joint meeting between the Menlo Park Fire Protection District Board and the Town of Atherton City Council, to be preceded by Town staff and Fire District staff meeting within the next 30 days to identify issues that each body sees as germane, to establish an agenda, including but not limited to the recommendations of the Civil Grand Jury report, as well as a response to the Civil Grand Jury report.

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

Mayor Carlson called for a recess at 10:03 p.m. The meeting was reconvened at 10:10 p.m.

26. LANDSCAPE MAINTENANCE AGREEMENT – 12 SELBY LANE

City Attorney Marc Hynes presented the staff report. Heritage trees were damaged at 12 Selby Lane when a wall was being installed and tree roots were cut. Litigation was authorized by the City Council and filed in Superior Court on September 12, 2006. The case was settled in November 2006; and as a result, the property owner agreed to plant five 15-gallon trees to be selected from a list provided by the Town Arborist and seven evergreen shrubs to be selected by the property owner. Additionally, they agreed to enter into an agreement to maintain the plantings. The agreement was before the Council that evening.

Council Member McKeithen saw the Heritage Tree Ordinance as serving two purposes: as restorative, and as a deterrent. She said entering into the \$20,000 agreement that basically went into a kitty for the beautification of El Camino Real was not furthering either goal. She believed if the property owners were required to put in significantly larger trees, equivalent value in terms of aesthetic, environmental, size, height, and appearance of the unlawfully removed trees would be achieved. Requiring considerably larger trees in accordance with the statute and the filing of the security deposit was the only way to be fair to the neighbors and act as a deterrent as well.

Town Arborist Kathy Hughes Anderson agreed with the concept. The situation was complicated by the fact there was an absentee property owner. She did not believe there was malicious intent on the part of the property owner; she thought the contractor was negligent. Additionally, the Town had some responsibility since the plans were approved without tree protection being required.

Council Member McKeithen thought the Town should try to negotiate with the resident for larger trees.

City Attorney Hynes clarified that the case had been settled, the settlement agreement had been signed, and the money had been received. What was before the Council that evening was the landscape maintenance agreement, which was purely ministerial.

John Thomas, Atherton, believed the money from the settlement should be restricted to the area in which the damage was done. The neighboring properties needed to be taken into consideration.

City Attorney Hynes said Council had the ability to determine what to do with the funds.

A short discussion ensued regarding whether there was merit in replacing the trees planted by the property owner with larger trees. A suggestion was made to meet with the neighbors in the area to try to make an accommodation that satisfied the neighbors as well as protecting some of the funds for the Tree Committee's project.

MOTION - to authorize the Mayor to sign the agreement with direction to staff to evaluate the neighborhood around the offending property to determine whether there were projects that would be feasible to spend the funds on before spending the funds elsewhere in Town

M/S A.Carlson/Janz

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

27. DISCUSSION AND POSSIBLE ACTION REGARDING THE ENVIRONMENTAL PROGRAMS COMMITTEE (*Continued from the City Council meeting of January 17, 2007*)

Valerie Gardner, Environmental Programs Committee Member, said the original Waste Reduction Committee was formed in 1998 as a response to a state-mandated requirement to improve recycling levels (AB 939). Presently, concerns about environmental issues were at an all-time high including energy consumption, air pollution, global warming, drought, etc. There was work to be done to improve the environmental performance of the Town. Rather than waiting to be put on a compliance order, the current Environmental Programs Committee (EPC) wanted to put Atherton ahead of the curve. Currently, there were three resident members. The committee changed its name to the EPC and increased meetings from quarterly to monthly. The EPC was moving beyond recycling and solid waste issues to address issues of global warming and CO2 emissions, green building standards and environmental improvements, energy efficiency, etc. The EPC wanted to improve and expand Earth Day activities to be held at Holbrook-Palmer Park. The EPC recommended extending the terms of its members to 4-year terms, increasing the number of resident members up to ten, and by including a mission statement that sought to improve the overall environmental performance of the Town in those areas related to energy efficiency, reduction in the usage of the electric grid, reduction of CO2, etc.

Council Member Marsala commended Ms. Gardner for her efforts on the committee. Other communities were creating Green Ribbon Task Forces to deal with the issues. The EPC served a dual purpose.

City Attorney Hynes clarified that the number of members authorized to serve on the committee determined a quorum. If the membership dropped below that, new members needed to be appointed.

Council Member McKeithen was not opposed to the recommended changes. She suggested speaking with the County on several of the issues, e.g., e-waste and Earth Day events, since the County had established programs.

Council Member Jerry Carlson asked what types of Town resources would be needed in the way of funds or staff time.

Ms. Gardner believed the activities would be self-sufficient by using sponsorships and not requiring a great deal of staff support.

City Manager Jim Robinson clarified there was some staff time incurred in the preparation of agendas, etc, and believed there would be some impact.

Council Member Carlson believed the EPC needed to think through what its goals and objectives were and to be realistic in what areas it could make a difference. He thought staggered terms would be more beneficial.

Vice Mayor Janz suggested the EPC develop a mission statement, goals and objectives, and a plan for the City Council to consider at the next meeting.

MOTION – that the City Council formally approves the name change from the Waste Reduction Committee to the Environmental Programs Committee, to increase membership to 10 resident advisors, and to increase the initial term limits for half the members to two-year terms and half to four-year terms

M/S J.Carlson/Marsala

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

A discussion ensued regarding Earth Day activities.

28. RECOMMENDATION FROM THE ENVIRONMENTAL PROGRAMS COMMITTEE TO ADOPT A RESOLUTION APPROVING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT

Council Member Marsala gave a PowerPoint presentation regarding the U.S. Mayors' Climate Protection Agreement updating the Council on climate protection. There were three parts to the agreement: 1) to urge federal and state governments to enact policies to reduce global warming; 2) to urge Congress to pass legislation to reduce greenhouse gas emissions; and 3) for local cities and towns to strive to reduce their own by taking action. One of the ways in which the Town could take action was to conduct a survey through ICLEI to establish a target to lower emissions, develop a plan, implement a plan, and measure to determine whether the goals have been met. The Mayors' Climate

Protection Agreement contained 12 action items. Council Member Marsala urged Council to approve the resolution.

Council Member McKeithen was in favor of looking at ways to compost and recycle, etc., but believed some of the items were totally inappropriate for Atherton and beyond the purview of the City Council.

Mayor Alan Carlson was concerned over the very aggressive agenda and how much staff time and resources would be needed from the Town. He believed the Town could do many of the things within its existing structure and not make commitments that might not be fulfilled.

City Manager Jim Robinson said anytime a new program or committee was added, additional staff time would be required. Other small cities had become involved and it was a matter of whether the Town wanted to become involved and had the energy to do so.

Council Member Jerry Carlson reiterated the need for adopting measurable goals and objectives and his concern regarding staff time.

Vice Mayor Janz was strongly in favor of adopting the resolution. The Town already participated in many of the activities within the County. Signing on to the agreement indicated the Town acknowledged there was a serious issue and wanted to become involved.

Council Member Marsala said the Environmental Programs Committee, on a unanimous vote, recommended adoption of the resolution.

MOTION - to adopt Resolution No. 07-03, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ENDORSING THE U.S. MAYORS' CLIMATE PROTECTION AGREEMENT," which did not incur any cost on behalf of the Town but was an ideology that the Town was in large part following

M/S McKeithen/Janz Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

- 18. APPROVAL FOR THE TOWN OF ATHERTON TO JOIN ICLEI, LOCAL GOVERNMENTS FOR SUSTAINABILITY, AS RECOMMENDED BY THE ENVIRONMENTAL PROGRAMS COMMITTEE** *(Removed from the Consent Calendar and placed on the Regular Agenda by the Mayor for discussion after Item No. 28.)*

The Environmental Programs Committee recommended the Town join ICLEI (International Council for Local Environmental Initiatives), an international association of local governments, nations, and regional local government organizations that have made a commitment to sustainable development. ICLEI also provided technical consulting, training and information services to support local government in the implementation of sustainable development at the local level. Their premise was that locally designed initiatives could provide an effective and cost-efficient way to

achieve local, national, and global sustainability objectives. ICLEI had also assisted local cities in the survey and methodology for measuring the CO2 emissions by providing software and software support.

Vice Mayor Janz said others cities that have joined ICLEI did so to follow the U.S. Mayors' protocol which envisioned a 7% reduction of greenhouse emissions below 1990 levels. Some cities were setting targets from current years. Most Contra Costa cities picked a 25% reduction from 2005 levels. He thought Atherton should pick a target that pertained to the Town as a whole. He described some of the proposed programs. ICLEI would work with the Town to do a baseline study, help determine what could be done to reduce greenhouse emissions, and implement methods to obtain results.

After a short discussion regarding the merits of joining ICLEI and the benefits for doing so, the Council concurred that the Town should join.

Valerie Gardner, Environmental Programs Committee, said by joining ICLEI, high-level expertise would be brought in to help accomplish the Town's goals easily and effectively without Town resources.

MOTION - to approve the Town of Atherton's membership in ICLEI as recommended by the Atherton Environmental Programs Committee

M/S McKeithen/Marsala

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

29. MID-YEAR BUDGET PROPOSAL FOR MOBILE DATA COMPUTERS

Police Chief Bob Brennan said there would be no additional cost associated for adding the computers to the network server. Recurring costs would be included in the upcoming budget. The computers were "read only" and would not contain confidential data. A brief discussion ensued regarding how the computers would be used.

MOTION - to approve an expenditure of \$66,225.60 to purchase 10 laptop computers, necessary software and hardware, to fully implement a Mobile Data Computer (MDC) program

M/S McKeithen/Marsala

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

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.

20. ADOPTION OF A RESOLUTION SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE (*Removed from the Consent Calendar and placed on the Regular agenda to be discussed after Item No. 31.*)

Council Member McKeithen suggested adding the name of the town, "Atherton," to the first whereas, made a correction to the date when weekday service was suspended from 2003 to 2005, and added the word "affected" to the second item under the "Now therefore be resolved" clause.

MOTION - to adopt a Resolution No. 07-04, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON SUPPORTING EXPANSION OF AND SAFETY ENHANCEMENTS TO TRANSIT SERVICE," as modified

M/S McKeithen/Janz

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

32. PUBLIC COMMENTS

There were no public comments.

33. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting to a *Continued* Closed Session at 12:10 a.m.

D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

City Attorney
City Manager

Mayor Carlson adjourned the *Continued* Closed Session, Item D, to the City Council Closed Session meeting of March 21, 2007, at 12:25 a.m.

Respectfully submitted,

Kathi Hamilton
Acting City Clerk

TOWN OF ATHERTON
CLAIMS LIST
February, 2007

Payroll Checks	9190 - 9264	\$ 19,571
Electronic Transfers		338,471
A/P Checks	23487 – 23631	385,163
TOTAL		\$ 743,205

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 9190 - 9264 (payroll) and 23487 – 23631 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$743,205; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers 9190 - 9264 (payroll) and 23487 - 23631 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$743,205; are true and correct, and are authorized for payment.

Alan Carlson
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$613,102
105	Tennis Fund	412
201	Special Parcel Tax	82,239
202	Transportation	-
203	Gas Tax Fund	-
210	Road Construction Impact Fees	213
211	Park Grants Fund	11,007
213	Library Special Revenue Fund	1,082
401	General Capital Projects	-
402	Storm Drainage	-
403	Atherton Channel District	-
406	Facilities Construction	-
610	Vehicle Replacement	12,169
611	Computer Maint. & Replacement	19,713
612	Administrative Services	3,268
715	Evans Estate	-
740	Tree Committee	-
TOTAL		\$743,205



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 MARCH 21, 2007

SUBJECT: MONTHLY FINANCIAL REPORT, FEBRUARY 2007

RECOMMENDATION:

Receive the Monthly Financial Report for February 2007.

INTRODUCTION:

The attached schedules show revenues, expenditures and fund balance for all funds as of February 28, 2007.

HIGHLIGHTS

General Fund expenditures for the eight months ended February 28, 2007, have amounted to \$5,805,898, or 61% of the \$9,480,065 budgeted for the fiscal year. For the eight months ended February 28, 2007, General Fund revenues amounted to \$4,988,894, or 62% of the \$8,018,670 estimated for the year.

By comparison, General Fund expenditures amounted to 59% of appropriations for the seven months ended January 31, 2006. Additionally, General Fund revenues amounted to 64% of estimated revenues for the eight months ended February 28, 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 February 28th, 2007

Fund	Revenue Source	2006-07 Estimate	Current Period Revenues	Year to Date Revenues	% Received
	Property Tax	\$ 4,135,402	17,154	2,356,235	57%
	Sales and Use Tax	157,500	12,400	110,514	70%
	Other Taxes	1,111,546	44,616	568,229	51%
	Licenses & Permits	1,466,200	56,467	846,215	58%
	Fines & Forfeitures	35,000	4,122	35,857	102%
	Revenue from Other Agencies	395,215	27,579	563,281	143%
	Charges for Services	176,500	14,445	206,678	117%
	Investment & Rental Income	307,852	8,754	276,470	90%
	Other Revenues	229,000	5,325	25,415	11%
	Total General Fund Revenues	8,014,215	190,862	4,988,894	62%
	Interfund (Operating) Transfers In	4,455	-	-	0%
101	General Fund Total	8,018,670	190,862	4,988,894	62%
	Special Revenue Funds:				
105	Tennis	8,000	1,175	4,988	62%
201	Special Parcel Tax	1,858,000	-	1,139,263	61%
202	Transportation	265,000	24,999	190,896	72%
203	Street Improvement (Gas Tax)	150,000	-	123,580	82%
209	Law Enforcement	100,000	-	100,702	101%
210	Road Construction Impact Fees	1,100,000	20,109	(103,273)	-9%
211	State Park Grants Fund	313,910	-	-	0%
213	Library	200,000	-	71,617	36%
	Total	3,994,910	46,283	1,527,773	38%
	Capital Project Funds:				
401	Capital Improvement	-	-	5,586	
402	Storm Drainage	20,000	-	918	
403	Channel Drainage District	50,000	221	36,889	74%
406	Facilities Construction	-	-	1,438	
	Total	70,000	221	44,831	64%
	Internal Service Funds:				
610	Vehicle Replacement	120,919	12,169	64,953	54%
611	Information Technology	104,670	-	55,528	53%
612	Administrative Services	303,221	-	157,333	52%
614	Workers Compensation Insurance	-	-	-	
	Total	528,810	12,169	277,814	53%
	Trust and Agency Funds:				
715	Evans Creative Design	14,500	-	4,136	29%
740	Tree Committee	1,400	250	25,328	
	Total	15,900	250	29,464	185%
	Total Revenues	12,628,290	249,785	6,868,776	54%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended February 28th, 2007

Fund	Description Department	2006-07 Budget	Current Period Expenditures	Year to Date Expenditures	% Spent
101	General Fund				
	11 City Council	\$ 21,749	\$ 174	\$ 21,536	99%
	12 City Manager	504,360	35,986	303,762	60%
	16 City Attorney	188,337	28,362	209,212	111%
	18 Finance	448,576	30,694	292,486	65%
	25 Building	1,364,503	68,119	800,090	59%
	40 Police	4,696,248	333,003	2,857,724	61%
	50 Public Works	2,036,292	148,287	1,321,088	65%
	Disaster Preparedness	120,000	-	-	0%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>9,480,065</u>	<u>644,625</u>	<u>5,805,898</u>	<u>61%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	General Fund Total	<u>\$ 9,480,065</u>	<u>\$ 644,625</u>	<u>\$ 5,805,898</u>	<u>61%</u>
Special Revenue Funds:					
105	Tennis	5,522	-	3,455	
201	Special Parcel Tax	1,910,535	649,155	2,040,091	107%
202	Transportation	444,500	-	15,000	3%
203	Street Improvement (Gas Tax)	150,000	-	23,234	15%
209	Law Enforcement	100,000	-	94,086	94%
210	Road Impact Fees	1,470,000	-	1,523,736	104%
211	State Park Grants	277,040	11,007	64,632	23%
213	Library Fund	78,326	1,165	36,289	46%
	Total	<u>4,435,923</u>	<u>675,279</u>	<u>3,856,455</u>	<u>87%</u>
Capital Project Funds:					
401	Capital Improvement	-	-	-	
402	Storm Drainage	21,394	-	2,963	14%
403	Channel Drainage District	60,000	-	10,644	18%
	Total	<u>81,394</u>	<u>-</u>	<u>13,607</u>	<u>17%</u>
Internal Service Funds:					
610	Vehicle Replacement	76,000	-	45,688	60%
611	Information Technology	116,120	17,607	29,414	25%
612	Administrative Services	288,342	13,973	210,801	73%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>480,462</u>	<u>31,580</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>1,351,484</u>	<u>9,965,197</u>	<u>69%</u>

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2006-07
As of February 28th, 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	4,988,894	-	5,805,898	8,527,470
	Special Revenue Funds:					
105	Tennis	23,692	4,988		3,455	25,225
201	Special Municipal Tax	1,005,832	1,139,263		2,040,091	105,004
202	Transportation	527,577	190,896		15,000	703,473
203	Street Improvement (Gas Tax)	102,874	123,580		23,234	203,220
209	Law Enforcement	10,437	100,702		94,086	17,053
210	Road Construction Impact Fees	1,373,559	(103,273)		1,523,736	(253,450)
211	State Park Grants	-	-		64,632	(64,632)
213	Library Special Revenue Fund	1,947,286	71,617		36,289	1,982,614
	Sub Total	4,991,256	1,527,773	-	3,856,455	2,662,574
	Capital Projects Funds:					
401	Capital Improvement	258,424	5,586		-	264,010
402	Storm Drainage	43,455	-		2,963	40,492
403	Channel Drainage District	36,039	36,889		10,644	62,284
406	Facilities Construction	-	1,438		-	1,438
	Sub Total	337,919	43,913	-	13,607	368,225
	Internal Service Fund					
610	Vehicle Replacement	440,370	64,953		45,688	459,635
611	Information Technology	89,739	55,528		29,414	115,853
612	Administrative Services	198,175	157,333		210,801	144,707
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	739,155	277,814	-	285,903	731,066
	Trust and Agency Funds					
715	Evans Creative Design	117,345	4,136		1,175	120,306
740	Tree Committee	24,558	250		2,159	22,649
	Sub Total	141,903	4,386	-	3,334	142,955
	Grand Total	\$ 15,554,708	\$ 6,842,780	\$ -	\$ 9,965,197	\$ 12,432,291



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 MARCH 21, 2007

**SUBJECT: ADOPTION OF A RESOLUTION OF THE CITY COUNCIL OF
THE TOWN OF ATHERTON APPROVING THE APPLICATION
FOR LAND AND WATER CONSERVATION FUND FOR THE
HOLBROOK-PALMER PARK TENNIS COURT
REHABILITATION PROJECT**

RECOMMENDATION:

Adopt a Resolution of the City Council of the Town of Atherton approving the application for Land and Water Conservation Fund (LWCF) for the Holbrook-Palmer Park Tennis Court Rehabilitation project, and committing the required local match of 50%.

BACKGROUND:

In February, the State of California Department of Parks and Recreation issued a call for projects to be funded by the LWCF grant program. Applications are due May 1, 2007.

The LWCF's statement of purpose reads:

The purposes of the LWCF program are "to assist in preserving, developing and assuring accessibility to all citizens of the United States of America of present and future generations . . . such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable. . . by (1) providing funds for and authorizing federal assistance to the states in planning, Acquisition, and Development of needed land and water areas and Facilities, and (2) providing

funds for the federal Acquisition and Development of certain lands and other areas.” (Section 1(b) of the Land & Water Conservation Fund Act of 1965, as amended, 78 Stat. 897)

The congressional intent of the LWCF is for Applicants and the California Department of Parks and Recreation to cooperatively acquire, develop, and maintain outstanding properties in perpetuity for outdoor recreation purposes. It is important that quality recreation Facilities are developed for people at the local level and statewide.

The LWCF program, administered nationally by the National Park Service, provides funds to federal agencies, the 50 states and 6 territories. Funds for the program come from federal recreation fees, sales of federal surplus real property, federal motorboat fuels tax, and Outer Continental Shelf mineral receipts. The money allocated to the states may be used for statewide planning, acquiring, and developing outdoor recreation areas and Facilities.

The LWCF Guidelines state that the funds may be used for Acquisition and Development projects, and that:

Development Projects shall include the construction of new and/or renovation of existing Facilities for outdoor recreation. . Associated support Facilities (e.g., restrooms, utilities) are eligible. Indoor Facilities which support outdoor recreation activities in the immediate vicinity are also eligible.

Projects that involve new construction or renovation of Facilities must provide access in accordance with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and all other laws relating to accessibility.

From this it is clear that the tennis courts rehabilitation project is eligible for these funds.

ANALYSIS:

The tennis courts rehabilitation project that would reconstruct the tennis court surface and replace the nets, fences, windscreens, benches and drinking fountain was originally bid on July 14, 2003, with a low bid of \$277,312. At that time, the City Council decided not to award the project unless significant funds could be provided from a non-City funding source. Since that time, asphalt prices have increased dramatically and other materials prices have also increased. The current estimate of the cost for the same project is now \$365,000.

The Town recently re-patched and re-painted the tennis courts. This maintenance action is expected to last approximately 5 years before needing further and more extensive rehabilitation. This grant would allow time to develop the project plans and begin to construct the project when the courts again begin to deteriorate.

FISCAL IMPACT:

The cost estimate for the Holbrook-Palmer Park Tennis Courts Rehabilitation Project is \$365,000, based on a cost estimate prepared by staff, including construction costs and contingency. The Town needs to commit to fund \$182,500 to match the LWCF grant; however, other non-federal grants, i.e., State Park Grants, may be used to provide matching funds for the LWCF grant and vice versa, if such other grants are awarded. Additionally, private donations may be used as a part of the matching funds.

This grant will allow sufficient time to pursue matching funds outside of normal City funds; however, the Town must commit to funding the project in the Resolution. A maximum of \$182,500 from either Parcel Tax funds, or the new Parks for the Future funding, if passed by the voters, will need to be committed and budgeted for the project in future years.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachments: Resolution

RESOLUTION 07-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
APPROVING THE APPLICATION FOR LAND AND WATER CONSERVATION
FUND FOR THE HOLBROOK-PALMER PARK TENNIS COURT
REHABILITATION PROJECT**

WHEREAS, the Congress under Public Law 88-578 has authorized the establishment of a federal Land and Water Conservation Fund Grant-In-Aid program, providing Matching funds to the State of California and its political subdivisions for acquiring lands and developing Facilities for public outdoor recreation purposes; and

WHEREAS, the California Department of Parks and Recreation is responsible for administration of the program in the State, setting up necessary rules and procedures governing Applications by local agencies under the program; and

WHEREAS, said adopted procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of Applications and the availability of eligible Matching funds prior to submission of said Applications to the State; and

WHEREAS, the proposed Holbrook-Palmer Park Tennis Court Rehabilitation Project is consistent with the Statewide Comprehensive Recreation Resources Plan *California Outdoor Recreation Plan - 2002*; and

WHEREAS, the Project must be compatible with the land use plans of those jurisdictions immediately surrounding Project;

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

1. Approves the filing of an Application for Land and Water Conservation Fund assistance; and
2. Certifies that said agency has Matching funds from the following source(s): private donations, tennis key sales and Parcel Tax funds and can finance 100 percent of the Project, half of which will be reimbursed; and
3. Certifies that the Project is compatible with the land use plans of those jurisdictions immediately surrounding the Project; and
4. Appoints the City Manager as agent of the Applicant to conduct all negotiations and execute and submit all documents, including, but not limited to, Applications, contracts, amendments, payment requests, and compliance with all applicable

current state and federal laws which may be necessary for the completion of the
aforementioned Project.

* * * * *

*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 March, 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:

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 MARCH 21, 2007

**SUBJECT: AUTHORIZATION OF A PURCHASE ORDER WITH NOR CAL
COATINGS FOR PAINTING THE MAIN HOUSE, PRE-SCHOOL AND
ENTRANCE GATES IN HOLBROOK-PALMER PARK**

RECOMMENDATION:

Award a purchase order to Nor Cal Coatings for \$17,300.00 for painting the exterior of the Main House, the Knox Pre-school (old section) and the park entrance gates (3).

BACKGROUND:

Some of Holbrook-Palmer Park's facilities were found to be in need of paint. These facilities are the Main House, the Knox Pre-school (old section) and the park's entrance gates (3). The low-bid price of \$17,300.00 is \$2300.00 over the current purchase order limit of our department.

INTRODUCTION:

Four reputable painting contractors were contacted to bid on the work. These contractors are known to us as being reasonably priced, capable of doing this type of work, highly professional and flexible enough to work with/around the schedule of park events. The scope of the work is as follows:

- Power-wash complete exteriors to remove all dirt, dust, mildew, etc...
- Wire-brush, scrape and sand all loose/peeling paint.
- Caulk all gaps and seams in siding and trim.
- Replace window glazing as needed.

- Prime all bare and prepared surfaces.
- Mask off all windows, cover all walkways and plants.
- Other preparation as required.

We requested bids for this project due to the following reasons:

- We did not know if the price would be above or below the \$15,000.00 level of purchasing authority granted the Public Works Director.
- We wanted to make certain that a good, reputable painting company was used for this work. This painting is expected to last many years (20+).
- We wanted a company that worked with a high level of professionalism.
- We needed a company that was able to work in and out of the many functions that occur in the park.

FISCAL IMPACT:

The bids from the four companies are listed below:

VARSITY PAINTING	WALNUT CREEK	\$28,210.00
EL GATO PAINTING	CUPERTINO	\$29,425.00
NORCAL COATINGS	SAN MATEO	\$17,300.00
ORLANDO TRUJILLO PAINTING	SAN MATEO	\$22,000.00

Funding currently exists in the Public Works Facility budget for the 2006-07 fiscal year to pay for this work.

Prepared by:

Approved by:

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

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

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

DATE: FOR THE MEETING OF MARCH 21, 2007

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

RECOMMENDATION

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

INTRODUCTION:

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

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

ANALYSIS:

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

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

FISCAL IMPACT:

Funding was not budgeted for this position in the Fiscal Year 2006-07 Adopted Budget. The total approximate fiscal impact for Fiscal Year 2006-07, based on filling this position by May 29, 2007, is \$8,354. This amount reflects salary and all roll-up costs, including PERS contribution.

Prepared by:

Approved by:

Wendé C. Protzman
Assistant to the City Manager

James H. Robinson
City Manager

Attachments

- A. Job Description
- Resolution

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

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

Class Characteristics

The class has responsibility for serving the public at the permit counter, receiving plans, processing permits, scheduling inspections, inputting data, and providing information to the public. This class is distinguished from the Building Inspector/Plan Checker position in that the latter performs combination inspections of building sites to enforce all applicable laws and codes and performs non-structural plan checking on a variety of residential construction and modification.

Examples of Duties (Illustrative Only)

- Assists in processing building applications and enters new permit data.
- Serves the public at the permit counter; accepts plans for plan check and verifies accuracy and completeness of information; calculates permit fees based on type of construction and use of building.
- Explains ordinances and procedures to owners, contractors, developers, and general public.
- Processes requests for refunds
- Compiles and reports on statistical information and data regarding building, zoning, sign, and related permits.
- Compiles weekly and monthly reports.
- Performs recordkeeping and filing of data.
- Performs related duties and responsibilities as required.
- Efficiently processes building permits and miscellaneous permits; ensures all necessary approvals are obtained.
- Performs elementary plan checking duties at the counter, reviewing for completeness and for conformance to building and other appropriate policies and procedures as assigned.
- Responds to inquiries and confers with builders, engineers, contractors, architects, and the public concerning submitted requirements, building codes, and permit regulations at the counter and over the phone.
- Calculates various valuations, plan checks fees and permit fees, collects and processes various fees; and balances the cash.
- Sorts and files documents and records, maintaining alphabetical, index, and cross-reference files; maintains complex office records related to building inspection and code enforcement.
- Organizes, maintains, and upkeeps Building Department files and reports any problems to the Building Official.
- Schedules inspections and checks documentation when a final inspection is requested.

- Performs other related duties as required.

Qualifications

Knowledge of:

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

Skill in:

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

Education and Experience:

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

License:

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

Physical Demands:

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

RESOLUTION NO. 07-_____

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

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

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

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

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

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

* * * * *

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

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

Alan B. Carlson, Mayor
Town of Atherton

ATTEST:

Kathi Hamilton, City Clerk

APPROVED AS TO FORM:

Marc Hynes, City Attorney

Permit Technician Salary and Benefit Package

Top Step Salary	5,621.00
Employer Paid Member Contribution (PERS) 7%	393.47
Medicare contribution (mandated)	81.50
Medical (Maximum contribution)*	1,258.95
Vision	26.03
Dental	100.30
Life	28.39
Long Term Disability	32.59
TOTAL	7,542.23



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: CHIEF ROBERT J. BRENNAN

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

**SUBJECT: PARTICIPATION IN MENLO FIRE PROTECTION DISTRICT EMERGENCY
COMMAND CENTER (ECC)**

RECOMMENDATION:

City Council approves the participation and cooperation in the Menlo Park Fire Protection District Emergency Command Center (ECC).

INTRODUCTION:

The Menlo Park Fire Protection District has recently designed and equipped a large, multi-room warehouse facility to house its California Task Force 3 operations. Part of that facility has been designated an Emergency Command Center (ECC) where disaster and emergency operations within the fire protection district can be managed. The fire district has designated rooms for each municipality within the district to place/install necessary equipment and resources for use of emergency personnel acting in an Agency Representative role within the Incident Command System (ICS).

ANALYSIS:

While the Menlo Park Fire Protection District's ECC is a welcomed resource for the Town of Atherton, it should not be viewed as a replacement for our Emergency Operations Center (EOC). All disasters and emergencies are the legal responsibility of local government who remain responsible for all stages of emergency management: Preparation, Mitigation, Response and Recovery. The California Emergency Services Act regulates and mandates local government be responsible for a declared emergency. In short, the Town cannot delegate its responsibility for, or response to, an emergency or disaster. It is the Emergency Services Act which prohibits local governments within the Menlo Park Fire Protection District from having a single Emergency Operations Center. Instead, an ECC will be opened by the Fire District to aid in communication efforts between entities.

Within the Incident Command System (ICS) – the only authorized personnel and resource management system in California – a position exists called the “Agency Representative.” The Agency Representative is an individual assigned to an incident from an assisting or cooperating agency who has been delegated authority to make decisions on matters affecting that agency's participation at the incident. In part, the Agency Representative is responsible for:

- Ensuring that all agency resources are properly checked-in at the incident
- Attending briefings and planning meetings as required
- Providing input on the use of agency resources
- Ensuring the well-being of agency personnel assigned to the incident
- Ensuring that all agency personnel and equipment are properly accounted for and released prior to departure
- Ensuring that all required agency forms, reports and documents are complete prior to departure

Because the Agency Representative has extensive responsibilities for making command decisions regarding Town personnel and resources, and, since that person would be an active participant in ECC briefings, it would be necessary to assign a trained supervisory or management Town employee to staff the ECC position.

A secondary position within the Town’s participation may be a police dispatcher – if available. Such a position would be used to communicate with the Town Emergency Operations Center (EOC) when telephone or Internet access is not available. If a police dispatcher is not available the responsibility of that position would be taken care of by the Agency Representative.

FISCAL IMPACT:

To fully participate in the Emergency Command Center (ECC) the following equipment should be approved:

Dedicating a computer (either laptop or stand alone PC) capable of Internet access to interface with the Town server and databases. When the Police Department’s MDC program is fully online that requirement should be met. The following table is a *minimum* recommended list of equipment with *estimated* costs. Based on the availability of equipment, power, antennas, future needs, and Internet access the below listed items could be affected.

Item	Unit Price	Number of Units	Total
Laptop or stand alone computer	\$2,000	1	\$2,000
Motorola or other compatible police radio including power supply, microphone, etc.	\$5,000	1	\$5,000
Wall maps and display charts	\$500		\$500
Miscellaneous office supplies	\$250		\$250
Total			\$7,750.00

Prepared by:

Robert J. Brennan
Police Chief

Approved by:

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 21, 2007

SUBJECT: ADOPTION OF A RESOLUTION SUPPORTING VIRGIN AMERICA AIRLINES SEEKING REGULATORY APPROVAL FROM THE FEDERAL AVIATION ADMINISTRATION

RECOMMENDATION:

City Council adopt a Resolution Supporting Virgin America Airlines seeking regulatory approval from the Federal Aviation Administration

BACKGROUND:

Virgin America Airlines is locked in a regulatory battle with the Department of Transportation over its application to provide domestic airline service out of San Francisco International Airport. The San Mateo County Board of Supervisors adopted a resolution in support of Virgin America. Supervisor Jerry Hill is requesting the City Councils in the County adopt a similar resolution. The resolution references a number of economic benefits an additional domestic airline carrier will provide—not just to the County but also to consumers across the country.

RESOLUTION 07-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON SUPPORTING VIRGIN AMERICA IN ITS ATTEMPT TO RECEIVE REGULATORY APPROVAL FROM THE FEDERAL AVIAATION ADMINISTRATION

WHEREAS, Virgin America is committed to serving travelers out of its base of operations at San Francisco International Airport; and

WHEREAS, Virgin America seeks to bring innovation and creativity to the airline industry; and to provide customers with a unique and rewarding travel experience; and

WHEREAS, Virgin America will bring 1,600 jobs to the Bay Area, in addition to the 170 it has already created; and

WHEREAS, Virgin America will generate millions of dollars in revenue for our local economy and expand the county’s ability to provide services our residents value; and

WHEREAS, Virgin America will bring much needed competition to the airline industry, lowering prices for consumers and improving the level of customer service.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the Town of Atherton hereby extends its full support to Virgin America in its attempt to gain regulatory approval to serve domestic airline travelers out of San Francisco International Airport.

* * * * *

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 March, 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: PUBLIC WORKS DIRECTOR DUNCAN JONES

DATE: FOR THE MEETING OF MARCH 21, 2007

SUBJECT: E.O.C. GENERATOR REQUIREMENT RESULTS

RECOMMENDATION:

Approve Public Works to proceed with advertising for bids for a 40Kw diesel generator with a 10Kw load bank and automatic transfer switch.

BACKGROUND:

The City Council requested that the Public Works Department hire an independent electrical consultant to survey the sizing for standby power to supply our new Emergency Operations Center (EOC) in the event of an emergency.

Our Town electrician, Intermountain Electric, suggested Loren Burns as a electrical consultant who would do a good job. Loren supplied the town an RFP for the work and was hired to evaluate and field test the EOC needs.

ANALYSIS:

The following is an excerpt from his findings;

“As requested by your City Council, we will herein explore the options concerning the sizing of a Diesel Driven Emergency Generator at your existing Public Works Building. This building will be equipped to act as an Emergency Operational Center (EOC).

The existing electrical loads in this building are:

1.	Air Conditioning Compressor	6,900 watts
2.	Interior and Exterior Lighting	2,100 “
3.	Receptacles	4,320 “
4.	Furnace Motor	1,200 “
5.	35% of Air Conditioning to Start Compr.	2,415

TOTAL	16 935 watts
or	16.94 kW

Proposed change-hot water heater from gas to electric	12.00 kW
--	----------

TOTAL	28.94 kW
-------	----------

DISCUSSION:

In the present situation with a minimum amount of future added electrical load, we would recommend a 40 kW – 120/240- volt single phase diesel driven generator. The 40kW generator equates to 174 amps at 120/240 volts single phase. This will require a 200 amp single phase Automatic Transfer Switch. The existing Electrical Panel in the building is rated at 200 amps; therefore, the two items together are consistent.

We strongly recommend a generator mounted 10 kW resistive load bank to be automatically on-line for the generators’ weekly testing under load. The load bank will be off-line when there is a utility outage.

Finally, the 40 kW generator will have a reserve capacity of approximately 10-12 kW depending upon the 4,320 watts of receptacle power that is actually connected. 10 kW equates to 42 amps at 240 volts or 84 amps at 120 volts. This added capacity can serve the Police Department Command Center Trailer, ham radios, battery chargers and other essential equipment.”

Loren Burns, PE.

FISCAL IMPACT:

It is anticipated the system as described above by Mr. Burns will cost approximately \$65,000 to purchase, deliver, install, start up and field test the entire system.

Prepared by:

Approved by:

Steven Tyler
Public Works Superintendent

James H. Robinson
City Manager

Attachments:

LOREN BURNS
CONSULTING ENGINEER
4414 Striped Maple Court
Concord, CA 94521-4329

925.383.4780

March 12, 2007

Town of Atherton
91 Ashfield Road
Atherton, CA 94027-3896

Attention: Mr. Steven Tyler
Public Works Superintendent

Re: Generator Sizing for Emergency Operational Center

Dear Steven:

As requested by your City Council we will herein explore the options concerning the sizing of a Diesel Driven Emergency Generator at your existing Public Works Building. This building will be equipped to act as an Emergency Operational Center (EOC).

The existing electrical loads in this building are:

1.	Air Conditioning Compressor	6,900 watts
2.	Interior and Exterior Lighting	2,100 “
3.	Receptacles	4,320 “
4.	Furnace Motor	1,200 “
5.	35% of Air Conditioning to Start Compr.	2,415
	TOTAL	16 935 watts
		or 16.94 kW
	Proposed change-hot water heater from gas to electric	12.00 kW
	TOTAL	28.94 kW

DISCUSSION:

In the present situation with a minimum amount of future added electrical load we would recommend a 40 kW – 120/240- volt single phase diesel driven generator. The 40kW

generator equates to 174 amps at 120/240 volts single phase. This will require a 200 amp single phase Automatic Transfer Switch. The existing Electrical Panel in the building is rated at 200 amps, therefore, the two items together are consistent.

We strongly recommend a generator mounted 10 kW resistive load bank to be automatically on-line for the generators' weekly testing under load. The load bank will be off-line when there is a utility outage.

Finally, the 40 kW generator will have a reserve capacity of approximately 10-12 kW depending upon the 4,320 watts of receptacle power that is actually connected. 10 kW equates to 42 amps at 240 volts or 84 amps at 120 volts. This added capacity can serve the Police Department Command Center Trailer, ham radios, battery chargers and other essential equipment.

Steven, please call to discuss any additional options that will affect this generator sizing.

Sincerely,

Loren Burns, PE



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 MARCH 21, 2007

**SUBJECT: CONSIDERATION AND POSSIBLE ADOPTION OF ICLEI PROGRAM
RESOLUTION**

RECOMMENDATION:

Staff recommends that the City Council consider and adopt the attached ICLEI Resolution.

BACKGROUND:

The City Council, at its February 21, 2007, meeting, approved the request to become a member of ICLEI (International Council for Local Environmental Initiatives). During the membership application process, staff learned that in order to become a member of ICLEI, the Town needs to adopt its Resolution. The Resolution generally states that the Town will “join ICLEI as a Full Member and participate in the Cities for Climate Change Campaign and, as a participant, pledges to take a leadership role in promoting public awareness about the causes and impacts of climate change.” Joining ICLEI and adopting the ICLEI Resolution is the action step to help the Town participate in the Climate Protection Campaign. Adopting the Resolution enables us to seek the assistance of ICLEI in establishing an initial baseline for emissions and creating a climate protection action plan.

Prepared by:

Reviewed by:

Kathy Hughes Anderson

Jim Robinson, City Manager

Attachments:
ICLEI Membership Application
ICLEI Resolution

RESOLUTION 07-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON APPROVING MEMBERSHIP IN ICLEI – LOCAL GOVERNMENTS FOR SUSTAINABILITY TO PARTICIPATE IN THE CITIES FOR CLIMATE PROTECTION CAMPAIGN

WHEREAS, scientific consensus has developed that Carbon CO₂ and other greenhouse gases released into the atmosphere have a profound effect on the Earth's climate; and

WHEREAS, in 2006, the U.S. National Climatic Data Center confirmed clear evidence of human influences on climate due to changes in greenhouse gases; and

WHEREAS, the U.S. Conference of Mayors endorsed the 2005 U.S. Mayors' Climate Protection Agreement initiated by Seattle Mayor Nickels and signed by 238 mayors in the United States as of June 2006: and

WHEREAS, the Urban Environmental Accords adopted by local government delegates during UN World Environment Day 2005 call for reduced emissions through energy efficiency, land use and transportation planning, waste reduction, and wiser energy management; and

WHEREAS, in 2003, the American Geophysical Union adopted a Statement noting that human activities are increasingly altering the Earth's climate and that natural influences cannot explain the rapid increase in near-surface temperatures observed during the second half of the 20th century; and

WHEREAS, in 2001, at the request of the Administration, the National Academy of Sciences (NAS) reviewed and declared global warming a real problem caused in part by the actions of humankind; and

WHEREAS, the 2001 Third Assessment Report from the International Panel on Climate Change (IPCC) and the 2000 U.S. Global Change Research Program's (USGCRP) First National Assessment indicate that global warming has begun; and

WHEREAS, 162 countries including the United States pledged under the United Nations Framework Convention on Climate Change to reduce their greenhouse gas emissions; and

WHEREAS, energy consumption, specifically the burning of fossil fuels, accounts for more than 80% of U.S. greenhouse gas emissions; and

WHEREAS, local government actions taken to reduce greenhouse gas emissions and increase energy efficiency provide multiple local benefits by decreasing air pollution, creating jobs, reducing energy expenditures, and saving money for the local government, its businesses, and its residents; and

WHEREAS, the Cities for Climate Protection[®] Campaign sponsored by ICLEI – Local Governments for Sustainability has invited the **Town of Atherton** to join ICLEI and become a partner in the Cities for Climate Protection Campaign;

NOW THEREFORE, BE IT RESOLVED, that the **Town of Atherton, California** will join ICLEI as a Full Member and participate in the Cities for Climate Protection Campaign and, as a participant, pledges to take a leadership role in promoting public awareness about the causes and impacts of climate change.

BE IT FURTHER RESOLVED, that the **Town of Atherton** will undertake the Cities for Climate Protection Campaign’s five milestones to reduce both greenhouse gas and air pollution emissions throughout the community, and specifically:

- Conduct a greenhouse gas emissions inventory and forecast to determine the source and quantity of greenhouse gas emissions in the jurisdiction;
- Establish a greenhouse gas emissions reduction target;
- Develop an action plan with both existing and future actions which when implemented will meet the local greenhouse gas reduction target;
- Implement the action plan; and
- Monitor and report progress; and

BE IT FINALLY RESOLVED that the **Town of Atherton** requests assistance from ICLEI’s Cities for Climate Protection Campaign

* * * * *

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 March, 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:

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 MARCH 21, 2007

**SUBJECT: ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE
TOWN OF ATHERTON APPROVING THE APPLICATION FOR
LAND AND WATER CONSERVATION FUND FOR THE
HOLBROOK-PALMER PARK SOUTH MEADOW
REHABILITATION PROJECT**

RECOMMENDATION:

Adopt a Resolution of the City Council of the Town of Atherton approving the application for Land and Water Conservation Fund (LWCF) for the Holbrook-Palmer Park South Meadow Rehabilitation project, and committing the required local match of 50%.

BACKGROUND:

In February, the State of California Department of Parks and Recreation issued a call for projects to be funded by the LWCF grant program. Applications are due May 1, 2007.

The LWCF's statement of purpose reads:

The purposes of the LWCF program are "to assist in preserving, developing and assuring accessibility to all citizens of the United States of America of present and future generations . . . such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable. . . by (1) providing funds for and authorizing federal assistance to the states in planning, Acquisition, and Development of needed land and water areas and Facilities, and (2) providing

funds for the federal Acquisition and Development of certain lands and other areas.” (Section 1(b) of the Land & Water Conservation Fund Act of 1965, as amended, 78 Stat. 897)

The congressional intent of the LWCF is for Applicants and the California Department of Parks and Recreation to cooperatively acquire, develop, and maintain outstanding properties in perpetuity for outdoor recreation purposes. It is important that quality recreation Facilities are developed for people at the local level and statewide.

The LWCF program, administered nationally by the National Park Service, provides funds to federal agencies, the 50 states and 6 territories. Funds for the program come from federal recreation fees, sales of federal surplus real property, federal motorboat fuels tax, and Outer Continental Shelf mineral receipts. The money allocated to the states may be used for statewide planning, acquiring, and developing outdoor recreation areas and Facilities.

The LWCF Guidelines state that the funds may be used for Acquisition and Development projects, and that:

Development Projects shall include the construction of new and/or renovation of existing Facilities for outdoor recreation. . Associated support Facilities (e.g., restrooms, utilities) are eligible. Indoor Facilities which support outdoor recreation activities in the immediate vicinity are also eligible.

Projects that involve new construction or renovation of Facilities must provide access in accordance with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and all other laws relating to accessibility.

From this it is clear that the big turf rehabilitation project is eligible for these funds.

ANALYSIS:

The grass on the south meadow’s big turf is old. It was originally placed by park staff seeding the existing ground with very little preparation due to budget constraints. Town staff has been struggling for years to keep the turf green and playable all through the summer. After consultation with our landscape contractor and other park districts, staff determined that irrigation and drainage upgrades, followed by split seeding with soil amendments. In addition, according to the Landscape Master Plan, approximately ¼-acre between the existing turf and the railroad tracks will be prepared, seeded and mulched to include it in the turf area to compensate for the turf used for the channel expansion and bridge project.

FISCAL IMPACT:

The cost estimate for the Holbrook-Palmer Park South Meadow Rehabilitation Project is \$100,000, based on a preliminary cost estimate prepared by staff with the assistance of Jensen Landscaping, including construction costs and contingency. Design is currently underway in order to develop a detailed cost estimate for the application. The Town

needs to commit to fund \$50,000 to match the LWCF grant; however, other non-federal grants, i.e., State Park Grants, may be used to provide matching funds for the LWCF grant and vice versa, if such other grants are awarded. Additionally, private donations may be used as a part of the matching funds.

This grant will allow sufficient time to pursue matching funds outside of normal City funds; however, the Town must commit to funding the project in the Resolution. A maximum of \$50,000 from either Parcel Tax funds, or the new Parks for the Future funding if passed by the voters, will need to be committed and budgeted for the project in future years.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachments: Resolution

RESOLUTION 07-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
APPROVING THE APPLICATION FOR LAND AND WATER CONSERVATION
FUND FOR THE HOLBROOK-PALMER PARK SOUTH MEADOW TURF
REHABILITATION PROJECT**

WHEREAS, the Congress under Public Law 88-578 has authorized the establishment of a federal Land and Water Conservation Fund Grant-In-Aid program, providing Matching funds to the State of California and its political subdivisions for acquiring lands and developing Facilities for public outdoor recreation purposes; and

WHEREAS, the California Department of Parks and Recreation is responsible for administration of the program in the State, setting up necessary rules and procedures governing Applications by local agencies under the program; and

WHEREAS, said adopted procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of Applications and the availability of eligible Matching funds prior to submission of said Applications to the State; and

WHEREAS, the proposed Holbrook-palmer Park South Meadow Turf Rehabilitation Project is consistent with the Statewide Comprehensive Recreation Resources Plan *California Outdoor Recreation Plan - 2002*; and

WHEREAS, the Project must be compatible with the land use plans of those jurisdictions immediately surrounding Project;

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

1. Approves the filing of an Application for Land and Water Conservation Fund assistance; and
2. Certifies that said agency has Matching funds from the following source(s): Parcel Tax funds and can finance 100 percent of the Project, half of which will be reimbursed; and
3. Certifies that the Project is compatible with the land use plans of those jurisdictions immediately surrounding the Project; and
4. Appoints the City Manager as agent of the Applicant to conduct all negotiations and execute and submit all documents, including, but not limited to, Applications, contracts, amendments, payment requests, and compliance with all applicable

current state and federal laws which may be necessary for the completion of the
aforementioned Project.

* * * * *

*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 March, 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:

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

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

**SUBJECT: ORDINANCE AMENDMENT REGULATING NONCONFORMING USES,
ATHERTON MUNICIPAL CODE CHAPTER 17.44**

RECOMMENDATION:

Staff recommends that the City Council conduct the public hearing and introduce the attached Ordinance based on the following finding for the reasons outlined in this staff report:

1. The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

BACKGROUND:

A nonconforming structure is any structure that was constructed legally based on the codes at the time of construction but does not meet current requirements. Examples include homes that exceed the current height limit or encroach upon the minimum setback requirements. Atherton's code regulating nonconforming uses (Chapter 17.44) does not allow nonconforming structures to be; enlarged, increased, extended to occupy greater land area or moved to another portion of the lot. Ordinary maintenance and minor repairs to nonconforming are permitted.

An Atherton resident, David Lewis, requested the City Council refer this item to the General Plan Committee for review. Mr. Lewis's home currently encroaches into the required side-yard setback by 4". Mr. Lewis wishes to expand his home in that area and was advised by the Town that the addition would need to comply with the current setback requirements.

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

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

ANALYSIS:

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

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

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

The code also allows additions to nonconforming structures that encroach into the required side yard for properties located within the R1-B zoning district (section 17.44.050(E)).

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

The General Plan Committee reviewed the request of Mr. Lewis to allow an addition to his home, (located within the R1-A zoning district) that encroaches into the required side yard setback by 4”. The Committee reviewed Ordinances from other jurisdictions and the current code requirements. The code currently allows additions to nonconforming structures in the R1-B zoning district. The Committee voted to recommend the code be amended to allow additions to main buildings located within the R1-A zoning district as long as the addition does not increase the degree of nonconformity (cannot extend further into the required setback than the existing nonconforming structure) and does not encroach more than 20% into any required setback (i.e., if the setback requirement were 50’, the addition could encroach 10’ into the required side yard). The Committee also recommended that the addition not exceed the height of the existing nonconforming structure. An existing single-story non-conforming structure can only add a single-story addition within the nonconforming area. A second story addition to an existing single-story structure would need to meet current setback requirements.

The General Plan Committee also recommended removing the requirement to obtain a conditional use permit for alterations to external openings within a nonconforming structure.

Staff also recommends a new requirement to the nonconforming ordinance regulating the extent of additions and alterations to nonconforming structures. The current code allows existing non-conforming walls to remain in place to continue the use of the nonconforming setback, while the remaining structure could be completely removed and rebuilt. The intent of the nonconforming ordinance is to allow some continued use of nonconforming structures, but over time, to have structures

conform to current regulations. Staff recommends that any addition or alteration that affects more than 50% of the existing building, be entirely brought up to current code requirements.

As stated above, the Planning Commission concurred with the General Plan Committee and Staff recommendations and voted (5-0) to recommend the City Council adopt the Ordinance as proposed.

Staff recommends that the current ordinance regulating nonconforming uses be amended to allow additions to non-conforming structures located in the R1-A zoning district and add a limitation to the extent of work on nonconforming structures.

CONCLUSION:

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

ALTERNATIVES:

The City Council could further modify the Ordinance or not adopt the changes.

FISCAL IMPACT:

Costs associated with the implementation of the ordinance will be borne by applicants.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15305, Class 5 which permits minor alterations in land use limitations which do not result in any changes in land use or density.

Prepared by:

Approved by:

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

1. draft Ordinance
2. Atherton Municipal Code Chapter 17.44
3. Planning Commission minutes from the February 28, 2007 meeting (excerpt)
4. General Plan Committee minutes (excerpt)
5. Staff Report – January 10, 2007 General Plan Committee
6. Letter from David Lewis

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

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

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

17.44.010 Discontinuance of nonconforming use.

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

17.44.020 Preexisting nonconforming land use.

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

17.44.030 Expansion or alteration.

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

17.44.040 Cessation of lawful nonconforming use.

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

17.44.050 Nonconforming structures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Introduced this ___ day of March, 2007

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

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

Alan Carlson
MAYOR, Town of Atherton

ATTEST

Kathi Hamilton
Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes
City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

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

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

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

RECOMMENDATION:

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

INTRODUCTION:

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

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

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

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

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

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

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

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

ANALYSIS:

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

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

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

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

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

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

CONCLUSION:

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

ALTERNATIVES:

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

FISCAL IMPACT:

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

ENVIRONMENTAL IMPACT:

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

Prepared by:

Approved by:

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager

Attachments:

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

MARCH 2ND DEADLINE.

TOWN OF ATHERTON APPLICATION FOR TOWN ACTION



Complete the following:

Type of application Appeal Date 2/27/2007

Application to: Planning Commission City Council Other

Under provisions or in violation of Atherton Code section 17.44.050

Property Owner Amanda + Alan Miller Phone Number 650-798-5546

Property Address 84 Walnut Avenue APN# 060-332-230

Applicant Amanda + Alan Miller Applicant's Phone 650-798-5546

Owner's Signature Amanda Miller Applicant's Signature Amanda Miller

* Attach a complete description of request as required by the Atherton Municipal Code, Title 17 and the appropriate procedural handout.

	Received By:	Date:
Description of Request	_____	_____
Application	_____	_____
Fee \$ _____ # _____	_____	_____
Plans & Reduced Plans	_____	_____

Notices Sent: Yes No Date _____

Planning Commission/City Council Hearing Date _____

Staff Recommendation _____ Date _____

Appeal Deadline: _____

Action Approved Action Denied Signature _____

Process Completed: Date _____ Signature _____

APPEAL OF THE DECISION OF THE BUILDING OFFICIAL REGARDING HOUSE CONSTRUCTION – 84 WALNUT AVENUE (APN 060-332-230)

We are writing to appeal the decision of the Building Official to require us to redesign our house (under construction) to conform with the current set-back requirements.

Our house was originally built in 1921, and is closer to the street than current set-backs allow. In 2002, we began work on plans for building a new house on our property. Because we have a large tree that encroaches on the buildable area in the middle of the lot, it was very important to us to be able to keep the front setback from the existing house. We had extensive discussions with the former Building Official about the process for retaining this setback. He said that as long as we did not increase the degree of non-conformity, we could use this area in our new house. He indicated that we should keep two walls as place-holders until the new foundation was poured, and that at that point we could replace those walls.

Given this understanding, we designed a plan to make use of the non-conforming setback, reducing the degree of non-conformity by making the structure narrower and changing from a gable roof to a hipped roof over the one story front area. We kept the window and door openings the same size as they were originally, to avoid any issues. Our plans were ultimately submitted in February 2006, and were approved. The floor plans indicate “Original Walls and Non-Conforming Area to be Kept” – which to us, given our many conversations with the former Building Official, meant that we were to keep the two walls as placeholders as described above. The structural drawings show the new foundation and new roof, as well as indicating that the walls and windows would be replaced with SIP walls and a double-pane window later in the process, to bring this area up to code. The former Building Official felt that replacing the walls with new construction would be better for the town than leaving the 1921 walls in place.

We began construction in July. Based on our understanding of the process, we kept the original walls (studs) for the front corner and side wall, as shown in the photo. We had originally intended to keep the entire front wall until we poured the new foundation, but unfortunately, despite our GC's instructions to the contrary, in August the deconstruction contractor accidentally knocked down a portion of this wall and removed it. However, because the plans allow for the foundation and walls in this area to be replaced and because of the building department guidance we had received, we had no indication that this was an issue. Our GC completed sign-offs at each stage of the project and had several conversations with various building inspectors about the front section specifically as the project proceeded, and at no point in the months since the deconstruction did any inspectors indicate any problem with the way we were proceeding.

In November, we had finished the basement, and were ready to pour the foundation for the front part of the house. At this point, we went to consult with the Acting Building Official, who indicated that we should not have been given permission to pour a completely new foundation and that his interpretation of “Original Walls and Non-Conforming Area to be Kept” is that we should have kept the entire structure – roof, floors and all – and retrofitted the new foundation to tie into the existing piers. But there was no way for us to know that.

The entire project has been designed to work within the guidance we were given. If we had been told earlier that because of the accident the non-conforming walls would not be permitted, we would have changed the design significantly – these changes are no longer possible, as we have already poured the basement foundation. For example, the basement was designed with a stepped back front wall and steel ties to anchor the front foundation to the basement, and these features were inspected and approved before the basement was poured. We have invested over \$400,000 so far in the house, including \$50,000 for windows and doors that were purchased for the existing design.

Given everything that has happened, we are proposing that we treat the fact that a portion of the front wall fell down as the accident it was, and allow for its replacement by moving it back inside the original non-conforming envelope. The existing wall and original survey show the location of the building envelope, and we would reduce the degree of non-conformity for the front wall by moving it back 3' farther from the street. This approach would let us make use of the windows and doors that we have already purchased and make the rest of the house design make sense, and can be allowed as an "alteration that reduces the degree of non-conformity" of the structure.

We appreciate your consideration, and hope that you will grant this appeal.

Sincerely,

– Amanda and Alan Miller

Enclosures: (+ follow)

- 1) Photo – existing walls after deconstruction
- 2) Plans – survey showing original non-conforming structure
- 3) Plans – site map showing approved structure
- 4) Plans – approved front elevation
- 5) Plans – approved floor plan
- 6) Plans – approved structural details (foundation)
- 7) Plans – approved structural details (walls to be replaced)
- 8) Plans – site map showing new proposed footprint
- 9) Plans – new proposed front elevation
- 10) Plans – new proposed floor plan

Chapter 17.44 NONCONFORMING USES

Sections:

[17.44.010](#) Discontinuance of nonconforming use.

[17.44.020](#) Preexisting nonconforming land use.

[17.44.030](#) Expansion or alteration.

[17.44.040](#) Cessation of lawful nonconforming use.

[17.44.050](#) Nonconforming structures.

17.44.010 Discontinuance of nonconforming use.

The use of any land, structure or building which does not conform to the regulation specified for the district in which such use, structure or building is located shall be discontinued within six months of the adoption of the ordinance codified in this title, except as provided in this chapter. (Ord. 407 § 11-1(A), 1985)

17.44.020 Preexisting nonconforming land use.

The lawful use of land, structures or buildings existing at the time of adoption of the ordinance codified in this title may be continued, although such use becomes nonconforming by adoption of the ordinance codified in this title. (Ord. 407 § 11-1(B), 1985)

17.44.030 Expansion or alteration.

A. Lawful nonconforming uses shall not be:

1. Enlarged or increased;
2. Changed to any other nonconforming use;
3. Extended to occupy greater land area;
4. Moved to another portion of the lot.

B. A building or structure housing a lawful nonconforming use shall not be enlarged, reconstructed or structurally altered. (Ord. 407 § 11-1(C), 1985)

17.44.040 Cessation of lawful nonconforming use.

If any lawful nonconforming use ceases for any reason for a period of more than thirty days, any subsequent use of such land shall conform with the regulations of this title. (Ord. 407 § 11-1(D), 1985)

17.44.050 Nonconforming structures.

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

B. Any nonconforming primary dwelling structure which was conforming at the time of its construction, and which is damaged or destroyed by fire, explosion, earthquake, or other accidental occurrence, may be restored within the building

envelope which existed immediately prior to the accidental occurrence; provided, that all such

reconstruction must meet current building codes. The burden of proving the extent of the building envelope existing immediately prior to the accidental occurrence shall be upon the party seeking to reconstruct the structure.

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

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

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

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

1. Shall not increase the degree of nonconformity of the existing side yard setback and any proposed new construction shall not be less than ten feet from the property line;
2. Shall not encroach into current front and rear setbacks;
3. Shall be limited to a single story with vertical sidewalls not exceeding twelve feet;
4. Shall have a roof height not exceeding eighteen feet. (Ord. 456 § 7, 1990; Ord. 420 § 1, 1986)

**DRAFT MINUTES
PLANNING COMMISSION MEETING
February 28, 2007
6:00 p.m.**

**ATHERTON TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California**

REGULAR MEETING

Chair Andrews called the meeting to order at 6:00 p.m.

ROLL CALL:

PRESENT: **Bob Andrews
 Rose Hau
 Jim Dobbie
 Marion Oster
 Kristi Waldron**

City Attorney Marc Hynes, Deputy Town Planner Lisa Costa Sanders and Town Arborist Kathy Hughes Anderson were also present..

PUBLIC HEARINGS

Ordinance Amendment – Ordinance Amendment amending Atherton Municipal Code Section 17.44 regarding Nonconforming Uses

Lisa Costa Sanders presented the Staff report noting recommendations of the General Plan Committee and Staff to modify the current nonconforming regulations.

OPEN PUBLIC COMMENT

David Lewis, 50 Jennings Lane, stated his desire to add on to a portion of his home that is considered non-conforming due to a 4” encroachment into the required side yard setback.

CLOSE PUBLIC COMMENT

MOTION to recommend the City Council adopt the Ordinance Amendment regulating nonconforming uses and structures based on the following findings;

M/S Waldron/Andrews Ayes: 5 Noes: 0

Findings:

1. The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

**GENERAL PLAN COMMITTEE
REGULAR MEETING
DRAFT MINUTES**

**TOWN OF ATHERTON
January 10, 2007
6:00 P.M.
TOWN COUNCIL CHAMBERS
94 ASHFIELD ROAD**

1. ROLL CALL:

PRESENT: Rose Hau
Marion Oster
Alan Carlson
Jim Janz
Todd Beardsley
James Ransohoff
Elizabeth Lewis
Randy Lamb

EXCUSED: Barbara Shoor

Lisa Costa Sanders, Deputy Town Planner and Kathy Hughes Anderson, Town Arborist were also present.

REGULAR AGENDA

Nonconforming Setbacks

Lisa Costa Sanders presented the staff report and noted options to allow additions to non-conforming structures.

OPEN PUBLIC COMMENT

David Lewis, discussed his plans to add a single story addition to his home that is non-conforming due to 4" encroachment into the side yard setbacks.

CLOSE PUBLIC COMMENT

Committee member discussed the following options relating to the modifications to the nonconforming ordinance;

- Should have language similar to the allowance to add onto a nonconforming structure in the R1-B district for nonconforming structures in the R1-A district.
- Utilize the requirements from Los Altos as a model
- Include findings for approval
- Remove the requirement to obtain a conditional use permit to alter external openings in a non-conforming structure.
- Allow addition to a non-conforming structure if single-story only allow single story addition, if existing two-story, allow two story addition.

M/S Lamb/Ransohoff to recommend the Planning Commission recommend an Ordinance to allow use of a non-conforming setback that does not encroach more than 20% into the required yard to be extended for an existing single story building at single story or to continue an existing two story building. This would not allow a single story building to add a second story at the non-conforming setback. Allow recommend removing the requirement to obtain a Conditional Use permit for changes to external openings within non-conforming structures and to include a maximum percentage of the non-conforming building that may be altered similar to the Los Altos Hills model. Motion passed (8-0).

David A. Lewis
50 Jennings Lane
Atherton, Ca. 94027
November 15, 2006

Mr. Jim Robinson
City Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

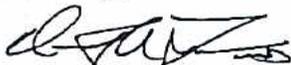
Re: Nonconforming Structure Ordinance

Dear City Manager:

Due to increasingly accurate land surveys because of GPS techniques, I and other Atherton residents are being found to live in homes that are too close to their property line setbacks through no fault of our own. A problem arises when the resident tries to extend a room by elongating the wall that is already too close to the setback even though the extension would be basically parallel to the property line. In my case, our home is about 4 inches too close to our neighbor so that lengthening the wall parallel to my neighbor to enlarge a bedroom by 6 feet would create a strip 4" by 6' that would violate the setback law. To create a 4 inch "notch" in the new 6 feet of wall would look strange and create problems with the roofline and eaves.

Given the recent scrutiny placed on our building officials and the concern over the amount of personal judgments made by officials in matters like this, it would be very helpful if the City Council of Atherton would look into an ordinance that would allow continuation of a non-conforming setback, similar to San Carlos or Palo Alto that addresses this issue. Sample ordinances are attached.

Sincerely,



David A. Lewis



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 MARCH 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.

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.

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.

CONCLUSION:

Revisions to concurrent terms of office for Town resident members on the Audit Committee and the Environmental Programs Committee are shown in the attached “Draft Proposed Amendments to City Council Rules of Procedure.”

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.
- All Committee and Commissions could be the subject of one ordinance with appropriate chapters in the Atherton Municipal Code

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:

Draft Proposed Amendments to City Council Rules of Procedure
Current 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

DRAFT
PROPOSED AMENDMENTS TO
CITY COUNCIL RULES OF PROCEDURE

9. **City Council Committees**

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. **Unless otherwise stated in subparagraph (a) of paragraph 9.4 below**, appointed members serve a one-year term concurrent with the Council Members' term on the committee.

9.4 Committees of City Council.

a. Standing Committees:

...

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. **The term of office of three (3) Town resident members appointed in 2005 shall be for three years. The term of two of the remaining two Town resident members shall be for four years. Thereafter, each term of office shall be for four (4) years.**

...

7. Environmental Programs Committee. Consisting of twelve members including two Council Members and ten 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. **Five of the Town resident members shall be appointed to a five-year term commencing 2007. The remaining five Town resident members' terms shall be four (4) years commencing 2007. Thereafter, each term of office shall be for four(4) years.**

b. Ad Hoc Committees.

...

1. Atherton Rail 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. 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.



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 Rugeiro	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

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 – Resigned~~
Robert Jenkins – Yes

Transportation/Traffic Subcommittee
Bob Huber – Yes
Lou Paponis – Yes
John Rugeiro – Yes

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



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF MARCH 21, 2007

**SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON MAKING FINDINGS ON APPEAL OF A
DETERMINATION BY THE BUILDING OFFICIAL REGARDING
CONSTRUCTION OF BASEMENT AT 233 PARK LANE, ATHERTON**

RECOMMENDATION:

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

BACKGROUND:

At the City Council meeting on February 21, 2007, the City Council conducted a public hearing on an appeal from a determination by the Building Official regarding construction of a proposed basement at 233 Park Lane in Atherton. The attached resolution sets out the findings in support of the City Council's action denying the appeal.

FISCAL IMPACT:

None.

Prepared by:

Approved by:

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
DENYING APPEAL OF A DETERMINATION BY THE BUILDING OFFICIAL
REGARDING CONSTRUCTION OF BASEMENT AT 233 PARK LANE,
ATHERTON, CALIFORNIA**

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 Chapters 17.36 and 17.64 of the Atherton Municipal Code, hereby makes the following findings and determinations in the appeal from the decision of the Acting Building Official to deny construction of a basement as proposed by Bill Ruehle and Judi Ruehle, owners of property at 233 Park Lane, Atherton, California.

1. The Ruehles submitted plans to the Town's Building Department for a new residence at 233 Park Lane. The plans proposed a basement to be constructed under the raised patio area attached to the main residence. On October 2, 2006, applicants were informed that the basement as proposed was not permitted and that a basement could be constructed only under the footprint of buildings in the main building area.

2. Atherton Municipal Code Section 17.36.190 provides that basements are only permitted under the footprint of buildings located within the main building area. A building is defined in Section 17.08.060 of the Atherton Municipal Code as "a structure having a roof supported by columns or walls."

3. The plans submitted for the Ruehles' residence at 233 Park Lane placed a basement under the main residence and extend the basement area under three separate raised patios which serve the residence. The patios do not have columns or walls. Current basement regulations only allow the basement under the footprint of a building and not under structures. The raised patios are structures, but are not buildings as defined in Section 17.08.060 of the Atherton Municipal Code. For this reason, the Acting Building Official has determined that the plans showing the basement under the patios without columns or walls are not allowed under the provisions of Section 17.36.190 of the Atherton Municipal Code.

4. The Ruehles timely appealed this determination and the matter was considered at a public hearing conducted at the regular City Council meeting on February 21, 2007.

5. The Ruehles were present at the appeal hearing and, along with their architect, Karin Payson, presented their appeal to the City Council.

6. Written and documentary evidence was presented and considered by the City Council, along with testimony from the Ruehles, their architect and 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.

7. The City Council determines that based upon substantial evidence the appeal should be denied and the basement proposed under patios which do not meet the definition of "building" in accordance with the Atherton Municipal Code be denied for the following reasons:

a. The basement proposed under patios which are only structures violates requirements of the Atherton Municipal Code Section 17.36.190 which requires that a basement be located only under the footprint of a building within the building area.

b. Substantial evidence was received from Town residents which supports the need to uphold determinations of the Building Official based upon requirements of the Town's ordinances which are enacted for the benefit of the public.

c. The Building Official has properly interpreted the requirements of Section 17.36.190 in determining that the plans submitted by the Ruehles for a basement which is not located only under the footprint of a building in the main building area, but, instead, has parts which are located under patios which are not buildings and is not permitted.

d. Accordingly, the determination of the Acting Building Official is appropriate and the appeal of that action by the Ruehles is 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 March, 2007, by the following vote:

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

Alan B. Carlson, Mayor

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 21, 2007

SUBJECT: UPDATE ON DRAINAGE CRITERIA FOR NEW DEVELOPMENT – BKF ENGINEERS

RECOMMENDATION:

City Council Review the BKF Project Study Update and provide appropriate direction to staff.

BACKGROUND:

The City Council approved an amended Scope of Work and Professional Services Agreement for Review of the Town's Drainage Criteria at its meeting of August 16, 2006. The attached Exhibit A represents the approved Project Approach and Tasks to be completed by BKF. The attached summary provides an Update on Drainage Criteria for New Development that will be presented by Ed Boscacci of BKF Engineers.

PROFESSIONAL SERVICES AGREEMENT FOR
Review of Town's Drainage Criteria

THIS AGREEMENT is entered into between the Town of Atherton, a municipal corporation, hereinafter referred to as "the City", and BKF Engineering, 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 engineering services in connection with the project designated as Review of Town's Drainage Criteria.

2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit "A" titled "Project Approach" 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 180 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 \$ 132,900 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. City agrees that Consultant shall bear no responsibility for any modifications by others made to the documents prepared by the Consultant. City agrees that Consultant shall bear no responsibility for any re-use by third parties to the documents prepared by the Consultant except for the specified use. 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 claims, losses or liability, or any portion thereof, including reasonable 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 occasioned 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 \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury, and \$1,000,000 per occurrence/aggregate for property damage. Said general liability policy shall name the Town of Atherton as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this section shall be delivered to the City within fifteen (15) days of execution of this agreement.

9. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.

10. Covenant Against Contingent Fees. The Consultant 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 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 the foregoing, 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:

Building Official
91 Ashfield Road
Atherton, CA 94027

Notices to Consultant shall be sent to the following address:

BKF ENGINEERS
255 Shoreline Drive, Suite 200
Redwood City, CA 94056
Attn: Edward Boscacci, Jr.

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 31st day of August, 2006.

Town of Atherton

By 
Charles E. Marsala
Mayor

Consultant

By 
Linda Schmidt
Chief Financial Officer



PROJECT APPROACH

Task 1. Kickoff Meeting

Attend one meeting with Town staff to finalize the Scope of Work and collect available data for use in developing design criteria.

Task 2. Storm Drain System Plan Review

Review the existing Storm Drain System Plan to develop an understanding of flow paths through the Town. Prepare a single Exhibit that shows the drainage facilities identified within the Plan and within other available documents.

BKF will confirm the Storm Drain System Plan by comparing drainage divides with those from the San Mateo County's digitized contours from the 400 scale aerial photos. BKF will also utilize Google Earth to view differences in contours.

Task 3. Groundwater System Review

Review the available information on groundwater within the Town. Direct the review to the upper aquifer and the impact that stormwater percolation is having on water levels through the Town. Review the impact of percolation on the existing, active wells used for irrigation.

Task 4. Groundwater Effect on Trees and Vegetation

Review the available information regarding the effect of current drainage policy on trees and vegetation. Direct the review to the upper aquifer and the impact that stormwater percolation is having on nearby trees and vegetation.

An arborist and landscape architect will provide field observation at typical areas defined by the aquifer survey as problem sites. At these locations, impacted tree and vegetation species will be identified. A concern is that vegetation located in areas with high water content is more susceptible to pathogens and water mold diseases. This will be discussed qualitatively. If desired, lab testing for pathogens and water mold diseases can be provided as an additional service.

Task 5. Atherton Channel and Redwood Creek Review

Review available analyses of Atherton Channel and Redwood Creek including design flow rates and water levels presented by various sources. At this time, no additional survey is proposed. Analyses should be based on existing HEC-2/HEC-RAS models, supplemented using Manning's Equation with normal depth for open channel sections and inlet control at culvert entrances. Prepare an Exhibit that shows available freeboard or overtopping at bottleneck locations along the Channel for the 10, 25 and 100-year storm events. Where possible, show the extent of flooding associated with channel deficiencies. List the timing of when the flood peak would be expected based on the time of concentration of the Atherton Channel drainage area.

The original design drawings for the Creek will be utilized to develop cross section information.



PROJECT APPROACH

Task 6. Drainage Areas

Use available drainage boundary delineation from the Storm Drain System Plan to prepare an Exhibit of key drainage areas within the Town and the drainage areas of adjoining cities and unincorporated San Mateo County that discharge to Atherton Channel and Redwood Creek.

Task 7. Infiltration Pit / Dry Well Inventory

Using information in Town files, prepare an inventory of dry wells and infiltration pits within the Town. Where available, list dimensions including, depth, length, width, diameter, open area, rocked area, and storage volume. Group the facilities by drainage area. Based on the available geologic information, provide an estimate of the infiltration rate of each facility.

Task 8. Detention Facility Inventory

Using information in Town files, prepare an inventory of detention facilities within the Town. Where available, list dimensions including, depth, surface area, and storage volume. Group the facilities by drainage area. Based on the available geologic information, provide an estimate of their effectiveness and amount of infiltration of each facility.

Task 9. Impervious Surface Change

Using information in Town files, prepare an inventory of the change in impervious areas within the Town for the last 10 years.

Task 10. Field Testing

Conduct field testing of percolation rates and permeability. Testing will be occurring at surface test pits constructed using a portable drill rig and at existing percolation pits. Based on studies at Menlo School, percolation test pits can be filled using connections to fire hydrants. For this work, Town crew will be needed to assist with fire hydrant connections. Flow rates are determined by timing flow into a 55 gallon can. Percolation facilities are filled with the hydrant wide open. The hydrant is then throttled to a flow rate that maintains a constant water level. The throttled flow rate is then measured by timing the filling of the 55 gallon drum.

Task 11. Direct Pumping into Atherton Channel

Using information in Town files, prepare an inventory of properties that are pumping storm water directly into the Atherton Channel.

Task 12. Impervious Area

Use available aerial photographs to estimate percentage imperviousness for the drainage areas shown on Task 6. Provide a series of about six Exhibits documenting these estimates. Field observations will be used to clarify ground types (decomposed granite versus asphalt) shown on aerials.

PROJECT APPROACH

Task 13. Monthly Water Balance

Use available literature and observations to develop a monthly water balance for the Town. List average monthly rainfall, typical excess watering, average stormwater runoff, average groundwater pumping from irrigation wells and construction de-watering wells, average surface infiltration and average infiltration through infiltration pits/dry wells. Many of these items will be based on best engineering judgment and should be approximated accordingly. The purpose is to quantify the relative impact of infiltration pits on groundwater hydrology. Site-specific studies would be considered as an additional service if results show that additional detailed studies are warranted.

Summer observations of Atherton Channel will be made to estimate excess irrigation over the course of the day. Flow will be measured at control points where the Channel is concrete lined. Water levels will be checked hourly for a 12-hour period. Comparisons will be made with 24-hour recordings made in Palo Alto and presented on the internet to extrapolate the data. Hourly precipitation based on the Palo Alto rain gage for a two year period will be used to compare hourly rainfall rate with expected infiltration rate to get a net runoff versus percolation.

Task 14. Detailed Review of Groundwater Trends

Conduct site-specific reviews of wells and locations of known surface seeps throughout the Town. Information will be limited based on cooperation of property owners. Collect data showing current groundwater levels and flow directions. (Based on two readings, Spring and Fall) Conduct sufficient ground/GPS survey to tie known groundwater levels within 0.50 feet. Evaluate trends in water levels, water quality, and ground subsidence that have occurred since the 1997 report by USGS.

The project team will work with the Town to contact residents willing to allow access for well level readings. Results will be incorporated into the data base.

Task 15. Detailed Review of Sharon Heights Golf Course

Conduct site-specific review of drainage quantities exiting at Sharon Heights Golf Course and compare to pre-development quantities. Observations will be made at outfalls to the Atherton Channel over a 12-hour period. Runoff volumes will be compared with similar sized drainage areas.

Task 16. Map High Ground Water Areas Within the Town

Using available data, prepare a map showing areas within the Town where groundwater is less than 20 feet from the land surface. Evaluate the claim that groundwater levels are rising especially in the area west of Alameda de Ins Pulgas.

Task 17. Drainage Criteria

Review and supplement the existing Town Drainage Criteria using the information collected in Tasks 1 through 9. Measures to be addressed include:

- Existing Town Drainage criteria should be used as a basis for starting.
- Infiltration and storage should be encouraged where practical benefits are derived.

PROJECT APPROACH

- Where infiltration is not practical, such as in areas with high groundwater or underlain by consolidated rock, on-site stormwater facilities should be sized for detention only. Timing on releases should be based on timing of flow peaks in Atherton Channel and Redwood Creek.
- Infiltration should be restricted in areas where infiltrated flows become surface flow a short distance away.
- The conditions of the San Mateo County's C.3 Permit with the Regional Board should be integrated into the Town's Drainage Criteria.
- In the eastern portions of Atherton, it may be more efficient to direct low flows off lots early during storm events, prior to peak water levels in the Atherton Channel. On-site detention could then remain available for periods when the Atherton Channel is at or near bank-full capacity.
- Varying geologic conditions and/or constraints should be reflected in the Drainage Criteria.
- Subsurface construction should account for both short-term and long-term groundwater levels. Subsurface construction should account for surface flows including Atherton Channel, Redwood Creek and storm drain system overtopping.
- Building finished floor elevations should account for overland flow paths and existing drainage system deficiencies, including Atherton Channel overtopping.

Task 18. Design Standards

Develop a set of Construction Standard Details for drainage facilities using available design details, including Caltrans Standard Plans, Standard Plans for Public Works Construction (aka "The Green Book"), San Mateo County Standard Plans, current Town Standard Plans and other available material. Drafting of Design Standards is excluded from this scope of services.

Task 19. Meetings

Prepare for and attend two workshop forums to present the drainage criteria. Modify the drainage criteria after each session, following discussion with Town staff, to reflect comments from the meetings.

Ed Boscacci has extensive experience presenting technical data at workshops. The forums will be presented for the lay person to understand the complex inter-connections of flood control, water treatment, groundwater levels and vegetation.

EXHIBIT "B"
PAYMENT

1. Consultant shall be paid up to \$132,900 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.



FEE PROPOSAL

	<u>Task</u>	<u>Cost</u>	<u>Hours</u>
Task 1.	Kickoff Meeting	\$1,720	(12 hours)
Task 2.	Storm Drain System Plan Review	\$2,360	(24 hours)
Task 3.	Groundwater System Review	\$3,400	(32 hours)
Task 4.	Groundwater Effect on Trees and Vegetation	\$11,110	(72 hours)
Task 5.	Atherton Channel and Redwood Creek Review	\$3,040	(32 hours)
Task 6.	Drainage Areas	\$2,600	(24 hours)
Task 7.	Infiltration Pit / Dry Well Inventory	\$9,240	(88 hours)
Task 8.	Detention Facility Inventory	\$9,240	(88 hours)
Task 9.	Impervious Surface Change.....	\$1,360	(12 hours)
Task 10.	Field Testing.....	\$8,500	(84 hours)
Task 11.	Direct Pumping into Atherton Channel	\$680	(8 hours)
Task 12.	Impervious Area	\$1,520	(16 hours)
Task 13.	Monthly Water Balance.....	\$9,200	(80 hours)
Task 14.	Detailed Review of Groundwater Trends	\$34,460	(180 hours)
	(hours plus 32 hours survey crew and includes \$4,000 Water Quality Testing)		
Task 15.	Detailed Review of Sharon Heights Golf Course.....	\$1,860	(20 hours)
Task 16.	Map high ground water areas within the Town	\$3,360	(32 hours)
Task 17.	Drainage Criteria	\$6,360	(56 hours)
Task 18.	Design Standards	\$5,760	(52 hours)
Task 19.	Meetings	\$6,700	(48 hours)
	Reimbursable, including Equipment Rental	\$4,000	
	Markup on Subconsultants (10%)	<u>\$6,400</u>	
	Total Cost	\$132,900	



Town of Atherton
Office of the City Clerk

91 Ashfield Road
Atherton, California 94027
650-752-0529
Fax 650-688-6528

August 31, 2006

Ed Boscacci
BKF Engineering
255 Shoreline Dr., Suite 200
Redwood City, CA 94065

Dear Mr. Boscacci:

Enclosed please find one executed copy of the Professional Services Agreement for Review of Atherton's Drainage Criteria. As per the agreement, Certificates of insurance coverage shall be delivered within fifteen (15) days of execution of this agreement.

Sincerely,

Kathi Hamilton
Acting City Clerk

Enclosure



August 21, 2006
BKF No. 20060005-11

Mr. Jim Robinson
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Subject: **Town Drainage Criteria Update**

Dear Mr. Robinson:

Attached is a signed copy of the BKF contract for Town Drainage Criteria Update. Please sign and return a copy of the executed contract to BKF.

If you have questions, please contact me at (650) 482-6334.

Sincerely,
BKF ENGINEERS

Edward Boscacci, Jr., P.E.
Project Engineer

Town of Atherton
Update On
Drainage Criteria
for New Development

Ed Boscacci

BKF Engineers

March 21, 2007

Focus is On-Lot Drainage Criteria for Future Development

The Town has Little Control over Existing On-Lot Drainage
unless the Owner Needs Building Department Approvals

Public Drainage is Addressed by the Townwide Drainage
Study dated June 2001

Scope of Work is 19 Tasks

BKF has Completed the Following Tasks:

1. Kickoff Meeting
2. Storm Drain System Plan Review
3. Groundwater System Review
5. Atherton Channel Review
6. Drainage Areas
7. Infiltration Pit/Dry Well Inventory
8. Detention Facility Inventory
9. Impervious Surface Inventory
12. Impervious Surface Change
15. Sharon Heights Golf Course

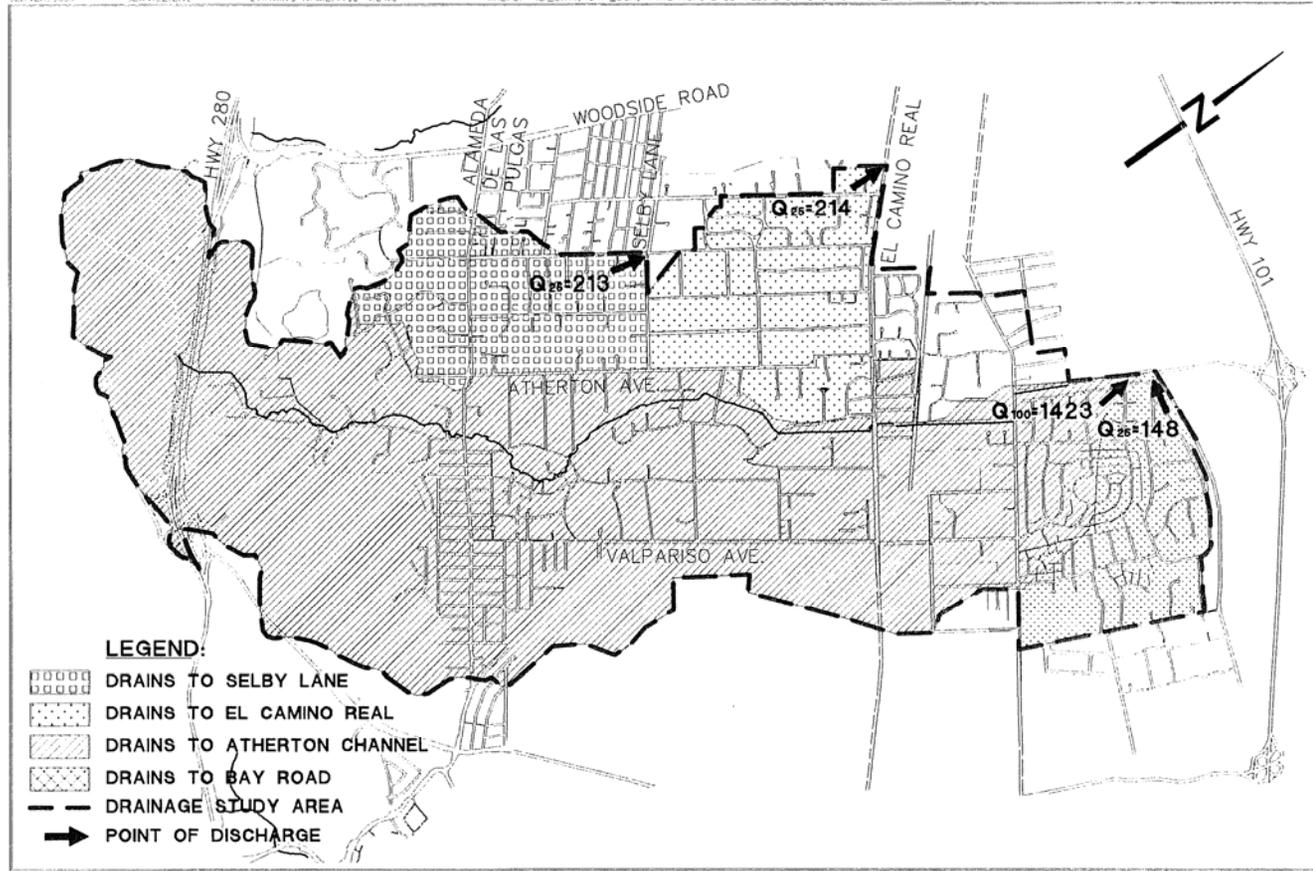
Scope of Work is 19 Tasks

BKF is Completing the Following Tasks:

4. Groundwater Effect on Trees and Vegetation
Will start with Spring Growth
10. Field Testing
Will start in Spring
11. Pumping to Channel
Need to Collect Data
13. Water Balance
Substantially Complete, Waiting for Information from CalWater
14. Detailed Review of Groundwater Trends
Spring readings will complete task
16. Map High Groundwater Tables
Spring Review Will Complete Task
17. Design Criteria
Substantially Complete – Need to Comply with MRP out soon
18. Design Standards
Substantially Complete
19. Meetings – Following Completion of Above

DRAINAGE AREA

TIME: 9:08 AM DATE: 08/30/01 PATH: H:\S\0709\CADD\Civil\Report\ SERVER: S.F.I SERVICE: EDC DRAWING NAME: FIG3-1.DWG XREFS: TB_BX11, OVR_BSN, ATHERTON, EXSD-FLD, STD1-ENDRY, MRSH_BAY, SELBY_ELC, CHNL-BSN



- LEGEND:**
-  DRAINS TO SELBY LANE
 -  DRAINS TO EL CAMINO REAL
 -  DRAINS TO ATHERTON CHANNEL
 -  DRAINS TO BAY ROAD
 -  DRAINAGE STUDY AREA
 -  POINT OF DISCHARGE

NOLTE
 BEYOND ENGINEERING
 1731 NORTON FIRST STREET, SUITE A SAN JOSE, CA, 95128
 408.392.7200 TEL 408.392.0101 FAX WWW.NOLTE.COM

TOWN WIDE DRAINAGE STUDY
 FIGURE 3-1
 DRAINAGE BOUNDARIES

PREPARED FOR: TOWN OF ATHERTON DATE SUBMITTED:

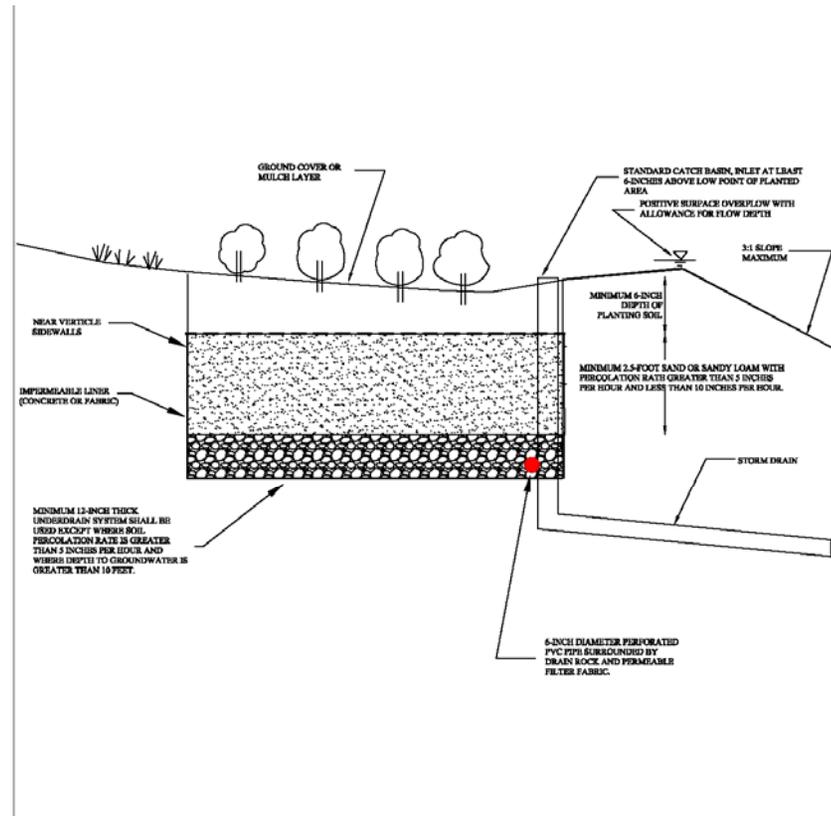
SHEET NUMBER
 OF SHEETS
 JOB NUMBER
 SJ0709

Vegetated Swale

- Treats Runoff



RAIN GARDEN



Bioretention - With Liner and Drain System

STORMWATER Creek Erosion Protection

The MRP will Require New Development to Include Hydrograph Modification Plans (Stormwater Detention of Normal Rainfall Events) for the Area Shown to Protect Creeks from Increased Flows:

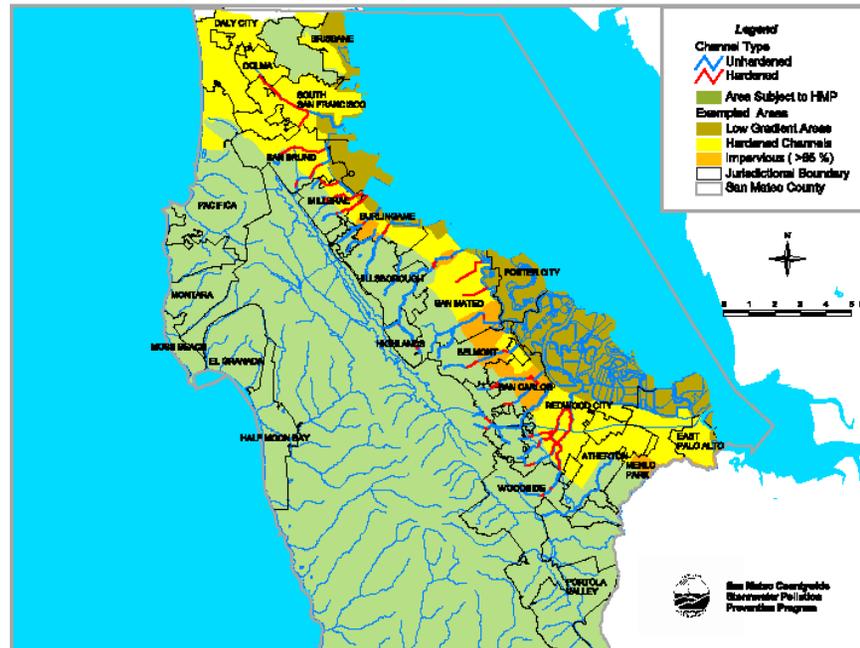
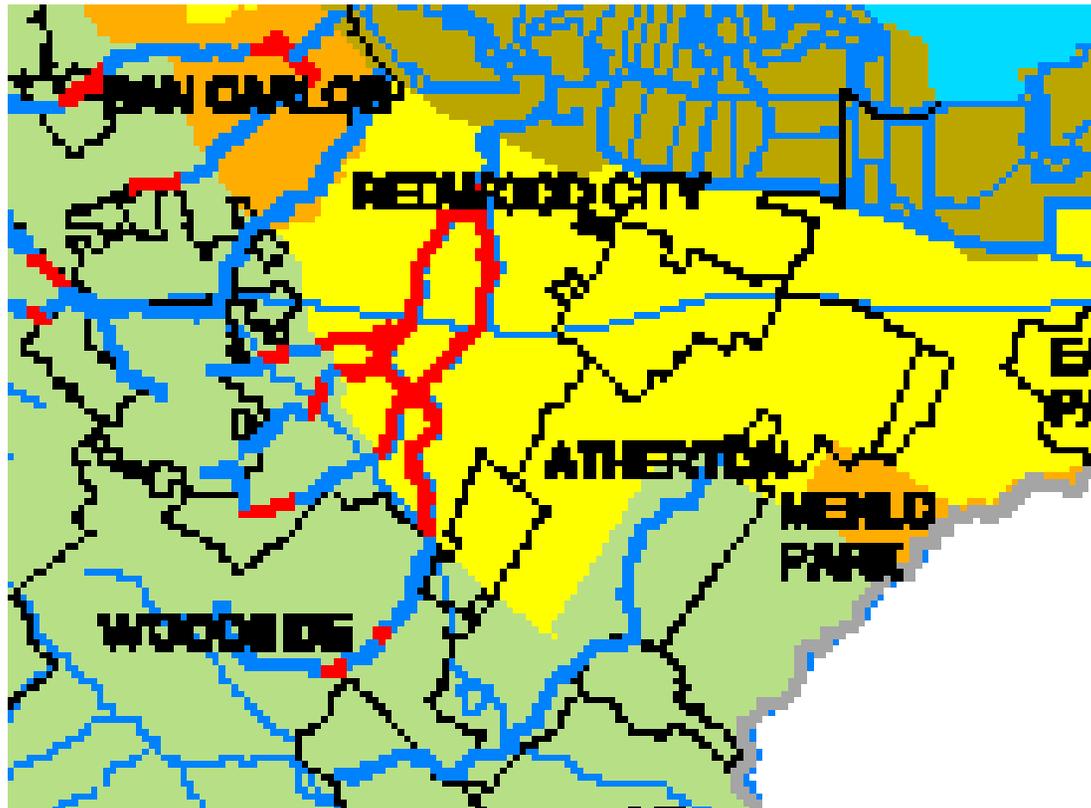


Figure 3-1. Watershed areas proposed as exempt from hydrograph modification requirements.

STORMWATER STORAGE

Areas to Atherton Channel West of the Railroad Tracks Must Comply with Storage (HMP) (From San Mateo C.3 Guidance Manual)



CITY DRAINAGE SYSTEM

Federal Emergency Management Agency (FEMA) –

One of FEMA's Many Roles is the National Flood Insurance Program

The Town is the Local Agency for Coordinating Activities with FEMA

For Additions and New Structures, Building Finished Floor must be 1 foot above Base Flood Elevation

The Town is Outside Zone A, and Flood Insurance is not Required.

Being Outside Zone A does not Assure Safety from Flooding

CITY DRAINAGE SYSTEM

Federal Emergency Management Agency (FEMA) –

FEMA only Mapped Open Channels. Urban Drainage was Not Considered in Initial Studies.

Unless Significant Development Occurs, FEMA does not Require Urban Mapping.

Because you are Not in Zone A does not mean that you are Safe from Flooding.

Storm Drains Generally Convey the 10 to 25-Year Storm Flow. Runoff in Excess of the Storm Drain System Flow Capacity is Carried in the Streets. Flooding could Occur Where the Flow Capacity of the Street is not Adequate.

WATER BALANCE

Annual Rainfall Runoff is about 2,700 acre-feet per year

Annual Rainfall Percolation is about 2,700 acre-feet per year

Average Percolation at Storage/Percolation Facilities if no Release 70 acre-ft

Annual Water Sales are about 3,300 acre-feet per year

Annual Irrigation from CalWater is about 550 acre-feet per year

NEW DEVELOPMENT, SITE DRAINAGE CRITERIA

Meet Town Flooding Storage Requirements

If Greater than 5,000 Square Feet of New or Replacement Impervious Surface, Must Meet RWQCB Stormwater Treatment Requirements (new MRP, Currently this Does Not Apply to Single Family Residences. It Will Apply with the MRP)

In Select Areas, if Greater than 5,000 SF, Must Meet RWQCB Hydrograph Modification Requirements

NEW DEVELOPMENT SITE DRAINAGE CRITERIA

FLOOD CONTROL –

All Sites Must Provide Storage for 2-inch per 48 Hour Rainfall Event. Storage Can Occur in Stormwater Treatment Facilities

Release Shall be the Greater of:

The Flow that Gravity Flows through a 1-inch Diameter Orifice
A Pumped Flow Rate of 30 gpm (about a 1/3 HP Pump)

The Flow that Empties the Storage Area in 48 Hours.

NEW DEVELOPMENT SITE DRAINAGE CRITERIA

Stormwater Treatment –

Sites with Greater than 5,000 Square Feet New and Replacement Impervious Area Must Provide Landscape-based Treatment of Stormwater Runoff as Required by the Municipal Regional Permit

Examples are Vegetated Swales and Bioretention Areas (Rain Gardens)

Percolation is an Accepted Method for Treatment in the Town if a Geotechnical Engineer Certifies that there are no Off-site Impacts

Mechanical Treatment is Accepted, with Prior Approval of the City Engineer.

NEW DEVELOPMENT SITE DRAINAGE CRITERIA

Hydrograph Modification Plan (HMP) –

Sites with Greater than 5,000 Square Feet New and Replacement Impervious Area Must Provide a Hydrograph Modification Plan as Required by the Municipal Regional Permit

It is Expected that the Town's Flood Control Criteria are More Stringent than the HMP Requirements will be, and that no Additional Measures are Required.

SITE DRAINAGE

Surface Ponding –

Avoid Long-term (Greater than 96 hour) Surface Ponding unless There are Mechanical Devices that will Keep Water Circulating and Aerated.

Surface Ponds are Mosquito Breeding Areas if Not Properly Maintained.

SUMMARY

Drainage Criteria for New Development

Provide Volume to Hold 2-inches of Rainfall Runoff

Percolation only Allowed with Geotechnical Engineer Certification of No Off-site Impact.

Provide Outlets to Discharge Runoff in about 48-hours. A Shorter Discharge Time is Acceptable if Minimum Size Outlet Works are Provided.

If the New Development includes a Total of 5,000 square feet of New and Replacement Impervious Area, Landscape Based Stormwater Treatment is Required.

Underdrains are Required on Landscape-Based Treatment Measures. Impermeable Liners are Required under Treatment Areas unless Percolation does not Impact Downstream Properties.

QUESTIONS?



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 21, 2007

SUBJECT: DISCUSSION AND POSSIBLE ACTION REGARDING A JOINT MEETING OF THE ATHERTON CITY COUNCIL AND THE MENLO PARK FIRE PROTECTION DISTRICT BOARD TO DISCUSS ISSUES RELATED TO THE FINDINGS AND RECOMMENDATIONS CONTAINED WITHIN THE CIVIL GRAND JURY REPORT

RECOMMENDATION:

Staff recommends that the City Council consider and identify issues to be discussed at a Joint Meeting with the Menlo Park Fire Protection District (MPFPD) Board and select a date for the meeting.

BACKGROUND:

At its February 21, 2007, meeting, the City Council recommended a Joint meeting with the Menlo Park Fire Protection District to discuss issues, "that each body sees as germane, to establish an agenda, including but not limited to the recommendations of the Civil Grand Jury report, as well as a response to the Civil Grand Jury Report."

In addition, Council recommended that staff discussions occur to assist in developing a list of issues to be considered at a Joint meeting. Town staff and Menlo Park Fire Protection District staff have met and identified, at a minimum, the attached proposed list. The MPFPD will meet in advance of our City Council meeting. Town staff will follow up in advance of the City Council meeting to determine if any additional or modified issues have been identified.

ISSUES FOR DISCUSSION AT JOINT MEETING

The following is a list of issues recommended to be considered and discussed in a Joint Meeting of the Menlo Park Fire Protection District (MPFPD) Board and the Atherton City Council. Issues were developed following a discussion between the MPFPD and Town staff to serve as a potential agenda for a future joint meeting.

- 1. Discuss and consider the policy question of delegation of development plan review by the Town of Atherton to the Menlo Park Fire Protection District.**
- 2. If a consensus is reached regarding Delegation of Authority, identify what specific plans would be submitted to the MPFPD for review.**
- 3. Discuss and consider the MPFPD's request and civil grand jury recommendation to require MPFPD approval prior to issuance of a building permit.**
- 4. Discuss and Consider reviewing the existing Town of Atherton sprinkler ordinance that was adopted in November 2004.**
- 5. Discuss the review of "substantial" open building permits by the MPFPD. It was recommended by the Grand Jury to direct the City Manager to request that the MPFPD examine all open substantial construction projects.**

- 6. Discuss and consider the review of all other permits issued and determine what specifically is to be reviewed.**

- 7. If the City Manager is directed to make this request for a review of the open permits, and those projects constructed during the tenure of the previous Building Official, by the MPFPD, it is necessary to determine the methodology of this review.**

- 8. Discuss and consider the MPFPD's expectation that the Town of Atherton be responsible "for all costs incurred by the Fire District to remediate the issues listed in the Interim Grand Jury Report."**

- 9. Discuss and consider the MPFPD Strategic Plan as it relates to the Fire Flow/ Infrastructure needs of the District.**

- 10. Establish a date for a Joint Meeting of the Menlo Park Fire Protection District and the Town of Atherton City Council to consider the above issues.**



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.

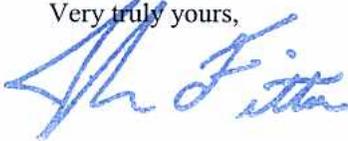
Please submit your responses as follows:

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 COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 21, 2007

**SUBJECT: CONSIDERATION AND DIRECTION TO STAFF REGARDING
THE RESULTS OF SOLICITATION OF PROPOSALS FOR THE
TOWN OF ATHERTON ZONING ORDINANCE UPDATE**

RECOMMENDATION:

Staff recommends that the City Council consider the results of the Solicitation of Proposals for the Zoning Ordinance Update and provide appropriate direction to staff.

BACKGROUND:

The Town of Atherton sent out a Request for Proposal requesting proposals from qualified firms or individuals for the preparation of a comprehensive update of the Zoning Code. The project would result in the reorganization of the Town's Zoning code while assuring that it is in compliance with applicable state laws, as well as local policies and regulations. The deadline for Proposals was February 20, 2007. The Town received only one proposal from PMC of Sacramento, California. PMC anticipated three months to complete the project with a proposed Budget of \$ 64,300. PMC recently completed Zoning Ordinance Reviews for Rancho Cordova, Pinole, Inyo County, and Elk Grove.

Staff was disappointed in the limited response to our request for proposals. If the Council wishes to proceed with the project staff would offer the following alternatives.

1. Meet with PMC and explore the proposal as submitted.
2. Initiate another Request for Proposal
3. Consider utilizing existing Town contract planners to complete the Zoning Ordinance Update.



Town of Atherton

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

REQUEST FOR PROPOSALS ZONING ORDINANCE UPDATE

The Town of Atherton is requesting proposals from qualified firms or individuals for the preparation of a comprehensive update of the zoning code (Title 17 of the Municipal Code). The project will reorganize the Town's zoning code while assuring that it is in compliance with applicable state laws, as well as local policies and regulations.

The last comprehensive review of the zoning code was performed in 1985. Since that time the code has been amended a number of times, resulting in a hard-to-read document with a number of internal inconsistencies. This lack of clarity has led to questions about appropriateness of staff determinations, the need to make interpretations of zoning intent on a case-by-case basis, and occasional internal differences on interpretations. The goal of this project is to: a) identify policy issues; b) reorganize the zoning code to improve its clarity to staff, applicants and the general public; c) eliminate internal inconsistencies and ambiguities; d) be in accordance with the Town's standards (e.g., design review is not to be included), and e) be in accordance with the General Plan.

The selected consultant will work under the general direction and coordination of the City Manager. The timeframe for completion of this project is expected to be no longer than four (4) months.

The Town's Municipal Code, including Title 17 (the zoning code), may be found at the Town's website at <http://www.ci.atherton.ca.us>.

OBJECTIVES

The Town of Atherton is seeking to embark on a comprehensive update of its Zoning Code. The update should meet the following objectives:

1. Organization. The zoning code should be organized in a logical manner that facilitates ease of use and clear interpretation.
2. General Plan. The zoning code should be consistent with the goals and policies of the General Plan.

3. State and Federal Laws. The zoning code should comply with all applicable state and federal laws.
4. Comprehensible. The zoning code should be clear, concise, and minimize ambiguities. It should use charts, graphs, and illustrations where necessary to improve readability.

SCOPE OF WORK AND WORK PRODUCTS

Required tasks to be undertaken are as follows:

1. Review of Existing Code and General Plan. The consultant will need to become familiar with the policy directives included in the existing General Plan and the content of the Zoning Code.
2. Create a New Zoning Code Structure. The consultant will meet with staff to discuss the format and structure of the Zoning Code, as well as recent problems in interpretation. Based on this input, the consultant will establish a new format for the Zoning Code.
3. Update Development Standards and Definitions. The consultant will formulate revised code text to address the specific issues raised by staff in the staff/consultant meetings. In addition, the consultant will formulate revised code text to assure that the above-listed objectives are achieved.
4. Prepare Illustrations of Zoning Standards and Definitions. The consultant will prepare illustrations explaining definitions and development standards, as needed. The illustrations should be simple drawings that are incorporated into the code.
5. Staff/Consultant Meeting Attendance. The consultant will meet with staff on a monthly basis to discuss project issues and to provide updates on project status.
6. Prepare Administrative Review Draft. The consultant will prepare an administrative draft of the revised Zoning Code for staff review and comment.
7. Prepare Public Review Draft. Based on staff's review of the administrative draft, the consultant will prepare a public review draft for presentation to the Planning Commission and City Council.
8. Prepare CEQA Documentation. The consultant will prepare an initial environmental study and conduct the appropriate environmental analysis for the proposed Zoning Code update.
9. Attend Planning Commission and Town Council Meetings. The consultant will present the proposed Zoning Code at a public hearing of the Planning Commission and City Council.

10. Prepare Final Zoning Code. Upon adoption, the consultant shall submit a final Zoning Code reflecting any changes resulting from Planning Commission and City Council deliberations.
11. Determine inconsistencies between provisions which might require Council action to be corrected.
12. Make recommendations for provisions that are not currently in the code that might be considered industry standards.

REQUIRED PROPOSAL CONTENT

All responses to this RFP must contain the following information:

1. Cover Letter. This should present the consultant's understanding of the project and the methodology that will be used. It should include the name, address, email and phone number of the person(s) to contact about the proposal.
2. Work Plan. Describe the proposed approach and activities to be accomplished. The primary effort should be directed toward consolidation of information and presentation in a clearly understandable format.
3. Firm Qualifications. Describe the firm's experience in managing projects similar in nature to the proposed project. This should include a description of prior experience in working with public agencies, including working with city staff and policymakers, and preparing and presenting materials at public hearings.

The proposal shall include a list of other similar zoning ordinance projects. This shall include the following information:

- Project name and location
 - Brief description of project and firm's responsibilities
 - Preparation date
 - Contact name, address, and phone number for client
4. Project Team. Provide a detailed resume of the project manager, who shall be a full-time employee of the firm, including a description of experience relevant to the project. Also provide a list of key personnel who will be working on the project.
 5. References. Provide three business-related references for the firm, two of which are familiar with the project manager. This shall include the name, company, contact information, and business relationship to the firm.
 6. Sample. Provide a sample of a recently completed zoning ordinance update or related project.

7. Schedule. Provide an estimated schedule to complete each of the tasks. This should include the amount of time required to complete each individual task, and the time to allow staff to review and respond to the submitted material.
8. Cost. This should include payment expectations, hourly rates, and costs for meeting attendance, printing, and other miscellaneous costs as applicable. Also include a not-to-exceed amount for completing the entire project.

SUBMITTAL

Proposals shall be submitted in a sealed envelope and identified as "Zoning Code Update Proposal." All proposals must be received by **February 20, 2007**, postmarks will not be accepted. Hand deliver or send proposals to:

James Robinson
City Manager
91 Ashfield Road
Atherton, CA 94027

Vender Selection Schedule:

- Proposals due: February 20, 2007
- Interview Consultants: Week of February 26, 2007
- Negotiate contract: Week of March 5, 2007
- City Council approval: March 21, 2007
- Begin Service: April 1, 2007

If additional information and/or clarification are needed on this RFP, please contact James Robinson, City Manager, at (650) 752-0504.

EVALUATION CRITERIA

Proposals will be judged on the basis of the following:

- Professional qualifications and capabilities of the firm and its personnel
- Past experience of the project manager to successfully manage such a project
- Relevant experience of the firm with similar types of projects
- Results of reference checks
- Overall quality of the proposal, including clarity of content
- Demonstration of a clear understanding of the project
- Cost related to the level of work proposed, and time schedule for completion



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: NEAL J. MARTIN, TOWN PLANNER

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

**SUBJECT: STATUS REPORT ON SAN MATEO COUNTY SUB-REGIONAL HOUSING
NEEDS ALLOCATION**

RECOMMENDATION:

Provide direction to Vice Mayor Janz on Atherton's position regarding the San Mateo County Sub-regional Housing Needs Allocation. The Sub-regional Technical Advisory Committee recommends adoption of the "ABAG Methodology."

ANALYSIS:

California local governments are required to update their Housing Elements every five years. The deadline for the next update cycle is June 30, 2009.

One of the critical steps leading up to the Housing Element update is the Regional Housing Needs Allocation. ABAG is required to distribute the regional housing needs number to each of the local Bay Area governments a year before the Housing Element updates are due. An advisory committee consisting of local government staff and elected officials has been formed to help ABAG develop the methodology to be used in distributing the regional housing needs numbers. The Atherton Town Planner attended the meetings of the advisory committee.

A new State law has been enacted that allows the formation of sub-regions for purposes of allocating the housing needs to jurisdictions within the subregion. San Mateo County and its twenty cities have formed a sub-region and are nearing the end of the process of developing their own methodology for distributing the Countywide housing needs number among the subregion's jurisdictions. The Town Planner has been representing Atherton on the sub-regional Technical Advisory Committee. Councilmember Janz has been representing Atherton on the sub-regional Policy Advisory Committee.

The sub-regional process has been facilitated by C/CAG through its executive officer Rich Napier. It includes the following:

1. A Technical Advisory Committee (TAC) consisting of one planner or housing professional representative from each jurisdiction. The TAC's function is to make recommendations regarding a proposal for the allocation methodology and its technical aspects.
2. A Policy Advisory Committee (PAC) consisting of one elected representative from each jurisdiction. The PAC's function is to review the proposed allocation methodology, provide policy input to the process and recommend an allocation methodology for submittal to ABAG.
3. The City Councils' and Board of Supervisors' role will be final review and approval of the actual allocation number for their jurisdictions.

County Preliminary Housing Needs Allocation

During the last allocation (so called RHNA-3 for the period 1999 – 2006) San Mateo County received an allocation of 16,305 new dwelling units. Although a county-wide allocation for the current period (so called RHNA-4 for the period 2007 – 2014) has not yet been received from ABAG, C/CAG has been using an estimate of 18,400 new dwelling units. The actual county-wide allocation is scheduled to be delivered from ABAG on May 17, 2007.

TAC Progress

The TAC has met on several occasions with a very high participation level by the jurisdiction representatives. They have reviewed numerous methods of allocation, including:

1. "Draft SubRHNA Methodology" – a formula weighted 100% on household growth projected for the years 2007 – 2014 by ABAG in its report "Projections 2007.
2. "ABAG Scenario 3 (San Bruno)" - a formula weighted 50% on household growth, 25% on existing jobs and 25% on job growth projected for the years 2007 – 2014 by ABAG in its report "Projections 2007.
3. "ABAG Methodology" - a formula weighted 45% on household growth, 5% on household growth near transit, 22.5% on existing jobs, 22.5% on job growth, and 5% on job growth near transit projected for the years 2007 – 2014 by ABAG in its report "Projections 2007. This is the formula adopted by ABAG for the rest of the region.
4. "RHNA-3 (1999 – 2006)" - a formula weighted 50% on household growth and 50% on job growth projected for the years 1999 - 2006 by ABAG. This is the same formula adopted by ABAG during the previous housing element and housing allocation period.

5. “RHNA-3 Scaled Up” – a formula using the RHNA-3 allocation scaled up by 12.85% which is the difference between the county-wide RHNA-3 allocation and the preliminary RHNA-4 allocation ($18,400 \div 16,305$).
6. A method that takes into account the number of housing units actually constructed during the 1999 – 2006 period.

The TAC met on March 15, 2007, and concluded its deliberations on the proposed allocation methodology. Its recommendation is to adopt the “ABAG Methodology” as described in Number 3 above. The TAC voted 15 to 3 with two jurisdictions absent and one abstention to recommend this methodology to the PAC.¹

The significance for Atherton is that the Town would be allocated approximately 123 new dwelling units if the county-wide allocation is 18,400 units. This is compared to an allocation of 166 units during the RHNA-3 cycle. The Atherton allocation would proportionately increase or decrease if the county-wide allocation is greater or less than 18,400 units.

PAC Progress

The PAC has met twice, receiving progress reports on the TAC deliberations and providing policy direction to the TAC. The PAC also held a public hearing on a draft allocation methodology. The PAC is scheduled to meet on March 22 to consider the TAC recommendation. The PAC decision will be forwarded to ABAG and will become the Final Methodology for Determining Housing Need Shares for the San Mateo County Sub-region. The deadline for submitting the final methodology to ABAG is March 30, 2007. Consequently, there is not sufficient time to permit each City Council and the Board of Supervisors to affirm the final methodology after the PAC meeting.

Future City Council Action

The City Council is requested to provide direction to Atherton PAC Representative Vice Mayor Janz on the recommended methodology at the March 21, 2007, Council meeting.

After the final county-wide allocation is made and allocations are made to individual jurisdictions according to the final methodology, each City Council and the Board of Supervisors will be asked to consider the numerical allocation.

ALTERNATIVES:

The following alternatives appear to be available:

¹ Jurisdictions voting for the ABAG Methodology were: Atherton, Brisbane Burlingame, Daly City, East Palo Alto, Half Moon Bay, Hillsborough, Menlo Park, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, South San Francisco and Woodside. Jurisdictions voting against were Belmont, Colma, and Millbrae. Foster City and San Mateo were absent but both had previously expressed approval of the ABAG Methodology. The unincorporated area abstained. It should be noted that Atherton voted for the Draft SubRHNA Methodology during initial straw polls, but that approach was eliminated due to limited support from the other jurisdictions.

1. Accept the TAC recommendation and direct Vice Mayor Janz to support the “ABAG Methodology” approach at the PAC meeting.
2. Request that Vice Mayor Janz support a different methodology and argue for that approach at the PAC meeting.
3. Drop out of the Sub-region. In this alternative, Atherton would revert to its status as an ABAG member jurisdiction and would be allocated a number according to the ABAG adopted formula. This would be similar to the Sub-regional number; however, it would probably be 3 – 4% higher because of a peculiarity in the law that assigns a slightly lower county-wide allocation to sub-regions. Another reason to stay in the Sub-region is that it allows “trading” of units with other jurisdictions.

CONCLUSION:

Planning Staff’s professional opinion is that the Town would be best served to support the “ABAG Methodology” as recommended by the Sub-regional TAC.

FISCAL IMPACT:

All costs covering this process are paid for by the Atherton General Fund and are included in the adopted Atherton Budget.

FORMAL MOTION:

I move that the City Council provide direction to Vice Mayor Janz to support the Sub-regional Technical Advisory Committee’s recommended “ABAG Methodology” at the March 22 Sub-regional Policy Advisory Committee meeting.

Prepared by:

Approved by:

Neal J. Martin
Town Planner

James H. Robinson
City Manager

Attachments:

1. Table entitled “Comparison of Allocation Weightings”
2. Final Methodology for Determining Housing Need Shares – San Mateo County Sub-Region
3. Staff Report to City Council on RHNA and Sub-Regional Housing Allocation, Nov. 15, 2006.

COMPARISON OF ALLOCATION WEIGHTINGS

JURISDICTION	Formula Builder		Draft SubRHNA Methodology		ABAG Scenario 3 (San Bruno)		ABAG Methodology		RHNA-3	RHNA-3
									Scaled Up	3 (1999 - 2006)
Household Growth	0%		100%		50%		45.0%			
Household Growth Near Transit	0%						5.0%			
Existing Jobs	0%				25%		22.5%			
Job Growth	0%				25%		22.5%			
Job Growth Near Transit	0%						5.0%			
ATHERTON	0	0.00%	72	0.39%	90	0.49%	123	0.67%	187	166
BELMONT	0	0.00%	571	3.10%	520	2.83%	538	2.92%	358	317
BRISBANE	0	0.00%	257	1.40%	521	2.83%	469	2.55%	481	426
BURLINGAME	0	0.00%	498	2.71%	779	4.23%	834	4.53%	638	565
COLMA	0	0.00%	48	0.26%	119	0.65%	153	0.83%	84	74
DALY CITY	0	0.00%	1764	9.59%	1478	8.03%	1396	7.59%	1570	1,391
EAST PALO ALTO	0	0.00%	1362	7.40%	818	4.45%	736	4.00%	1447	1,282
FOSTER CITY	0	0.00%	465	2.53%	631	3.43%	568	3.09%	779	690
HALF MOON BAY	0	0.00%	523	2.84%	359	1.95%	323	1.76%	517	458
HILLSBOROUGH	0	0.00%	157	0.85%	112	0.61%	101	0.55%	95	84
MENLO PARK	0	0.00%	912	4.96%	1182	6.43%	1137	6.18%	1108	982
MILLBRAE	0	0.00%	610	3.32%	505	2.74%	609	3.31%	387	343
PACIFICA	0	0.00%	423	2.30%	358	1.94%	322	1.75%	752	666
PORTOLA VALLEY	0	0.00%	130	0.71%	96	0.52%	86	0.47%	93	82
REDWOOD CITY	0	0.00%	1513	8.22%	2016	10.96%	1981	10.76%	2871	2,544
SAN BRUNO	0	0.00%	1444	7.85%	1155	6.27%	1301	7.07%	427	378

March 21, 2007 City Council Staff Report
 Sub-regional Housing Allocation Update
 Page 2

SAN CARLOS	0	0.00%	825	4.48%	853	4.64%	834	4.53%	415	368
SAN MATEO	0	0.00%	3800	20.65%	3137	17.05%	3301	17.94%	2750	2,437
SOUTH SAN FRANCISCO	0	0.00%	1670	9.08%	1755	9.54%	1863	10.13%	1502	1,331
WOODSIDE	0	0.00%	76	0.41%	85	0.46%	76	0.41%	46	41
UNINCORPORATED	0	0.00%	1281	6.96%	1830	9.95%	1647	8.95%	1896	1,680
SAN MATEO COUNTY	18,400	0%	18,400	100%	18,400	100%	18,400	100%	18,400	16,305

Attachment 2

FINAL METHODOLOGY FOR DETERMINING HOUSING NEED SHARES SAN MATEO COUNTY SUBREGION

State Law

State law (Section 65584.03 of the California Government Code) allows the County and cities within the County to join together to form a “subregion,” a consortium that would administer the State mandated Regional Housing Needs Allocation (RHNA) program at the local level. Each member jurisdiction of a “subregion” has submitted a resolution to the Association of Bay Area Governments (ABAG) and the City/County Association of Governments (C/CAG) requesting authority to locally administer the program by August 31, 2006. ABAG has adopted a resolution approving the formation of the “subregion.”

The process will locally determine housing need shares through the year 2014 to all jurisdictions in the County. These housing need shares would be included in the Housing Element update process in 2009.

San Mateo County Subregion

The County of San Mateo, in partnership with all twenty cities in the county, has formed a subregion, as allowed by state statute. The subregion has designated the City/County Association of Governments (C/CAG) as the entity responsible for coordinating and implementing the subregional RHNA process.

As required by statute, ABAG will assign a share of the regional need to the San Mateo subregion “in a proportion consistent with the distribution of households” in *Projections 2007*. The subregion is responsible for completing its own RHNA process that is parallel to, but separate from, the regional RHNA process. The subregion will create its own methodology, issue draft housing need shares, handle the revision and appeal processes, and then issue final housing need shares to members of the

subregion.

Organization

A RHNA Policy Advisory Committee has been formed. It is comprised of 21 members, one from each City Council and the Board of Supervisors. The Policy Advisory Committee is the governing board of the Subregion. The committee's primary role is to review and approve the work of the Technical Advisory Committee and to provide policy direction and take all actions required to fulfill the statutory obligations of the Subregion.

A RHNA Technical Advisory Committee has been formed. It is comprised of 21 members, one from each city and the County. These members are senior staff experts in the fields of housing and land use. The committee's primary role is the technical development of recommendations for consideration by the Policy Advisory Committee.

The City Manager's Association will be provided monthly reports. The Association will review the work of the Technical Advisory Committee and provide input. The final methodology will be presented to the City Managers for review and comment.

City Councils and the Board of Supervisors will review and approve the housing need shares prior to submitting them to the Association of Bay Area Governments.

The Association of Bay Area Governments will approve the final housing shares.

RHNA Schedule (2006-2008) and Process for Determining Housing Need Shares for Subregion

December 31, 2006

- Subregion develops draft methodology and submits to ABAG for comment.

December 31, 2006 - March 1, 2007

- Sixty (60) day review period of draft methodology.
- Subregion conducts one public hearing.

March 1 - April 1, 2007

- Subregion adopts final methodology.
- Subregion sends final methodology to ABAG and State HCD for review and comment.

May 1, 2007

- ABAG assigns housing total share of housing need to subregion.
- Subregion conducts one public hearing.

May 1 – June 30, 2007

- Subregion assigns draft shares to cities and County. Unless an alternate method or formula for allocation is agreed to unanimously by the 21 jurisdictions comprising the Subregion by May 31, 2007, the Subregion shall assign each jurisdiction a share of the Subregion's total allocation ~~pre-~~ ~~rated on the basis of the increase (from 2007 through 2014) in the number of households forecast for~~

~~the jurisdiction in ABAG Projection 2007.~~ **utilizing the adopted Association of Bay Area Governments (ABAG) formula for Regional Housing Needs Allocation 4. Identify and analyze any member jurisdiction that has an issue with their individual share under this method.**

July 1 – August 31, 2007

- Through facilitated dialogue among member jurisdictions, and with their unanimous consent, the Subregion may make adjustments to the draft assignment of shares to effect a distribution that is more equitable and/or more likely to result in actual housing production. **Define solutions in response to the member jurisdictions that identified issues with the initial draft shares while maintaining an overall equitable balance for all member jurisdictions.**
- Cities and County may request revisions to draft shares.

September 1 – October 31, 2007

- Subregion responds to revision requests.

December 1, 2007 – February 28, 2008

- Cities and County may appeal draft shares to subregion.

January 1 – April 30, 2008

- Subregion holds public hearing on appeals.

February - April 30, 2008

- Subregion issues final shares to cities and County.

February - March 30, 2008

- Subregion holds public hearing to adopt final shares.
- Subregion submits final shares to City Councils and Board of Supervisors for approval.
- Subregion submits final shares to ABAG.

Adjustment of Housing Need Shares

After the final housing need shares are determined by the Subregion, each local jurisdiction may petition ABAG to be allowed to transfer units with willing partner(s), in a way that maintains total housing need amongst all transfer parties, maintains income distribution of both retained and transferred units, and includes a package of incentives to facilitate production of housing units. This transfer rule allows the transfer of housing need shares between willing jurisdictions in conjunction with financial and non-financial resources, while maintaining the integrity of the state's RHNA objectives by preventing any jurisdiction from abdicating its responsibility to plan for housing across all income categories. Transfers done in this manner may facilitate increased housing production in the region.

ABAG has adopted the following criteria, which would be applied when adjudicating petitions for transferring units among local jurisdictions:

1. Transfer requests must have at least two willing partners and the total number of units within the group requesting the transfer cannot be reduced.
2. Transfers must include units at all income levels in the same proportion as initially allocated.
3. All members of the transfer group must retain some allocation of very low and low income units.
4. The proposed transfer must include a specifically defined package of incentives and/or resources that will enable the jurisdiction(s) receiving an increased allocation to provide more housing choices than would otherwise occur absent the transfer and the accompanying incentives or resources.
5. If the transfer results in a greater concentration of very low or low income units in the receiving

jurisdiction, the effect must be offset by findings by the members of the transfer group that address the RHNA objectives. For example, the findings might include (a) there is such an urgent need for more housing choices in those income categories that the opportunity to effect more housing choices in these categories offsets the impacts of over-concentration, or (b) the package of incentives and/or resources are for mixed income projects, or (c) the package of incentives and/or resources are for “transitional” housing -for very low or low income households being relocated for rehabilitation of existing very low or low income units, or (d) the package of incentives and/or resources are for additional units that avoid displacement or “gentrification” of existing communities.

6. For the transfer of very low and low income units, there are restrictions that ensure the long-term affordability of the transferred units.
7. Transfers must comply with all other statutory constraints and be consistent with the RHNA objectives.

In addition to guaranteeing that transfers meet the RHNA statutory objectives, these criteria promote regional policies to increase housing supply and provide more housing choices. The criteria state that the transfer must include the resources necessary to improve housing choices and, specifically, in a way that would not otherwise be possible without the transfer. The long-term affordability restrictions on very low and low income transferred units ensure that these units will contribute to a fundamental increase in affordable housing choices.

The criteria also emphasize development of affordable units and are therefore consistent with the state RHNA objective that every jurisdiction does its “fair share” to provide affordable housing. The requirement that jurisdictions must retain some very low and low income units and the stipulation that transfers must maintain the same income distribution as is initially allocated ensure that a jurisdiction cannot abdicate its responsibility to provide affordable units. The criteria also ensure that the benefits

created by the transfer outweigh any possible negative effects of an over-concentration of lower income households.

Procedures

“Subregions” must follow the same substantive and procedural rules and guidelines that ABAG follows when distributing housing allocations. By March of 2007, the “subregion” must also enter into an agreement with ABAG, known as “the allocation methodology,” that specifies the process, timing, and other terms and conditions for administering the local housing needs determination process.

Spheres of Influence

Each local jurisdiction with the land-use permitting authority in a “Sphere of Influence” should plan for the housing needed to accommodate housing growth, existing employment and employment growth in such “Sphere of Influence” areas. A 100 percent share of the housing need to the jurisdiction that has land use control over the area would ensure that the jurisdiction that plans for accommodating the housing units also receives credit for any built units during the RHNA period.

Regional Determination of Housing Units based on Affordability

There are two primary goals of the RHNA process: 1) increase the supply of housing and 2) ensure that local governments consider the housing needs of persons at all income levels.

Each local jurisdiction should plan for income-based housing in the same ratio as the regional average income distribution (as described by the 2000 Census). A methodology that allocates each jurisdiction's regional housing need based on the regional average income distribution would be an “equal share” approach, because it applies the same income distribution to each jurisdiction. Although considered an

equitable approach, it does not consider existing concentrations of poverty.

The following distribution of regional housing needs to jurisdictions by income categories, based on the income distribution of San Francisco Bay Area, is:

- **Very Low, 23 Percent**

Households with income up to 50 percent of the County's area median income (AMI)

- **Low, 16 Percent**

Households with income between 50 and 80 percent of the County's AMI

- **Moderate, 19 Percent**

Households with income between 80 and 120 percent of the County's AMI

- **Above-Moderate, 42 Percent**

Households with income above 120 percent of the County's AMI

The need for affordable housing is a problem shared by the region as a whole, and is not localized to specific jurisdictions. By assigning every community an equal share of the County's need for affordable units, the methodology promotes the idea that every jurisdiction should do its "fair share" to provide housing.



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: NEAL J. MARTIN, TOWN PLANNER

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

**SUBJECT: GENERAL PLAN HOUSING ELEMENT UPDATE 2009: STATUS REPORT
ON SAN MATEO COUNTY SUBREGIONAL HOUSING NEEDS
ALLOCATION**

RECOMMENDATION:

No City Council action is required at this time.

EXECUTIVE SUMMARY:

California local governments are required to update their Housing Elements every five years. The deadline for the next update cycle is June 30, 2009.

One of the critical steps leading up to the Housing Element update is the Regional Housing Needs Allocation. ABAG is required to distribute the regional housing needs number to each of the local Bay Area governments a year before the Housing Element updates are due. An advisory committee consisting of local government staff and elected officials has been formed to help ABAG develop the methodology to be used in distributing the regional housing needs numbers. The Atherton Town Planner has been attending the meetings of the advisory committee.

A new State law has been enacted that allows the formation of subregions for purposes of allocating the housing needs to jurisdictions within the subregion. San Mateo County and its 20 cities have formed a subregion and are beginning the process of developing their own methodology for dividing the Countywide housing needs number among the subregion's

jurisdictions. The initial meeting of the subregional Technical Advisory Committee will be November 9, 2006. The deadline for stating a draft methodology is December 31, 2006. The Atherton City Manager and Town Planner will be participating in this process. Periodic reports will be provided to the City Council.

Every two years, ABAG produces forecasts of population, households, and jobs for the Bay Area and each local jurisdiction. A draft of the most recent forecast, "Projections 2007," was sent to each local jurisdiction for review and comment. Atherton Town staff prepared a comment letter indicating that the forecasts of households and jobs for Atherton in Projections 2007 were too high and not reflective of past growth or Town policy. Publication of the final version of Projections 2007 is expected in late November 2006.

STATUS REPORT:

Housing Element Update Required by June 30, 2009

California Government Code Section 65588 requires California cities and counties to periodically update the housing elements of their general plans. Atherton's Housing Element was originally adopted in 1983 and was amended on the dates listed below.

Atherton Housing Element	Adoption Date	RHNA Cycle²
Originally Adopted	1983	
1990 Update	May 14, 1991	1988 - 1995
		1996 - 2000
2001 Update	November 20, 2002	2001 - 2006
		2007 - 2014

Theoretically the statute requires each jurisdiction to update their housing elements on a five-year cycle. However, due to factors such as lack of funding for the required regional allocation of housing needs to local jurisdictions and the time required to implement the complex process of distributing the housing needs to each jurisdiction, the five-year cycles have expanded to about every five to seven years. The next update cycle is due to be completed on June 30, 2009. By that date each local jurisdiction is required to have adopted its updated housing element.

Housing Needs Allocation

The Housing Element Statute³ requires the California Department of Housing and Community Development (HCD), in consultation with each council of governments, to determine the existing and projected need for housing for each region in the State. This determination is made prior to the required housing element update cycle. The regional council of governments in the San Francisco Bay Area is the Association of Bay Area Governments (ABAG). The next cycle

² Regional Housing Needs Allocation cycle for the San Francisco Bay Area

³ California Government Code Section 65584.

for the San Francisco Bay Area is for the period 2007 – 2014⁴. During the last cycle (2001 – 2006) the ABAG housing needs number was 230,743 housing units; that is the State’s determination of how many additional housing units need to be added to the housing stock to accommodate population and job growth during the five-year cycle. As can be seen from the ABAG publication, “A Place to Call Home,” the Bay Area as a whole permitted approximately 80% and constructed approximately 73% of that goal.

The Statute also requires that HCD divide the housing needs number for each of the regional councils of governments into four income categories; above moderate, moderate, lower and very low. In recent years HCD has included a fifth income category; extremely low. These categories are defined below along with the income limits for the San Francisco Bay Area for a family of four in 2006.

Income Category	Definition⁵	Income Limits in 2006⁶
Above Moderate	Households with incomes greater than 120% of median	< \$114,000
Moderate	Households with incomes between 80% and 120% of median	\$114,000
Median	Median income for San Mateo County	\$95,000
Lower	Households with incomes between 50% and 80% of median	\$90,500
Very Low	Households with incomes between 30% and 50% of median	\$56,550
Extremely Low	Households with incomes less than 30% of median	\$33,950

The State Housing Element Law requires the regional councils of governments (i.e. ABAG in the case of the San Francisco Bay Area) to allocate the regional housing needs numbers to all of the local jurisdictions within the region. During the last cycle, ABAG created a formula that divided the regional needs number among the jurisdictions based on a weighting of projected household growth and projected job growth for each locality⁷. During the last cycle, the process provided for very little input from the local governments to whom the allocation applied.

ABAG created the methodology and submitted the draft allocations to the member jurisdictions. There was an appeal period but almost all of the appeals were denied. The allocation to Atherton for the RHNA cycle 2001 – 2006 was 166 housing units; 22 very low income, 10 lower income, 27 moderate income and 107 above moderate income units.

After the last RHNA cycle the housing element statute was changed to provide for more participation and input into the RHNA methodology by local governments. It was also amended

⁴ There are different cycle years for different regions in the State.

⁵ HCD makes certain adjustments to the extremely lower, very low and low income categories to reflect high housing costs and other factors unique to particular areas in the State. Therefore, the income limits may be different from simply multiplying the median income times the percentage factor in the definition.

⁶ Income limits for a family of four living in the San Francisco Bay Area in 2006.

⁷ The weighing was 50% household growth and 50% job growth

to require consideration of a number of factors in the development of the methodology that allocates regional housing needs.⁸ Finally, a provision was included to permit the formation of subregions

for the purpose of allocating the subregion's existing and projected need for housing among its members.

Although HCD has not yet provided a preliminary regional housing needs allocation for the San Francisco Bay Area, ABAG began preparing for the upcoming RHNA cycle by forming a Housing Methodology Committee (HMC). The Committee's function is to advise ABAG staff on the appropriate methodology for distributing the housing needs numbers to each member jurisdiction. The committee consists of approximately twenty five staff and elected representatives from the cities and counties in the Bay Area. The HMC has been meeting this summer and fall. At its meeting of October 19, 2006, HMC and the ABAG staff generally agreed on an allocation formula including the factors listed below:

- 40% Household Growth (i.e. 40% times the share of regional household between 2007 and 2014), plus
- 20% Jobs in 2007 (i.e. 20% times the share of regional jobs existing in 2007), plus
- 20% Job Growth (i.e. 20% times the share of regional job growth between 2007 and 2014), plus
- 10% Transit Job Growth (i.e. 10% times the share of regional job growth within ½ mile of major transit stations between 2007 and 2014), plus
- 10% Transit Household Growth (i.e. 10% times the share of regional household growth within ½ mile of major transit stations between 2007 and 2014)

San Mateo County Subregion Formation

Meanwhile, with leadership from Rich Napier, Executive Director of the San Mateo City/County Association of Governments (C/CAG), in August 2006, San Mateo County and the 20 cities within the County joined together to form a subregion for purposes of allocating the housing needs within San Mateo County. Apparently San Mateo County is the only subregion that has been formed in the State. The subregion has designated C/CAG as the entity responsible for coordinating and implementing the subregional RHNA process. The timeframe for adopting a housing needs allocation methodology is quite short. C/CAG must:

- articulate a draft methodology by December 31, 2006
- adopt a final methodology by February 28, 2007

Subsequent to developing the methodology, the timeframe for making the actual numerical allocations are lengthier. C/CAG must:

⁸ Factors include: jobs and housing relationship, lack of sewer or water capacity, availability of land suitable for urban development, preserved or protected lands, preservation of prime agricultural land, distribution of household growth to maximize the use of public transportation, market demand for housing, agreements to direct growth toward incorporated areas of a county, loss of assisted units, high housing costs burdens, needs of farm workers, and other factors.

- adopt an initial subregional allocation by June 30, 2007
- adopt a final subregional allocation by June 30, 2008

If C/CAG does not complete any of the required steps, ABAG must allocate the subregional share among members of the subregion. Therefore, there must be a parallel effort in methodology development and, subsequently needs allocation, since a failed C/CAG effort would automatically cause ABAG to reassume the lead in the process for San Mateo County and the 20 cities.

The initial meeting of the Subregion members was held on September 22. It was attended by staff or elected members of most of the member jurisdictions⁹. Atherton was represented by Jim Robinson, City Manager, and Neal Martin, Town Planner. At the meeting, a number of decisions were made regarding the process to be followed.

- A RHNA Technical Advisory Committee would be formed to make recommendations regarding the technical aspects of the allocation methodology. This committee would be made up of planners and housing professionals and perhaps a few city managers from the 21 member jurisdictions.
- The existing City Managers Association of San Mateo County would review recommendations from and provide guidance to the RHNA Technical Advisory Committee regarding the allocation methodology. The final product will be presented to the City Managers for approval. The primary role of the Managers is practical assessment of the issues and solutions.
- A RHNA Policy Advisory Committee to review and provide initial policy input to the process. The existing C/CAG Board of Directors could function as the RHNA Policy Advisory Committee.
- The City Councils and Board of Supervisors role will be final review and approval prior to submitting to products to ABAG.
- C/CAG Staff will facilitate meetings, agendas and technical support for the Planning/Technical Advisory Committee.
- Duane Bay, San Mateo County Housing Director, will function as the RHNA Technical Advisory Committee meeting facilitator, at least during the initial meetings.
- City Manager Jim Robinson has appointed Town Planner Neal Martin to represent Atherton at the RHNA Technical Advisory Committee meetings.
- A member of the Atherton City Council will need to be appointed to represent the Atherton City Council as part of the process, which I understand will take place at the January 2007 City Council meeting.

The next meeting of the RHNA Technical Advisory Committee is scheduled for November 9, 2006.

⁹ San Mateo County and the twenty cities.

ABAG Projections 2007

Meanwhile, ABAG is in the process of preparing its latest round of population, jobs and housing projections. This is a series of forecasts and projections prepared on a two-year cycle known as “ABAG Projections.” ABAG Projections 2007 (Projections 2007) includes forecasts of population, households¹⁰ and jobs in five-year increments from the year 2000¹¹ to 2035 for each local jurisdiction in the region. When finalized, Projections 2007 forecasts for the 2007 – 2014 timeframe will be used in the ABAG Regional Housing Needs Allocation formulas.

On September 15, 2006, ABAG distributed Draft Projections 2007 to all of the local jurisdictions in the region providing an approximate 30-day period for review and comment. Atherton staff prepared a comment letter to ABAG stating and documenting that the forecasts of households and jobs for Atherton in Projections 2007 were too high and not reflective of past growth or Town policy¹². According to the ABAG website, typically, revisions are made to the projections forecast and the ABAG Executive Board adopts the forecast at its November meeting¹³.

Prepared by:

Approved by:

Neal J. Martin
Town Planner

James H. Robinson
City Manager

Attachments:

1. San Mateo County (C/CAG) Summary of the Sub-Regional RHNA Process, 10/20/06.
2. Association of Bay Area Governments, “A Place to Call Home: Housing in the San Francisco Bay Area,” June 2006.

¹⁰ A household includes all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. The presence of relatives determines that it is a family household.

¹¹ U.S. Census counts are used for the year 2000.

¹² See letter to Paul Fassinger, Research Director, Association of Bay Area Governments from James H. Robinson, City Manager, October 16, 2006.

¹³ The ABAG Executive Board meets November 16, 2006



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: CHIEF ROBERT J. BRENNAN

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

SUBJECT: INCIDENT COMMAND SYSTEM (ICS) 1 & 2 TRAINING

RECOMMENDATION:

Council considers organizing an eight hour training session on the Incident Command System (ICS) as part of the Town's Disaster Preparedness Program and possible dates to hold the class.

INTRODUCTION:

At the February 28, 2007, Emergency Preparedness Subcommittee meeting, Council Member McKeithen requested the Police Department recommend potential dates to present to Council, community groups, and other interested persons training on the Incident Command System and its relationship to the Town's Disaster Preparedness Program.

ANALYSIS:

The Police Department has on staff a sergeant who was certified by the State of California to present training on ICS Programs. All police employees and many other town employees received this eight hour training in the fall of 2006. Should Council elect to hold this training class, Town employees who missed this compulsory training last fall can join Council and members of the community.

Please refer to Attachment A to review the course outline and Attachment B (calendar) for assistance in selecting a date. Unavailable dates have been blackened out. Council may consider a single day of eight hour training or two four-hour sessions.

FISCAL IMPACT:

The cost of a trainer is \$706.70 (includes class time and preparation).

Prepared by:

Approved by:

Robert J. Brennan
Chief of Police

James H. Robinson
City Manager

Attachments: A - Course Outline
B - 2007 Calendar

Calendar for year 2007

April 2007

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8						
15						
22						
29						

May 2007

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June 2007

Su	Mo	Tu	We	Th	Fr	Sa
						1 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July 2007

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 2007

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3 4
5						
12						
19	20	21	22	23	24	25
26	27	28	29	30	31	

September 2007

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October 2007

Su	Mo	Tu	We	Th	Fr	Sa
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November 2007

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December 2007

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF MARCH 21, 2007

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

RECOMMENDATION:

Consider proposed revisions to Title 12 and 13 of the Atherton Municipal Code in order to conform to Town regulations to the California Digital Infrastructure and Video Competition Act of 2006.

BACKGROUND AND ANALYSIS:

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

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

Chapter 13.08 mirrored Chapter 2.10 of the City of Palo Alto Municipal Code. As the City of Palo Alto is the administering agent for the Joint Powers Agreement between the Town and the cities of Palo Alto, Menlo Park, East Palo Alto and the Counties of San Mateo and Santa Clara,

and TCI Cablevision of California, Inc. (Comcast), it is appropriate for the Town to bring its regulations into conformance with the changes that the City of Palo Alto is making amending Chapter 2.10 of the Palo Alto Municipal Code and adding a new Chapter 2.11 on the subject of Video Service Providers as well as some revisions to encroachment permit regulations. A proposed new Chapter 13.10 to the Atherton Municipal Code will provide the necessary match to the City of Palo Alto's Chapter 2.11.

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

Amendments to existing ordinance provisions are shown in **bold**.

FISCAL IMPACT:

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

Prepared by:

Approved by:

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachments:

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

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

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

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

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

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

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

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

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

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

"Section 12.06.030. Definitions.

As used in this chapter:

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

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

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

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

"Section 12.06.040 Compliance required.

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

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

"Section12.06.050 Permit – Required.

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

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

"Chapter 12.07 STATE VIDEO SERVICE FRANCHISEES

Sections:

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

12.07.010 Definitions.

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

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

12.07.020 Purpose and interpretation.

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

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

12.07.030 State video franchisee permit application procedures.

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

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

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

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

12.07.040 Appeals.

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

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

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

Sections:

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

12.09.020 Maps and improvement plans.

12.09.010 Regulations applicable to right-of-way permittees.

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

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

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

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

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

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

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

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

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

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

12.09.020 Maps and improvement plans.

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

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

“13.08.600. Applicability and Sunset.

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

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

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

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

“Chapter 13.10

**VIDEO SERVICE PROVIDERS –
APPLICABLE REQUIREMENTS**

Sections:

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

13.10.010 Purpose.

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

13.10.020 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) “EAS” means Emergency Alert System.

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

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

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

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

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

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

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

13.10.030 State Franchise Required.

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

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

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

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

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

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

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

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

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

13.10.040 Administration and Regulations.

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

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

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

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

13.10.050 Construction, Operation, Maintenance and Repair.

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

13.10.060 Franchise Fee.

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

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

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

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

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

(a) PEG Channel Capacity.

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

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

(b) PEG Support.

(1) Amount of PEG support fee.

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

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

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

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

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

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

(c) PEG Carriage and Interconnection.

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

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

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

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

13.10.080 Audits and Records.

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

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

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

13.10.090 State Franchise Service Obligations.

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

13.10.100 Customer Service and Protection.

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

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

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

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

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

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

13.10.110 Emergency Alert System.

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

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

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

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

13.10.120 No Exclusivity.

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

13.10.130 Notices.

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

13.10.140 Miscellaneous Provisions.

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

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

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

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

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

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

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

Introduced this day of , 2007.

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

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

Alan B. Carlson
MAYOR, Town of Atherton

ATTEST:

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney