



**AGENDA**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON**  
**CHANNEL DRAINAGE DISTRICT**  
**June 21, 2006**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

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

- 7:00 P.M.    1.    **PLEDGE OF ALLEGIANCE**
- 7:03 P.M.    2.    **ROLL CALL**            Janz, J. Carlson, A. Carlson, Marsala, McKeithen
- 7:05 P.M.    3.    **PRESENTATION**
- None
- 7:05 P.M.    4.    **COUNCIL REPORTS**
- 7:15 P.M.    5.    **PUBLIC COMMENTS** (only for items which are not on the agenda –  
limit of three minutes per person)
- 7:25 P.M.    6.    **STAFF REPORTS**
- 7:35 P.M.    7.    **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**  
(Directed by Resolution Nos. 99-6 and 02-31)
- None
- 7:35 P.M.    **CONSENT CALENDAR** (Items 8 - 20)

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

8.    **APPROVAL OF MINUTES OF THE SPECIAL MEETING, SPECIAL  
CLOSED SESSION, AND SPECIAL MEETING OF MAY 17, 2006**

9. **APPROVAL OF BILLS AND CLAIMS FOR MAY 2006 IN THE AMOUNT OF \$759,492**
10. **ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR MAY 2006**
11. **SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING CHAPTER 2.37 OF THE ATHERTON MUNICIPAL CODE BY REVISING SECTION 2.37.020 TO INCREASE THE TERM OF OFFICE FOR CERTAIN MEMBERS OF THE GENERAL PLAN COMMITTEE**

**Recommendation:** Waive reading of the Ordinance beyond the title and adopt an Ordinance to extend the term of membership on the General Plan Committee to a four-year term for members who are not members of the City Council or Planning Commission.

12. **SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 17.36.195 REGULATING RETAINING WALLS**

**Recommendation:** Staff recommends that the City Council waive reading of the ordinance beyond the title and adopt an Ordinance based on the following finding for the reasons outlined in the staff report: The proposed ordinance amendment is required to achieve the objectives of the Zoning Plan and the General Plan.

13. **SECOND READING AND ADOPTION OF AN ORDINANCE ADDING ATHERTON MUNICIPAL CODE SECTION 15.40.157 REGARDING CONSTRUCTION SITE SCREENING**

**Recommendation:** Waive reading of the Ordinance beyond the title and adopt the Ordinance based on the following finding for the reason outlined in the staff report: The proposed Ordinance is required to achieve the objectives of the Zoning Plan and the General Plan.

14. **AMENDMENT TO HERITAGE TREE ORDINANCE – MODIFY PENALTY PROVISIONS – SECOND READING**

**Recommendation:** Adopt the ordinance amendment to the penalty provisions of the Heritage Tree Ordinance to set out certain remedies related to planting of replacement trees where a heritage tree has been removed in violation of Town regulations.

15. **APPROVAL TO RENEW AGREEMENT WITH NEAL MARTIN AND ASSOCIATES**

**Recommendation: Approve agreement for professional services for Fiscal Year 2006-07 for Neal Martin and Associates and authorize an increase in certain hourly rates.**

- 16. APPROVAL OF RENEWAL OF INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF ATHERTON AND TIM WULFF FOR PLAN CHECKING SERVICES FOR FISCAL YEAR 2006-07**

**Recommendation: Approve the renewal of Independent Contractor Agreement between the Town of Atherton and Tim Wulff for Plan Checking Services for Fiscal Year 2006-07.**

- 17. ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE OF COMPLETION AND APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$1,310 FOR THE UPPER ATHERTON CHANNEL REPAIR PROJECT, PHASE 1, PROJECT NO. 04-007**

**Recommendation: Accept the work, authorize recording of a Notice of Completion and approve contract change orders in the amount of \$1,310 for the Upper Atherton Channel Repair Project, Phase 1, Project No. 04-007.**

- 18. ADOPTION OF A RESOLUTION AUTHORIZING APPLICATION FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR THE VALPARAISO AVENUE OVERLAY PROJECT AND COMMITTING THE NECESSARY NON-FEDERAL MATCH FOR THE PROJECT AND STATING THE ASSURANCE OF THE TOWN OF ATHERTON TO COMPLETE THE PROJECT**

**Recommendation: Adopt a resolution authorizing staff to submit an application for Surface Transportation Program (STP) grant funds to overlay Valparaiso Avenue, committing the required local match and stating the assurance of the Town to complete the project.**

- 19. ADOPTION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH CALTRANS FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR THE VALPARAISO AVENUE REHABILITATION PROJECT**

**Recommendation: Adopt a resolution authorizing the City Manager to execute agreements with Caltrans for federal Surface Transportation Program (STP) funding for the Valparaiso Avenue Rehabilitation project.**

- 20. REJECT ALL BIDS AND AUTHORIZE RE-ADVERTISEMENT OF THE 2006 PAVEMENT PATCHING PROJECT, PROJECT NO. 05-006**

**Recommendation: Reject all bids and re-advertise the 2006 Pavement Patching Project, Project No. 05-006.**

**PUBLIC HEARINGS (Item No. 21)**

- 7:45 P.M. 21. INTRODUCTION OF AN ORDINANCE FOR FIRST READING AMENDING ATHERTON MUNICIPAL CODE SECTION 17.36.190 REGULATING BASEMENTS**

**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 the staff report: The proposed amendment is required to achieve the objectives of the Zoning Plan and the General Plan.**

**REGULAR AGENDA (Items 22 - 26)**

- 8:05 P.M. 22. CONSIDERATION AND DIRECTION TO STAFF REGARDING RESIDENT AWARENESS AND EMERGENCY PREPAREDNESS (Continued from the meeting of April 19, 2006)**

**Recommendation: It has been requested that the City Council hold a study session to review the Town's emergency plan and efforts for resident awareness.**

- 8:25 P.M. 23. SECOND READING AND ADOPTION OF AN ORDINANCE REGARDING TIME LIMITS FOR COMPLETION OF CONSTRUCTION**

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

- 8:40 P.M. 24. FIVE YEAR EXTENSION OF KNOX PLAYSCHOOLS LEASE**

**Recommendation: Approve amendment to Knox Playschools Lease and authorize extension of the lease's term for a period of five (5) years, commencing June 30, 2006, through and including June 30, 2011.**

- 9:00 P.M. 25. ADOPTION OF RESOLUTIONS PERTAINING TO THE NOVEMBER 2006 GENERAL MUNICIPAL ELECTION**

**Recommendation: 1) Adopt a Resolution calling for a General Municipal Election for the purpose of electing three (3) members of the Atherton City Council and requesting consolidation with the County Elections Office; and 2) Adopt a Resolution requiring candidates to pay the**

**prorated cost of publication and distribution of the Statement of Qualifications and specifying the length of the Statement.**

**9:15 P.M. 26. POSSIBLE CANCELLATION OF AUGUST CITY COUNCIL MEETING**

**Recommendation: If the city council desires to cancel its regularly scheduled meeting of August 16, 2006, a motion is needed to cancel the August meeting.**

**9:20 P.M. 27. PUBLIC COMMENTS**

**9:25 P.M. 28. ADJOURNMENT**

*Agendas and staff reports may be accessed on the Town website at: [www.ci.atherton.ca.us](http://www.ci.atherton.ca.us)*

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

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk's Office at (650) 752-0500. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29CRF35.104 ADA Title II.)



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

**May 17, 2006**

**5:00 P.M.**

**Meeting Room**

**Town Administrative Offices**

91 Ashfield Road  
Atherton, California

**Special Meeting**

The meeting was called to order at 5:05 p.m.

**ROLL CALL**

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

City Manager Jim Robinson, City Attorney Marc Hynes, Police Chief Bob Breenan, and Alice Chan and Brian Murray from Godbe Research were also present.

**PUBLIC COMMENTS**

There were no public comments.

**REGULAR AGENDA**

**1. CONSIDERATION AND DIRECTION TO STAFF REGARDING A DRAFT  
ATHERTON POLICE SERVICES SURVEY FROM GODBE RESEARCH**

**Recommendation:** It is recommended that the City Council review the draft Atherton Police Services Survey and give direction to Godbe Research.

Brian Murray, Godbe Research noted the survey integrated the phone and mail survey and presented a brief overview. A page-by-page review ensued, followed by an in-depth discussion regarding revisions and the rationale behind changing, adding, or deleting an item. Mr. Murray indicated the survey would be revised according to the comments/concerns of the Council and redistributed by the weeks end.

2. **ADJOURN**

**The meeting was adjourned by Mayor Marsala at 6:32 p.m.**

**Respectfully submitted,**

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**Kathi Hamilton  
Acting City Clerk**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON CHANNEL**  
**DRAINAGE DISTRICT**  
**MAY 17, 2006**  
**6:00 P.M.**  
**Meeting Room**  
**Town Administrative Offices**  
91 Ashfield Road  
Atherton, California  
**Special Meeting**

The meeting was called to order at 6:40 p.m.

**ROLL CALL**

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

**PUBLIC COMMENTS**

There were no public comments.

**CLOSED SESSION**

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

One (1) potential case

**RECONVENE TO OPEN SESSION**

Report of action taken.

City Attorney Marc Hynes reported out of Closed Session that there was no reportable action taken with regarding to Item A, Conference with Legal Counsel.

**ADJOURN**

**The Special Meeting adjourned at 6:47 p.m.**

**Respectfully submitted,**

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**Charles E. Marsala**  
**Mayor**

**Minutes Prepared by:**

**Kathi Hamilton**



**DRAFT MINUTES**  
**Town of Atherton**  
**CITY COUNCIL/ATHERTON**  
**CHANNEL DRAINAGE DISTRICT**  
**May 17, 2006**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California

**REGULAR MEETING**

Mayor Marsala called the meeting to order at 7:10 p.m.

1. **PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

**City Manager Jim Robinson and City Attorney Marc Hynes were also present.**

3. **PRESENTATION**

A. **Swearing in of new Police Officer Nicholas Hillard  
Oath of Office Administered by Police Chief Bob Brennan**

**Police Chief Bob Brennan introduced Police Officer Nicholas Hillard and administered the Oath of Office.**

B. **Recognition of Outgoing Committee Members**

**Mayor Marsala presented Certificates of Appreciation to Outgoing Committee Members: Shirley Carlson, Thor Miller, and Bob Franceschini, Waste Reduction Committee; and Bob Wilson, Audit Committee. Diane Crittenden, Joan Sanders, Arts Committee; Gustavo Eydelseyn, Doris Kellett, Fred Wolin, Caltrain Corridor Ad Hoc Subcommittee; and Phil Lively, General Plan Committee were not present.**

#### 4. COUNCIL REPORTS

- Council Member Janz met with Sarah Rosendall from Senator Joe Simitian's office to update Senator Simitian regarding the lack of Caltrain service in Atherton. On May 11, he attended the City/County Association of Governments (C/CAG) meeting where a presentation on global warming took place. An outcome of the meeting was the appointment of a committee to look into ways that local governments in San Mateo County can reduce electric consumption. C/CAG urged cities in the county to pass resolutions against one state resolution and one federal resolution regarding utilities and cable T.V. within towns. A meeting of the Association of Bay Area Governments (ABAG) was scheduled for the next evening where a discussion of the status of the next housing needs allocation process was on the agenda, a two-year regional housing needs allocation process. By March 2007, the allocation methodology would be developed and approved; by June 2007, the draft regional allocations would be issued; and by June 2008, the final regional allocations would be adopted. The Housing Endowment and Regional Trust (HEART) was also working in conjunction with the process to see whether the allocations made to San Mateo County could be handled within the County.
- Council Member Jerry Carlson attended the Tree Committee's Arbor Day event at Selby Lane School. He commended Kathy Hughes Anderson and Denise Kupperman for organizing the event. The San Francisco Airport Roundtable was celebrating its 25<sup>th</sup> anniversary on June 7, at the Airport Museum, at 7:00 p.m. Out of the 948 noise complaints in March, 371 came from Atherton from three residents. The Finance Committee met and was working on the budget. He met with the Audit Committee. He met with the Redwood City School Board regarding Selby Lane School, and the Board made a 3-year commitment to fund the International Baccalaureate Program. He attended the D.A.R.E. graduation at St. Joseph's, along with Officer Potts and his wife Ruth, and the members of the Atherton Police Department, who did an excellent job in supporting the program.
- Vice Mayor Alan Carlson attended a meeting of the Atherton Disaster Preparedness Committee, and the committee was meeting again on Saturday, May 20, 2006. He and Mayor Marsala met with representatives of Menlo-Atherton High School (M-A) and addressed a number of issues with respect to the proposed Performing Arts Center (PAC): traffic, parking, noise, and hours of operation. The school was developing guidelines for usage of the PAC. In upcoming meetings, the City of Menlo Park would be included.
- Mayor Marsala said both M-A High School and the Sequoia Union High School Board were receptive to Atherton's concerns. He attended a League of Cities event. The League was supporting the Governor's budget package. He spoke with the Mayor of Sunnyvale regarding its Sunnyvale Neighborhood Action Plan (SNAP) program for earthquake preparedness. He attended Atherton's Earth Day event where 150 residents donated E-waste. Kathy Hughes Anderson and Troy Henderson did a great job and perhaps a second event would be scheduled. He attended services for Vit Eckersdorf, a longtime resident who volunteered his time to the Town. Menlo College's graduation was held, the

college hosted M-A's fundraiser, and an Art and Wine event was planned for Fathers' Day. Mayor Marsala served as a moderator for the Silicone Valley Values and Vision Conference, which was on housing, environmental issues, and philanthropy.

- Council Member McKeithen attended the San Mateo County Office of Emergency Services meeting where the main issue was the budget. A significant increase in costs was expected for the Hazard Materials Response Team and would result in a 27% cost increase per member, or \$8,000 for Atherton. Ongoing costs for the OES were increasing 14 %, and an additional \$30,000 would be required for ongoing maintenance, fuel, and repairs for new vehicles acquired through a Homeland Security grant. The total amount for the Town was approximately \$15,000, including a \$91,000 rollover from the OES' previous year budget. The Town's auditors presented an independent auditor report regarding four areas pursuant to a Finance Department request: 1) Cash receipt processing in the Building Department with a focus on how fees were calculated resulted in a mandate for written policies and procedures pertaining to the processing and issuing of building permits and the calculation, to be put into place by June, with better control over blank permit stock; 2) Review of the bank reconciliation process for July 1 – December 31, 2005, resulted in the need for a notation that the Finance Director reviewed the documents; 3) Review of the accounts payable system and associated claims indicated that only one out of the ten inspected lacked supporting documentation, and the auditors recommended that support packages be filed immediately after the account was reviewed and paid; 4) Review of GASB 34 implementation showed the reports contained formatting errors of the summary totals, as well as historical cost information for depreciation expense calculation and resulted in the need to hire a consultant.
- Council Member Janz noted that the Town was hosting the San Mateo County Council of Cities dinner on Friday, May 19, at Stent Hall in Menlo School.

## 5. PUBLIC COMMENTS

Richard Moore, President, Atherton Civic Interest League (ACIL), reminded those in attendance that the Annual Meeting of the ACIL was the next evening, May 18, at 7 p.m. Every Atherton resident would receive a free emergency preparedness kit for a family of four.

## STAFF REPORTS

- City Manager Jim Robinson said the Parks for the Future recently completed a second survey of San Mateo County registered voters who continued to support a 1/8 cent sale tax increase that would generate approximately \$200,000 for Atherton. The measure was anticipated to go to the voters in November 2006.

Council Member McKeithen asked about the progress on maintenance of the area around the train station.

City Manager Robinson said an aggressive cleanup had taken place around Town including in front of the park along Watkins Avenue, along the El Camino Real median islands, as well as around the train station. Additional contract services would be considered during the budget process.

- Council Member McKeithen wanted to know what the costs were for weekly maintenance of the area, as well as replanting and removal of unsightly and dead shrubbery. Additionally, she requested that the Public Works Director inspect/direct and have oversight of the area while the work was being done. She noted that the corner of Marsh Road and Middlefield Road needed to be cleaned up as well. Further, Council had asked staff to look into lessening the potential liability for resurfacing Selby Lane.

City Attorney Marc Hynes said he filed a claim with P.G.&E for the amount noted in the staff report indicating the amount might increase when the project was completed. He made a request of the Public Works Director for a records search that might show what happened at the time the lines were installed. A copy of the claim was placed in Council's mail.

Council Member McKeithen requested a follow-up report regarding the vegetation and a report with regard to any records found.

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

#### **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

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

**One (1) potential case**

**No reportable action.**

- Police Chief Bob Brennan participated in the annual chess tournament at the Atherton Library. He played the championship round against a 10 year old. Although the Chief lost, his strategy of making less moves in more time made the game last longer. Thirty-four children, from 5 to 12 years old, participated.
- Finance Director John Johns attended a meeting at the assessor's office and reported on a settlement with the airlines. The effect was a \$1 billion reduction in the assessed value of property held at San Francisco Airport, a loss of \$15,000 for Atherton.
- Public Works Director Duncan Jones reported that Public Works Supervisor Troy Henderson had a non-elective surgery and would be out approximately 6 weeks.

## **7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

**No Report**

**CONSENT CALENDAR** (Items 8 - 17)

In response to Council Member McKeithen on Item No. 14, Public Works Director Duncan Jones said adequate transition asphalt would be added to Valparaiso Avenue during the first phase to protect the street. Additionally, the agreement with Menlo Park covered both phases, and \$108,000 was Menlo Park's total estimated cost for Phase 1. The \$404,000 was Menlo Park's local match for the grant. The cost between the two agencies was strictly proportional based on the ultimate cost. Regarding Item No. 16, Public Works Director Jones, said Caltrain assistance with construction of the sidewalk within the right-of-way was a part of the train station upgrade. Currently, he was working with Caltrain to have the work performed separately, as well as to have the Fair Oaks crossing upgraded. Council Member McKeithen asked for an update at next month's meeting.

**MOTION – to approve the Consent Calendar as presented.**

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

8.    **APPROVED MINUTES OF THE SPECIAL MEETING OF APRIL 5, 2006, AND THE SPECIAL CLOSED SESSION AND REGULAR MEETING OF APRIL 19, 2006**
9.    **APPROVED BILLS AND CLAIMS FOR APRIL 2006 IN THE AMOUNT OF \$684,346**
10.   **ACCEPTED MONTHLY FINANCIAL REPORT FOR APRIL 2006**
11.   **ACCEPTED QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED MARCH 31, 2006**
12.   **APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE STREET RECONSTRUCTION PHASE 3, PROJECT NO. 05-005**
13.   **AWARD OF CONTRACT FOR TREE MAINTENANCE, PROJECT NO. 05-004**

**Approved the plans and specifications and authorized advertisement for bids for the Street Reconstruction Phase 3 Project, Project No. 05-005.**

**Awarded a contract for the 2006 Tree Maintenance Project, Project No. 05-004, to Tru-Green Landcare, the low bidder on the May 5, 2006 bids, for \$50,000, and authorized the Mayor to sign the contract on behalf of the Town.**

**14. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE FOR VALPARAISO AVENUE RECONSTRUCTION PROJECT, PROJECT NO. 05-003**

**Approved the plans and specifications and authorized advertisement for bids for the Valparaiso Avenue Reconstruction Project, Project No. 05-003.**

**15. FIRST READING AND INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 2.37 OF THE ATHERTON MUNICIPAL CODE BY REVISING SECTION 2.37.020 TO INCREASE THE TERM OF OFFICE FOR CERTAIN MEMBERS OF THE GENERAL PLAN COMMITTEE**

**Waived reading of the Ordinance beyond the title and introduced an Ordinance to extend the term of membership on the General Plan Committee to a four-year term for members who are not members of the City Council or Planning Commission.**

**16. ADOPT A RESOLUTION ADOPTING A NEGATIVE DELCARATION FOR THE HOLBROOK-PALMER PARK ACCESS TRAIL AND BRIDGE PROJECT**

**Adopted Resolution No. 06-03 adopting a Negative Declaration (Environmental Document) for the Holbrook-Palmer Access Trail and Bridge Project**

**17. APPOINTMENT TO THE GENERAL PLAN COMMITTEE**

**Accepted the City Council Selection Committee's recommendation to appoint Todd Beardsley to a full four-year term on the General Plan Committee, effective through 2010.**

**PUBLIC HEARINGS**

**18. FROM THE GENERAL PLAN COMMITTEE AND PLANNING COMMISSION – FIRST READING AND INTRODUCTION OF AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 17.36.195 REGULATING RETAINING WALLS**

**Recommendation: Staff recommends that the City Council conduct the public hearing, waive reading of the ordinance beyond the title, and introduce an Ordinance based on the following finding for the reasons outlined in the staff report: The proposed ordinance amendment is required to achieve the objectives of the Zoning Plan and the General Plan.**

**Deputy Town Planner Lisa Costa Sanders presented the staff report. Both the General Plan Committee and the Planning Commission heard the item and recommended changes to the distance spacing for retaining walls. Previously, the height would be measured from the average natural grade. At the Planning Commission meeting, a**

concern was raised that someone might lower the grade on the property, which would result in the retaining wall being much higher than six feet. The existing language of the ordinance (a maximum height of six feet) was preferred. The Commission also recommended that spacing of retaining walls for a terraced situation would be no closer than 20 feet apart. A provision was added that if there was something unique about the property, the Planning Commission could review it using the Conditional Use Permit process.

Mayor Marsala opened the public hearing. No one came forward to speak, and Mayor Marsala closed the public hearing.

**MOTION – to accept the recommendation of the General Plan Committee and the Planning Commission and introduce an ordinance for first reading, “AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTION 17.26.195 OF THE ATHERTON MUNICIPAL CODE REGULATING RETAINING WALLS WITHIN THE TOWN OF ATHERTON”**

M/S Janz/McKeithen

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

**REGULAR AGENDA (Items 19 - 28)**

**19. DISCUSSION AND POSSIBLE ACTION – CREATION OF CODE ENFORCEMENT OFFICER POSITION – PRESENTATION TO COUNCIL**

**Recommendation:** The City Council hear the presentation from CSG regarding a proposal for providing an evaluation of Atherton code enforcement needs and providing contract code enforcement services on an experimental basis for the Town of Atherton.

City Manager Jim Robinson said Gordon Siebert, CSG Consultants, Inc., would make a presentation to the Council regarding Code Enforcement services. CSG provided services to a number of cities/towns. In response to Vice Mayor Alan Carlson, City Manager Robinson said part of the initial task would be to ascertain what was being done currently in terms of hours/numbers/types of code enforcement.

Gordon Siebert, CSG Consultants Inc., presented an overview of his and his staff’s qualifications and background in providing code enforcement services. Additionally, he described services his company provided to the cities of Monte Sereno, Pinole, and Pittsburg. He described the steps to provide an initial assessment of the Town’s code enforcement needs, potential code enforcement changes, code enforcement ongoing efforts, and the advantages of using consulting services, i.e., the cost was only for the hours of use and dedicated staff.

In response to Mayor Marsala, Mr. Siebert said a Senior Code Enforcement Officer earned \$100/hour and was fully benefited; a Code Enforcement Officer at a journeyman level was \$75 per hour.

**City Manager Robinson said staff recommended an initial evaluation by CSG for an approximate cost of \$5,000 to determine what was being done, what the needs were, and what changes could be made to improve procedures.**

**Discussion centered on what would be included in the needs assessment: types of activities to be enforced, types of complaints received and how to deal with them, along with associated costs, and with a recommendation for changes/additions to current code enforcement practices. CSG provided staff augmentation in those cities where it contracted for code enforcement services, from one to five days a week, and either operated on a complaint basis or proactively determined by the city. Mr. Siebert believed within two months, he could reasonably report on the types of complaints the Town received and suggest changes to make the program more effective.**

**Bob Huber, Atherton, was concerned about a complaint-based system and did not like to complain about his neighbors. He was in favor of a code enforcement officer and urged communication with the residents before implementing the program.**

**Richard Hill, Lindenwood, believed a Town police officer was a better choice for code enforcement rather than a third party with no vested interest in the community. He urged the Council to avoid an endeavor that might create a “Gestapo” environment.**

**Amanda Miller, Walnut Avenue, said responding to people’s complaints allowed the Town to determine where enforcement was important and where it wasn’t.**

**Vice Mayor Alan Carlson was in favor of the initial needs assessment for \$5,000. Additionally, he wanted staff to do an economic analysis of the cost of using staff or using contract services.**

**Council Member McKeithen believed the current system was not working. Not all code enforcement issues were police related. She was in favor of the initial needs assessment. The Council could then understand what the community wanted and what quality of life meant in Atherton.**

**Mayor Marsala believed the \$5,000 would be well spent. However, at the same time, the Town needed to determine whether the program could be handled internally.**

**Council Member Jerry Carlson was in favor of the initial assessment.**

**Council Member Janz concurred with his Council colleagues.**

**MOTION – to approve an initial code enforcement needs assessment to be performed by CSG Consultants, Inc., in an amount not to exceed \$5,000**

**AMENDMENT A. Carlson – to include direction to staff to perform a cost analysis with respect to utilizing staff vs. an outside service, including a resource analysis in terms of availability of staff/time of staff**

Mayor Marsala, moved Item No. 28 forward to be heard before Item No. 20.

**28. CONSIDER REQUEST FROM POP WARNER FOOTBALL FOR AN EXEMPTION OF THE SPECIAL EVENTS GUIDELINES AND GIVE APPROPRIATE DIRECTION TO STAFF**

City Manager Jim Robinson gave a brief staff report regarding the history of the Special Events Ordinance and the adopted School Guidelines for Non-School Related Events. The Town had to contend with the ongoing issue related to the increase of activities occurring on school campuses that were non-school related. Within the Special Events Ordinance, the City Manager was authorized to permit a variance for an event to occur outside the guidelines for a limited amount of days. The request from Pop Warner Football was for a special permit that would exempt it from the hours set forth in the guidelines and included a schedule for practices and games and the need for the use of the field at Menlo-Atherton High School over a four-month period. Staff was reluctant to grant a permit that was longer than a few days so soon after adoption of the ordinance and guidelines. Additionally, within the ordinance, an option for a hearing by the Planning Commission was allowed.

In response to Mayor Marsala, Deputy Town Planner Lisa Costa Sanders explained the process staff used when developing the guidelines which included an extensive outreach to the schools and school districts that had oversight of the fields. Representative from AYSO Soccer and Little League attended the meetings; however, she did not recall whether anyone from Pop Warner Football had attended.

Vice Mayor Alan Carlson said issuing a Special Event Permit rested with the City Manager. The best the City Council could do was to listen to the residents and representatives of Pop Warner and then present the Council's view of what the City Manager should do.

In response to Council Member Janz, City Attorney Marc Hynes said because the ordinance resided in the Planning title, the appeal provisions provided that any decision made by a city officer could be appealed to the City Council.

In response to Council Member McKeithen, City Manager Robinson said his recommendation was not to issue a permit.

Greg Baty, Ridgeview Dr., spoke on behalf of Pop Warner Football. Pop Warner had used the field at M-A High School for the past seven years, worked with the neighbors, addressed noise complaints, and was a good custodian of the field. Additionally, he was unaware of the process or public notice regarding the Special Event Ordinance. Pop Warner could only use the field when the high school teams were not using it, and the stadium field was the only field they were allowed to use. Practices/games followed Pop Warner guidelines. Additionally, there were no other schools that would allow Pop Warner to use the fields in Atherton or Menlo Park.

**Larry Couch, Oak Grove Avenue, spoke against allowing an exemption for Pop Warner Football. More creativity on the part of Pop Warner was needed to find alternative fields. In a discussion he had with the Menlo-Atherton High School principal, she indicated a willingness to consider use of other fields.**

**Bill Barrett, Woodside, Pop Warner Board Member, spoke in favor of an exemption for Pop Warner Football. He emphasized that the requirements of the program, the cost of referees, and the practicality of multiple fields for different games would not work. Additionally, he did not consider Pop Warner Football a special event as it had been an ongoing program for the past seven years.**

**Mel Britton, Toyon Road, spoke against allowing an exemption. He believed anything beyond teaching the students of Atherton at the high school should be considered a special use. He would like to spend his Saturdays and Sundays in quiet. He urged Council to vote against an exception.**

**Richard Hill, Lindenwood, spoke in favor of Pop Warner Football and believed the program was worthwhile. He emphasized that the Lindenwood Homes Association did not contact him nor did it represent his interests or the majority of interests in Lindenwood.**

**Joan Dove, Oak Grove Avenue, spoke against allowing an exemption. She lived next door to the high school and the noise was not acceptable.**

**Mike Stanick, Lindenwood, coached Pop Warner Football and lived close to Laurel School. He loved the sound of kids and supported an exemption.**

**Bruce Smith, Oak Grove Avenue, lived 100 yards from M-A's field and could hear the P.A. system 20 yards behind the fence. He thought the Town's noise ordinance was flawed and was technically an anti-blower ordinance that really didn't measure the types of noise from the field. He wanted the Special Events Ordinance enforced.**

**Les DeWitt, Lindenwood, said he had a great deal of respect for the Lindenwood Homes Association. The Pop Warner Football program developed a community greater than Atherton and provided access to eastside kids. He believed there was a way to work things out and spoke in favor of an exemption for Pop Warner.**

**Carol Smith, Oak Grove Avenue, did not believe anyone was opposed to Pop Warner Football. The sound of children was an awesome sound. The problem was the sound of children 24/7. The neighbors wanted some quiet time. She urged Pop Warner to find a creative way to continue its program and urged Council to deny an exemption.**

**Bob Williams, President, Pop Warner Football, said the primary reason for not using other fields on Saturdays was the simple fact that referees were not available on Saturdays because they were officiating high school games. Also, he had been told by**

**M-A high school officials that the only field Pop Warner could use was the artificial turf.**

**Alicia Seebold, Atherton, strongly urged Council to deny the exemption. An ordinance was enacted and should be followed.**

**Vice Mayor Alan Carlson said the evening was difficult and there was merit on both sides. A process had been followed with properly noticed public hearings when enacting the Special Events Ordinance. He sympathized with the neighbors who were exposed to a continuum of noise seven days a week from a variety of programs. Additionally, he did not see any compromise on the part of Pop Warner and urged them to try to find alternatives. If there were room for a compromise, he thought the Planning Commission was the right venue.**

**Mayor Marsala believed the Town needed to improve the way in which conflicts were resolved. There was room to compromise. He thought the Sunday hours should be upheld; however, the Monday-Friday schedule and the month of September might work. He suggested a 30-day trial period.**

**Council Member Janz concurred with Vice Mayor Carlson's comments. He liked the idea of looking at other solutions, a middle ground that complied with the ordinance. The Little League arrangement had worked well for the last six years. He suggested Menlo School might be willing to consider working with Pop Warner in conjunction with acquiring an artificial turf.**

**Council Member McKeithen said there were three important issues: 1) the children and their needs; 2) quality of life; and 3) the process. Notices were posted at five locations throughout the Town, one in Lindenwood, as well as on the Internet. All sides tried to compromise in crafting the ordinance. She urged Pop Warner to find an innovative solution and to try again with Menlo School and/or other fields.**

**Council Member Jerry Carlson admired what the Pop Warner Football program did for the kids. He concurred with the City Manager's recommendation.**

**Direction was given to the City Manager to deny the request for an exemption, and Council suggested that the Pop Warner Football organization try to work with the community to find alternatives.**

**20. CONSIDERATION OF A REQUEST TO REDUCE SOLAR PANEL FEES TO ENCOURAGE SOLAR INSTALLATION**

**Building Official Mike Hood presented a brief staff report. Mr. Kurt Newick was requesting the City Council reduce the building inspection permit fee schedule to encourage solar installations within the Town. Currently, the permit fee for the installation of a \$27,000 system would cost \$970.49 and was based on a valuation method. Less than five systems were installed per year of the new photovoltaic**

systems, which were for electricity for the house. Previously, almost all of the systems were for solar water heating.

Mayor Marsala thought reducing the fee was a good idea and would send a message that the Council was looking to alternative energy sources.

Council Member Janz said he thought the fee should be reduced but was not sure where to set it.

City Manager Jim Robinson said the request had come from an individual from the Sierra Club and other jurisdictions had acted on it. Staff was seeking Council's view of whether to reduce the fee to make it less expensive to install solar equipment.

Council Member Jerry Carlson did not think the fees being collected amounted to much in a year. He thought the Town should do the ecological right thing and do away with the fee.

Vice Mayor Alan Carlson thought the fee should be set at "0" until such time as it became a significant drain on the Building Department's manpower.

Council Member McKeithen believed the Town should be a leader but did not believe it should be "0." To the extent that there was a cost for reviewing the plans, the costs should not be subsidized by others. The fee should be minimal, in direct relation to what the actual cost was to the Town.

Kurt Newick, Global Warming Energy Chair, Sierra Club, said an official letter would be sent to every city in the State of California regarding setting minimum permit costs to encourage solar use. The Supreme Court ruled that cities should be able to recover their costs. The permit fees for solar were much higher based on the valuation method. A flat fee would encourage the use of solar and still allow cities to recover their costs. The Solar Rights Act prohibited cities from prohibiting solar based on aesthetic concerns. A technical task force was creating a checklist for a Bay Area standard for a template with all the information to review a solar permit. Solar photovoltaic systems had a tremendous potential to power society and were underutilized.

Ernie Goitein, Almendral, believed the fee should be reduced to "0"; the Town should be a leader and can afford it.

Bill Streeter, Saratoga, just installed a system. An over-the-counter permit in Saratoga cost \$102 for two field inspections. He urged Council to lower the cost to a set price for any size system.

Annie Belt, San Jose, worked with the Sierra Club and urged Council to lower the fee to a flat fee of \$300 or less and join the 13 Bay Area cities that had already lowered their fees.

**Amanda Miller, Walnut Avenue, urged Council to lower the fee. She said most systems were grid-tied systems where the power went to P.G. & E. When the power went out, the solar system did not work and a backup system was needed. Trying to add a battery backup system after the fact would be costly.**

**In response to Council Member McKeithen, Building Official Hood said about 2-1/2 hours, approximately \$250, of staff time was required for inspections.**

**City Manager Robinson said \$250 was in line with a majority of the other existing permit fees.**

**MOTION – to approve a request to reduce the building permit fee for solar panels to “0”**

**Council Member Janz said energy systems were making everyone bare a cost in terms of increased carbon monoxide in the air; whereas, a photovoltaic system did not. He supported the motion.**

**Vice Mayor Alan Carlson said the Town had worked hard to develop the principle that one resident should not subsidize another resident, and he did not want to depart from that principle. A \$250 fee seemed in line with what other cities were charging. He would not support the motion.**

**Mayor Marsala said Portola Valley and Los Altos Hills were at “0” and \$50. As the environment changed, there were companies that sold energy credits to those who were consuming trees or other fossil fuels. A long-term benefit for encouraging solar would be lower power consumption for the Town, which had the highest use in the county.**

**Council Member McKeithen believed in solar; however, Council did not have the right to waive a fee and pass it on to other people. She did not support the motion.**

**Council Member Janz said it would not have an impact if other fees were not raised.**

**Council Member Jerry Carlson was a fiscal conservative; and even though he thought the Town should be a leader, he believed the principle not to subsidize was a good one. He would support reducing the fee to recover costs.**

**M/S Marsala/Janz                      Ayes: 2 (Marsala, Janz)    Noes: 3 (A. Carlson, J. Carlson, McKeithen)    Absent: 0    Abstain: 0**

**The motion failed.**

**Amanda Miller, Walnut Avenue, did not believe the difference between “0” and \$250 would prevent people from using solar.**

Denise Kupperman, Atherton, said an equitable solution (making something sustainable) was the idea that energy and effort went into reviewing a permit and recovering the cost created a net “0.”

**MOTION – to approve a request to reduce the building permit fee for solar panels to a flat fee of \$250**

M/S A. Carlson/McKeithen

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

**21. ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO GUIDELINES: CONSTRUCTION, OPERATIONS AND PARKING PLANS (COP Plans)**

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

City Attorney Marc Hynes presented the staff report. The most recent revision included changes to paragraph 1.a and 1.c relative to parking regulations onsite, and paragraph 9 included language changes to notes included on the COP Plans.

Council Member Jerry Carlson asked how the City Manager would report as required by paragraph 13.

City Manager Jim Robinson said staff would provide a format that would identify the primary construction sites within the Town and identify where variances existed and where citations occurred. Staff thought reporting on a quarterly basis was more workable for staff.

After a short discussion, paragraph 13 of the guidelines was amended to read, “After implementation of the Guidelines, the Building Official shall report to the City Council on the effect and operation of these guidelines on a quarterly basis for the first year and every six months thereafter.

**MOTION – to adopt Resolution No. 06-04, “A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING GUIDELINES FOR CONSTRUCTION OPERATION AND PARKING PLANS AND RESSCINDING RESOLUTION NO. 03-28**

M/S McKeithen/J. Carlson

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

**22. SECOND READING AND ADOPTION OF AN ORDINANCE REGARDING TIME LIMITS FOR COMPLETION OF CONSTRUCTION**

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

City Attorney Marc Hynes presented a summary of the changes from the last meeting.

**Council Member McKeithen had several changes: 1) regarding deposits, the method of payment should include a Certificate of Deposit in all instances; 2) subsection F should read, “If the owner believes that the failure to meet the applicable time limit was caused by circumstances beyond the owner's control ~~and those circumstances are among those listed as grounds for appeal in Section 15.40.210(B)~~, the owner may file a written statement to that effect with the Building Official at the time of making the deposit as described in subsections A and/or ~~B D~~ above and provide **any** documentation substantiating such grounds of appeal and the effect on the construction. If the owner makes such filing, no part of the deposit shall be forfeited to the Town and no demand shall be made against the bond if construction is completed within thirty (30) days of the deposit. If construction is ~~thus~~ completed **after the thirty (30) days** and the Building Official concurs with the owner's statement as to the cause of the failure to meet the deadline, the Building Official shall waive the penalty and return the cash deposit, **certificate of deposit**, or bond to the owner. If the Building Official does not concur with the owner's statement, it shall be treated as an appeal under Section 15.40.210 and all the provisions of that section shall apply.”; 3) subsection G should read, “If construction is completed after the applicable time limit, **and the Building Official does not concur with the owner's statement**, the Town shall draw on the deposit, **certificate of deposit**, or bond in the amount of the applicable penalties; provided, however, that in the event of an appeal, the Town shall not draw on the deposit, **certificate of deposit**, or bond until the Planning Commission and, if applicable, the City Council has rendered its decision as set forth in Section 15.40.210(A). 4) **add the words “certificate of deposit”**; 5) **the first sentence under Appeal should read, “A penalty imposed pursuant to Sections 15.40.160 through 15.40.220 200 and Section 15.40.220 may be appealed...”**; and 6) **add the words, “but not limited to,” in the second sentence.****

**A short discussion ensued regarding whether the 12-month deadline would penalize someone when there was an unusually long rainy season.**

**MOTION – to reintroduce an ordinance for first reading, “AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ESTABLISHING TIME LIMITS FOR COMPLETION OF CONSTRUCTION AND AMENDING CIVIL PENALTY PROVISIONS AND RENUMBERING CODE SECTION PERTAINING TO VIOLATIONS OF CHAPTER 15.40 PERTAINING TO CONSTRUCTION REGULATIONS”**

**M/S A.Carlson/McKeithen**

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

**23. FIRST READING AND INTRODUCTION OF AN ORDINANCE ADDING ATHERTON MUNICIPAL CODE SECTION 15.40.157 REGARDING CONSTRUCTION SITE SCREENING**

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

outlined in the staff report: The proposed Ordinance is required to achieve the objectives of the Zoning Plan and the General Plan.

Deputy Town Planner Lisa Costa Sanders presented staff report. The proposed ordinance was reviewed by the General Plan Committee. Initially the language said all construction sites should have screening. After discussion, the Committee thought that existing walls or significant landscaping could screen the site. Any construction site that was visible from the public right-of-way needed to be adequately screened to the satisfaction of the Building Official, should consist of materials approved by the Building Official, be identified on the approved plans, and installed prior to construction.

In response to Council Member McKeithen, City Attorney Marc Hynes said that a cross reference could be added to read, "...as described in 15.40.110A," that defines construction as including site preparation and demolition to ensure screening was included in the demolition phase.

M/S Janz/McKeithen

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

**24. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR DRAINAGE STUDY**

**Recommendation:** Consider approval and authorize the Mayor to sign a professional services agreement with BKF Engineers for review of the Town's drainage policy.

Building Official Mike Hood said the agreement with BKF Engineers was before the Council. He noted that to be consistent with ABAG direction the amount of insurance should be \$2,000,000.

Council Member McKeithen, said the BKF project approach needed to be labeled Exhibit A, notices should be addressed to the Building Official, and any additional questions she had for BKF could be addressed at the kick-off meeting.

**MOTION – to authorize the Mayor to sign the professional services agreement with BKF Engineers for a drainage study not to exceed \$132,900**

M/S McKeithen/J.Carlson

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

**25. RED LIGHT VIOLATION CAMERAS**

**Recommendation:** Staff recommends the Town enter into a trial agreement with Redflex Traffic Systems for three signal-controlled intersections within the jurisdiction of Atherton. Further, if the trial proves viable, staff recommends approval of a contract with Redflex for the permanent installation at the recommended locations.

Police Chief Bob Breenan said the item originally was presented to the Transportation Committee in January in an effort to mitigate some of the problem intersections within

the Town. Staff was asking for permission from Council to conduct a trial for three intersections. The trial would assess whether there was enough violations of right turns on red lights to warrant installing a camera system at each intersection to help curb the accident rate, educate the public, and recover the cost for the system. There was no cost to the Town for the trial. Staff was recommending Redflex to perform the trial, assess whether there was enough volume at the intersections to warrant a camera system and, if so, contract with Redflex. The three intersections were: 1) Oak Grove and Middlefield; 2) Marsh Road and Middlefield; 3) Fair Oaks and the El Camino. The trial was for a 12-hour period during peak traffic times.

Council Member McKeithen questioned whether there was a way to terminate the contract sooner.

City Attorney Marc Hynes said an escape clause could be added in the event revenue fell off.

Police Chief Brennan said Redflex's agreement contained a neutral clause that said if revenues fell below the \$5,000 amount to lease the cameras, the Town was not required to pay more.

A discussion ensued regarding the three intersections (four approaches), as well as additional approaches that could be added. The approaches were selected based upon statistical evidence that indicated they were the most dangerous, i.e., the most accidents occurred there.

Amanda Miller, Walnut Avenue, suggested letting residents know about the program before implementation.

**MOTION – to enter into a trial agreement with Redflex Traffic System for three signal-controlled intersections in Atherton**

M/S McKeithen/J. Carlson

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

**26. AMENDMENT TO HERITAGE TREE ORDINANCE – MODIFY PENALTY PROVISIONS – FIRST READING (Continued from the meeting of April 19, 2006)**

**Recommendation:** Consider an amendment to the penalty provisions of the Heritage Tree Ordinance to set out certain remedies related to planting of replacement trees where a heritage tree has been removed in violation of Town regulations.

City Attorney Marc Hynes presented a brief staff report. The proposed amendment would add a new subsection D to the penalty provisions of Chapter 8.10.060 of the Atherton Municipal Code. Comments were received from the Town Arborist after Council received the packet. The following changes were made to the ordinance: 1) Subsection D1 was changed to read, “Requiring that the violator obtain a tree removal, ~~pruning or encroachment~~ permit for the previously conducted unlawful activity...”; Subsection 1i, was changed to designate, “...in the option of the Town Arborist



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

**TOWN OF ATHERTON**  
**CLAIMS LIST**  
 May 2006

Payroll Checks	7813 - 7884	\$ 17,052
Electronic Transfers		323,401
A/P Checks	21939 – 22105	419,039
<b>TOTAL</b>		<b>\$ 759,492</b>

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 7813 - 7884 (payroll) and 21939 – 22105 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$759,492; are true and correct, and that there are sufficient funds for payment.

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James H. Robinson  
City Manager

The above claims, check numbers 7813 - 7884 (payroll) and 21939 - 22105 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$759,492; are true and correct, and are authorized for payment.

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Charles Marsala  
Mayor, Town of Atherton

**SOURCE OF FUNDS**

<b>101</b>	General Fund	718,082
<b>105</b>	Tennis Fund	116
<b>201</b>	Special Parcel Tax	
<b>202</b>	Transportation	
<b>203</b>	Gas Tax Fund	
<b>210</b>	Road Construction Impact Fees	2,682
<b>211</b>	Park Grants Fund	33,522
<b>213</b>	Library Special Revenue Fund	1,126
<b>401</b>	General Capital Projects	
<b>402</b>	Storm Drainage	
<b>403</b>	Atherton Channel District	
<b>406</b>	Facilities Construction	
<b>610</b>	Vehicle Replacement	
<b>611</b>	Computer Maint. & Replacement	1,756
<b>612</b>	Administrative Services	1,700
<b>715</b>	Evans Estate	175
<b>740</b>	Tree Committee	333
<b>TOTAL</b>		<b>\$759,492</b>



## 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 JUNE 21, 2006**

**SUBJECT: MONTHLY FINANCIAL REPORT, MAY 2006**

#### **RECOMMENDATION:**

Receive the Monthly Financial Report for May 2006.

#### **INTRODUCTION:**

The attached schedules show revenues and expenditures and fund balance for all funds as of May 31, 2006.

#### **HIGHLIGHTS**

General Fund expenditures for the eleven months ended May 31, 2006, have amounted to \$7,279,332, or 84% of the \$8,701,010 budgeted for the fiscal year. For the eleven months ended May 31, 2006, General Fund revenues amounted to \$8,542,812, or 98% of the \$8,720,458 estimated for the year.

By comparison, General Fund expenditures amounted to 86% of appropriations for the eleven months ended May 31, 2005. Additionally, General Fund revenues amounted to 94% of estimated revenues for the eleven months ending May 31, 2005.

**FISCAL IMPACT:**

None

Prepared by:

Approved by:

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John P. Johns  
Finance Director

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James H. Robinson  
City Manager

**TOWN OF ATHERTON**  
**Revenue Summary**  
**For the Month ended May 31st, 2006**

<b>Fund</b>	<b>Revenue Source</b>	<b>2005-06 Estimate</b>	<b>Current Period Revenues</b>	<b>Year to Date Revenues</b>	<b>% Received</b>
	Property Tax	\$ 3,651,651	297,485	3,958,194	108%
	Sales and Use Tax	126,000	10,707	155,623	124%
	Other Taxes	830,760	61,134	1,195,516	144%
	Licenses & Permits	1,839,879	204,822	1,604,527	87%
	Fines & Forfeitures	35,000	5,883	52,705	151%
	Revenue from Other Agencies	303,166	98,502	281,350	93%
	Charges for Services	336,208	33,345	293,360	87%
	Investment & Rental Income	291,633	7,935	299,195	103%
	Other Revenues	5,000	1,763	50,342	1007%
	<b>Total General Fund Revenues</b>	<b>7,419,297</b>	<b>721,576</b>	<b>7,890,812</b>	<b>106%</b>
	Interfund (Operating) Transfers In	1,301,161	-	652,000	50%
<b>101</b>	<b>General Fund Total</b>	<b>8,720,458</b>	<b>721,576</b>	<b>8,542,812</b>	<b>98%</b>
	<b>Special Revenue Funds:</b>				
105	Tennis	7,000	500	5,651	81%
201	Special Parcel Tax	1,858,000	134,542	1,800,168	97%
202	Transportation	180,000	21,374	225,808	125%
203	Street Improvement (Gas Tax)	172,376	11,991	146,544	85%
209	Law Enforcement	100,000	-	101,430	101%
210	Road Construction Impact Fees	1,158,328	187,238	1,025,107	88%
211	State Park Grants Fund	197,399	-	13,609	0%
213	Library	200,000	-	110,141	55%
	<b>Total</b>	<b>3,873,103</b>	<b>355,645</b>	<b>3,428,458</b>	<b>89%</b>
	<b>Capital Project Funds:</b>				
401	Capital Improvement	-	-	4,454	
402	Storm Drainage	-	-	756	
403	Channel Drainage District	50,665	5,339	57,495	113%
406	Facilities Construction	-	-	1,147	
	<b>Total</b>	<b>50,665</b>	<b>5,339</b>	<b>63,852</b>	<b>126%</b>
	<b>Internal Service Funds:</b>				
610	Vehicle Replacement	97,980	-	51,897	
611	Information Technology	101,621	-	53,639	53%
612	Administrative Services	294,389	-	152,376	52%
614	Workers Compensation Insurance	-	-	-	
	<b>Total</b>	<b>493,990</b>	<b>-</b>	<b>257,912</b>	<b>52%</b>
	<b>Trust and Agency Funds:</b>				
715	Evans Creative Design	13,200	-	3,449	26%
740	Tree Committee	-	1,386	3,938	
	<b>Total</b>	<b>13,200</b>	<b>1,386</b>	<b>7,387</b>	<b>56%</b>
	<b>Total Revenues</b>	<b>13,151,416</b>	<b>1,083,946</b>	<b>12,300,421</b>	<b>94%</b>

**TOWN OF ATHERTON**  
**Expenditure Summary**  
**For the Month Ended May 31st, 2006**

<b>Fund</b>	<b>Description Department</b>	<b>2005-06 Budget</b>	<b>Current Period Expenditures</b>	<b>Year to Date Expenditures</b>	<b>% Spent</b>
101	General Fund				
	11 City Council	\$ 20,535	\$ 2,130	\$ 12,751	62%
	12 City Manager	475,598	31,098	364,432	77%
	16 City Attorney	180,255	12,447	133,460	74%
	18 Finance	460,667	35,960	380,190	83%
	25 Building	1,042,371	71,415	872,108	84%
	40 Police	4,521,000	314,097	3,792,826	84%
	50 Public Works	1,900,584	179,917	1,723,565	91%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>8,701,010</u>	<u>647,064</u>	<u>7,279,332</u>	<u>84%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	<b>General Fund Total</b>	<b><u>\$ 8,701,010</u></b>	<b><u>\$ 647,064</u></b>	<b><u>\$ 7,279,332</u></b>	<b><u>84%</u></b>
<b>Special Revenue Funds:</b>					
105	Tennis	25,011	783	12,821	
201	Special Parcel Tax	1,832,077	-	1,481,594	81%
202	Transportation	323,420	-	28,400	9%
203	Street Improvement (Gas Tax)	150,000	-	73,249	49%
209	Law Enforcement	100,000	12,153	91,404	91%
210	Road Impact Fees	1,598,671	-	459,026	29%
211	State Park Grants	196,736	33,522	53,875	27%
213	Library Fund	71,045	1,179	25,168	35%
	Total	<u>4,296,960</u>	<u>47,637</u>	<u>2,225,537</u>	<u>52%</u>
<b>Capital Project Funds:</b>					
401	Capital Improvement	282,896	-	-	0%
402	Storm Drainage	21,394	-	2,563	12%
403	Channel Drainage District	425,300	41,853	451,937	106%
	Total	<u>729,590</u>	<u>41,853</u>	<u>454,500</u>	<u>62%</u>
<b>Internal Service Funds:</b>					
610	Vehicle Replacement	76,000	-	81,543	107%
611	Information Technology	112,622	3,116	98,035	87%
612	Administrative Services	317,139	10,710	263,928	83%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>505,761</u>	<u>13,826</u>	<u>443,506</u>	<u>88%</u>
<b>Trust and Agency Funds:</b>					
715	Evans Creative Design	11,200	175	1,185	11%
740	Tree Committee	-	333	2,901	
	Total	<u>11,200</u>	<u>508</u>	<u>4,086</u>	<u>36%</u>
	<b>Total Expenditures</b>	<b><u>14,244,521</u></b>	<b><u>750,888</u></b>	<b><u>10,406,961</u></b>	<b><u>73%</u></b>

**TOWN OF ATHERTON**  
**Budget Summary**  
**Fiscal Year 2005-06**  
**As of May 31st, 2006**

<b>Fund</b>	<b>Description</b>	<b>Beginning Fund Balance July 1, 2005</b>	<b>Revenues to Date</b>	<b>Transfers to Date</b>	<b>Expenditures To Date</b>	<b>Ending Fund Balance to Date</b>
101	<b>General Fund</b>	7,582,785	7,890,812	652,000	7,279,332	8,846,265
	<b>Special Revenue Funds:</b>					
105	Tennis	21,841	5,651		12,821	14,671
201	Special Municipal Tax	1,112,743	1,800,168		1,481,594	1,431,317
202	Transportation	330,685	225,808		28,400	528,093
203	Street Improvement (Gas Tax)	34,413	146,544		73,249	107,708
209	Law Enforcement	13,758	101,430		91,404	23,784
210	Road Construction Impact Fees	832,049	1,025,107		459,026	1,398,130
211	State Park Grants	38,688	-		53,875	(15,187)
213	Library Special Revenue Fund	1,415,042	110,141		25,168	1,500,015
	Sub Total	<u>3,799,219</u>	<u>3,414,849</u>	<u>-</u>	<u>2,225,537</u>	<u>4,988,531</u>
	<b>Capital Projects Funds:</b>					
401	Capital Improvement	253,970	4,454		-	258,424
402	Storm Drainage	45,262	-		2,563	42,699
403	Channel Drainage District	439,931	57,495		451,937	45,489
406	Facilities Construction	65,382	1,147		-	66,529
	Sub Total	<u>804,545</u>	<u>63,096</u>	<u>-</u>	<u>454,500</u>	<u>413,141</u>
	<b>Internal Service Fund</b>					
610	Vehicle Replacement	412,904	51,897		81,543	383,258
611	Information Technology	133,100	53,639		98,035	88,704
612	Administrative Services	140,976	152,376		263,928	29,424
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	<u>697,851</u>	<u>257,912</u>	<u>-</u>	<u>443,506</u>	<u>512,257</u>
	<b>Trust and Agency Funds</b>					
715	Evans Creative Design	113,488	3,449		1,185	115,752
740	Tree Committee	1,949	1,386		2,901	434
	Sub Total	<u>115,437</u>	<u>4,835</u>	<u>-</u>	<u>4,086</u>	<u>116,186</u>
	<b>Grand Total</b>	<u><b>\$ 12,999,837</b></u>	<u><b>\$ 11,631,504</b></u>	<u><b>\$ 652,000</b></u>	<u><b>\$ 10,406,961</b></u>	<u><b>\$ 14,876,380</b></u>



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

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

**DATE: FOR THE CITY COUNCIL MEETING OF JUNE 21, 2006**

**SUBJECT: EXTENSION OF TERMS OF GENERAL PLAN COMMITTEE  
MEMBERS OTHER THAN PLANNING COMMISSION OR  
CITY COUNCIL MEMBERS**

### **RECOMMENDATION**

Waive reading of ordinance beyond the title and adopt an ordinance amending Section 2.37.020 of the Atherton Municipal Code to extend the term of membership on the General Plan Committee to a four-year term for members who are not members of the City Council or Planning Commission.

### **BACKGROUND**

Section 2.37.020 of the Atherton Municipal Code presently limits members of the General Plan Committee who are not members of the City Council or the Planning Commission to one full two-year term. This amendment to Section 2.37.020 would extend the two-year term to a four-year term.

### **FISCAL IMPACT**

None.

Prepared by:

Approved by:

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

\_\_\_\_\_  
James H. Robinson  
City Manager

Attachment

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING CHAPTER 2.37 OF THE ATHERTON MUNICIPAL CODE BY REVISING  
SECTION 2.37.020 TO INCREASE THE TERM OF OFFICE FOR CERTAIN  
MEMBERS OF THE GENERAL PLAN COMMITTEE**

---

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

**SECTION 1: Amendment of Code.** Chapter 2.37 of the Atherton Municipal Code is hereby amended by revising Section 2.37.020 "Term of office" to read as follows:

**"2.37.020 Term of office.**

Members of the committee who are not members of the City Council or Planning Commission shall serve consecutively for no more than one full four-year term."

**SECTION 2: Continued Effect of Chapter 2.37.** Except as amended, all other provisions of Chapter 2.37 shall continue to remain in effect.

**SECTION 3:** 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 17th day of May, 2006.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

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

---

Charles E. Marsala  
Mayor, Town of Atherton

ATTEST:

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes  
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 JUNE 21, 2006**

**SUBJECT: ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION  
17.36.195 REGULATING RETAINING WALLS**

**RECOMMENDATION**

Staff recommends that the City Council waive reading of the Ordinance beyond the title and adopt the 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**

At its regular meeting on May 17, 2006, the City Council introduced, for first reading, an ordinance amending Chapter 17.36 of the Atherton Municipal Code pertaining to retaining walls in the Town. The ordinance was introduced as presented without further modification.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders  
Lisa Costa Sanders  
Deputy Town Planner

\_\_\_\_\_  
James H. Robinson  
City Manager

**Attachment:**

1. Ordinance

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING SECTION 17.36.195 OF THE ATHERTON MUNICIPAL CODE  
REGULATING RETAINING WALLS WITHIN  
THE TOWN OF ATHERTON**

---

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

**SECTION 1: Amendment of Code.** Section 17.36.195 of the Atherton Municipal Code pertaining to retaining walls is hereby amended to read as follows:

Retaining walls shall be located no closer than five feet from any property line. Except for basements and underground driveway approaches, the maximum height of the retaining walls shall not exceed six feet solid wall construction, with a maximum three-foot high safety fence on top. The safety fence shall be substantially open to light and air in compliance with applicable safety codes. **Retaining walls shall be constructed no closer than twenty (20) feet from one another on the same property. Provided, however, that upon a proper showing a conditional use permit may be issued to authorize retaining walls:**

- a. **In excess of the six foot height limit;**
- b. **Located less than twenty (20) feet from other retaining walls on the same property.**

**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 of 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 17<sup>th</sup> day of May, 2006.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_ 2006, by the following vote:

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

\_\_\_\_\_  
Charles Marsala, MAYOR  
Town of Atherton

ATTEST:

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

APPROVED AS TO FORM:

/s/ Marc G. Hynes  
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 JUNE 21, 2006**

**SUBJECT: ORDINANCE ADDING ATHERTON MUNICIPAL CODE SECTION 15.40.157  
REGARDING CONSTRUCTION SITE SCREENING**

**RECOMMENDATION**

Staff recommends that the City Council waive reading of the Ordinance beyond the title and adopt the Ordinance based on the following finding for the reasons outlined in this staff report:

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

**BACKGROUND**

At its regular meeting on May 17, 2006, the City Council introduced, for first reading, an ordinance adding Chapter 15.40.157 to the Atherton Municipal Code requiring screening of construction sites in the Town. The ordinance was introduced with the following additional language at the end of the last sentence; "as defined in 15.40.110(A)." Section 15.40.110(A) defines "construction." This reference was added by the Council to clearly indicate when the screening shall be installed. Staff has revised the attached Ordinance accordingly for adoption.

Prepared by:

Approved by:

\_\_\_\_\_  
Lisa Costa Sanders  
Deputy Town Planner

\_\_\_\_\_  
James H. Robinson  
City Manager

**Attachment:**

1. Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING SECTION 15.40.157 OF THE ATHERTON MUNICIPAL CODE  
REGULATING CONSTRUCTION SITE SCREENING WITHIN  
THE TOWN OF ATHERTON

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

**SECTION 1: Amendment of Code.** Chapter 15.40 of the Atherton Municipal Code is hereby amended by adding thereto Section 15.40.157 entitled “Screening” to read as follows:

“15.40.157 Screening

Any construction site project that is visible from the public right-of-way shall be adequately screened to the satisfaction of the Building Official. Screening shall consist of materials approved by the Building official and identified on approved building plans. Screening shall be installed prior to start of construction as defined in 15.40.110(A).”

**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 of 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 17th day of May, 2006.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_ 2006, by the following vote:

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

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Charles Marsala, MAYOR  
Town of Atherton

ATTEST:

---

Kathi Hamilton,  
Acting City Clerk

APPROVED AS TO FORM:

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



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS**

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

**DATE: CITY COUNCIL MEETING OF JUNE 21, 2006**

**SUBJECT: AMENDMENT TO HERITAGE TREE ORDINANCE –  
REMEDIES FOR VIOLATIONS**

### **RECOMMENDATION:**

It is recommended that the City Council adopt an amendment to the penalty provisions of the Heritage Tree Ordinance regarding the planting of replacement trees where a heritage tree has been removed in violation of Town regulations.

### **BACKGROUND:**

A new subsection D is proposed to be added to the existing Section 8.10.060 of the municipal code which sets out penalties for violation of the Town's Heritage Tree Ordinance.

Upon introduction of the ordinance, certain additional revisions were described. These are shown in the version of the ordinance attached with added language in **bold** and deleted language in ~~strikethrough~~. In particular, attention is invited to the provisions of subsection D(1); D.(1)(i) and D.(1)(ii). Subsection D.2 deletes reference to a minimum five years as shown by the ~~strikethrough~~.

### **FISCAL IMPACT:**

None.

Prepared By:

Approved By:

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Marc G. Hynes  
City Attorney

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James H. Robinson  
City Manager

Attachment

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING CHAPTER 8.10 (HERITAGE TREES) OF THE ATHERTON MUNICIPAL  
CODE BY ADDING PROVISIONS TO SECTION 8.10.060 PERTAINING TO  
PENALTIES AND REMEDIES FOR VIOLATIONS OF HERITAGE TREE  
REGULATIONS**

---

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

**SECTION 1:** Amendment of Code. Section 8.10.060 of the Atherton Municipal Code is hereby amended by revising the title to read Violation – Penalties and Remedies and by adding thereto a new subsection D and E to read as follows:

"8.10.060 Violations; Penalties and Remedies.

D. The violation of any provision contained in this chapter shall be subject to the penalties or remedies as described herein and any other remedies authorized by the Town of Atherton Municipal Code, including, but not limited to the following:

(1) Requiring that the violator obtain a tree removal, ~~pruning or encroachment~~ permit for the previously conducted unlawful activity, including one or more of the following conditions as appropriate:

(i) The violator shall replace each unlawfully removed tree with one or more new trees which can be accommodated on the site of the violation according to ~~good forestry practices~~ **the Town Arborist** and, in the opinion of the ~~Building Official~~ **Town Arborist**, will provide equivalent value in terms of cost (as determined pursuant to a certified arborist's calculation of the value of the removed tree(s) in accordance with the **latest edition of the** Guide for Plant Appraisal **published by the Council of Tree and Landscape Appraisers** adopted by reference), aesthetic and environmental quality, size, height, location, appearance and other characteristics of the unlawfully removed tree, or

(ii) Where replacement trees cannot be accommodated on site according to ~~good forestry practices~~ **the Town Arborist**, or cannot provide equivalent aesthetic or environmental quality of removed tree(s) on site, the violator shall either plant replacement trees off site **as designated by the Town Arborist** or make a cash payment as described in subparagraph B above, or any combination thereof, in accordance with the following:

(a) To the extent that a cash payment is required for any portion or all of the value of the removed tree, such payment shall be doubled to reflect the estimated installation costs that would be incurred if replacement trees are planted; and

(b) To the extent that the planting of offsite replacement trees is required, the retail cost of such trees, as shown by documentary evidence satisfactory to the Town Arborist, shall be offset against the value of the removed tree, but no credit shall be given for transportation, installation, maintenance and other costs incidental to the planting and care of the replacement trees;  
or

(iii) Where the unlawful activity did not result in tree removal, but did result in tree damage, the violator shall enhance the condition of the remaining trees or portions of trees according to good forestry practices which in the opinion of the Town Arborist, will provide equivalent value in terms of damage to the tree(s), aesthetic and environmental quality, size, height, location, appearance and other characteristics of the unlawfully damaged tree; provide equivalent enhancement of the condition of trees off site or make a cash payment to the fund described in subparagraph A above (based on the Town Arborist's calculation of the equivalent value of the unlawful damage to the tree).

(2) Any person who is required to plant replacement trees on site pursuant to this Section shall permanently maintain such trees in a good and healthy condition ~~for a minimum of five years~~ to ensure permanent establishment of any such tree(s), as determined by the Town Arborist. Such person shall post a maintenance bond or security deposit in a form prescribed by the Building Official and execute a maintenance agreement with the Town, which shall be recorded in the office of the County Recorder.

E. All remedies provided in this Section shall be cumulative and are not exclusive."

**SECTION 2:** That the City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of 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 affect the validity of the remaining parts of this Ordinance.

**SECTION 3:** 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.

**SECTION 4:** 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 no possibility that the ordinance may have a significant effect on the environment (CEQA guidelines section 15061.b).

Introduced this 17<sup>th</sup> day of May, 2006.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

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

---

Charles E. Marsala  
Mayor, Town of Atherton

ATTEST:

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

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



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS**

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

**DATE: CITY COUNCIL MEETING OF JUNE 21, 2006**

**SUBJECT: AMENDMENT TO CONTRACT FOR SERVICES  
NEAL MARTIN & ASSOCIATES**

### **RECOMMENDATION:**

Consider request for increase in rates for professional services for Town Planner. If the City Council desires to approve the proposed increase, the existing contract will be amended by replacing existing Exhibit B with a new Exhibit B containing revised rates.

### **BACKGROUND:**

The Town contracts with Neal Martin & Associates for planning services. A copy of the professional services agreement currently in effect is attached to this report as Exhibit 1. An increase in rate for professional services is proposed and is described in a letter to the City Manager dated May 30, 2006, which shows the rates approved in July of 2004 and proposed increases. The letter and rate description are attached as Exhibit 2. Should the Council desire to approve the rate increase, the existing contract may be amended by attaching a new Exhibit B showing the revised hourly rates. A copy of new Exhibit B is attached as Exhibit 3.

### **FISCAL IMPACT:**

The proposed fee increase will involve an approximate increase in costs for planning services of 5% per year.

Prepared By:

Approved By:

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

\_\_\_\_\_  
James H. Robinson  
City Manager

Attachments: Exhibit 1 Existing Contract  
Exhibit 2 Letter dated May 30, 2006  
Exhibit 3: Exhibit B

**Neal Martin & Associates  
751 Laurel Street, Suite 622  
San Carlos, CA 94070  
650-333-0248**

---

May 30, 2006

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

Dear Jim,

Please find attached the proposed Agreement for Professional Services for FY 06/07. We are requesting a 5% overall rate increase. The rates were last increased 5% effective July, 2004.

We propose to continue all other contract provisions. Please let me know if you need any additional information.

Sincerely,

Lisa Costa Sanders  
Chief Financial Officer, NM&A

**EXHIBIT B**

**NEAL MARTIN & ASSOCIATES**

	<b><u>Hourly Rate</u></b>
Principal Planner	\$143.25
Deputy Town Planner	\$93.75
Senior Planner	\$82.00
Associate Planner	\$71.50
Assistant Planner	\$55.00
Administrative Assistant	\$40.75
Mileage	Town rate



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

**FROM: MICHAEL A. HOOD, BUILDING OFFICIAL**

**DATE: FOR THE MEETING OF JUNE 21, 2006**

**SUBJECT: APPROVAL OF INDEPENDENT CONTRACTOR AGREEMENT BETWEEN  
THE TOWN OF ATHERTON AND TIM WULFF FOR PLAN CHECKING  
SERVICES FOR FISCAL YEAR 2006-07**

#### **RECOMMENDATION:**

Approve the Independent Contractor Agreement between the Town of Atherton and Tim Wulff for Plan Checking Services for Fiscal Year 2006-2007.

#### **BACKGROUND:**

Building construction activity continues at a rate far in excess of our permanent staff's ability to respond in a timely manner. We have been utilizing the services of Tim Wulff, an independent contractor, for plan checking on a month-to-month basis since November 2004. Mr. Wulff's performance has been excellent; and with the new fiscal year, it is now time to renew his contract.

In accordance with Town requirements, Mr. Wulff has provided proof of General Liability insurance in the amount of \$2 million dollars (see attached). The rate of \$50 per hour represents a \$5 per hour increase over the previous contract.

Funds for this expense are budgeted in the adopted Fiscal Year 2006-07 Operating Budget, Building Department, Plan Reviewer Account.

Prepared by:

Approved by:

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Michael A. Hood  
Building Official

---

James H. Robinson  
City Manager

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF ATHERTON AND  
TIM WULFF

This Independent Contractor Agreement ("Agreement") is entered into between the Town of Atherton ("Town") and TIM WULFF ("Contractor").

1. Services of Contractor. Contractor agrees to perform the services described in Exhibit A ("the Services") attached to this Agreement. Contractor will determine the method, details, and means of performing the Services.

2. Compensation. The Town agrees to pay Contractor \$50.00 per hour based upon a monthly itemized invoice Contractor provides to the Town. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation, including all estimated taxes, and shall provide the Town with proof of payment on demand. Contractor indemnifies Town for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Town arising out of Contractor's breach of this provision. Contractor shall be responsible for all expenses incurred in association with the performance of Services.

3. Term of Agreement. This Agreement will be effective as of July 1, 2006. This Agreement will terminate on June 30, 2007, at which time it may be renewed annually by action by the City Council after receipt and review of responses to a request for proposals, if any. Prior to the termination date, either party may terminate this Agreement by giving 30 days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination shall be effective on receipt of the notice, or 5 days from mailing the notice, whichever comes first. "Material breach" shall include, but not be limited to, the following: a) Town's failure to pay compensation for 20 days after a demand for payment; or b) failure of Contractor to perform the Services to the satisfaction of the Town.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to Town as his/her employer, or as a partner, agent or principal. Contractor shall not be entitled to any benefits accorded to Town employees, such as workers' compensation, disability insurance, vacation, sick pay, holiday pay, medical insurance, retirement benefits, or any other employee benefit. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, disability, workers' compensation or other insurance as well as licenses and permits usual or necessary for performing the Services. Contractor agrees to perform the Services as needed, but that no more than 1,000 hours will be devoted to performance of the Services in any Town fiscal year (e.g., July 1 to June 30). Consistent with this requirement, Contractor may represent, perform services for, or be employed by any additional persons, or companies as Contractor sees fit.

5. Contractor's Representations. Contractor represents that he/she has the qualifications and ability to perform Services in a professional manner, without the advice, control or supervision of the Town. Contractor shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction, or control from the Town. Contractor shall have sole discretion and control of Contractor's services and the manner in which performed.

6. Indemnities. Except as set forth below, Contractor shall and does hereby indemnify, defend and hold harmless Town, and Town's Council members, managers, and department heads from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that Town may incur or suffer and that result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties and agreements contained in this Agreement.

Town shall provide legal defense to Contractor in connection with claims related to the exercise of discretion by Contractor in the performance of duties hereunder to the same extent as a regular employee of the Town under the provisions of California Government Code sections 810 through 825.6.

Contractor agrees to maintain minimum limits of insurance no less than the following amounts during the term of this agreement:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

Any deductibles or self-insured retentions must be declared to and approved by the town. The Town may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

7. Notices. All notices to Town shall be directed to: City Clerk, Town of Atherton, 91 Ashfield Road, Atherton, California, 94027. All notices to Contractor shall be directed to: Tim Wulff, 166 Monroe Street #10, Santa Clara, CA 95050.

8. Mediation. Should any dispute rise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs and fees. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.

9. Attorneys' Fees. In the event of litigation between the parties to enforce any provision of the Agreement, the unsuccessful party shall pay the costs of litigation including reasonable attorneys' fees of the successful party.

10. Conflict of Interest. Contractor may serve other clients, but none who are active within the Town or who conduct business that would place Contractor in a "conflict of interest" as the term is defined and understood in State law.

11. Entire Agreement. This Agreement and Exhibit A hereto constitute the entire agreement between the parties. All prior agreements, written or oral, are hereby superseded by this Agreement.

12. Amendment. This Agreement can only be amended by a writing that is signed and dated by both parties and approved by the Town's City Council.

The foregoing is agreed to by:

TOWN:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Charles E. Marsala, Mayor

CONTRACTOR:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tim Wulff

Approved as to Form:

Marc G. Hynes  
Marc Hynes, City Attorney

## EXHIBIT A

Contractor Tim Wulff, agrees to provide PLAN CHECKING SERVICES for the Town of Atherton. Services include the review of construction plans and projects to verify conformance with the provisions of the Atherton Municipal Code and the 2001 California Building Code. Services shall include meeting with contractors, homeowners, and engineers and maintaining a courteous and professional relationship. Plan checking assignments and general direction will be coordinated by the Building Official.



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

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

**DATE: FOR THE MEETING OF JUNE 21, 2006**

**SUBJECT: ACCEPTANCE OF WORK, AUTHORIZATION TO RECORD NOTICE  
OF COMPLETION AND APPROVAL OF CONTRACT CHANGE  
ORDERS IN THE AMOUNT OF \$1,310 FOR THE UPPER ATHERTON  
CHANNEL REPAIR PROJECT, PHASE 1, PROJECT NO. 04-007**

### **RECOMMENDATION**

Pass a motion accepting work, authorizing recording of a notice of completion and approving contract change orders in the amount of \$1,310.00 for the Upper Atherton Channel Repair Project, Phase 1, Project No. 04-007.

### **INTRODUCTION**

The Council awarded a contract in July 2005 to HSR General Engineering Contractors, Inc. (HSR) for the Upper Atherton Channel Repair Project, Phase 1, Project No. 04-007. The authorized contract amount was \$348,500.00. Construction work under the contract has been completed, with the exception of a three-year plant maintenance requirement.

### **ANALYSIS**

The original contract price was for \$348,500.00. There were two contract change orders totaling \$1,310.00. On the remainder of the project, quantities were less than the bid estimate, resulting in a decrease in cost. The contractor also remains responsible for a three-year maintenance period for the plantings. Funds for the continuing maintenance are not included in this Notice of Completion or the final payment. The contract changes were as follow:

1. Original Contract	\$348,500.00
2. Change Order No. 1	(\$307.00)
3. Change Order No. 2	\$1,617.00

4. Quantity Changes		<u>(\$5,725.00)</u>
	TOTAL CONTRACT PRICE	\$344,085.00
5. Plant Maintenance		<u>(\$12,400.00)</u>
	TOTAL THIS NOTICE OF COMPLETION	\$331,685.00

The plant maintenance pay items will be paid over the next three years, during the required plant maintenance period, pro-rata upon submittal of the required semi-annual reports.

**FISCAL IMPACT**

Funding for this project in the amount of \$390,000 was included in the FY 04/05 budget. The final cost of this segment of work is \$344,085.00, which is less than the budget estimate.

**CONCLUSION:**

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

Prepared by:

Approved by:

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

\_\_\_\_\_  
James H. Robinson  
City Manager

Attachment: Notice of Completion  
Certificate of Completion

**RECORD REQUESTED BY:**

**TOWN OF ATHERTON**  
**AND WHEN RECORDED MAIL TO:**

**CITY CLERK, TOWN OF ATHERTON**

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

No fee pursuant to Government Code Section 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TOWN OF ATHERTON**  
**NOTICE OF COMPLETION**

**UPPER ATHERTON CHANNEL REPAIR PROJECT, PHASE 1**  
**PROJECT NO. 04-007**  
**ATHERTON, CALIFORNIA**

NOTICE IS HEREBY GIVEN THAT Duncan L. Jones, Engineer of Work for the Town of Atherton, County of San Mateo, California, on the 16th day of June, 2006, did file with the City Clerk of said Town a Certificate of Completion for the work described in the construction contract awarded to HSR General Engineering Contractors, Inc. on the 20th day of July, 2005, said contract being executed on the 20<sup>th</sup> day of July 2005.

That said work and improvements were accepted as completed on the 2<sup>nd</sup> day of May, 2006, and that acceptance for completion of said work was ordered by Motion of the City Council of said Town, adopted on the 21<sup>st</sup> day of June, 2006, and that the name of the surety on the Contractor's bond for performance, labor and materials on said project is First National Insurance Company of America, 400 Taylor Blvd., Pleasant Hill, CA 94523.

That said work and improvements consisted of construction of a concrete drop structure, vortex weir, frog habitat pond, wine shed retaining wall and Walsh Road retaining wall, as described in the plans and specification approved by the City Council of the Town of Atherton pursuant to motion, adopted the 15<sup>th</sup> day of June, 2005.

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

BY: \_\_\_\_\_  
City Engineer  
\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
City Clerk  
\_\_\_\_\_  
Date

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

\_\_\_\_\_  
(Date and Place)

\_\_\_\_\_  
(Signature)

# CERTIFICATE OF COMPLETION

## TOWN OF ATHERTON

**PROJECT NAME:** Upper Atherton Channel Repair Project, Phase 1  
**PROJECT NUMBER:** 04-007  
**LOCATION:** Atherton Channel above Reservoir Road

### NOTICE IS HEREBY GIVEN:

1. That on May 2, 2006, the Public Works project known as the Upper Atherton Channel Repair Project, Phase 1, was completed in accordance with the plans and specifications as required by the Town of Atherton.

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

Town of Atherton  
91 Ashfield Road  
Atherton, California 94027.

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

HSR General Engineering Contractors, Inc.  
530 Also Avenue  
Santa Clara, CA 95954

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

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

5. Construction of a concrete drop structure, vortex weir, frog habitat pond, wine shed retaining wall and Walsh Road retaining wall as more particularly described in the plans and specification approved by the City Council of the Town of Atherton pursuant to Motion, adopted the 15<sup>th</sup> day of June, 2005.

**BY:**

\_\_\_\_\_  
**Duncan L. Jones, P.E.**  
**Public Works Director**

\_\_\_\_\_  
**Date**

**ATTEST:**

\_\_\_\_\_  
**Kathi Hamilton**  
**Acting City Clerk**

\_\_\_\_\_  
**Date**



## Town of Atherton

### CITY COUNCIL STAFF REPORT

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

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

**DATE: FOR THE MEETING OF JUNE 21, 2006**

**SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR THE VALPARAISO AVENUE OVERLAY PROJECT AND COMMITTING THE NECESSARY NON-FEDERAL MATCH FOR THE PROJECT AND STATING THE ASSURANCE OF THE TOWN OF ATHERTON TO COMPLETE THE PROJECT**

#### **RECOMMENDATION:**

Adopt a resolution authorizing staff to submit an application for Surface Transportation Program (STP) grant funds to overlay Valparaiso Avenue, committing the required local match and stating the assurance of the Town to complete the project.

#### **BACKGROUND:**

In March, the City/County Association of Governments of San Mateo County (C/CAG) issued a call for local street and roads projects to be funded by the Surface Transportation Program (STP). The STP provides Federal Funds for the development of capital projects for pavement rehabilitation on local streets that are on the federal classification system. Project applications were due by April 7, 2006, and an application was submitted for our project. The project was recommended for funding. Now the Metropolitan Transportation Commission requires Resolutions of Local Support and Opinions of Legal Counsel be submitted by July 14, 2006. The recommended amount for the Town of Atherton's project for FY 2006-07 is \$470,000.

**ANALYSIS:**

The project recommended for the STP application consists of overlaying both the Atherton and Menlo Park sides of Valparaiso Avenue from El Camino Real to North Lemon Street (Menlo Park City limits). This project is Phase 2 of the Valparaiso Avenue rehabilitation. Phase 1 will be constructed this summer, removing the old pavement and constructing a new pavement base. The Phase 1 project will also repair the pavement on the Menlo Park side. The Phase 2 project will place the final two inches of surface pavement, using open-graded asphalt for sound absorption, and re-stripe the roadway. By overlaying the entire roadway in one project, a centerline joint is eliminated, creating a continuous pavement across the section and avoiding one of the major causes of failure on multi-jurisdictional streets.

Because of MTC requirements, funds can only be used on projects on the federal classification system. Valparaiso Avenue is on the federal classification system and is the highest priority street in Atherton in need of repair that qualifies for this grant program.

Menlo Park requested to be included with the Atherton project so that the project would score better. Scoring in the competitive grant process gives extra points to multi-jurisdictional projects. The two cities also decided to seek only 50% of the project cost because the grant scoring also gives higher scores to increased local match. All of the projects that received funding provided a 50% local match. This project scored 5<sup>th</sup> out of the 20 projects that received funding in this cycle.

**FISCAL IMPACT:**

The estimated cost for the total Valparaiso Avenue Overlay project is \$972,489. Menlo Park has agreed to fund their share in the amount of \$296,457. The Town needs to commit to fund \$176,032 for this grant in FY 2006-07. The proposed FY 2006-07 budget includes \$180,000 from the Parcel Tax fund for this project.

Prepared by:

Approved by:

---

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

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James H. Robinson  
City Manager

Attachments: Resolution

**RESOLUTION 06-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AUTHORIZING THE FILING OF AN APPLICATION FOR FEDERAL  
SURFACE TRANSPORTATION PROGRAM FUNDING FOR THE  
VALPARAISO AVENUE OVERLAY PROJECT AND COMMITTING THE  
NECESSARY NON-FEDERAL MATCH FOR THE PROJECT AND STATING  
THE ASSURANCE OF THE TOWN OF ATHERTON TO COMPLETE THE  
PROJECT**

**WHEREAS**, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) (Public Law 109-59, August 10, 2005) continues the Surface Transportation Program (23 U.S.C. § 133 and the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149); and

**WHEREAS**, the SAFETEA legislation will guide STP, CMAQ, and TE programming until a SAFETEA bill is authorized; and

**WHEREAS**, pursuant to SAFETEA, and the regulations promulgated thereunder, eligible project sponsors wishing to receive Surface Transportation Program or Congestion Mitigation and Air Quality Improvement Program grants for a project shall submit an application first with the appropriate metropolitan transportation planning organization (MPO), for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

**WHEREAS**, the Metropolitan Transportation Commission is the MPO for the San Francisco Bay region; and

**WHEREAS**, the Town of Atherton is an eligible project sponsor for Surface Transportation Program or Congestion Mitigation and Air Quality Improvement Program funds; and

**WHEREAS**, the Town of Atherton wishes to submit an application to MTC for funds from the Surface Transportation Program Improvement Program in fiscal years 2006-07, 2007-08, and 2008-09 for the following project:

Overlay Valparaiso Avenue from El Camino Real to North Lemon Avenue

**WHEREAS**, MTC requires, as part of the application, a resolution stating the following:

- 1) the commitment of necessary local matching funds of at least 11.47%; and
- 2) that the sponsor understands that the Surface Transportation Program and Congestion Mitigation and Air Quality Improvement Program funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be

- funded with Surface Transportation Program or Congestion Mitigation and Air Quality Improvement Program funds; and
- 3) the assurance of the sponsor to complete the project as described in the application, and if approved, as programmed in MTC's TIP; and
  - 4) that the sponsor understands that funds must be obligated by June 30 of the year that the project is programmed for in the TIP, or the project may be removed from the program; and
  - 5) that the sponsor has a certified pavement management system (PMS).

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that the Town of Atherton is authorized to execute and file an application for funding under the Surface Transportation Program of SAFETEA in the amount of \$470,000 for the Valparaiso Avenue Overlay Project; and

**BE IT FURTHER RESOLVED** that the City Council by adopting this resolution does hereby state that:

- 1) the Town of Atherton will provide \$472,489 in non-federal matching funds; and
- 2) the Town of Atherton understands that the Surface Transportation Program and Congestion Mitigation and Air Quality Improvement Program funding for the project is fixed at \$470,000, and that any cost increases must be funded by the the Town of Atherton from local matching funds, and that the Town of Atherton does not expect any cost increases to be funded with Surface Transportation Program or Congestion Mitigation and Air Quality Improvement Program funds; and
- 3) The Valparaiso Avenue Overlay project will be built as described in this resolution and, if approved, for the amount shown in the Metropolitan Transportation Commission (MTC) Transportation Improvement Program (TIP) with obligation occurring within the timeframe established below; and
- 4) The program funds are expected to be obligated by June 30 of the year the project is programmed for in the TIP.

**BE IT FURTHER RESOLVED** that the Town of Atherton is an eligible sponsor of projects in the Surface Transportation Program; and

**BE IT FURTHER RESOLVED** that the Town of Atherton is authorized to submit an application for Surface Transportation Program funds for (project name); and

**BE IT FURTHER RESOLVED** that there is no legal impediment to the Town of Atherton making applications for Local Streets and Roads Shortfall Program funds; and

**BE IT FURTHER RESOLVED** that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of the Town of Atherton to deliver such project; and

**BE IT FURTHER RESOLVED** that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and

**BE IT FURTHER RESOLVED** that the MTC is requested to support the application for the project described in the resolution and to program the project, if approved, in MTC's TIP.

\* \* \* \* \*

*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 21<sup>st</sup> day of June, 2006, 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:

\_\_\_\_\_  
Charles E. Marsala, MAYOR  
TOWN OF ATHERTON

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

APPROVED AS TO FORM:

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

**Attachment D: Part 1b.  
Third Cycle STP/CMAQ/TE Program  
Certification of Assurances**

The sponsor indicated below hereby certifies that the project indicated below, for which Surface Transportation Program funding from MTC's Local Streets and Roads Shortfall Program is requested, meets the following project screening criteria. **Please initial each.**

**Sponsoring Agency:** TOWN OF ATHERTON

**Project Name:** VALPARAISO AVENUE OVERLAY PROJECT

1. The project is eligible for consideration in the Surface Transportation Program, as identified in 23 USC 133 of the United States Code.
2. The agency is an eligible sponsor of projects in the Surface Transportation Program. \_\_\_\_\_
3. An application has been submitted for the project. \_\_\_\_\_
4. The project is consistent with the Regional Transportation Plan (RTP). \_\_\_\_\_
5. The project is fully funded and results in an operable and useable segment. \_\_\_\_\_
6. For the funds requested, no costs have/will be incurred prior to the federal authorization of the funds. \_\_\_\_\_
7. The year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project. \_\_\_\_\_
8. The implementing agency has a certified Pavement Management System with MTC in accordance with Section 119 of Title 23, United States Code. \_\_\_\_\_
9. Cost increases on the project are the responsibility of the project sponsor. \_\_\_\_\_
10. Cost savings from the project will be returned to the region. \_\_\_\_\_
11. The sponsor agrees to be available for any audit of STP/CMAQ funds, if requested. \_\_\_\_\_

The sponsor agrees to abide by all regulations, statutes, rules and procedures applying to Third Cycle STP/CMAQ/TE Program, and to follow all requirements associated with the funds programmed to the TIP, including, but are not limited to the four items below:  
\_\_\_\_\_

1. Environmental requirements: NEPA standards and procedures for all projects with Federal funds; CEQA standards and procedures for all projects programmed with State funds.
2. Federal Transit Administration (FTA) requirements, as outlined in FTA regulations and circulars for all projects with FTA funding

3. Federal Highway Administration (FHWA) and Caltrans requirements for highway and other roadway projects as outlined in the Caltrans Local Programs Manual.
4. Federal air quality conformity requirements, and local project review requirements, as outlined in the adopted Bay Area Conformity of the State Implementation Plan (SIP).

**Certified By:** Signature Print Name Date:



## 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 JUNE 21, 2006**

**SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE CITY  
MANAGER TO EXECUTE AGREEMENTS WITH CALTRANS FOR  
FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR  
THE VALPARAISO AVENUE REHABILITATION PROJECT**

#### **RECOMMENDATION:**

Adopt a resolution authorizing the City Manager to execute agreements with Caltrans for federal Surface Transportation Program (STP) funding for the Valparaiso Avenue Rehabilitation project.

#### **BACKGROUND:**

The Town has been awarded two STP grants for Valparaiso Avenue, one for \$72,000, and one for \$470,000. In order to receive reimbursement under these grants, various funding agreements must be signed by the Town. Caltrans requires a resolution specifically authorizing the City Manager to sign these agreements.

#### **FISCAL IMPACT:**

There is no fiscal impact of this action.

Prepared by:

Approved by:

---

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

---

James H. Robinson  
City Manager

Attachments: Resolution

**RESOLUTION 06-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH  
CALTRANS FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING  
FOR THE VALPARAISO AVENUE REHABILITATION PROJECT**

**WHEREAS**, the Town of Atherton is eligible to receive Federal funding for certain Transportation Projects through the California Department of Transportation (Caltrans); and

**WHEREAS**, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and Fund Transfer Agreements need to be executed with Caltrans before such funds could be claimed, and;

**WHEREAS**, the Town of Atherton wishes to delegate authorization to execute these agreements and any amendments thereto to the City Manger:

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the Town of Atherton that the City Manager be authorized to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with Caltrans for the Valparaiso Avenue Rehabilitation 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 21<sup>st</sup> day of June, 2006, by the following vote:*

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

ATTEST:

\_\_\_\_\_  
Charles E. Marsala, 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 JONES, PUBLIC WORKS DIRECTOR**

**DATE: FOR THE MEETING OF JUNE 21, 2006**

**SUBJECT: REJECT ALL BIDS AND AUTHORIZE RE-ADVERTISEMENT  
OF THE 2006 PAVEMENT PATCHING PROJECT, PROJECT  
NO. 05-006**

#### **RECOMMENDATION:**

Reject all bids and re-advertise the 2006 Pavement Patching Project, Project No. 05-006.

#### **INTRODUCTION:**

This project will grind and replace approximately 9706 square feet of asphalt to a six-inch depth the following streets:

- Elena Avenue
- Atherton Avenue

#### **ANALYSIS:**

Six bids were received for the 2006 Pavement Patching Project as follows:

<u>CONTRACTOR</u>	<u>LOCATION</u>	<u>BID</u>
Union City Construction	Fremont, CA	\$70,200
Wattis Construction Co. Inc.	San Jose, CA	\$65,910
El Camino Paving, Inc.	Mountain View, CA	\$64,350
G. Bortolotto & Co., Inc.	San Carlos, CA	\$57,427.50
Interstate Grading & Paving, Inc.	S. San Francisco, CA	\$56,842.50
Galedridge Construction, Inc.	Alviso, CA	\$45,191.25

Galedridge Construction, Inc., submitted an original bid of \$45,191.25, which was more than 10% less than the engineer's estimate of \$60,000. Upon investigation, it was determined that the bid package included an error in stated quantities (asphalt tonnage) that misled Galedridge. Staff recommends that the project be re-advertised to be fair to all bidders. The contract can be awarded at the July meeting with construction completed in August.

**FISCAL IMPACT:**

Gas Tax and Road Impact Fee funds in the amount of \$150,000.00 are budgeted for Street Patch, Seal and Overlay in FY 2005-06. Bids were received for the project on June 9, 2006. All of the bids except Galedridge and Union City Construction (high by 17%) were within 10% of the engineer's estimate.

Prepared By:

Approved:

---

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

---

James H. Robinson  
City Manager



## Town of Atherton

### **CITY COUNCIL STAFF REPORT**

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

**FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

**DATE: FOR THE CITY COUNCIL MEETING OF JUNE 21, 2006**

**SUBJECT: ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION  
17.36.190 REGULATING BASEMENTS**

### **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**

The General Plan Committee discussed the allowed floor area for homes and discussed the allowed area for basements. The General Plan Committee decided not to change the floor area ratio at this time.

The Committee was unable to reach consensus on basement limitations and requested direction from the City Council. The City Council, at its April 19, 2006, meeting, discussed several alternatives and provided direction to staff to prohibit below grade garages and to limit the maximum depth of a basement. Staff has prepared the attached Ordinance reflecting direction provided by the City Council. The Planning Commission reviewed the draft Ordinance at its May 24, 2006, meeting.

### **ANALYSIS**

Basements are currently exempt from the floor area calculations. As indicated above, this item was discussed at the General Plan Committee and City Council meetings. Committee members and Council members expressed concern with the impact of below grade garages and the resulting sweeping deep access driveways and large retaining walls. Council members provided direction to staff that rather than provide limitations on below grade garages, they should be prohibited. There was also consensus from both the General Plan Committee and the City Council that the maximum depth of a basement should be limited. It is recommended that the depth of a basement be limited to 14'

measured from average natural grade to the finished slab floor of the basement. This will provide ample space for a basement and the finished floor above.

The Planning Commission recommended that the provisions apply to residential properties and properties within the Public Facilities School Zoning District (PFS) be allowed to have an underground garage with a Conditional Use Permit and that the maximum depth of a basement not be limited in the PFS zone. The Commission felt that underground parking structures at the school sites or town hall would be acceptable given the large size of these properties and the ability to mitigate impacts.

Staff recommends the following modification to section 17.36.190 regulating basements (new language shown in **bold**) to prohibit garages in basements (unless steep sloped lots with a conditional use permit) and to restrict the maximum depth of a basement to 14’.

Proposed Amendment to Atherton Municipal Code Section 17.36.190;

“Basements shall not exceed two feet in height above the surrounding average natural grade. Exceptions to the requirements of this section for hillside properties (where the average cross-slope is greater than twenty percent as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit. Basements are only permitted under the footprint of buildings located within the buildable area. **Garages are not permitted in basements except for properties located in the PFS zoning district and hillside properties with an average cross-slope greater than twenty percent upon the issuance of a conditional use permit.** Areas for stairways and light wells may extend beyond the footprint of buildings, but shall be limited to the buildable area. **The maximum depth of a basement is limited to fourteen feet below average natural grade to the finish slab below except for properties located in the PFS zoning district.**”

The Planning Commission recommended the above language on a 3-0 vote, with one member indicating his/her reluctance to approve any preference to allow garages in basements with additional setbacks and landscape screening to mitigate the appearance of the driveways.

### **CONCLUSION:**

It is Planning Staff’s professional opinion that the proposed Ordinance Amendment is consistent with the General Plan and will achieve the desired result of eliminating below grade garages on residential properties and the associated deep sweeping driveway approaches as well as limit the maximum depth of basements.

### **ALTERNATIVES:**

The Council could modify the attached Ordinance. If the Council wanted to provide opportunities for garages in basements on a limited basis, it could require a Conditional Use Permit process rather than prohibiting garages in basements in residential properties. The granting of a Conditional Use Permit could be based on the finding that the visual impact of the sweeping driveway was mitigated and additional landscape screening was provided.

### **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:

/s/ Lisa Costa Sanders  
Lisa Costa Sanders  
Deputy Town Planner

\_\_\_\_\_  
James H. Robinson  
City Manager

**Attachment:**

1. draft Ordinance

**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON**  
**AMENDING SECTION 17.36.190 THE ATHERTON MUNICIPAL CODE PLACING LIMITS**  
**ON BASEMENTS WITHIN THE TOWN OF ATHERTON**

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

**SECTION 1:** Section 17.36.190 of the Atherton Municipal Code is hereby amended to read as follows:

**17.36.190 Basements**

“Basements shall not exceed two feet in height above the surrounding average natural grade. Exceptions to the requirements of this section for hillside properties (where the average cross-slope is greater than twenty percent as determined under Section 16.24.050) may be permitted upon issuance of a conditional use permit. Basements are only permitted under the footprint of buildings located within the buildable area. **Garages are not permitted in basements except for properties located in the PFS zoning district and hillside properties with an average cross-slope greater than twenty percent upon the issuance of a conditional use permit.** Areas for stairways and light wells may extend beyond the footprint of buildings, but shall be limited to the buildable area. **The maximum depth of a basement is limited to fourteen feet below average natural grade to the finish slab below except for properties located in the PFS zoning district”**

**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 \_\_\_\_\_, 2006

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote

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

\_\_\_\_\_  
Charles E. Marsala  
MAYOR, Town of Atherton

ATTEST

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

APPROVED AS TO FORM:

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

256 Park Lane  
Atherton, Ca. 94027

RECEIVED  
TOWN OF ATHERTON

2006 JUN -2 A 9: 27

May 31, 2006

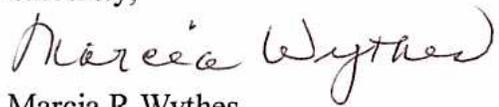
Mayor Charles Marsala  
Atherton City Council  
91 Ashfield Road  
Atherton, CA 94027

Dear Mr. Marsala:

As a resident of Atherton, I feel very strongly that the use of basements as garages should not be permitted. Last week, I attended the Planning Commission meeting that approved the ordinance to disallow the construction of garages in basements of homes.

Therefore, I would like to go on record to recommend the approval of the basement ordinance as passed by the Atherton Planning Commission.

Sincerely,

  
Marcia R. Wythes

June 8, 2006

RECEIVED  
TOWN OF ATHERTON

2006 JUN -9 A 11: 06

To: Mayor Charles Marsala, Town of Atherton, CA  
Vice Mayor Alan Carlson  
Council Member Jerry Carlson  
Council Member Jim Janz  
Council Member Kathy McKeithen

Re: Time Limits on Construction - Support  
Basement Ordinance - Support  
For June 21, 2006 Town Council Meeting

We, the undersigned, thank you for your work on these construction issues.

We urge you to **support and pass the Time Limits Ordinance**, which is scheduled to be before you on June 21 for a second reading, as amended at your May 17, 2006 Town Council Meeting.

We also urge you to **support and pass the Basement Ordinance**, as passed by the Atherton Planning Commission at their May 24, 2006 meeting.

<u>Name</u>	<u>Address</u>
Linda Debes	98 Monte Vista Avenue
Carol L. Collier	40 Linda Vista Atherton
Russell Collier	40 Linda Vista, Atherton
Elizabeth Gerstley	111 Alameda Atherton
<del>Ferness Gerstley</del>	32 27
Rosemary Enthoven	1 McCornick Atherton
Aloyni Enthoven	1 McCornick Ln Atherton
W. W. W.	89 Fairwinds Ln. Atherton
Clare Skari	89 Fair Oaks Ln Atherton
Bette Moorman	172 Tuscaloosa, Atherton
<del>John M. Thomas</del>	78 CESLO LANE ATHERTON, CA 94027

June 8, 2006

To: Mayor Charles Marsala, Town of Atherton, CA  
Vice Mayor Alan Carlson  
Council Member Jerry Carlson  
Council Member Jim Janz  
Council Member Kathy McKeithen

Re: Time Limits on Construction  
Basement Ordinance

We, the undersigned, thank you for your work on these construction issues.

We urge you to **support and pass the Time Limits Ordinance**, which is scheduled to be before you on June 21 for a second reading, as amended at your May 17, 2006 Town Council Meeting.

We also urge you to **support and pass the Basement Ordinance**, as passed by the Atherton Planning Commission at their May 24, 2006 meeting.

Name	Address
Sidney Liebes	98 Monte Vista Avenue
CVT	74 " " "
Linda Protiva	" " "
Clifford Mandato	82 Monte Vista Avenue
Ralph Mandato	82 Monte Vista Avenue
Roberta Schumacher	39 Monte Vista Avenue
JM	39 Monte Vista Av
Margaret Beltramo	244 Camino al Lago, Atherton
Reida B. Rynck	57 Mulberry Lane, Ath

EUGENE V. ELSBREE II

346 Fletcher Drive  
Atherton, CA 94027  
650-854-0157

RECEIVED  
TOWN OF ATHERTON  
June 6, 2006  
2006 JUN 13 A 10:28

To: The Atherton City Council

This is to recommend and request  
that you ban underground/basement garages.

We make this request because underground/  
basement garages:

1. necessitate additional heavy trucks +  
equipment;
2. extend the construction time period;
3. unreasonably inconvenience neighbors;
4. further detract from our already  
unfortunately rapidly declining  
rural + rustic environment;
5. usually require additional tree  
removal (heritage + otherwise);

6. result in tons of earth being relocated over our streets (additional wear + tear);
7. require unique landscaping solutions (special shrubbery vs. trees);
8. allow for a concentration of rain water ... that may ultimately be pumped + focused onto our streets; and
9. are extremely dangerous to small children (due to the very deep excavation for vehicle entry).

Please ban underground/basement garages.

Thank you for your consideration.

Sincerely,

John Johnson

Date: June 13, 2006

To: Mayor Charles Marsala, Town of Atherton, CA

Vice Mayor Alan Carlson

Council Member Jerry Carlson

Council Member Jim Janz

Council Member Kathy McKeithen

RE: Support for Time Limits on Construction and Basement Ordinance

**We are strongly in support of the imposing time limits on construction in the Town of Atherton and limiting the size of basements in new construction, and we hope that you will pass these two ordinances that will be on the agenda at your June 21<sup>st</sup> meeting.**

Sincerely,

*John and Clara Steinhart*

132 Tuscaloosa Ave.

Atherton, CA. 94027

650/327-88818

email: [jsteinhart@sbcglobal.net](mailto:jsteinhart@sbcglobal.net) and [csteinhart@sbcglobal.net](mailto:csteinhart@sbcglobal.net)

**LIDA URBANEK**  
75 Tuscaloosa Ave  
Atherton, CA 94027  
Tel: (650) 324-9105    lurbanek@sbcglobal.net    Fax: (650) 324-0974

TO: ATHERTON TOWN COUNCIL

June 14, 2006

Dear Atherton Council Member:

I have been following the debate about putting limits on basement construction in Atherton with great interest. I will probably not be able to attend the Council meeting on June 21 so I am voicing my views on the matter with this letter.

I object to basements because they are essentially "free space," not controlled by any ordinances. Yet they do have an impact on the property and on the neighborhood.

I think that basements have an effect on the vegetation of our town. Basements are an obstacle to the healthy growth of tree roots, contributing to the decline in the Town of Atherton of large trees. Basements must also affect the flow of water in the soil, changing the conditions for existing trees and plants.

I also think that basements are contributing to the trend in Atherton of building colossal houses and changing the rural nature of the town. I think the square footage of basements should be included in the allowed size of construction to discourage the excessively large homes that are being built today.

I feel that garages in basements should be prohibited because they necessitate unsightly and dangerous ramps for access. The ramps are an additional obstacle to landscaping and the health of large trees.

I encourage the members of the Town Council to adopt the proposed ordinance limiting the depth and use of basements. The 14' limit and the elimination of underground garages is a very reasonable compromise and a step in the right direction.

Yours truly,

Lida Urbanek

Tim & Melissa Draper  
172 Elena Avenue, 222 & 228 Park Lane  
Atherton, California 94027  
(650)325-6773/melissa@melissadraper.com

RECEIVED  
TOWN OF ATHERTON  
2006 JUN 15 A 9:38

June 14, 2006

The Atherton Town Council  
91 Ashfield Road  
Atherton, California 94027

Dear Mayor Marsala, Council Members Carlson, Janz, McKeithen & Carlson;

We are writing to express concern about the proposed ordinance amending Atherton Municipal Code Section 17.36.190 regulating basements. In attending the Planning Commission meeting on May 24, 2006 where this was discussed, there wasn't a convincing argument for changing the existing ordinance, either for eliminating underground garages or limiting the ceiling height of basements.

In further discussing this issue with friends and neighbors, we happened on an interesting fact, that in 1995 this same topic was being discussed by the Atherton Town Council with the exact opposite conclusion. The inclusion of underground garages was encouraged to create a less cluttered landscape. All of us can agree that this idea of eliminating bulky eyesores is even more true today as the need for car storage seems to have gotten greater.

While we also can understand the discouragement of unsafe or unattractive entrances to underground garages, when we tried to find any of these in Atherton, we could only find one at Santiago and Park Lane, which we understand is due to be demolished anyway. It would seem that you only know about these if you are seeing the building being constructed. Certainly these are difficult and expensive to build, which would eliminate them from most people's plans, but, if it is appropriate to the design on a lot, it should be the choice of the owner.

Letter to Atherton Town Council  
June 14, 2006/Page Two

We will be attending the meeting with friends, family and neighbors on Wednesday night and strongly urge you to vote NOT to adopt this ordinance amendment.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Draper". The signature is written in dark ink and is positioned to the right of a large, stylized initial "M" that starts with a large loop.

Tim & Melissa Draper

RECEIVED  
TOWN OF ATHERTON

2006 JUN 15 A 8: 36

217 Park Lane  
Atherton, CA 94027  
June 13, 2006

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

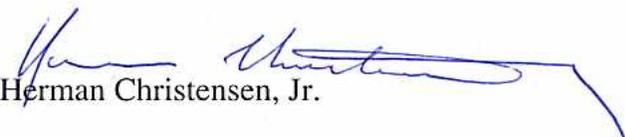
Dear Mayor and Council Members:

I write this letter to urge your support of the change in town ordinances approved by the Planning Commission to prohibit basement garages. There are several reasons for this change. Some of them are:

1. To viewers from the street, basement garages with their three story facades present an urbanized look, not in character with the more rustic look of the community desired by residents.
2. With a retaining wall more than ten feet high, five feet from the property line, the driveway is difficult to screen from view by neighboring properties because planting in this narrow strip is limited to certain types of shrubs and hedges, not trees.
3. The excavated drive often requires the removal of heritage trees both in the path of the driveway and close by because of damage to root structure.
4. The driveway excavation results in more than 350 cubic yards having to be transported over town streets with resulting additional wear and tear on streets and inconvenience to neighbors.
5. The excavated driveways act as a concentrator of rain water with sump pumps and piping often draining the water to the street at a single point.
6. The high retaining walls necessary to retain the excavated driveway can be dangerous if rails are not installed at the top. At least one such situation exists in the neighborhood of Park Lane.

Again, I hope that you will be able to support this change and I would be happy to answer any questions that you may have.

Very truly yours,

  
Herman Christensen, Jr.



Item  
**Alan B. Carlson**  
Vice Mayor  
Town of Atherton

**91 Ashfield Road**  
**Atherton, CA 94027**

**Office Telephone: (408) 998-4150**  
**Office Facsimile: (408) 288-5686**

April 10, 2006

Charles E. Marsala  
Mayor  
Town of Atherton  
91 Ashfield Road  
Atherton, CA 94027

Dear Mayor Marsala:

On January 21, 2006, the Town held an emergency preparedness meeting to which the residents of the Town were invited through articles in the Athertonian and other news media. Unfortunately, the meeting was poorly attended, an issue to which I will return below. In any event, the presentation by Sergeant Grimm of our Police Department was excellent and gave me much to consider as a member of the City Council. In particular, the meeting raised for me the issue of the Council's oversight responsibilities prior to the occurrence of an emergency as well as during and after such has occurred. With respect to these issues, serious concerns are raised which should be addressed by the Council, including the extent to which the City Council is prepared for an emergency of the magnitude that might cause activation of the Town's emergency plan as well as those of governmental entities above it.

Subsequent to the January 21, 2006 meeting, and as a first step in understanding the issues involved, I requested from the City Manager a copy of the emergency plan of the Town. I have now had the opportunity to review the plan and study its proposed operation. Essentially, the Town's plan is two plans. First is the San Mateo County emergency plan, which is a voluminous document by which county-wide and more local emergencies are to be handled using County resources and through which to draw upon resources at higher levels. Second is the Town's emergency plan, last updated by its terms in March 1999, which can be viewed as the first level of response, and which is intended to integrate into the broader County plan. Depending upon the nature of the emergency, and if entirely local to the Town in nature, the Town's plan is the only one that may be activated in given circumstances.

In reviewing the emergency plans of both the Town and County, I was struck by two points. First, the City Council has a definite role and responsibility under the Town's emergency plan, one that I believe has not been well defined and considered by the Council. Second, the plans are "emergency action plans," more appropriately "reaction" plans. They are not "emergency awareness and preparedness plans," plans intended to prepare the public and

Charles E. Marsala  
April 10, 2006  
Page 2

residents for emergencies before they occur. In this latter area, I believe there is much that the Council should consider, and should decide as to what undertakings in this area are appropriate. Given the size of the Town, I think more can be done in this area than would otherwise be possible in a much larger city.

That the City Council has a clear role in response to events which might occur within or affecting the Town under its emergency plan is clear from the plan itself. A specific "policy advisory" with a checklist of action items and responsibilities for the Council is found within the plan. (pp. 59-60) Further, the plan is specific as to the responsibilities of the Council in an emergency. As stated in the management section of the plan:

The members of Town Council will form a Policy/Advisory Group to proclaim and/or ratify a declaration of local emergency, approve emergency orders, serve as Town policy officials, and provide a forum for input from the public.

(p. 4) The plan designates the City Manager as the "director of emergency services" and provides that he reports to and is to "conduct periodic briefing sessions with the Town Council." (p. 5, 11) That the enumerated responsibilities of the City Council have attached to them clear liability issues and implications is revealed by the City Attorney's responsibilities, in part to "[a]dvice the Town Council . . . on areas of legal responsibility and identify potential liabilities." (p. 26)

In view of the above, the City Council is a part of the Town's emergency plan, and has a role in the reaction to events which might cause the plan to be implemented. As a consequence, the Council should thoroughly understand the nature of that role and be prepared to assume it. To do so, I believe a study session should be held to explore the responsibilities of this role and how is it to be executed and interface in conjunction with others in the Town's administration who have likewise been given specific roles and responsibilities by the plan. It is better to sort out these roles and responsibilities, and to be sure all understand their function within the plan, before the occurrence of an emergency as opposed to during such.

As stated above, the Town's emergency plan is a "reaction" plan, not an "awareness and preparedness" plan by which residents become and are prepared for an emergency. Given the limited size of our community, I believe more can and should be done in this area. Clearly, given the poor resident attendance at the January 21, 2006 emergency preparedness meeting, this does not now appear to be an issue of priority with residents. As a City Council, we should attempt to make it such. As a starting point, the Town does not have a plan, one that is formalized, to make its residents aware of what emergencies may impact them, what that impact would be, and how they should prepare for such. In December 2004, the Town mailed residents a "Pocket Guide to Emergency Preparedness" and the Fall 2005



## Town of Atherton

### CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS**

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

**DATE: CITY COUNCIL MEETING OF JUNE 21, 2006**

**SUBJECT: ADOPTION OF THE CONSTRUCTION TIME LIMIT ORDINANCE**

### RECOMMENDATION:

Adopt an ordinance pertaining to time limits for completion of construction.

### BACKGROUND:

Because of revisions made at the regular meeting on May 17, 2006, the construction time limit ordinance was reintroduced for first reading. The ordinance, showing revisions discussed at the May 17, 2006, meeting accompanies this report. New language is shown in **bold** with deletions shown by ~~strike through~~. For ease of review, your attention is invited to the following:

Section 15.40.180 – revised language in the table is shown in **bold**. An additional sentence shown in **bold** follows the table.

Section 15.40.200 has been revised to show a certificate of deposit authorized in subsection A, and the deletion of a reference in subparagraph F to grounds for appeal which have been deleted from the ordinance. Additional revisions in subparagraph F are shown in **bold**.

Subparagraph G of section 15.40.200 is revised as shown in **bold**.

Subparagraph H includes the addition of the referenced certificate of deposit.

Section 15.40.210 "Appeal" shows that reference is to sections 15.40.160 through 15.40.200 and 15.40.220.

Revision to subparagraph B of Section 15.40.210 is shown in **bold**.

Section 15.40.220 is revised in line 4 with the use of the word "**said**" instead of the word "subject."

**FISCAL IMPACT:**

Costs of enforcement which should be recovered in whole or part by the penalties imposed.

Prepared By:

Approved By:

---

Marc G. Hynes  
City Attorney

---

James H. Robinson  
City Manager

Attachment

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
ESTABLISHING TIME LIMITS FOR COMPLETION OF CONSTRUCTION AND  
AMENDING CIVIL PENALTY PROVISIONS AND RENUMBERING CODE SECTION  
PERTAINING TO VIOLATIONS OF CHAPTER 15.40 PERTAINING TO  
CONSTRUCTION REGULATIONS**

---

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

**SECTION 1: Findings.**

The City Council of the Town of Atherton finds that:

- A continuous stream of large numbers of construction projects on private properties within the Town of Atherton for many years past has resulted in substantial and continuing adverse impacts on the Town and its residents from construction activities;
- Among those adverse impacts are long-term noise disturbances to neighbors of the construction projects, loss of already inadequate on-street parking due to the presence of large numbers of construction vehicles, and frequent closures of the Town's narrow streets for construction deliveries and staging, which closures hinder and/or eliminate local and emergency access for varying periods of time;
- The Town has seen numerous individual projects designed and built on a very large scale so that construction has often continued for many years, thus prolonging the adverse impacts created by those projects;
- It is in the interests of the health, safety, and welfare of the citizens of the Town of Atherton to place a reasonable time limit on the duration of each construction project, so as to balance the needs of the owner of the project with those of his neighbors and the community generally in the safe and peaceful enjoyment of their properties;
- These amendments are needed in order to reduce the incidence of unreasonably lengthy construction projects that extend through subsequent uniform code update cycles, create noise, debris, traffic problems and a general disruption of the neighborhood.
- The time limits adopted allow an adequate and reasonable amount of time for the kinds of construction projects undertaken in the Town; and
- Because of the large monetary value of many of the construction projects in the town, substantial penalties should be imposed upon persons who violate the time limits imposed pursuant to this chapter, so as to encourage compliance with such time limits and achieve their purposes.

**SECTION 2: Amendment of Code.** Chapter 15.40 of the Atherton Municipal Code is hereby amended by adopting new Sections 15.40.160 through Sections 15.40.220 to read as follows:

**"15.40.160 Application.**

Sections 15.40.160 through 15.40.220 shall apply to all building construction (including, but not limited to, all additions, alterations, modifications, repairs and improvements) that requires a building permit, and landscaping related to such building construction."

**"15.40.170 Construction completion.**

For the purpose of Sections 15.40.160 through 15.40.220, construction shall be complete upon the final performance of all construction work other than landscaping, including, but not necessarily limited to, exterior repairs and remodeling, total compliance with all conditions of application approval, and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and approval of the construction work by the Town shall mark the date of construction completion. Deadlines for the completion of landscaping are set forth in Section 17.50.060. "

**"15.40.180 Time limits.**

<b>Building Permit Valuation</b>	<b>New Building Construction Additions, alterations, modifications, repairs and improvements</b>
2,000 square feet or less	12 months from <b>original</b> building permit issuance
2001 – 4,000 square feet	24 months from <b>original</b> building permit issuance
Greater than 4,001 square feet	36 months from <b>original</b> building permit issuance

**Time limits will not be increased by issuance of subsequent building permits for the same project."**

**"15.40.190 Penalties.**

A. If a property owner fails to complete construction by the applicable time limit established in this chapter, the property owner shall be subject to the following penalties payable to the Town:

<b>Period of time that project remains incomplete beyond applicable time limit</b>	<b>Penalty</b>
First 30 days	-0-
31 <sup>st</sup> through 60 <sup>th</sup> day	\$200.00 per day (i.e., \$6,000.00 maximum penalty applicable to this 30-day period)
61 <sup>st</sup> through 120 <sup>th</sup> day	\$400.00 per day (i.e., \$24,000.00 maximum penalty applicable to this 60-day period)
121 <sup>st</sup> day and every day thereafter	\$1,000.00 per day (to a maximum of \$250,000.00)

B. Penalties, fees and costs due to the Town pursuant to this chapter are due each day as the penalties accrue.

C. Any violation of this chapter shall constitute a public nuisance and, in addition to being subject to any other remedies allowed by law, may be abated as provided by law."

**"15.40.200 Deposit.**

A. Upon reaching the time limits set out in Section 15.40.180 above, if construction has not been completed, if no final inspection has been made or a certificate of occupancy issued, the property owner or his representative shall deliver to the building department a refundable deposit (in cash **or a certificate of deposit** or in the form of a payment penalty bond) in the amount of Thirty Thousand Dollars (\$30,000.00). Any bond shall be in the amount of the deposit and in form and contents satisfactory to the Town and shall cover a minimum time period of two years.

B. If no deposit is made as provided in subsection A above, the Building Official shall issue a stop work order.

C. If a property owner fails to complete construction by the applicable time limit, the applicable penalties shall accrue daily up to the maximum set out in Section 15.40.190.

D. On or before the 120<sup>th</sup> day that the project has remained incomplete, no final inspection has been made and no certificate of occupancy issued, the property owner or his representative shall deliver to the building department a refundable deposit (in cash or in the form of a Certificate of Deposit or a payment penalty bond) in the amount of Two Hundred Twenty Thousand (\$220,000.00). Any bond shall be in the amount of the deposit and in form and contents satisfactory to the Town which shall cover a minimum time period of two (2) years.

E. If no deposit is made as provided in subsection D above, the Building Official shall issue a stop work order.

F. If the owner believes that the failure to meet the applicable time limit was caused by circumstances beyond the owner's control ~~and those circumstances are among those listed as grounds for appeal in Section 15.40.210(B)~~, the owner may file a written statement to that effect with the Building Official at the time of making the deposit as described in subsections A and/or ~~B~~ **D** above and provide **any** documentation substantiating such grounds of appeal and the effect on the construction. If the owner makes such filing, no part of the deposit shall be forfeited to the Town and no demand shall be made against the bond if construction is completed within thirty (30) days of the deposit. If construction is ~~thus~~ completed **after the thirty (30) days** and the Building Official concurs with the owner's statement as to the cause of the failure to meet the deadline, the Building Official shall waive the penalty and return the cash deposit, **certificate of deposit**, or bond to the owner. If the Building Official does not concur with the owner's statement, it shall be treated as an appeal under Section 15.40.210 and all the provisions of that section shall apply.

**G.** If construction is completed after the applicable time limit, **and the Building Official does not concur with the owner's statement**, the Town shall draw on the deposit, **certificate of deposit**, or bond in the amount of the applicable penalties; provided, however, that in the event of an appeal, the Town shall not draw on the deposit, **certificate of deposit**, or bond until the Planning Commission and, if applicable, the City Council has rendered its decision as set forth in Section 15.40.210(A).

**H.** After construction is completed and all applicable fines received by the town, any remaining deposit shall be refunded or the **certificate of deposit or** bond shall be returned."

**"15.40.210 Appeal.**

**A.** A penalty imposed pursuant to Sections 15.40.160 through 15.40.220 ~~200~~ **and Section 15.40.220** may be appealed to the Planning Commission on the grounds that the property owner was unable to comply with the applicable time limit for reasons beyond the control of the property owner and the owner's representatives. There shall be no right to appeal until construction is completed. Any person aggrieved by the decision of the Planning Commission on the appeal may appeal to the Atherton City Council. The provisions of Chapter 17.64 of the Atherton Municipal Code shall apply to the appeal process.

**B.** At the time the appeal is filed or within two weeks thereafter, the appellant shall submit documentary and other evidence sufficient to establish that design decisions, construction drawings and documents, bids and construction contracts, permit applications, and compliance with all required permit conditions were undertaken in a diligent and timely manner. Documentary evidence shall include, **but not be limited to**, dated design contracts, date stamped plans, dated construction contracts and material orders, and proof of timely payment of any deposits or fees required pursuant to any of the foregoing items. The documentary and other evidence shall demonstrate that construction delays resulted from circumstances fully out of the applicant's control and despite diligent and clearly documented efforts to achieve construction completion within the applicable time limit. Penalties shall not be modified or cancelled unless ~~the~~ **all** evidence required by this subsection is submitted at the time of appeal."

**"15.40.220 Enforcement.**

**A.** Sections 15.40.160 through 15.40.220 shall apply to all construction for which a building permit was issued on or after the effective date of the ordinance codified in these sections.

**B.** Any penalty due under Section 15.40.200 in excess of the deposit made under Section 15.40.200 shall be a personal debt owed to the Town by the property owner(s) and, in addition to all other means of enforcement and collection, shall become a lien against the **said** property and shall be subject to the same penalties (including interest thereon at the maximum rate allowed by law from the date the lien attaches until the date of payment) and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes."

**SECTION 3: Amendment of Code.**

Existing Section 15.40.160 of the Atherton Municipal Code entitled "Violations" is renumbered as Section 15.40.230 and subsection B thereof is amended to read as follows:

**"15.40.230. Violations.**

B. As part of a civil action brought by the Town, a court may assess against any person who commits, allows, or maintains a violation of any provisions of this chapter a civil penalty in an amount not to exceed Five Thousand dollars (\$5,000.00) per violation. The civil penalty is separate and distinct from penalties imposed pursuant to Sections 15.40.160 through 15.40.220 above."

**SECTION 4:** 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 no possibility that the ordinance may have a significant effect on the environment (CEQA Guidelines section 15061.b).

**SECTION 5:** The City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any word, sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**SECTION 6:** 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 following its passage and adoption.

Introduced this 17th day of May, 2006.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

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

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Charles E. Marsala  
Mayor, Town of Atherton

ATTEST:

---

Kathi Hamilton, Acting City Clerk

APPROVED AS TO FORM:

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



## 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 JUNE 21 2006**

**SUBJECT: FIVE YEAR EXTENSION OF KNOX PLAYSCHOOLS LEASE**

#### **RECOMMENDATION:**

Approve amendment to Knox Playschools Lease and authorize extension of the lease's term for a period of five (5) years, commencing June 30, 2006, through and including June 30, 2011.

#### **BACKGROUND AND ANALYSIS:**

In 2001, the Town and Knox Playschools, Inc., entered into a lease of a Town-owned facility together with adjoining play yard and the use by adults of one restroom in the Carriage House, along with a space for one new modular building to be added by the Lessee and all for the purpose of operating a licensed playschool facility in Holbrook-Palmer Park. The original lease term was for a period of five years beginning July 1, 2001, and ending on June 30, 2006.

An option to extend the lease for one five year period was provided in paragraph 5. However, exercise of the option was required to be made no later than June 30, 2005. By a letter dated May 29, 2006, the Lessee, Knox Playschools, Inc., has requested exercise of the five year option. Under the terms of the lease, the Town if it desires, can refuse to accept the option exercise because it is untimely. Otherwise, if the Town wishes, it may amend the lease to provide for the late notice and have the extension go into effect. An amendment which would accomplish this has been prepared and accompanies this report.

#### **FISCAL IMPACT:**

Under the lease extension, the Town will receive monthly payments beginning at Six Thousand Dollars (\$6,000.00) per month for the playschool facilities.

Prepared by:

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

Approved by:

\_\_\_\_\_  
James H. Robinson  
City Manager

Attachment

AMENDMENT TO LEASE

1. This is an amendment to the lease between the Town of Atherton ("Lessor") and Knox Playschools, Inc. ("Lessee") entered into between the parties on May 24, 2001.

2. For consideration, receipt of which is hereby acknowledged, the parties agree that paragraph 5 , Options to Extend Lease, may be amended to provide that the lease may be extended for one five (5) year period following the expiration of the initial term on June 30, 2006. Notice of exercise of this option made under letter dated May 29, 2006, from Lessee to Lessor is deemed acceptable notice of the option to extend.

3. Except as amended above, all other terms and provisions of the lease between the parties shall continue to remain in effect.

This amendment to the agreement is executed by the parties on \_\_\_\_\_, \_\_\_\_\_, 2006, at Atherton, California.

LESSOR:

LESSEE:

TOWN OF ATHERTON

KNOX PLAYSCHOOLS, INC.

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: President

State of California )  
County of Santa Clara )

On \_\_\_\_\_, 2006, before me, \_\_\_\_\_, a notary public in and for the State of California , personally appeared Charles Marsala, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

State of California )  
County of Santa Clara )

On \_\_\_\_\_, 2006, before me, \_\_\_\_\_, a notary public in and for the State of California , personally appeared \_\_\_\_\_ personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)



**PLAYSCHOOL**

919 Cloud Avenue  
Menlo Park, CA 94025

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

May 29, 2006

Dear Mr. Robinson:

Enclosed with Playschool's June rent check is a list of the Atherton families we currently serve (90 children). After currently enrolled children and their siblings, we continue to give admission priority to Atherton residents as specified in our lease. Playschool remains quite popular in the community; we currently have over 200 families on our waiting list for all classes.

I am very late in this notice and I apologize for that. As we finish our eighth year in Holbrook-Palmer Park, I would like to exercise my option to extend the lease period for another 5 year term. The current lease term expires June 30.

Starting July 1, Playschool is required to transfer the ownership of the "new modular building" to the Town of Atherton and to pay an increased rental amount totaling \$6,000.00 per month.

I will get the transfer papers to you as soon as possible and pay July's new rental amount prior to July 1. Please let me know if there is anything else that I need to do.

Playschool has found a great home here in the Park, and has fantastic support from the families we serve. Many thanks go to the Town.

I can be reached by phone at 854-6705.

Sincerely,

Susan Knox  
Knox Playschools, Inc.

LEASE

1. Parties. This lease is entered into between the Town of Atherton, a California municipal corporation, whose address is 91 Ashfield Road, Atherton, California 94027 ("Lessor") and Knox Playschools, Inc., a California corporation, whose address is 919 Cloud Avenue, Menlo Park, California 94025 ("Lessee").

2. Leased Premises. Lessor leases to Lessee those certain premises ("Premises") presently commonly known as the Creative Design Facility, together with the adjoining play yard, the tricycle track behind the Carriage House, and the non-exclusive use by adults of one rest room in the Carriage House and (a) space for one (1) modular building ("new modular building") approximately 36 by 60 feet in size to be acquired by Lessee at Lessee's expense and to eventually be transferred by Lessee to Lessor and located on property at Holbrook Palmer Park, 150 Watkins Avenue, Atherton, San Mateo County, California, all as shown on Exhibit A attached here and incorporated by this reference, and (b) following transfer of the modular building to Lessor pursuant to paragraph 4 the term "Premises" shall include the modular building itself, on the following terms and conditions:

3. Term. The lease term shall be for a period of five (5) years commencing effective 12:01 a.m. on July 1, 2001, and ending at 11:59 p.m. on June 30, 2006. During the term of the lease and any extension as described below, Lessee shall have the exclusive occupancy and use of the Premises from 7:30 a.m. until 6:00 p.m. each Monday through Friday provided, however, that classes shall be scheduled and conducted in accordance with the terms and conditions of the Conditional Use Permit issued to Lessee by the Town of Atherton. Lessee shall not have occupancy or use of the Premises at other hours nor on Saturdays, Sundays, school vacations and holidays, providing, however, that Lessee shall have the use and occupancy of the Premises for up to four (4) night meetings per year for parent-teacher meetings and/or student family functions so long as these have been cleared with Lessor's City Manager in advance so as to avoid conflict with other programs or activities. Lessee shall use the new modular building during the initial term of this lease and, following its transfer to Lessor as described in Paragraph 4 below, for the purposes and subject to the limitations set forth in this lease and the Conditional Use Permit.

4. Ownership of New Modular Building. Lessee intends to acquire a new modular building approximately 36 by 60 feet in size to be located on the Holbrook Palmer Park property as shown in Exhibit A. No later than the expiration of the initial term of this lease, Lessee shall transfer to Lessor without charge and Lessor shall accept ownership of the new modular building. Upon transfer of ownership to Lessor, the new modular building shall be treated in all respects as Lessor owned property under the terms and provisions of this lease. Lessee shall execute any documents required to transfer ownership of the modular building from Lessee to Lessor.

5. Options to Extend Lease. No later than June 30, 2005, Lessee shall have the option to extend the term of this lease for one five (5) year period following the expiration of the initial term on all of the terms and conditions in this lease. The rent during the extension term shall be set and thereafter adjusted as described in paragraph 6, below. To exercise this option, Lessee must give Lessor written notice of exercise of the option ("option notice") by June 30, 2005.

However, if, as of Lessor's receipt of the option notice, Lessee is in default under this lease, or has committed or failed to perform acts that with the giving of notice or the lapse of time would constitute a default under this lease ("potential default"), the option notice shall be of no effect. If after giving the option notice, Lessee is in default under this lease, or if a potential default has occurred, and that default or potential default remains uncured as of the expiration of the term then in effect, this lease shall, at the election of Lessor, terminate as of the expiration of the term then in effect.

6. Base Rent. Lessee shall pay to Lessor as base rent for the Premises the sum of Two Thousand Seventy-one Dollars (\$2,071.00) to be increased on the basis of the calculations described below to establish the amount owing as of July 1, 2001 and for each month of the lease term thereafter, in advance on the first day of each month commencing on July 1, 2001 and ending on June 30, 2002 and thereafter in increased amounts calculated as set forth below at such place as Lessor may from time to time specify by written notice served on Lessee; provided, however, that Lessee shall pay an additional sum of Five Hundred Dollars (\$500.00) per month for the new modular building space commencing on July 1, 2001 and to be adjusted commencing on the "adjustment date" as hereinafter provided until ownership of the new modular building is transferred to Lessor. Thereafter, the additional sum for the new modular building shall be equal to the base rent and shall be adjusted on the adjustment dates so as to remain equal to the base rent as adjusted. Until changed by written notice served on Lessee by Lessor, all rent payable hereunder shall be paid to Lessor at its address first specified in this lease.

The base rent and additional sum described above shall be adjusted for the then remaining portion of the initial term of this lease or any extension thereof as of the first and following annual anniversary dates after the commencement date. Each such anniversary date is hereunder referred to as an "adjustment date." The base rent and the additional sum for the new modular building shall be adjusted on the adjustment date commencing as of July 1, 2002, and as of each adjustment date thereafter to an amount calculated by multiplying the base rent for the month in which the commencement date occurred, or the month in which the immediately preceding adjustment date occurred, whichever month is later, by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California (1982-1984 equals 100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment date, and the denominator of which shall be the CPI for the month in which the commencement date occurred, or the month in which the immediately preceding adjustment date occurred, whichever is later. Provided, however that on July 1, 2001, the base rent shall be adjusted by multiplying the sum of Two Thousand Seventy-One Dollars (\$2,071.00) by a fraction, the numerator of which shall be the "CPI", for June, 2001, and the denominator of which shall be the CPI for June, 2000. Further provided that in the event Lessee exercises the option to extend this lease, the base rent shall be set at Three Thousand Dollars (\$3,000.00) and the additional sum shall be set at Three Thousand Dollars (\$3,000.00) effective July 1, 2006. If the CPI or successor index is changed so that the base year differs from that in effect on the commencement date, the CPI or successor index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. In the event that compilation and/or publication of the CPI shall be transferred to any

other governmental department or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. Further provided that in no event shall either the base rent and or the additional sum be less than the amount being paid on the adjustment date.

7. Security Deposit. On execution of this lease, Lessee shall deposit with Lessor the additional sum of Two Thousand Dollars (\$ 2,000.00) as security for the faithful performance of the provisions of this lease relating to rent, repairs or cleaning, and to be returned on full performance of those provisions. This deposit shall be governed in all respects by the provisions of Section 1950.7 of the California Civil Code. This deposit is in addition to an existing Two Thousand Dollars already deposited, receipt of which is hereby acknowledged, for a total security deposit of Four Thousand Dollars (\$4,000.00).

8. Use Limitations. The Premises shall be continually operated by Lessee during the time specified in paragraph 3 for a licensed play school, as described in Exhibit "B" attached here and incorporated by this reference. Lessee shall not use the Premises for any other purpose. Siblings of children enrolled in the playschool shall have first priority to register and use the program. Thereafter, children of Atherton residents will have priority to register and use the program. Other than as set forth above, children of Atherton residents will not be rejected except for good and sufficient reasons or because of class size and/or space limitations. Lessor will permit Lessee to advertise the play school in Lessor's mailers at least semi-annually during the term of the lease, without charge to Lessee. Lessee shall not permit the Premises or any part thereof to be used for (1) the conduct of any offensive, noisy or dangerous activity that would increase the premiums for fire insurance on the Premises; (2) the creation or maintenance of a public or private nuisance (including, without limiting the generality of the foregoing, any noise nuisance to the occupants of adjoining or neighboring properties); (3) anything which is contrary to or prohibited by any laws or rules and regulations or any public authority (including Lessor) at any time applicable to the Premises; or (4) any purpose or in any manner which will obstruct, interfere with, or infringe on the rights of other tenants or users of adjoining property owned by Lessor. Lessee shall be solely responsible for the conduct of its activities on the Premises, and each party hereto does not in any way constitute itself the agent, partner, or joint venturer of the other. Lessee shall restrict its use of the Premises to those areas at least twenty-four (24) feet from the property line at the rear of the buildings on the Premises, and shall, at its sole cost and expense, maintain a substantial fence to the satisfaction of Lessor as now existing along a line twenty-four (24) feet from said rear line and at such other locations as are specified on Exhibit "A" attached hereto and by this reference incorporated herein, and remove the said fences, if requested to so do by Lessor, at Lessee's sole cost and expense upon the termination of its occupancy hereunder. In accordance with this paragraph, Lessee shall extend the existing fence to comply with the design as shown on Exhibit A.

9. Taxes and Assessments. Lessee shall be responsible for and shall timely pay, before delinquency, any and all taxes and assessments of every nature levied or assessed on any fixtures, furniture, appliances, or personal property belonging to Lessee, including the modular building, and located on the Premises.

10. Utilities. Lessee shall pay the actual monthly charges for all water, electrical, sewer and garbage service provided to the Premises for the use of Lessee related to Lessee's occupancy. Lessor shall advise Lessee, monthly, of the charges then due for the preceding month's services. Lessee shall pay said charges within ten (10) days of receipt of Lessor's billing. Lessee shall contract and pay for janitorial and cleaning service for the premises. Lessor will clean floors and carpeting on the Premises on a quarterly basis and shall bill Lessee for this work. Lessee shall promptly pay these charges.

11. Alterations. Lessee shall make no alterations to the Premises nor construct any structures on the Premises without first having obtained the written consent of Lessor, provided that Lessor hereby consents to the addition of the new modular building as described above.

12. Acceptance of Premises. Lessee stipulates that it has examined the Premises and all improvements located thereon and that they are all, at the date of this lease, in good order, repair, and a safe and clean condition. Lessor has, at no expense to Lessee, put the Premises into condition fit for occupation, and except as to the new modular building as described above, which during Lessee's ownership shall be the obligation of the Lessee to repair and maintain, will, in a timely manner, repair any future dilapidations thereof which render it untenable and except when Lessee is in substantial violation of any obligation of Lessee hereunder, and except that Lessee shall at its sole cost and expense repair all deteriorations and injuries to the Premises caused by the want of ordinary care on the part of Lessee, or any person on the premises as part of Lessee's business.

13. Signs. Lessee shall pay for the cost of any necessary directional signage, and Lessor shall have sole authority to control the content and location thereof. Lessee shall only erect or display signs on or about the Premises in compliance with regulations of the Town of Atherton and subject to Lessor's prior written approval.

14. Warranties of Lessee. Lessee has warranted and does hereby warrant to Lessor that Lessee has all necessary licenses and permissions required by any authorities having jurisdiction thereof to conduct the activities of Lessee contemplated by this lease, and Lessee will abide by and perform all requirements thereof. If, at any time during the term of this lease or any extension thereof, Lessee lacks such licenses and permissions, Lessee shall immediately notify Lessor of that fact, and this lease shall immediately be terminated. Any expenses resulting from licensing requirements imposed as a result of Lessee's occupancy hereunder shall be paid by Lessee. The maximum enrollment in the play school shall not exceed one hundred fifty (150) children and the maximum number of children occupying the Premises hereunder at any given time shall not exceed sixty-four (64) unless Lessor has first given written approval of a larger number.

15. Indemnity/Hold Harmless. Lessee agrees to and shall defend, indemnify and hold Lessor, its officers, agents and employees, and the Premises, free and harmless from any and all liability, costs and expenses of every nature for injury to or death of any person, and for damage to property arising from the use and occupancy of the Premises by Lessee or from the act or omission of any person or persons, and including children or other occupants as well as the

officers, agents and employees of Lessee, who are in or about the Premises with the express or implied consent of Lessee.

16. Insurance. Lessee shall procure and maintain for the duration of the lease and any extension thereof, including any holdover occupancy by Lessee, insurance for claims for injuries or death to persons or damage to property which may arise from or in connection with Lessee's occupancy, operation and use of the Premises. During its ownership of the new modular building, Lessee shall insure said modular building against loss by fire for full replacement value. Lessor shall be named on such policy as an additional insured. Lessee's insurance shall cover and include Lessee's contractual liability obligations under this lease and specifically Lessee's agreement in paragraph 15, above. The cost of all such insurance shall be paid by Lessee. All such insurance shall at least meet the minimum standards therefor which are specified in Exhibit "C" attached here and incorporated by this reference. For purposes of Exhibit "C", the term "Agency" shall mean the Lessor. Further provided that General Liability insurance shall be in the minimum amount of Two Million Dollars (\$2,000,000.00).

17. Damage/Destruction of Premises. Should the new modular building while owned by Lessee, or any other part of the Premises be damaged or destroyed by fire, the elements, acts of God, or other causes, Lessee shall repair and restore said building. Lessor may, at its option, either repair and restore the building or buildings owned by Lessor or terminate this lease and return any unearned rent previously paid under this lease by Lessee.

18. Ownership of Property at Expiration of Lease. All alterations, changes and improvements built, constructed, or placed on the Premises by Lessee, other than trade fixtures or moveable personal property shall, unless otherwise provided by written agreement between the parties hereto, be the property of Lessor and remain on the Premises at the expiration or sooner termination of this lease. Provided, however, that should this lease terminate before the transfer of ownership of the new modular building to Lessor, Lessee, at Lessee's expense, shall cause said building to be removed from the Holbrook Palmer Park property unless the parties otherwise agree. Nothing contained in this paragraph shall, however, authorize Lessee to make or place any such alterations, changes or improvements on the Premises without having first obtained the written consent of Lessor.

19. Assignment. Lessee shall not assign this lease, sublet or license the Premises, or assign, mortgage or hypothecate any interest therein. An assignment or subletting shall be void and shall terminate this lease.

20. Lessee's Default. Should Lessee be in default for a period of more than ten (10) days in the payment of any rent due under this lease or in the performance of any other provision of this lease, Lessor may terminate the lease and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California in effect at the date of such default.

21. Assignment for Benefit of Creditors. Should Lessee make an assignment for the benefit of creditors or allow a judgment rendered against it to stand unbonded and unsatisfied for

sixty (60) days or more, this lease and all rights, privileges, and benefits of Lessee under this lease shall, at Lessor's option, terminate and not become a part of the estate subject to such assignment or judgment.

22. Continuation of Lease After Breach. At Lessor's option, if Lessee has breached this lease and abandoned the Premises, the lease shall continue in effect for so long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of its rights and remedies under this lease, including the right to recover rent as it becomes due.

23. Lessor's Right of Entry. Lessor shall have the right to enter the Premises during the hours demised to Lessee under this lease only in the following circumstances:

- (a) In case of emergency.
- (b) To make necessary or agreed repairs, decoration, alterations or improvements, or supply necessary or agreed services.
- (c) After Lessee has abandoned or surrendered the Premises.

24. Holding Over. In the event that, upon expiration of the term of this lease, or any extension, Lessee holds over beyond the expiration of the term, such tenancy shall be deemed a month-to-month tenancy only at the current rental, as adjusted pursuant to this lease, payable in advance on the first day of each month thereafter until the tenancy is terminated in a manner provided by law.

25. Notices. Any and all notices and other communications required or permitted by this lease to be served upon or given to either party by the other shall be in writing and, except as otherwise required by law or this lease, be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when it is deposited in the United States mail, postage prepaid, addressed to the party at the address first stated for the party in this lease, or at such other address as a party may from time to time designate in a written notice delivered to the other party.

27. Arbitration. In the event of any dispute regarding the terms and provisions of this lease, the parties agree to arbitrate the dispute in accordance with the judicial arbitration procedures of the San Mateo County Superior Court.

27. Attorneys' Fees. Should any arbitration or litigation be commenced between the parties concerning the Premises, this lease, or the rights or duties of either in relation thereto, the prevailing party in such arbitration or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees in such arbitration or litigation.

28. Waiver of Breach. The waiver by Lessor of any breach of any provision of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this lease.

29. Time of Essence. Time is expressly declared to be of the essence of this lease.

30. Successors and Assigns. Subject to the provision of this lease against assignment of Lessee's interests under this lease, all provisions of this lease shall extend to and bind, or inure to the benefit not only of the parties hereto but to each and every one of the representatives, successors and assigns of the parties hereto.

31. Integration. Lessor and Lessee agree that this lease document contains the sole and only agreement between them concerning the Premises and correctly sets forth their rights and obligations to each other concerning the Premises as of its date. Any agreement or representation respecting the Premises or the duties of Lessor or Lessee in relation to them not expressly set forth in this instrument is null and void.

EXECUTED on May 24, 2001, at Atherton, California.

TOWN OF ATHERTON, Lessor

By: Ralph Freedman  
Its: City Manager

KNOX PLAYSCHOOLS, INC., Lessee

By: Susan R. Knox  
Its: President

Atherton Lease Agreement 3/8/01

**NOTARIAL ACKNOWLEDGMENT**

State of California )  
County of San Mateo )

On May 24, 2001, before me, Sharon Barker, Notary Public, personally appeared Susan R. Knox and Ralph Freedman - and

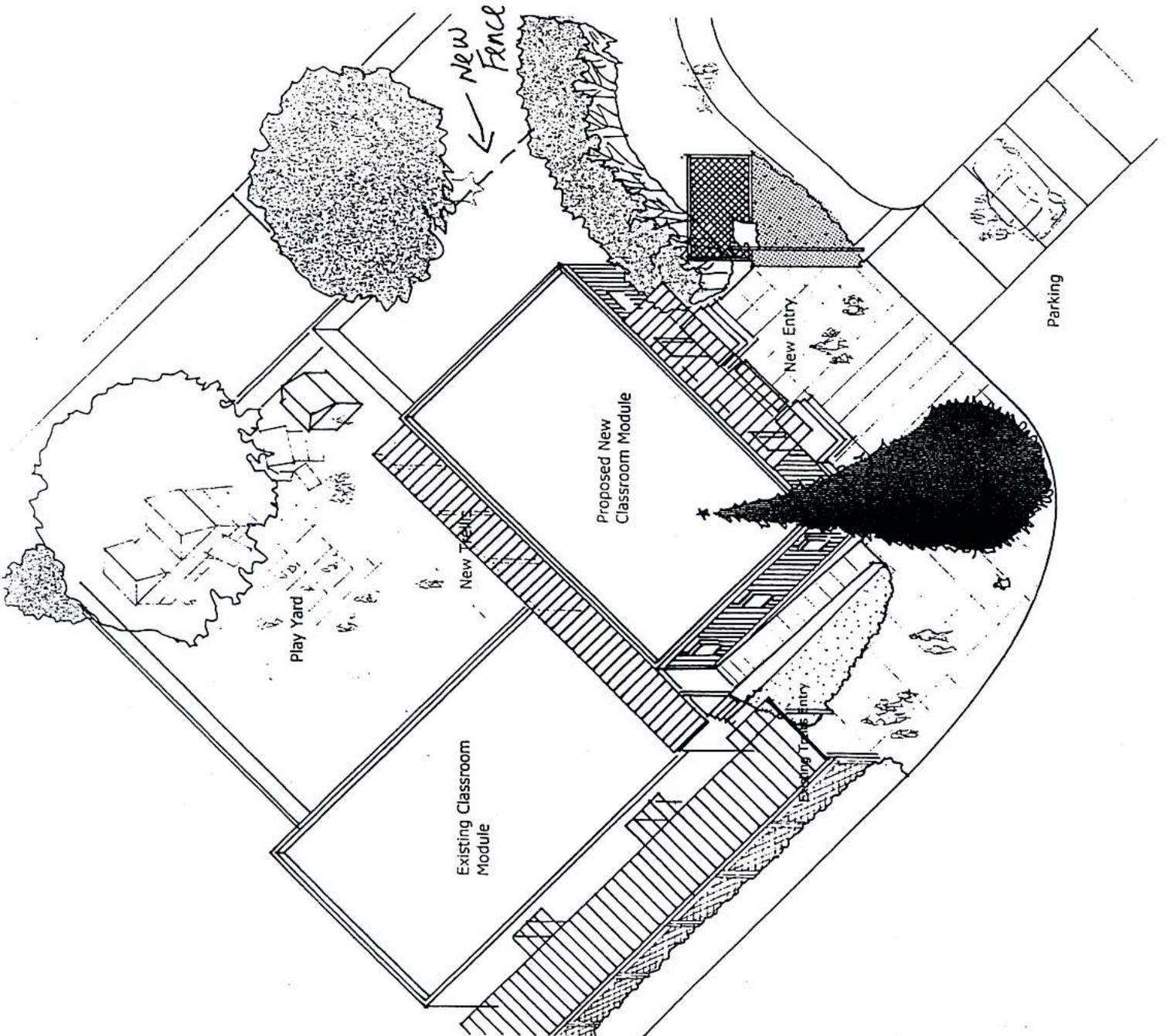
~~personally known to me~~ OR  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sharon Barker  
Notary public

Exhibit "A"



PROPOSED ADDITION

AERIAL VIEW



### Proposal for Expansion

Due to the demand of Atherton residents for an increase in Playschool's services, Knox Playschools, Inc. proposes to double our classroom space with the addition of a 2 classroom portable building. The 36' x 60' modular would be installed adjacent to the current classrooms in an unused portion of Holbrook-Palmer Park. Doubling our capacity would allow Playschool to admit more Atherton residents to its preschool programs. It would also permit the addition of some programs such as classes for 2 and 5 year olds, Mom's groups, and extended care.

- ❖ Classrooms are brought to the site in 3 12' x 60' pieces and then assembled
- ❖ The water main that feeds the sprinklers behind the Carriage House would be rerouted
- ❖ Sewer and electric line connections are straightforward
- ❖ The foundation from the old greenhouse would be removed and a new foundation constructed
- ❖ 2 small fruit trees that were planted last year would have to be relocated
- ❖ No additional trees will be interfered with
- ❖ The walking path and oleander will be preserved
- ❖ The current trellis and walkway along the side of the building would be replaced by an ADA approved ramp and new trellis
- ❖ The position of the building abides by the 50' setback from the Felton Gables property line that is required for schools
- ❖ Discussions are taking place regarding the placement of the new side fence
- ❖ The fenced play yard will be redone, preserving the redwood play structure that Playschool built in 1999
  
- ❖ The siding will be lapped horizontally and painted to match the current building
- ❖ Lattice work will front the building to disguise the paneling and tie the two buildings together harmoniously
- ❖ Landscaping will be prevalent, tasteful, and compatible with the current landscaping
- ❖ Classrooms will be surrounded by trees and inconspicuous
- ❖ Concrete in front of the new entryway will be aggregate to match the current walkway
  
- ❖ Parking will remain adequate as drop-off and pick-up times for classes will be staggered



- ❖ Knox Playschools, Inc. acquired the Playschool in 1998 from the Junior League of Palo Alto-Mid Peninsula
- ❖ 3 year lease with the Town of Atherton expires in June of 2001
- ❖ Facility includes a 2 classroom modular building, fenced backyard, and shared use of the paved area behind the adjacent Carriage House
- ❖ Licensed by the State of California for 40 children but allow only 32 to attend at any one time
- ❖ NAEYC accredited (only 7% of preschools nationwide have achieved this distinction)
- ❖ Serves children aged 18 months to 6 years
- ❖ Children are grouped into classes by age:  
Mommy and Me is for 18 months-2 ½ year olds  
Preschool is for 2 ½-3.8 year olds  
Pre-Kindergarten is for 3.9-5 year olds
- ❖ Hours of operation are M-F 8:30 a.m. – 12:00 noon and M-Th 1:00 – 4:00 p.m. (Tuesdays until 4:30 p.m.)
- ❖ Classes follow a school calendar with an additional 6 week summer program
- ❖ Currently 90 children are enrolled in all classes, including 44 Atherton residents
- ❖ Atherton residents are given priority for admission
- ❖ Number of Atherton residents served has increased in each of our 3 years  
25 in 1998-99  
37 in 1999-00  
47+ in 2000-01
- ❖ Our waitlist numbers over 250, with 65 children from Atherton

1. The Entity, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy. (CG 20 10 11 85).
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. The Insurance Company agrees to waive all rights of subrogation against the Entity, its elected or appointed officers, officials, agents, and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the Agency. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice (10 days for non-payment) by certified mail, return receipt requested, has been given to the Entity.
5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### ***Verification of Coverage***

Contractor shall furnish the Entity with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

***Subcontractors:*** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.



**Administrative Offices**

91 ASHFIELD ROAD  
ATHERTON, CALIFORNIA 94027-3896  
(415) 325-4457  
FAX (415) 688-6528

**TOWN OF ATHERTON  
PLANNING COMMISSION  
CONDITIONAL USE PERMIT**

THIS IS TO CERTIFY THAT the Atherton Planning Commission at a regular meeting thereof, held on Wednesday, January 24, 2001 did grant a Conditional Use Permit to Knox Playschools, pursuant to Atherton Municipal Code Section 17.28 for the addition of a modular building at 150 Watkins Avenue in Atherton (Assessor's Parcel Number 061-310-100). The Permit was approved subject to the following conditions:

1. Construction shall be in compliance with the plans reviewed at the January 24, 2001 Planning Commission meeting. Any substantive changes to the plans shall be reviewed by the Planning Commission.
2. The applicant shall submit a landscape screening plan to the satisfaction of the Zoning/Building Official.
3. The air conditioning unit shall be located away from the residential neighbor's fence and shall be screened and/or painted to match the building.
4. Start time of classes shall be staggered as stated in the application materials to minimize traffic and parking impacts.

  
Michael Hood,  
Zoning and Building Official

Effective Date: February 5, 2001  
Atherton, CA

## INSURANCE REQUIREMENTS FOR CONTRACTORS

Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors.

### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Form CG 0001 covering Commercial General Liability on an "occurrence" basis.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### *Minimum Limits of Insurance*

Contractor shall maintain limits no less than:

1. General Liability: (Including operations, products and completed operations.)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

### *Deductibles and Self-Insured Retentions*

Any deductible or self-insured retentions must be declared to, and approved by, the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officer, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### *Other Insurance Provisions*

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:



## 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 JUNE 21, 2006**

**SUBJECT: ADOPTION OF RESOLUTIONS PERTAINING TO THE  
NOVEMBER 7, 2006, GENERAL MUNICIPAL ELECTION**

#### **RECOMMENDATION:**

Staff recommends the adoption of a resolution calling for a General Municipal Election, for the purpose of electing three (3) members of the Atherton City Council, to be held on November 7, 2006; requesting the San Mateo County Board of Supervisors to consolidate the election with any other elections to be held on November 7, 2006; contracting with the Chief Elections Official for the purpose of providing election services; and authorizing the City Manager to sign the service agreement with the County Elections Officer. Further, staff recommends adoption of a Resolution requiring candidates to pay the prorated cost of publication and distribution of the Statement of Qualifications and specifying the length of the Statement.

#### **INTRODUCTION:**

Three terms of the Atherton City Council will expire in November 2006. It is, therefore, necessary to take action to begin the General Municipal Election process. The nomination period opens Monday, July 17, 2006, and closes at 5:00 p.m., on Friday, August 11, 2006, unless an incumbent does not file. In the event an incumbent does not file by 5:00 p.m. on August 11, the filing period will be extended to 5:00 p.m. on Wednesday, August 16, 2006.

#### **ANALYSIS:**

An attached resolution calls for the election, requests the services of the County Clerk/Registrar of Voters to conduct the election, and requests consolidation of the General Municipal Election with the Gubernatorial Election to be held on November 7,

2006. The County Clerk will verify signatures on all nomination papers submitted, monitor polling places, canvass the returns, and report results of said election.

An attached resolution also establishes a deposit requirement in the amount of \$400 for candidates wishing to file a Statement of Qualifications and sets the length of the statement at 200 words (Council can make a change to 400 words). The City Clerk is authorized to publish a notice of election and perform other duties as necessary in relation to the election.

**FISCAL IMPACT:**

An estimated cost of \$10,000 is included in the proposed Fiscal Year 2006/07 City Clerk's budget.

Prepared by:

Approved by:

---

Kathi Hamilton  
Acting City Clerk

---

James H. Robinson  
City Manager

Attachment: Resolutions

**RESOLUTION NO.**

**A RESOLUTION OF THE TOWN OF ATHERTON  
CALLING A GENERAL MUNICIPAL ELECTION  
TO BE HELD ON TUESDAY, NOVEMBER 7, 2006, FOR THE  
ELECTION OF THREE MEMBERS OF THE CITY COUNCIL**

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

**WHEREAS**, the City Council of the Town of Atherton has need to conduct a General Municipal Election on November 7, 2006, for the purpose of electing three members of the Atherton City Council to four year terms which will expire during the month of November, 2010; and that the polls for said election will be open from 7:00 a.m. to 8:00 p.m.

**WHEREAS**, due to the economics involved, the public interest would best be served by consolidating such General Municipal Election with any other elections to be held on November 7, 2006, and by contracting with the County of San Mateo for election services.

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to consolidate said General Municipal Election with any other election to be held on November 7, 2006; and

**BE IT FURTHER RESOLVED** that the City Manager be and he is hereby authorized and directed to enter into a contract with the Chief Elections Official of the County of San Mateo for the purpose of providing election services in connection with said General Municipal Election; and

**BE IT FURTHER RESOLVED** that the candidates for election may file nomination papers between 8:30 a.m. on July 17, 2006 through 5:00 p.m. on August 11, 2006.

\* \* \* \* \*

*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 June, 2006, by the following vote:*

*AYES: COUNCILMEMBERS:  
NOES: COULCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:*

\_\_\_\_\_  
Chares E. Marsala, MAYOR  
TOWN OF ATHERTON

ATTEST:

---

Kathi Hamilton, Interim City Clerk

APPROVED AS TO FORM:

---

Marc G. Hynes, City Attorney

**RESOLUTION NO. 06-**

**A RESOLUTION OF THE TOWN OF ATHERTON REQUIRING  
CANDIDATES TO PAY THE COST OF PUBLICATION AND DISTRIBUTION  
OF THE STATEMENT OF QUALIFICATIONS WITH THE SAMPLE BALLOT  
AND SPECIFYING THE LENGTH OF THE STATEMENT  
AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 7, 2006**

**WHEREAS**, Section 13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for municipal election, including costs of the candidate statement;

**BE IT RESOLVED** by the City Council of the Town of Atherton that each candidate who requests that a Statement of Qualifications be published and distributed with the sample ballot for the General Municipal Election, to be held November 7, 2006, shall be charged a deposit of \$400 to cover the cost of publication of such Statement of Qualifications, including the cost of translation of such statement into Spanish and Chinese, if requested by the candidate.

**BE IT FURTHER RESOLVED** that such Statement of Qualifications may not exceed two hundred words in length.

**BE IT FURTHER RESOLVED** that such statement will be the only material sent with the sample ballots and no other material will be included for distribution.

\* \* \* \* \*

*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 \_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:*

AYES: COUNCILMEMBERS:  
NOES: COULCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

ATTEST:

\_\_\_\_\_  
Charles Marsala, 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**

**FROM: JAMES H. ROBINSON, CITY MANAGER**

**DATE: FOR THE CITY COUNCIL MEETING OF JUNE 21, 2006**

**SUBJECT: CANCELLATION OF AUGUST CITY COUNCIL MEETING**

#### **RECOMMENDATION:**

It is recommended that if the City Council desires to cancel its regularly scheduled meeting of August 16, 2006, that a motion be made to cancel the August meeting.

#### **BACKGROUND:**

In 2001, 2003, 2004, and 2005, the City Council has canceled its August meeting. If the August 16, 2006, meeting is canceled, the next regularly scheduled meeting of the City Council is scheduled for September 20, 2006. Formal City Council action for cancellation of the meeting should also provide for public comment.