



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

February 16, 2005

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

- 7:00 P.M. 1. **PLEDGE OF ALLEGIANCE**
- 7:03 P.M. 2. **ROLL CALL** Janz, Marsala, Carlson, Conwell, McKeithen
- 7:05 P.M. 3. **PRESENTATION**

 Caltrain – Report on Hold-Out Stations
- 7:20 P.M. 4. **COUNCIL REPORTS**
- 7:30 P.M. 5. **PUBLIC COMMENTS** (only for items which are not on the agenda –
 limit of three minutes per person)
- 7:40 P.M. 6. **STAFF REPORTS**
- 7:45 P.M. 7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT** (Directed
 by Resolution Nos. 99-6 and 02-31)

 Atherton Heritage Association
- 7:55 P.M. **CONSENT CALENDAR** (Items 8 - 18)
8. **APPROVAL OF MINUTES OF SPECIAL AND REGULAR
 MEETINGS OF JANUARY 19, 2005 AND SPECIAL MEETING OF
 FEBRUARY 7, 2005**
9. **APPROVAL OF BILLS AND CLAIMS FOR JANUARY 2005 IN THE
 AMOUNT OF \$637,948**

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR JANUARY 2005

11. ACCEPTANCE OF INVESTMENT REPORT FOR QUARTER ENDED DECEMBER 31, 2004

Recommendation: Note, receive and file.

12. CONTRACT FOR TENNIS PROFESSIONAL SERVICES AT HOLBROOK-PALMER PARK

Recommendation: Approve a two-year contract for services of Tennis Professional Alan Margot.

13. SECOND READING AND ADOPTION OF ORDINANCE – CLAIMS AGAINST THE TOWN OF ATHERTON

Recommendation: Waive further reading and adopt ordinance.

14. PURCHASE OF POLICE VEHICLES FOR FY 2005-06

Recommendation: Authorize the Town to “piggy back” on the City of Redwood City’s bid in order to purchase two marked patrol vehicles and related equipment for the Fiscal Year 2005-06, for a total cost of \$65,788.16.

15. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE 2004 STREET RECONSTRUCTION PHASE 2 PROJECT, NO. 04-002

Recommendation: Approve the plans and specifications, and authorize advertisement of the contract for the 2004 Street Reconstruction Phase 2 Project, No. 04-002.

16. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE SELBY LANE RECONSTRUCTION PROJECT, NO. 04-004

Recommendation: Approve the plans and specifications, and authorize advertisement of the contract for the Selby Lane Reconstruction Project, No. 04-004.

17. RESOLUTION IN SUPPORT OF MENLO COLLEGE DIRECTIONAL SIGNAGE ON INTERSTATE 280 AND BAYSHORE FREEWAY 101

Recommendation: Adopt a resolution requesting Senator Joseph Simitian's assistance to help secure directional signs on both Interstate 280 and Bayshore Freeway 101 for Menlo College.

18. RESOLUTION APPROVING CALTRAIN'S PROPOSED "HOLD-OUT" STATION MODIFICATIONS AND ADVOCATING THE INSTALLATION OF FOUR-QUADRANT GATES AT FAIR OAKS DRIVE AND WATKINS AVENUE TO IMPROVE GRADE CROSSING SAFETY

Recommendation: Adopt a resolution approving Caltrain's proposed "Hold-Out" station modifications and advocating the installation of four-quadrant gates at Fair Oaks Lane and Watkins Avenue.

8:00 P.M. PUBLIC HEARINGS (Items 19 - 20)

19. ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 17.20.040 REGARDING THE USE OF THE HETCH-HETCHY PROPERTY FOR SETBACK PURPOSES

Recommendation: After public hearing, consider comments from the City and County of San Francisco, and determine whether to introduce the ordinance as written or amended waiving reading beyond title. Alternatively, the City Council may decide to take no action pending further developments of the Hetch-Hetchy Right-of-Way.

20. CONSIDERATION OF REVENUE ENHANCEMENT OPTIONS - PUBLIC HEARING REGARDING PARCEL TAX ORDINANCE FOR JUNE 7, 2005 ELECTION

A. CONSIDERATION OF FINANCE COMMITTEE AND STAFF RECOMMENDATION REGARDING REVENUE ENHANCEMENT OPTIONS

Recommendation: Consider and discuss options.

B. PUBLIC HEARING - ORDINANCE CALLING A SPECIAL ELECTION FOR JUNE 7, 2005 TO PLACE A MEASURE BEFORE THE VOTERS REGARDING A RENEWAL OF THE PARCEL TAX

Recommendation: After public hearing, adopt ordinance calling Special Election for June 7, 2005. Hold roll call vote.

C. RESOLUTION SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

Recommendation: Decide whether to authorize the City Council to write ballot argument for the measure, and adopt resolution.

D. SET DATES OF COMMUNITY MEETINGS REGARDING MEASURE

Recommendation: Discuss and select dates for holding community informational meetings regarding the March 8, 2005 Special Election.

9:30 P.M. REGULAR AGENDA (Items 21 - 23)

21. REVIEW AND APPROVAL OF RESIDENT SURVEY REGARDING CALTRAIN

Recommendation: Review the draft survey prepared by the Caltrain Corridor Ad Hoc Sub-Committee, and if appropriate, approve of the survey and direct staff to conduct the survey.

9:45 P.M. 22. LICENSE AGREEMENT – BEAR GULCH COMMUNICATIONS SITE

Recommendation: Approve License Agreement between California Water Service Company and the Town of Atherton for a license authorizing Town's use of California Water Service Company reservoir site for communications equipment and tower and authorize City Manager to execute agreement on behalf of the Town.

10:00 P.M. 23. PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE

Recommendation: Consider and discuss membership in the Peninsula Traffic Congestion Relief Alliance.

10:10 P.M. 24. PUBLIC COMMENTS

10:20 P.M. 25. ADJOURNMENT

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

☛ Please contact the City Clerk's Office at 650.752.0529 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) 752-0529. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



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

January 19, 2005

6:00 P.M.

Meeting Room
Town Administrative Offices

91 Ashfield Road
Atherton, California

Special Meeting

The meeting was called to order at 6:15 p.m.

ROLL CALL

PRESENT: James R. Janz
Alan B. Carlson
Kathy McKeithen
William R. Conwell

ABSENT: Charles E. Marsala (Excused)

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

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

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

RECONVENE TO OPEN SESSION

Report of action taken.

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

No action was taken.

- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to Government Code Section 54956.9 (b)
1 potential case

No action was taken.

ADJOURN

The Special Meeting adjourned at 6:30 p.m.

Respectfully submitted:

William R. Conwell
Mayor



Draft MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
January 19, 2005

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

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

1. **PLEDGE OF ALLEGIANCE**

2. **ROLL CALL**

PRESENT: James R. Janz
Alan B. Carlson
William R. Conwell
Kathy McKeithen

ABSENT: Charles Marsala (Excused)

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

3. **PRESENTATION**

Christine Maley-Grubel, Executive Director, Peninsula Traffic Congestion Relief Alliance, spoke to the Council regarding the organization's activities and requested that Atherton consider joining this Joint Powers Authority, which is funded through C/CAG and the Transportation Authority. Its mission is to reduce the number of single-occupancy vehicles traveling through the County and to improve air quality.

Mayor Conwell suggested that membership in the Peninsula Traffic Congestion Relief Alliance be placed on a future agenda to ascertain Council interest in joining the group.

4. COUNCIL REPORTS

- Council Member McKeithen announced that the next Office of Emergency Services meeting will be held next Thursday at 5:30 p.m. in the Jury Room and the topic of discussion will be tsunami relief and mapping.
- Council Member Carlson stated he attended the Transportation Committee's January 11th meeting and the high points of the meeting included discussion of a channelizing plan for the intersection of Green Oaks and Acorn in Lindenwood, which will be referred to the Lindenwood Homes Association for their input. Another item was a request for speed bumps which was referred to General Plan Committee. Furthermore, there has been a request for the installation of a traffic light at Encinal Avenue and Middlefield Road, and staff is going to put together a report and bring it to the City Council at a future meeting. There was also a request for placing a 4-way stop sign at Alameda and Stockbridge and this was referred to the Police for review and input. In addition, a lengthy discussion ensued regarding the Middlefield Road corridor, and there was a request to look at left turn arrows at Oak Grove and Middlefield at Menlo-Atherton High School. A member of the public reminded the Committee that the Town had a traffic enforcement plan in 1995, and the issue was referred to the Police Department as to the advisability of updating that plan. Traffic accidents are down. The next Transportation Committee meeting will be held on April 12th.
- Council Member Janz announced that he attended the Peninsula 2020 Policy Advisory Committee meeting, the committee formed to come up with a solution to improve connections between the Dumbarton Bridge and the 101. He also attended the Caltrain Corridor Committee and a meeting with other cities to discuss working together on Caltrain corridor related issues, and the goal is to have some impact as a group on what happens along the corridor. He suggested that clusters of cities work together on Caltrain issues to cover the Peninsula. A high speed rail board meeting is coming up in Sacramento on January 26th which he will be attending. In response to Mayor Conwell's question, Council Member Janz replied that he believed that Caltrain would have eminent domain powers over areas to expand the track right of way.
- Mayor Conwell stated that no Airport Roundtable was held this month. He stated that the Criminal Justice Council is in preparation for its annual March retreat. At the C/CAG meeting, there was a discussion on El Camino Real and how to beautify the corridor and he differed with the majority at the meeting. He asked Council Member Janz if he would like to elaborate on the meeting.
- Council Member Janz stated that there were two break out sessions at the C/CAG meeting, regarding the beautification of El Camino Real, as well as housing density, development and the allocation of housing. There will be a need for increased development in existing areas and in areas under development.
- Mayor Conwell continued that he was part of the D.A.R.E. graduation at Encinal School which was inspiring and gratifying.

5. **PUBLIC COMMENTS**

Bob Jenkins, Atherton, regarding the Menlo Park Fire Protection District Board meeting he attended where the recent Atherton fire was discussed. He also announced he was the first resident to attend and complete CERT training.

6. **STAFF REPORTS**

City Attorney Hynes reported out of the closed session held at 6:15 p.m.

A. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code Section 54956.9(c):
3 potential cases

No action was taken.

B. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Government Code Section 54956.9 (b): 1 potential case

No action was taken.

The closed session adjourned at 6:30 p.m.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

Jerry Carlson and Jenny Redo of the Atherton Civic Interest League (ACIL) reviewed the history of the ACIL and its activities, including an update of ACIL's efforts with Selby Lane School, and a briefing on the upcoming school district parcel tax.

Mayor Conwell announced that on the issue of day workers congregating in the Key Market area of Fifth Avenue, he addressed this issue with the County Manager and Board of Supervisors and was told that a focal point for the workers would be created along Middlefield.

John Riggeiro and Jim Dobbie also spoke on the issue of day workers.

CONSENT CALENDAR (Items 8 - 14)

City Manager Robinson announced that Item No. 12 needed a correction.

MOTION – to approve the Consent Calendar with an amendment to Item No. 12, replacing the references to “Committee for Green Foothills” to “Atherton Tree Committee.”

M/S McKeithen/Carlson

Ayes: 4 Noes: 0 Absent: 1 Abstain: 0

8. **APPROVED MINUTES OF REGULAR AND SPECIAL MEETINGS OF DECEMBER 15, 2004**
9. **APPROVED BILLS AND CLAIMS FOR DECEMBER 2004 IN THE AMOUNT OF \$684,260**
10. **ACCEPTED MONTHLY FINANCIAL REPORT FOR DECEMBER 2004**
11. **ADOPTED RESOLUTION NO. 05-29 AUTHORIZING APPLICATION FOR A DEPARTMENT OF WATER RESOURCES URBAN STREAMS RESTORATION PROGRAM GRANT FOR THE UPPER ATHERTON CHANNEL REHABILITATION PROJECT AND COMMITTING THE REQUIRED TWENTY PERCENT LOCAL MATCH**

Adopted Resolution No. 05-29 authorizing staff to submit an application for a Department of Water Resources (DWR) Urban Stream Restoration program grant to rehabilitate the Upper Atherton Channel above Reservoir Road and committing the required local match of 20%.

12. **ADOPTED RESOLUTION NO. 05-30 AUTHORIZING APPLICATION FOR A DEPARTMENT OF WATER RESOURCES URBAN STREAMS RESTORATION PROGRAM GRANT FOR THE ATHERTON CHANNEL AT HOLBROOK-PALMER PARK RESTORATION PROJECT AND COMMITTING THE REQUIRED TWENTY PERCENT LOCAL MATCH**

Adopted Resolution No. 05-30 authorizing staff to submit an application for a Department of Water Resources (DWR) Urban Stream Restoration program grant to restore and expand the Atherton Channel adjacent to the Holbrook-Palmer Park south meadow and committing the required local match of 20% (as amended, replacing the references to "Committee for Green Foothills" to "Atherton Tree Committee.")

13. **HELD SECOND READING AND ADOPTED ORDINANCE NO. 553 AMENDING ATHERTON MUNICIPAL CODE CHAPTER 17.36.050 REGULATING ACCESSORY STRUCTURE SETBACK REQUIREMENTS AND CHAPTER 17.36.055 REGULATING WINDOW OPENINGS ON ACCESSORY STRUCTURES**

Waived further reading and adopted Ordinance No. 553.

14. **APPROVED APPLICATION FOR ARTSHARE GRANT – ATHERTON ARTS COMMITTEE**

Authorized the Atherton Arts Committee to apply for an ArtShare grant in the amount of \$1,000, to help fund a Selby Lane School student mural project, and if granted, authorized the expenditure of \$2,000 from the Rita Corbett Evans Fund (\$1,000 from the proposed grant and \$1,000 from the Rita Corbett Evans fund as matching funds for the grant).

PUBLIC HEARINGS (Items 15 - 16)

John Sisson, Atherton, asked questions regarding services provided.

MOTION - approve an amendment to the agreement with San Mateo County for the provision of Animal Control Services increasing the contract term from three years to five years and amending the payment schedule to reflect a cost reduction.

M/S McKeithen/Janz

Ayes: 4 Noes: 0 Absent: 1 Abstain: 0

19. DISCUSSION AND CONSIDERATION – OPTIONS FOR THE PLACEMENT OF A REVENUE ENHANCEMENT MEASURE ON THE JUNE 7, 2005 SPECIAL ELECTION BALLOT, AND SELECTION OF DATES FOR COMMUNITY INFORMATIONAL MEETINGS (SPECIAL COUNCIL MEETINGS) REGARDING A BALLOT MEASURE

City Manager Robinson presented the staff report.

Council Member Carlson spoke in favor of a parcel tax longer than four years in duration, and indexed for inflation.

Council Member McKeithen stated she would consider a tax along the lines of five years, and the Town should look into impacts to the revenue stream and consideration of a senior exemption, as well as road impact and landscaping fees.

Council Member Janz stated that five years was the minimum that we should consider, and consider an exemption for seniors, as well as programmed increases.

Mayor Conwell stated that the measure needed to be made as attractive as possible to ensure passage at the polls.

Jim Dobbie, Atherton, spoke in favor of both a real estate tax and a parcel tax.

Sam Goodman, Atherton, spoke in favor of outreach meetings being held at schools.

Bob Jenkins, Atherton, stated the Audit Committee prepared a 10-page report on revenue enhancements and cost reductions.

John Sisson, Atherton, stated that one ballot measure was preferable over two.

Jack Ringham, Atherton, stated that extensive citizen input was needed on the alternatives, and that he is concerned with the two-thirds vote needed for passage.

Pat Briscoe, Atherton, stated that realtors should not be taxed.

Phil Lively, Atherton, stated he was in favor of at least a 12-year tax and that a dedicated committee should be formed.

22. PUBLIC COMMENTS

Bob Jenkins, Atherton, stated that in order to simplify the parcel tax, there could be a straight fee regardless of the size of the parcel.

23. ADJOURNMENT

Mayor Conwell adjourned the meeting at 10:19 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk



Draft MINUTES
Town of Atherton
CITY COUNCIL
February 7, 2005

6:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

Special Meeting

The meeting was called to order at 6:03 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

PRESENT: James R. Janz
Alan B. Carlson
Kathy McKeithen
William R. Conwell

ABSENT: Charles E. Marsala (Excused)

3. **PUBLIC COMMENTS – None.**

REGULAR AGENDA

4. **CONSIDER AND DISCUSS POSSIBLE REVENUE ENHANCEMENT OPTIONS, INCLUDING BUT NOT LIMITED TO A BALLOT MEASURE RENEWING THE PARCEL TAX AT A SPECIAL ELECTION TO BE HELD ON JUNE 7, 2005, AND PROPOSED AMENDMENTS TO THE ROAD IMPACT FEE ORDINANCE RELATED TO EXCAVATION PROJECTS**

City Manager Robinson introduced the item and deferred to the City Council's Finance Committee (Council Members Carlson and McKeithen) for a report on the matter.

Council Member Carlson explained that the Finance Committee met on two occasions over the past month and reviewed various proposals with staff. The recommendation is to place a renewal of the current parcel tax, at the current assessment amounts, on the June 7, 2005 ballot, for a five or seven year period. The renewal of a five or seven year tax could take place in 2009 or 2011, respectively, which would be off-year elections where the voters could focus exclusively on the local measure. Since the current assessment level is insufficient in itself to

ensure the Town's fiscal sustainability, the Committee is also recommending that the road impact fee be revised to reflect the cost of damage caused to the Town's streets by construction projects which involve extensive excavation. A professional study was conducted which concluded that the current road impact fee should be raised to cover the excavation damage. Through this change, which is proposed to be considered by City Council at the March 16, 2005 meeting, the Town would be able to replace the parcel tax funds which would normally flow to the Capital Improvement Fund. He added that he would be comfortable with a seven-year tax.

Council Member McKeithen added that the Committee considered a senior exemption, which would cover approximately 25% of residents, and the Committee decided that allowing an exemption could result in an unstable revenue stream. The Committee also considered changes in the amount of parcel tax charged, but concluded that it was best to maintain the same assessment, and make sure that it was worded as a "renewal" of the existing tax to clarify for the residents that it was not a new tax. She also stated that she is open to a five- or seven-year tax.

Council Member Janz stated that there was a lot of sentiment in favor of the parcel tax and he agreed that the amount should be kept the same but the length of five or seven years needed to be decided.

Mayor Conwell stated that Vice Mayor Marsala was unable to attend the meeting but he indicated that he would support a 12-year tax.

Council Members discussed the difficulty in adhering to the assessment over a 12-year time period, noted that 2016 is a Presidential election year, and that voters generally feel comfortable with the familiar.

Sam Goodman, Atherton, stated that the road impact fee should cover more than excavation damage. Council Member Carlson noted that the current road impact fee covered construction road damage.

Pat Briscoe, Atherton, stated the parcel tax campaign needed to be straightforward about the proposal and what the funds were to be used for.

John Sisson, Atherton, stated that the increased cost of employee retirement plans and benefits needed to be addressed.

Council Members responded that the cost of benefits needed to be weighed with the cost of employee turnover and the need for employee retention, and that the Council is staying abreast of increased costs and that certain items are subject to labor negotiation.

Susan Tilling, stated she was not an Atherton resident, and said she heard that some residents did not vote for the parcel tax since they did not realize it was a renewal of the existing tax.

Phil Lively, Atherton, stated he supports the idea of selling the tax as a renewal and supports a seven-year tax.

Mayor Conwell stated that tonight's meeting was a study session and that the Council would not be taking action. A public hearing on the parcel tax election issue is scheduled for the regular City Council meeting of February 16, 2005, at which time the Council could take action on the matter. He further stated that in order to sell the parcel tax, the renewal of the parcel tax needs to be emphasized, he is in favor of a seven-year tax, and we should not have too many items for the voters to consider and keep things straightforward.

5. ADJOURN

Mayor Conwell adjourned the meeting at 6:57 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk

TOWN OF ATHERTON

CLAIMS LIST

January 2005

Payroll Checks	5411 - 5477	\$ 26,566
Electronic Transfers		296,254
A/P Checks	19171 - 19346	315,129
	TOTAL	\$637,948

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 5411 - 5477 (payroll) and 19171 – 19346 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$637,948; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers 5411 - 5477 (payroll) and 19171 - 19346 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$637,948; are true and correct, and are authorized for payment.

William R. Conwell
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	594,862
105	Tennis Fund	
201	Special Parcel Tax	20,933
202	Transportation	
203	Gas Tax Fund	6,968
210	Road Construction Impact Fees	4,380
211	Park Grants Fund	586
213	Library Special Revenue Fund	1,567
401	General Capital Projects	
402	Storm Drainage	
403	Atherton Channel District	
404	Park Playground Improvement	
406	Facilities Construction	
610	Vehicle Replacement	
611	Computer Maint. & Replacement	1,278
612	Administrative Services	7,353
715	Evans Estate	21
	TOTAL	\$637,948



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

SUBJECT: MONTHLY FINANCIAL REPORT, JANUARY, 2005

RECOMMENDATION:

Receive the Monthly Financial Report for January 2005.

INTRODUCTION:

The attached schedules show revenues and expenditures and fund balance for all funds as of January 31st, 2005.

HIGHLIGHTS

General Fund expenditures for the seven months ended January 31st, 2005, have amounted to \$4,184,161 or 52% of the \$8,046,585 budgeted for the fiscal year. For the seven months ended January 31st, 2005, General Fund revenues amounted to \$4,790,100 or 60% of the \$7,985,565 estimated for the year.

By comparison, General Fund expenditures amounted to 53% of budgeted expenditures for the seven months ended January 31st, 2004. Additionally, General Fund revenues amounted to 53% of estimated revenues for the seven months ending January 31st, 2004.

FISCAL IMPACT:

None

Prepared by:

John P. Johns
Finance Director

Approved by:

James H. Robinson
City Manager

TOWN OF ATHERTON
Revenue Summary
For the Month ended January 31st, 2005

Fund	Revenue Source	2004-05 Estimate	Current Period Revenues	Year to Date Revenues	% Received
	Property Tax	\$ 3,060,517	194,558	\$ 2,036,205	67%
	Sales and Use Tax	169,906	5,300	66,022	39%
	Other Taxes	893,010	56,921	480,690	54%
	Licenses & Permits	1,606,949	122,506	1,022,564	64%
	Fines & Forfeitures	50,000	1,365	21,414	43%
	Revenue from Other Agencies	144,500	1,600	198,866	138%
	Charges for Services	354,622	14,439	207,657	59%
	Investment & Rental Income	401,900	8,140	85,671	21%
	Other Revenues	3,000	3,656	20,430	681%
	Total General Fund Revenues	6,684,404	408,485	4,139,519	62%
	Interfund (Operating) Transfers In	1,301,161	-	650,581	50%
101	General Fund Total	7,985,565	408,485	4,790,100	60%
Special Revenue Funds:					
105	Tennis	7,010	1,425	775	11%
201	Special Parcel Tax	1,858,000	192,709	926,851	50%
202	Transportation	178,500	16,073	103,066	58%
203	Street Improvement (Gas Tax)	147,000	9,750	75,524	51%
209	Law Enforcement	100,000	-	-	0%
210	Road Construction Impact Fees	400,000	40,840	249,164	62%
211	State Park Grants Fund	220,000	-	54,400	0%
213	Library	200,000	-	14,219	7%
	Total	3,110,510	260,797	1,423,999	46%
Capital Project Funds:					
401	Capital Improvement	-	-	-	
402	Storm Drainage	-	-	-	
403	Channel Drainage District	48,530	2,828	24,720	51%
404	Park Playground Improvement	2,205	-	-	0%
405	Middlefield Road Grants	-	-	-	
406	Facilities Construction	-	-	-	
	Total	50,735	2,828	24,720	49%
Internal Service Funds:					
610	Vehicle Replacement	66,000	-	33,000	50%
611	Information Technology	98,661	-	49,321	50%
612	Administrative Services	285,815	-	150,074	53%
614	Workers Compensation Insurance	-	-	-	
	Total	450,476	-	232,395	52%
Trust and Agency Funds:					
715	Evans Creative Design	45,150	500	3,130	7%
	Total	45,150	500	3,130	7%
Total Revenues		11,642,436	672,610	6,474,344	56%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended January 31st, 2005

Fund	Description Department	2004-05 Budget	Current Period Expenditures	Year to Date Expenditures	% Spent
101	General Fund				
	11 City Council	\$ 20,204	\$ 1,159	12,099	60%
	12 City Manager	509,226	34,819	294,947	58%
	16 City Attorney	176,228	10,701	72,149	41%
	18 Finance	456,797	23,765	228,906	50%
	25 Building	975,249	59,262	488,770	50%
	40 Police	4,002,909	301,042	2,214,994	55%
	50 Public Works	1,805,972	113,470	872,296	48%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>8,046,585</u>	<u>544,218</u>	<u>4,184,161</u>	<u>52%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	General Fund Total	<u>\$ 8,046,585</u>	<u>\$ 544,218</u>	<u>\$ 4,184,161</u>	<u>52%</u>
Special Revenue Funds:					
105	Tennis	-	180	4,513	
201	Special Parcel Tax	2,591,910	20,933	1,124,387	43%
202	Transportation	211,120	-	25,000	12%
203	Street Improvement (Gas Tax)	147,000	6,968	137,929	94%
209	Law Enforcement	100,000	12,499	78,683	79%
210	Road Impact Fees	400,000	4,380	208,672	52%
211	State Park Grants	80,000	586	7,920	10%
213	Library Fund	49,870	1,567	14,829	30%
	Total	<u>3,579,900</u>	<u>47,113</u>	<u>1,601,933</u>	<u>45%</u>
Capital Project Funds:					
401	Capital Improvement	367,902	-	47,928	13%
402	Storm Drainage	21,394	-	2,963	14%
403	Channel Drainage District	48,530	-	8,038	17%
404	Park Playground Fund	-	-	-	
405	Middlefield Road Grants	-	-	-	
406	Facilities Construction	-	-	997	
	Total	<u>437,826</u>	<u>-</u>	<u>59,926</u>	<u>14%</u>
Internal Service Funds:					
610	Vehicle Replacement	98,853	-	56,774	57%
611	Information Technology	104,625	1,278	12,075	12%
612	Administrative Services	285,815	13,085	190,058	66%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>489,293</u>	<u>14,363</u>	<u>258,907</u>	<u>53%</u>
Trust and Agency Funds:					
715	Evans Creative Design	43,287	21	7,407	17%
	Total	<u>43,287</u>	<u>21</u>	<u>7,407</u>	<u>17%</u>
	Total Expenditures	<u>12,596,891</u>	<u>605,715</u>	<u>6,112,334</u>	<u>49%</u>

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2004-05
As of January 31st, 2005

Fund	Description	Beginning Fund Balance July 1, 2004	Revenues to Date	Transfers to Date	Expenditures To Date	Ending Fund Balance to Date
101	General Fund	6,060,452	4,139,519	650,581	4,184,161	6,666,391
	Special Revenue Funds:					
105	Tennis	11,867	775		4,513	8,129
201	Special Municipal Tax	963,223	926,851		1,124,387	765,687
202	Transportation	145,636	103,066		25,000	223,702
203	Street Improvement (Gas Tax)	45,050	75,524		137,929	(17,355)
209	Law Enforcement	12,174	-		78,683	(66,509)
210	Road Construction Impact Fees	632,420	249,164		208,672	672,912
211	State Park Grants	(5,663)	-		7,920	(13,583)
213	Library Special Revenue Fund	1,075,913	14,219		14,829	1,075,303
	Sub Total	<u>2,880,620</u>	<u>1,369,599</u>	-	<u>1,601,933</u>	<u>2,648,286</u>
	Capital Projects Funds:					
401	Capital Improvement	302,895	-		47,928	254,967
402	Storm Drainage	48,225	-		2,963	45,262
403	Channel Drainage District	404,424	24,720		8,038	421,106
404	Park Playground Improvement	1,309	-		-	1,309
405	Middlefield Road Grants	1,514	-		-	1,514
406	Facilities Construction	65,382	-		997	64,385
	Sub Total	<u>823,749</u>	<u>24,720</u>	-	<u>59,926</u>	<u>788,543</u>
	Internal Service Fund					
610	Vehicle Replacement	449,451	33,000		56,774	425,677
611	Information Technology	106,856	49,321		12,075	144,102
612	Administrative Services	122,618	150,074		190,058	82,634
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	<u>689,796</u>	<u>232,395</u>	-	<u>258,907</u>	<u>663,284</u>
	Trust and Agency Funds					
715	Evans Creative Design	117,129	3,130		7,407	112,852
	Sub Total	<u>117,129</u>	<u>3,130</u>	-	<u>7,407</u>	<u>112,852</u>
	Grand Total	<u>\$ 10,571,746</u>	<u>\$ 5,769,363</u>	<u>\$ 650,581</u>	<u>\$ 6,112,334</u>	<u>\$ 10,879,356</u>



CITY COUNCIL STAFF REPORT

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

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: QUARTERLY INVESTMENT REPORT, FOR THE QUARTER ENDED
DECEMBER 31ST, 2004**

RECOMMENDATION:

Note, receive and file.

INTRODUCTION:

This is the quarterly status report of the Town's investments in the Local Agency Investment Fund (LAIF) and the San Mateo County Investment Pool (SMCIP) for the quarter ending December 31st, 2004.

DISCUSSION

As of December 31st, 2004 the Town had a total investment of **\$11,451,886**. The total interest earning for the quarter ending December 31st, 2004 amounted to **\$66,914**. The funds are invested in the San Mateo County Investment Pool (SMCIP) and the Local Agency Investment Fund (LAIF).

During the fourth quarter of 2004, interest earnings on funds invested with LAIF amounted to an annual rate of 1.85 percent of the average daily cash balance of funds invested. This compares to an annual interest earnings of 2.89 percent of the average daily cash balance of funds invested with San Mateo County Investment Pool.

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

market value of the fixed income securities held by either the San Mateo County Pool or the State of California Local Agency Investment Fund.

Investment at SMCIP: San Mateo County Investment Pool is created and managed by the County Treasurer. As of December 31st 2004, the County's investment pool carried investments with a total par value of \$2.3 billion and an average duration to maturity of 1.6 years. The Town's investment with the San Mateo County Investment Pool as of December 31st amounted to \$8,124,810 or 71 percent of the town's total investment holdings.

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

Investment in LAIF: Local Agency Investment Fund (LAIF) is created and managed by the California State Treasurer as part of the Treasurer's Pooled Money Investment Account (PMIA). According to the State Treasurer, 2,733 local government agencies and special districts participate in LAIF with total investments amounting to approximately \$20 billion or roughly 37 percent of the \$53 billion which State Treasurer manages in the PMIA. (Since LAIF investments are combined with PMIA, the Treasurer does not report the results for LAIF separately).

The Town's investment with LAIF as of December 31st, amounted to \$3,327,076 or 29 percent of the Town's total investment holdings.

The average duration to maturity of PMIA as of December 31st, 2004 was 210 days. Attachment 2 to this report provides a summary of investment holdings for the PMIA as of December 31st, 2004.

FISCAL IMPACT:

Informational only.

Prepared by:

Approved by:

John P. Johns
Finance Director

James H. Robinson
City Manager

ATTACHMENTS:

1. Quarterly investment summary, San Mateo County Investment Pool
2. Quarterly investment summary, State of California Local Agency Investment Fund

COUNTY OF SAN MATEO
ESTIMATED SUMMARY OF POOL EARNINGS
FOR THE 2ND QUARTER ENDING DECEMBER 31, 2004

	<u>12/31/04</u> <u>Par Value</u>	<u>Gross</u> <u>Earnings</u>
<u>Fixed Income Investments</u>		
U S Treasury Notes	\$355,000,000	\$1,573,113
Corporate Notes	\$332,000,000	\$2,785,147
Asset Backed Securities	\$10,297,548	\$12,083
Federal Agencies	\$390,000,000	\$2,482,648
Floating Rate Securities	\$144,000,000	\$251,337
<u>Short Term Investments</u>		
<u>Repurchase Agreements</u>		
Corporate Notes	\$54,000,000	\$542,545
Asset Backed Securities	\$388,926	\$349
Federal Agencies	\$544,000,000	\$1,838,638
Floating Rate Securities	\$93,000,000	\$262,446
Commercial Paper	\$207,000,000	\$132,506
Certificate of Deposit	\$100,000,000	\$13,205
LAIF	\$37,000,000	\$180,388
SUBTOTAL - ACCRUED INCOME	<u>\$2,266,686,474</u>	<u>\$9,874,405</u>
<u>Realized Gain/Loss & Interest Received</u>		
Repurchase Agreements		\$977,894
U S Treasury Notes		\$611,910
Corporate Notes		\$503,466
Asset Backed Securities		\$82,103
Federal Agencies		\$2,068,289
Floating Rate Securities		\$831,095
Commercial Paper		\$328,584
Securities Lending Income		\$132,201
GROSS POOL RATE/EARNINGS*	2.93%	<u>\$15,409,947</u>

<u>POOL BREAKDOWN</u>	<u>Pool 1</u>	<u>Pool 2</u>	<u>Pool 3</u>	<u>TOTAL</u>
Average Balance	227,859,584	500,897,041	1,359,386,216	2,088,142,841
Gross Earnings	1,681,544	3,696,489	10,031,914	15,409,947
Admin Fees	(71,791)	(157,817)	(428,300)	(657,908)
Bank Fees	(90,538)	(60,358)		(150,894)
Net Earnings	<u>1,519,216</u>	<u>3,478,314</u>	<u>9,603,614</u>	<u>14,601,145</u>
Net Earnings %	2.65%	2.76%	2.80%	2.77%

Earnings %'s are based on Q2 04-05 average daily balance of investment pools.
Pool 1 and Pool 2 are charged with bank fees associated with their disbursement/depository activity.

PHIL ANGELIDES
TREASURER
STATE OF CALIFORNIA

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

December 31, 2004			
<u>TYPE OF SECURITY</u>	AMOUNT	PERCENT	PERCENTAGE CHANGE FROM PRIOR MONTH
Government			
Bills	\$ 1,366,649	2.56	-0.10
Bonds	0	0	
Notes	4,995,307	9.34	+0.02
Strips	0	0	0
Total Governments	\$ 6,361,956	11.90	-0.08
Federal Agency Coupons	\$ 5,907,960	11.05	-0.45
Certificate of Deposits	10,857,060	20.31	+0.24
Bank Notes	924,963	1.73	-0.55
Bankers' Acceptances	0	0	0
Repurchases	0	0	0
Federal Agency Discount Notes	8,021,474	15.01	+3.71
Time Deposits	6,445,295	12.06	-0.26
GNMAs	347	0	0
Commerical Paper	7,764,360	14.52	-3.46
FHLMC/REMICS	636,895	1.19	+0.55
Corporate Bonds	1,641,961	3.08	-0.24
AB55	4,893,826	9.15	+0.35
GF Loans	0	0	0
Reversed Repurchases	0	0	<0.19>
Total (All Types)	\$ 53,456,097	100.00	

Average Life of Portfolio as of December 31, 2004 is 210 Days



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: CITY COUNCIL MEETING OF FEBRUARY 16, 2005

**SUBJECT: APPROVAL OF CONTRACT FOR SERVICES FOR ALAN MARGOT,
TENNIS PROFESSIONAL**

RECOMMENDATION

Approve contract for services of Tennis Professional Alan Margot.

BACKGROUND

The Town has previously retained the services of Alan Margot as Tennis Professional at Holbrook-Palmer Park. The previous contract effective March 1, 2003 is due to expire February 28, 2005. Attached is a form of contract based upon the previous contract, for a two-year term through February 2007. Changes have been made relative to hourly rates and duties of the professional, revised from \$80 to \$85 per hour for private lessons. The revisions reflect the actual course of conduct which has occurred between the Town, its employees, and the Tennis Professional. Mr. Margot has provided proof of liability insurance as is required by the contract (attached).

FISCAL IMPACT

A slight increase in revenues to the Town is anticipated as a result of the increase in hourly rates proposed by the contract.

Attachment: Draft Contract
Insurance Certificate

AGREEMENT FOR SERVICES OF USPTA
TEACHING TENNIS PROFESSIONAL ALAN MARGOT

This agreement ("contract") is effective as of March 1, 2005 between the Town of Atherton, California ("Town"), a California Municipal Corporation, and Alan Margot, USPTA "Tennis Professional," ("Tennis Pro") on the following terms and conditions:

1. EMPLOYMENT AS TENNIS PROFESSIONAL

Position:

During the term of the contract, **ALAN MARGOT** shall serve as a Tennis Professional. Tennis Pro shall provide top quality services and instruction to members of the Atherton Tennis Club (ATC) and local area residents, and shall actively pursue fulfilling the Town's Tennis Mission Statement. Tennis Pro shall support the interests of the Town with undivided loyalties.

Tennis Mission Statement

- The Town shall provide Atherton residents an affordable tennis facility and program for recreation and to build a sense of community among the residents.
- The tennis operation should be self supporting and cover the full expenses and capital improvement costs of the tennis facility and programs.
- The tennis facility may be used for tennis instruction to non-residents, providing ATC members and other Atherton residents have first priority.
- All tennis related revenues and expenses shall be approved annually as part of a tennis program budget, which shall be under the direct supervision of the City Manager.

2. INDEPENDENT CONTRACTOR STATUS

The services to be provided, as set forth in the contract, shall be provided by the Tennis Pro as an independent contractor, as defined in Labor Code Section 3353 or as amended, under the control of the City Manager as to the results of the work, but not the means by which such results are accomplished, and nothing herein contained shall be construed to make the Tennis Pro an agent or employee of the Town while providing said services; and, Tennis Pro shall be entitled to no other benefits or compensation except as provided herein.

3. HOLD HARMLESS AND INDEMNITY PROVISIONS

Tennis Pro shall:

A. Hold harmless and indemnify the Town and its officers, employees and agents from and against any and all claims, loss, liability, damage and expense arising from performance of this contract, including claims, loss, liability, damage, and expense caused or claimed to be caused by passive negligence of the Town, its officers, employees, or agents.

B. Defend the Town, its officers, employees, or agents against all matters set forth in A above; provided, however, that this provision does not apply to claims, loss, liability, damage or expense arising from the active negligence or willful misconduct of the Town.

C. Provide general liability and automobile liability insurance in the following minimum limits:

1. \$2 million liability insurance, while on court, for bodily injury to others; and for damage to property not in the tennis professional's care, custody or control

2. Automobile liability in limits of \$500,000 bodily injury and property damage combined.

3. Workers' Compensation Insurance in at least the minimum statutory amounts shall be maintained if Tennis Pro hires any employees to work hereunder.

All liability insurance policies shall specify the Town, its officers, employees and agents as additional named insureds. A certificate of insurance shall be provided to the City Clerk prior to performance pursuant to this contract, which certificate shall provide that it may not be canceled except after 30 days written notice delivered to the City Clerk. Further, any changes in insurance required herein must be approved in writing by Town's City Attorney.

D. Tennis Pro warrants that as an equal opportunity employer Tennis Pro shall comply with applicable regulations governing equal employment opportunity. Neither Tennis Pro nor any of his subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

4. **TERM OF CONTRACT**

A. This contract shall commence effective March 1, 2005, and unless terminated sooner per 4.B. below, terminate on the last day of February, 2007.

B. The City Manager may terminate the contract without cause by giving at least sixty (60) days prior written notice to Tennis Pro. Tennis Pro may terminate the contract without cause by giving at least sixty (60) days prior written notice to the City Manager.

C. The City Manager may terminate this agreement if at any time Tennis Pro is in default in the payment of any fees, portion of net revenue or any other monies required to be paid to the Town, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declare to be of the essence,) upon five (5) days written notice to Tennis Pro and Tennis Pro fails to correct such default within said five (5) day period.

D. This agreement shall automatically terminate on the last day of February, 2007, unless both parties agree in writing to extend the existing terms and conditions for another two year term. The Tennis Pro will be automatically terminated if convicted of a felony.

5. **TENNIS PRO'S DUTIES AND RESPONSIBILITIES**

Tennis Pro will be required to provide the following services:

A. Manage the Town's tennis instruction program, including employment and supervision of all necessary personnel as employees of the Tennis Pro, maintenance of proper records and payments of personnel, including any fringe benefits or other compensation required by law.

B. Conduct programs for all age groups, to include, but not be limited to:

- Large group lessons - 1 to 8 ratio maximum
- Small group lessons - 1 to 4 ratio maximum
- Semi-private lessons - 1 to 3 ratio maximum
- Private lessons - 1 to 1 ratio maximum
- Camps and Clinics - Ratio to be determined
- Adult Jr. leagues - Ratio to be determined

C. Tennis Pro will work closely with the on-site Park Program Manager and the Tennis Committee to create and coordinate a minimum of two (2) tournaments per year designed specifically for members, and two (2) open tournaments per year designed for either adults or juniors (ages 8 – 18). Tennis Pro shall also conduct a minimum of one (1) summer tennis clinic and at least one tennis camp in the spring or summer for adults and/or children (up to the age of 18).

D. Tennis Pro will, at his own expense, provide the necessary equipment to conduct a high-quality tennis instruction program. Tennis Pro may store this equipment in a storage facility at the Holbrook-Palmer Park tennis courts at no cost.

E. Tennis Pro is authorized to use space in the Main House at Holbrook-Palmer Park to conduct administrative duties including, but not limited to, registration, communications and educational purposes that relate to tennis instruction and recreation. Town will provide routine custodial services for the space. No modifications to the area used by Tennis Pro may be made without written approval of the City Manager.

F. Tennis Pro shall not charge personal toll telephone calls to the Town's telephone.

G. Tennis Pro shall work closely with the Park Program Manager to facilitate proper participant enrollment and manage participant's transfers and funds.

H. Tennis Pro will be responsible for conducting registration for Town-sponsored group lessons, tournaments, and mini-group participants through the normal Town registration procedures. Tennis Pro may cancel a class if minimum registration is not met. Tennis Pro shall be responsible for registration of all individuals, taking any kind of private, semi-private, group lessons and clinics.

Tennis Pro will not allow any person to participate in any tennis lessons unless that person has registered; each participant must sign a Town indemnification/hold harmless agreement in order to play or participate in any tennis event or activity. No person who does not have a tennis key may play on the Holbrook-Palmer Park tennis courts unless he is a guest of an ATC member, or he is engaging in activities and programs operated by the Tennis Pro.

Payments for all monthly-tennis revenue (10% of gross revenue) shall be paid by check made payable to the "TOWN OF ATHERTON."

I. The priorities for the Tennis Pro are, in order of importance, as follows:

- 1st priority Meet the goals and objectives of the Tennis Program.
- 2nd priority Develop rapport with members – provide user friendly service.
- 3rd priority Remain loyal to Town Parks and Recreation Commission Program, and Holbrook-Palmer Park Foundation.
- 4th priority Increase sale of keys and revenue to the Town.
- 5th priority Maintain rapport with staff – for harmonious coordination.
- 6th priority Develop rapport with students – to demonstrate personal interest.
- 7th priority Maintain teaching ability – provide top quality instruction.
- 8th priority Maintain playing ability - maintain perspective on match play and enthusiasm for teaching.

J. Tennis Pro is granted the use of the southeast tennis courts, i.e. Courts No. 5 and 6, at Holbrook-Palmer Park for the purpose of giving individual and mini-group tennis lessons and instruction during the hours of 7:30 a.m. through sundown, Monday through Friday, and Saturdays from 8:00 a.m. through 5:00 p.m. In the event Tennis Pro is not using those courts, they shall be made available for public play. Additional tennis courts may be made available for use by Tennis Pro for lessons and instruction upon prior approval of the City Manager. The City Manager may authorize use of said courts on occasion, for special Town events, giving no less than seven (7) days notice to Tennis Pro of this use. Tennis Pro will post a sign on the fence of the southeast court explaining its special use and indicating how registration can be accomplished.

K. Tennis Pro shall provide professionally competent and experienced instructors to meet instructional obligations. All employees of Tennis Pro shall be neatly dressed and courteous at all times. Tennis Pro shall cover each of said employees with Workers' Compensation insurance. Tennis Pro shall furnish the City Manager with a certificate of statutory coverage therefore. Instructors shall be employees of Tennis Pro, and not Town. The City Manager may observe Tennis Pro's personnel on a periodic basis to determine that such personnel are providing instruction in a professional, competent, and courteous manner. Pursuant to this periodic review, the City Manager may determine Tennis Pro's satisfactory performance of this contract.

L. All lessons taught for the ATC by Tennis Pro shall be given at Holbrook-Palmer Park, unless the City Manager gives prior approval.

M Tennis Pro shall follow the daily rules of work listed below:

- 1. Arrive at courts at least ten minutes before lesson time.
- 2. If courts are set, allow enough time to roll-dry all the puddles prior to lesson time.
- 3. Stay on schedule so all lessons and meeting start and finish on time.
- 4. When opening, get out all carts, ball machines, and ball pick-up devices to be used that day.
- 5. When closing, be sure all equipment is put away and storage facility door is

- locked.
6. Insure that proper tennis attire is worn at all times. Proper tennis attire includes tennis shoes, tennis shorts, tennis skirts, tennis dresses, collared tennis shirts, classy T-shirts and tennis warm-ups. It does not include black-soled running shoes, running shorts and swim suits.
7. Pick up balls and retrieve any that went over the fence (but not on Felton Gables Property) after each lesson, or at least at the end of teaching for the day.

N. All tennis class lists and records originally acquired through association with the ATC shall remain the confidential property of the ATC for the term of this contract, regardless of location at which lesson is given, and shall not be used or taken by Tennis Pro for any other purpose other than for the sole use of the ATC.

ATC Members, followed by Town residents, shall have priority over non-members in registration for instruction.

Tennis Pro shall be responsible for the behavior of all participants in the Town's tennis instruction program while in the tennis area. Tennis Pro shall ensure that all participants in the Town's tennis instruction program comply with club rules regarding use of courts and other facilities, and control of noise.

6. RATE AND REE SCHEDULE:

Tennis Pro shall charge the following rates;

Rates (per hour): Private Lessons: \$85.00 Per Hour

Clinics, tournaments and lessons of less than one hour shall be less than the hourly rate (pro rata).

7. RESPONSIBILITIES OF TOWN

Town shall be responsible for:

- A. Publication of all Town-sponsored tennis programs, clinics and events in brochures, the ATC newsletter, or in local newspapers.
- B. Maintenance of tennis courts, fencing, nets, wind screens, water fountains, shelters, benches, pathway landscaping, trees, ball machine, and electrical service affecting the tennis courts.
- C. Providing office space, desk, miscellaneous furniture, electricity, ball machine, rollers and/or squeegees, and use of Town photocopier.

- for
- D. Installation, maintenance and monthly fees associated with a telephone or pager, and telephone answering machine or voice mail.

8. PAYMENT TO TOWN BY TENNIS PRO

Tennis Pro shall pay the Town ten percent (10%) of his gross revenues on the last day of each month.

Tennis Pro shall submit a record of all lessons, clinics, etc. taught or held, and include the names of each person, date of lesson, etc. and time expended for each lesson, amount charged/collected, with a summary sheet showing total hours taught and total (100%) of the money collected.

Tennis Pro shall include, with the above records, a check representing payment for ten percent (10%) of the total income shown by such records made payable to "Town of Atherton" and submit all information to the Holbrook-Palmer Park Program Manger at 150 Watkins Avenue, Main House, Atherton. Said payments shall be made on the last day of each month.

9. AUDIT

Once during each year of the term of this contract, and at any one time in the year following the termination of this contract, the City Manager may cause an audit of Tennis Pro's business within the Town, by an independent accountant selected by the City Manager. If any monthly or annual statement of gross revenues submitted by Tennis Pro to the Park Program Manager is found to be more than ten percent (10%) less than the amount of Tennis Pro's actual gross revenue for the same period, Tennis Pro shall immediately pay to Town the cost of the audit pus ten percent (10%) of the difference together with interest thereon computed at the rate of ten percent (10%) per annum. Otherwise, the cost of the audit shall be paid by the Town.

10. FORCE MAJEURE

If the facilities at Holbrook-Palmer Park are damaged or made unusable due to a natural disaster or causes beyond the control of the Town, the parties will be relieved of their mutual obligations under this contract. When the affected facilities are again deemed to be useable by the City Manager, the contract will be considered to be resumed.

11. PERFORMANCE REVIEWS

Tennis Pro shall be given an annual evaluation by the City Manager to review the performance of this agreement. Other reviews may be scheduled as agreed upon or as necessary by either party. Any notice given pursuant to this contract shall be considered complete upon hand delivery or three days after mailing, postage pre-paid as follows:

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

TENNIS PRO

Alan Margot
325 M Sharon Park Dr.
Menlo Park, CA 94025

Dated: _____

By: _____
WILLIAM R. CONWELL, Mayor
Town of Atherton

Dated: _____

By: _____
ALAN MARGOT, Tennis Professional

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: MARC G. HYNES, CITY ATTORNEY

DATE: CITY COUNCIL MEETING OF FEBRUARY 16, 2005

**SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE – CLAIMS
AGAINST THE TOWN OF ATHERTON**

RECOMMENDATION

Hold second reading of ordinance by title only, waive further reading and adopt ordinance.

BACKGROUND

At the regular meeting of January 19, 2005, the City Council held first reading of an Ordinance adding Chapter 1.22 to the Atherton Municipal Code pertaining to claims against the Town of Atherton. A public hearing was held and there were no comments from the public. The Ordinance was introduced for first reading by unanimous vote of the Council Members present, without amendment.

Attached is the staff report which was presented for the first reading of the Ordinance.

At this time, it is in order to hold second reading of the ordinance by title only, waive further reading and adopt the ordinance.

Prepared by:

Approved by:

/s/ Marc G. Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachments: Staff Report of January 19, 2005
Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADDING CHAPTER 1.22 TO THE ATHERTON MUNICIPAL CODE PERTAINING TO
CLAIMS AGAINST THE TOWN OF ATHERTON**

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

SECTION 1: Chapter 1.22 consisting of Sections 1.22.010 through 122.050 is hereby added to the Atherton Municipal Code to read as follows:

"Chapter 1.22 **CLAIMS AGAINST THE TOWN OF ATHERTON**

Section 1.22.010 **Authority.** The Chapter is enacted pursuant to Section 935 of the California Government Code.

Section 1.22.020. **Claims Required.** All claims against the Town of Atherton for money or damages not otherwise governed by the Tort Claims Act, California Government Code Sections 900 et seq., or another state law (hereinafter in this Chapter, "claims") shall be presented within the time, and in the manner, prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this chapter.

Section 1.22.030. **Form of Claim.** All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by California Government Code Section 910.

Section 1.22.040. **Claim Prerequisite to Suit.** In accordance with California Government Code Sections 935(b) and 945.6, all claims shall be presented as provided in this section and acted upon by the City Council prior to the filing of any action on such claims and no such action may be maintained by a person who has not complied with the requirements of Section 1.22.020 of this Chapter.

Section 1.22.050. **Suit.** Any action brought against the Town of Atherton upon any claim or demand shall conform to the requirements of Sections 940-949 of the California Government Code. Any action brought against any employee of the Town of Atherton shall conform with the requirements of Section 950-951 of the California Government Code."

SECTION 2: The City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, section by section, and word by word and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any sentence, paragraph, section, or word 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.

Introduced this 19th day of January, 2005.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the 16th day of February, 2005, by the following vote:

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

William R. Conwell
Mayor, Town of Atherton

ATTEST:

Linda Kelly, 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: ROBERT BRENNAN, POLICE CHIEF

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

SUBJECT: BLACK AND WHITE PATROL CAR PURCHASE

RECOMMENDATION:

Authorize the Town to “piggy back” on the City of Redwood City’s bid in order to purchase two marked patrol vehicles for the Fiscal 2005-2006 budget cycle, for a total cost of \$65,788.16.

INTRODUCTION:

The history of replacing vehicles in the Police Department over the past few years has been to rotate the vehicle with the highest mileage or maintenance cost. The mileage mark of replacing vehicles has been at approximately 75,000 miles. This standard has in the past required the replacement of three marked cars per year. During the 2003-2004 budget cycle, the Police Department deferred purchase or replacement of any marked patrol vehicle in the fleet. One marked car was replaced in January of 2003 that had been ordered and purchased during the 02-03-budget cycle. Two vehicles were replaced during the Fiscal 04-05 cycle. During the last 4 years the Police Department has reduced the number of vehicles in the fleet by 5. The vehicles that were eliminated were for special service, but seldom used vehicles. They included two pool cars, an evidence van, a training motorcycle and a spare motorcycle were also eliminated from the fleet. The current rotation has reduced the need of replacement from three cars per year to two marked cars per year.

ANALYSIS:

Because of reduction in the fleet and not purchasing marked patrol vehicles during the 03-04 fiscal year, the mileage and maintenance costs of the existing patrol fleet has been mounting. By allowing the Police Department to place our order during the last quarter of the fiscal year, we assure

ourselves of vehicle delivery during the Summer of 2005, no cost increase for 2006 cars, avoid the plant shutdown for re-tooling and subsequent late fall delivery. Even with a summer delivery, it is not expected the vehicles will be equipped for service until late September. This will still put these vehicles in service three or four months sooner and decrease the risk of loss of service to the residents of Atherton because of a shortage of vehicles due to breakdowns of the current overextended fleet.

FISCAL IMPACT: With the ability to “piggy back” on Redwood City’s bid for 6 vehicles, we should see a cost savings by adding our additional two. Last year’s purchase was \$1,800 less than the State bid contract. The cost to the Town of Atherton for **two 2005 Ford Police Interceptors is \$22,894,08 each, plus tax, for a vehicle total of cost \$45,788,16 plus tax. An additional expense of approximately \$10,000 per vehicle is required for purchase and/or installation of required equipment** (in-car camera, moving radar, and mobile radio). **Total replacement cost is \$65,788,16 plus tax.** Approval of the 05-06 ABAG camera grant would see a reduction of \$5,700 of the final amount. Much of the equipment is re-used from the vehicles that will be retired, but in some cases, it is less expensive to replace than recycle. The funds are available from the vehicle replacement account. There is no requirement to augment the current budget.

Prepared By:

Approved:

Robert Brennan
Police Chief

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION
TO ADVERTISE THE 2004 STREET RECONSTRUCTION PHASE 2
PROJECT, NO. 04-002**

RECOMMENDATION:

Approve the plans and specifications, and to authorize advertisement of the contract for the 2004 Street Reconstruction Phase 2 Project, No. 04-002.

INTRODUCTION:

The Fiscal Year 2004-05 adopted budget includes appropriations for street reconstruction in the amount of \$1,272,000. The need for this project resulted from the pavement condition surveys conducted in the summer of 2003.

ANALYSIS:

The Town hired EIS, Inc., using a Metropolitan Transportation Commission grant to survey all the streets in Atherton. The report recommends that all streets with a Pavement Condition Index (PCI) between 0 and 25 should be reconstructed. In addition, the CIP for 2004-05 included several additional streets for reconstruction. Due to favorable bids on previous street reconstruction projects, there is sufficient budget to reconstruct all streets in the 2004-05 CIP and all streets with a PCI of 1 to 25. The streets to be included in Phase 2 are:

Flood Circle
Magnolia Avenue

Linden Avenue
Prior Lane cul-de-sac

Luburnum Road

The Project is budgeted for construction in Fiscal Year 2004-05. The plans and specifications are ready to be advertised for construction.

FISCAL IMPACT:

The Engineer's Estimate for the 2004 Street Reconstruction Phase 2 Project is \$808,522. In addition, a 10% construction contingency of \$80,852 would bring the total estimate to \$889,374. An amount of \$1,272,000 (\$1,130,380 from Parcel Tax funds and \$141,620 from Measure A funds) is budgeted for the project in Fiscal Year 2004-05. The project is scheduled to receive bids on May 17, 2005.

The project will be brought to the City Council at the June 16, 2005 meeting for award of contract. At that time, Council may choose to award the contract or reject all bids. It is anticipated that, if the funding mechanism selected to replace the current Parcel Tax is not approved in the June election, the City Council will choose not to award the contract, and all bids will be rejected. The project is being advertised now so that, should funding become available, the project can be constructed in the summer 2005 construction season.

Prepared By:

Approved:

Duncan L. Jones, PE
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: DUNCAN JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION
TO ADVERTISE THE SELBY LANE RECONSTRUCTION PROJECT, NO.
04-004**

RECOMMENDATION:

Approve the plans and specifications, and to authorize advertisement of the contract for the Selby Lane Reconstruction Project, No. 04-004.

INTRODUCTION:

The adopted Capital Improvement Program (CIP) includes funds for constructing the Selby Lane Reconstruction Project. The need for this project resulted from the pavement condition surveys conducted in the summer of 2003.

ANALYSIS:

The Town hired EIS, Inc., using a Metropolitan Transportation Commission grant to survey all the streets in Atherton. The report recommends that all streets with a Pavement Condition Index (PCI) between 0 and 25 should be reconstructed and that streets between 25 and 70 should be resurfaced. The PCI for Selby Lane ranges from 27 to 53. Staff reviewed the street to prepare a dig-out plan in preparation for resurfacing, and found that the extent of base failure would require dig-outs that would be more costly than a complete reconstruction. For this reason, a complete reconstruction is recommended.

The Selby Lane Reconstruction Project is budgeted for construction in Fiscal Year 2004-05. The plans and specifications are ready to be advertised for construction.

FISCAL IMPACT:

The Engineer's Estimate for the Selby Lane Reconstruction Project is \$1,319,235. In addition, a 10% construction contingency of \$131,924 would bring the total estimate to \$1,451,159. An amount of \$1,100,000 (\$807,098 from Parcel Tax funds and \$292,902 from Capital Improvement funds) is budgeted for the project in Fiscal Year 2004-05.

This estimate has been updated based on current construction costs which have seen a dramatic increase since the original estimate last year. For this reason, the allocated budget is not sufficient and the remaining \$351,159 will need to be re-allocated from the 2005 Street Reconstruction Phase 2 Project, which has a remaining balance, based on the current estimate plus contingencies, of \$382,626.

This project is scheduled to receive bids on May 10, 2005 and will be brought to the City Council at the June 16, 2005 meeting for award of contract. At that time, Council may choose to award the contract or reject all bids. It is anticipated that, if the renewal of the current Parcel Tax is not approved in the June 7, 2005 election, the City Council may choose not to award the contract, and all bids will be rejected. The project is being advertised now so that, should funding become available, the project can be constructed in the summer 2005 construction season.

Prepared By:

Approved:

Duncan L. Jones, PE
Public Works Director

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: CITY COUNCIL MEETING OF FEBRUARY 16, 2005

SUBJECT: RESOLUTION IN SUPPORT OF MENLO COLLEGE DIRECTIONAL SIGNAGE ON INTERSTATE 280 AND BAYSHORE FREEWAY 101

RECOMMENDATION

Adopt a resolution requesting Senator Joseph Simitian's assistance to help secure directional signs on both Interstate 280 and Bayshore Freeway 101 for Menlo College.

BACKGROUND

The Town received a request from Menlo College for a resolution asking Senator Joseph Simitian to assist in having directional signs placed on both Interstate 280 and Bayshore Freeway 101 to Menlo College. The City of Menlo Park has also been requested to adopt a similar resolution.

According to Menlo College, the Director of the California Department of Transportation has the authority to direct District 4 to install appropriate signage as prescribed in their *Traffic Manual* in subsection 2 of Section 4-04.13. Senator Simitian has indicated that he is inclined to make this request if the Council formally requests him to do so by adopting a resolution. Local support is required by Senator Simitian in order to promote this project to Caltrans. Once the resolution is adopted, copies will be sent to Senator Simitian and Menlo College.

Menlo College believes that highway signage would be helpful for anyone attempting to locate the college. Such signage exists for other colleges and universities.

Attachments: Letter from Menlo College
Proposed Resolution

Resolution No. 05-___

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
REQUESTING SENATOR JOSEPH SIMITIAN’S ASSISTANCE WITH DIRECTIONAL
SIGNAGE BEING PLACED ON INTERSTATE 280 AND BAYSHORE FREEWAY 101 TO
MENLO COLLEGE**

WHEREAS, Menlo College first opened as a two-year junior college in 1927 and in 1986 Menlo College began offering only four-year programs; and

WHEREAS, Menlo College is the venue for many athletic, academic, and social activities with other institutions of higher learning; and

WHEREAS, Over 20% of the Menlo College student body comes from the far reaches of the globe, and is a significant destination for visitors to the San Francisco Peninsula; and

WHEREAS, Menlo College is within the Town of Atherton; however, freeway and major highway exits are in the City Menlo Park.

NOW, THEREFORE, be it resolved by the City Council of the Town of Atherton that the Town hereby respectfully requests Senator Joseph Simitian’s support in placing appropriate directional signs on Interstate Highway 280 and Bayshore Freeway 101 for the purpose of assisting the motoring public in accessing Menlo College.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 16th day of February, 2005 by the following vote:

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

William R. Conwell, Mayor
Town of Atherton

ATTEST:

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Linda Kelly
Acting City Clerk

Marc G. Hynes
City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: DUNCAN L. JONES, PUBLIC WORKS DIRECTOR

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: RESOLUTION APPROVING CALTRAIN'S PROPOSED "HOLD-OUT"
STATION MODIFICATIONS AND ADVOCATING THE INSTALLATION
OF FOUR-QUADRANT GATES AT FAIR OAKS LANE AND WATKINS
AVENUE TO IMPROVE GRADE CROSSING SAFETY**

RECOMMENDATION:

Adopt a resolution approving Caltrain's proposed "Hold-Out" station modifications and advocating the installation of four-quadrant gates at Fair Oaks Lane and Watkins Avenue.

BACKGROUND:

Caltrain is proposing to modify the Atherton train station platforms to eliminate the center platform. A center requires trains to "hold-out" before entering the station whenever there is a train in the opposite direction in the station. This requirement is for the safety of passengers who may be on the center platform. The modified plan would construct a new platform for the northbound track on the east side of the tracks. The center platform would be removed and a fence would be installed. Passenger would access the northbound platform using a gated pedestrian crossing at the north end of the platform, along Fair Oaks Lane.

The new station would also resurface the southbound platform to raise it to the current eight inches above top of rail standard. Both platforms would have shelters, platform lights, benches, trash receptacles, signs, communications speakers, electronic message boards and wheelchair lifts. The new lights would match the existing platform lights. The shelters would be small canopy shelters with hip roofs and painted to match the color of the existing station. The modifications would create a station very similar to the station at Menlo Park.

The project will also replace the at-grade crossings at Fair Oaks Lane and Watkins Avenue with the current standard concrete track crossings. The crossing material will be extended beyond the roadway to provide pedestrian crossings at Fair Oaks Lane for access to the northbound platform and at Watkins Avenue to connect the walking paths on both sides of the tracks. Pedestrians at Fair Oaks Lane will be protected by new pedestrian gates. Pedestrians at Watkins Avenue will be protected by the existing vehicle gates. No additional vehicle gates are included in the project.

The Caltrain Corridor Subcommittee considered this item at their November 9, 2004 meeting recommended that the project be approved by the City Council in order to express to Caltrain the Town's support of modifying the station, both to improve the safety of the station, and to show commitment for the station continuing to serve the Town of Atherton. The 65% plans and specifications were received from Caltrain in January, reviewed by staff, and discussed at the Subcommittee's February 1, 2005 meeting. Comments were sent to Caltrain for clarifications and revisions to the plans. The Caltrain Subcommittee recommended approval of the station plans and specifications with the comments incorporated.

The Caltrain Subcommittee is also is considering the requirements for creation of an official Quiet Zone through Atherton. The Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Parts 222 and 229, developed by the Federal Railroad Administration (FRA) is scheduled to become effective on April 1, 2005 to create a mechanism for municipalities with railroad at-grade crossings to create Quiet Zones by implementing supplemental safety measures (SSM) which would improve the safety of the crossing sufficient to allow the trains to stop sounding their horns. Using the FRA Quiet Zone Calculator, the *Risk Index with Horns* for both crossings would be 35,157.29, the *Nationwide Significant Risk Threshold* is 16,988, the *Quiet Zone Risk Index* with no SSM is 58,642.36, and the *Quiet Zone Risk Index* with four-quadrant gates as the SSM is 13,487.74. "The risk index is basically the predicted cost to society of the casualties that are expected to result from the predicted collisions at a crossing." Federal Register Vol. 68, No. 243 Pg.70684. This indicates that the crossings will be significantly safer with the four-quadrant gates and no horns than they are with the current configuration and the trains sounding their horns.

Under the federal rule, only a municipality can implement a Quiet Zone. The City Attorney issued a legal opinion, attached, regarding the City's liability exposure for installing SSM and implementing a Quiet Zone under the new FRA rule.

The requested resolution will approve of the station modifications to encourage Caltrain to continue with the project and implement it as soon as possible. The requested resolution will also encourage Caltrain to include four-quadrant gates in the station modification project.

FISCAL IMPACT:

There is no fiscal impact to the Town of Atherton for the station modification project. Caltrain's budget for the project is \$2 million. Currently the project estimate (prepared by Caltrain's consultant) exceeds the budget. Staff has been working with Caltrain to trim lower priority items from the project.

The four-quadrant gates are estimated to cost \$500,000 for both crossings. Staff is seeking more detail from recently constructed projects to refine this estimate. Currently the gates are not funded.

Staff is seeking grant funds to pay for the gates. The requested resolution is intended to encourage the California Public Utilities Commission (CPUC), the agency responsible for crossing safety in California, to request Caltrans to allocate Section 130 grade crossing upgrade grant funds for the Atherton four-quadrant gates.

Prepared by:

Approved by:

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

James H. Robinson
City Manager

Attachments:

Quiet Zone Legal Opinion
Proposed Ordinance

RESOLUTION 05-__

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
APPROVING CALTRAIN’S PROPOSED “HOLD-OUT” STATION MODIFICATIONS
AND ADVOCATING THE INSTALLATION OF FOUR-QUADRANT GATES AT FAIR
OAKS LANE AND WATKINS AVENUE TO IMPROVE GRADE CROSSING SAFETY**

WHEREAS, Caltrain is proposing modifications to the Atherton train station platforms to eliminate the ‘hold-out’ status of the station; and

WHEREAS, Caltrain has submitted 65% design plans to the Town of Atherton for review and comment; and

WHEREAS, the residents of the Town of Atherton desire that the trains using the Caltrain corridor stop sounding their train horns, except in case of emergency; and

WHEREAS, the Federal Railroad Administration has formulated an Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Parts 222 and 229, that provides for the creation of Quiet Zones.

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

1. The Town of Atherton fully supports Caltrain’s efforts to upgrade the Atherton station to eliminate the “hold-out” status of the station, subject to the comments provided by Town staff (Attached herein as Exhibit “A”); and
2. The Town of Atherton requests that the station modification plans include four-quadrant gates at both Fair Oaks Lane and Watkins Avenue to improve the safety of these crossings sufficient for the Town to request a Quiet Zone according to the new federal train horn rule; and
3. The Town of Atherton requests that the California Public Utilities Commission include the addition of four-quadrant gates for the Atherton grade crossings at Fair Oaks Lane and Watkins Avenue on the Section 130 grade crossing safety funding list as a high priority demonstration 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 16th day of February, 2005, by the following vote:

<i>AYES:</i>	<i>COUNCILMEMBERS:</i>
<i>NOES:</i>	<i>COUNCILMEMBERS:</i>
<i>ABSENT:</i>	<i>COUNCILMEMBERS:</i>
<i>ABSTAIN:</i>	<i>COUNCILMEMBERS:</i>

ATTEST:

William R. Conwell, MAYOR

TOWN OF ATHERTON

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

Marc G. Hynes, City Attorney

Exhibit A

**TOWN OF ATHERTON STAFF COMMENTS
REGARDING PROPOSED “HOLD-OUT” STATION MODIFICATIONS
AND FOUR-QUADRANT GATES**

Based on my review and comments received from the Atherton Caltrain Subcommittee, the following are the Town of Atherton’s comments on the 65% “hold-out” station modification plans:

1. The pedestrian gates on the north side of Fair Oaks Lane are not necessary because there is no sidewalk on the east side of the tracks and pedestrians using this side of Fair Oaks Lane are adequately protected by the existing vehicle gate. In fact, the existing gate on the northeast side is right next to the bushes on the corner of the adjacent property, and the proposed gate is similarly situated, so there will be no space for pedestrians to use the gate if it is installed. There is a dirt path on the northwest side, but it is not an official sidewalk. We can landscape that area to prevent pedestrian use if that will help. If you need to delete items from the plans in order to stay within your budget, these should be the first to go.
2. A new crossing gate is shown on the northeast and southwest quadrants. The existing gates could easily remain to save budget for more important items. Perhaps the southeast quadrant would need to be relocated to properly fit with the pedestrian crossing, but the existing gate could be used, with a pedestrian gate kit added.
3. There does not appear to be space between the pedestrian gate on the southeast side and the wall for pedestrians to walk through to Fair Oaks Lane, and the plan proposes a fence to prevent pedestrians from going on the vehicle side of the gate. There are a new electrical box (probably related to CTX) and an old meter box in the area between the gate and the wall. I suggest that the fence be deleted so that pedestrians bound for Fair Oaks Lane will continue to walk on the street side of the gate (where they will be protected by the vehicle gate as they are now). The pedestrian gate will serve passengers bound for the northbound platform.
4. The PNA and passenger shelters will be a different type than shown in Section 02870 of the specifications. The shelter roof should match as close as possible the hip roof shape of the historic station roof. We understand that the northbound shelters will no have side panels. The southbound shelters should match the northbound shelters, but should have side panels, if possible.
5. The shelter paint colors should be revised to match the existing station colors for the historic Atherton station.
6. Remove the existing floodlights and pole on the southbound platform and add platform lights on the remainder of the southbound platform opposite the new platform lights on the northbound platform. The existing light shown south of the bicycle lockers is the floodlight pole.
7. The new lights on the northbound platform need to be low-level cut-off prism type fixtures that provide light on the platform and not into the back yards of neighbors. The new lights on the

southbound platform do not need to be cut-off lights because the other side is the parking lot and Town Center beyond.

8. On page 157 the northbound platform lights are shown as fixture type H1 square box aluminum (Gardco Square Form 10) with square aluminum poles. As previously discussed, any new lights and poles at the historic Atherton station must match the existing station and platform lighting (as was done at the Menlo Park station). The existing light poles are from Spring City (see www.springcity.com) and are the Edgewater design. The new poles should be the same. Recently we have purchased the Villa globe for our parking lot lights, however there seem to be several types of acorn style globes at the station and in the parking lot. Finding a globe that offers the cut-off feature with a similar style would be more desirable than matching the Villa globe exactly. The Washington series is very close in style and is offered in the “LiteShield” series.
9. On page 37, the proposed passenger shelter is well located in the area next to the oak tree just north of the bicycle lockers, so it will not cause modifications to the parking. The ADA shelter you were discussing will impact parking if the curb is extended. Perhaps you could look at creating a “kiss & ride” area from that shelter to the station. Many passengers are dropped off at this station, and there is no designated place for drop-off.
10. On page 38, the station for the end of fence on the southbound platform is incorrect. It shows 1665+03, but the end of platform is 1665+22.
11. On page 39, for the Watkins Avenue crossing, asphalt should be placed between the grade crossing panels on the south side where the crossing panels line up with walking paths along Watkins Avenue. In addition, where the grades permit, asphalt should be placed on the south side within the Caltrain right-of-way. The Town is planning a project to complete the gap in this walking path, as recommended by the CPUC during their field visit. We would prefer that our contractor not need to construct within the Caltrain right-of-way to complete this project.
12. At both crossings, would it be possible for the new asphalt overlay to extend across the right-of-way so that the Town’s paving contractor will not have to construct within Caltrain right-of-way?
13. The south crossing gate on Watkins Avenue should be moved to provide pedestrian protection for the walkway, as recommended by the CPUC during their field review. The gate would need to be extended to reach the centerline.

Duncan L. Jones, P.E.
Public Works Director
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
650.752.0532



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 FEBRUARY 16, 2005

**SUBJECT: ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION
17.20.040 REGARDING THE USE OF THE HETCH HETCHY
PROPERTY FOR SETBACK PURPOSES**

RECOMMENDATION:

It is recommended that the City Council conduct a public hearing on the subject ordinance, consider comments from the City and County of San Francisco, and determine whether to introduce the ordinance as written or amended waiving reading beyond title. Alternatively, the City Council may decide to take no action pending further developments of the Hetch-Hetchy Right-of-Way.

INTRODUCTION

The City Council granted an appeal of the decision of the Building Official and allowed the property owner at 439 Walsh Road to utilize the Hetch Hetchy property for setback purposes. Thereafter, an ordinance was prepared and reviewed by the Planning Commission which would authorize use of Hetch Hetchy property bordering property in the town for setback purposes. The Planning Commission has approved the Ordinance and recommends its adoption by the City Council subject to hearing comments from the City and County of San Francisco. These comments accompany this report. An e-mail has been received from Stephen Nachtsheim in support of the ordinance. A copy is attached.

BACKGROUND

The City and County of San Francisco acquired property up and down the Peninsula for the underground pipe system routing water from the Hetch-Hetchy Reservoir to the City of San Francisco. This property was acquired in the 1950's by the granting of an approximate 80' wide strip. In exchange for the 80 foot wide property, the former property owner who retained interest in adjacent property was often granted the rights to plant, cultivate, irrigate, harvest and retain

crops and to use the Hetch Hetchy property for pasturage. Further rights allowed the adjacent property owner the ability to construct, maintain, use, repair, replace and renew fences, roads, and streets over and across the Hetch Hetchy land (but not along in the direction of the pipe line or lines). Property owners, with the exception of the limited rights described, cannot construct above ground improvements on the Hetch Hetchy land. The full extent of these surface rights has not, to my knowledge, ever been litigated. The City and County of San Francisco urges its position regarding the scope of these rights. There are approximately 15 properties in the Town of Atherton bordering the Hetch Hetchy property and which have surface rights similar to those described.

ANALYSIS

The attached ordinance will allow properties that border the Hetch Hetchy property to calculate the Hetch Hetchy property upon which they have surface rights as part of their overall lot area for setback purposes. This will allow adjacent property owners to construct improvements up to their rear property line. They may not cross onto Hetch Hetchy property, but can build up to the Hetch Hetchy property. Setbacks will be calculated from the original property line prior to the grant of property to the City and County of San Francisco. For properties that were subdivided following the grant to the City and County of San Francisco, the property line will be deemed to run from the center of the Hetch Hetchy property.

CONCLUSION:

It is recommended that the City Council hold a public hearing, consider all comments on the ordinance, and introduce the attached ordinance , unless revisions are deemed appropriate or the Council decides to take no action. If introduced at this meeting, the ordinance will be considered for final adoption at the next City Council meeting.

FISCAL IMPACT:: None

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/ Marc G. Hynes

Marc G. Hynes, City Attorney

James H. Robinson, City Manager

Attachments: Draft Ordinance
Stephen Nachtsheim E-mail

February 10, 2005

Honorable Mayor William Conwell and
City Council Members for Town of Atherton
91 Ashfield Avenue
Atherton, CA 94027

Re: Town of Atherton; Proposed Ordinance (the "Ordinance") to amend the Atherton Municipal Code to allow homeowners with reserved rights over certain property owned by the City and County of San Francisco ("CCSF") to include portions of CCSF's property as part of their setback requirements

Dear Honorable Mayor William Conwell:

At the request of Marc Hynes, City Attorney for Atherton, I am writing on behalf of CCSF to provide comments to the above referenced Ordinance currently under consideration by the Atherton City Council (the "Council"). We appreciate you bringing this to our attention and providing an opportunity to voice our concerns. While CCSF recognizes and respects that matters of local zoning are within the discretion of the Council, we strongly object to the adoption of the Ordinance. If the Council deems it appropriate to allow reduced or zero line setbacks for any property in Atherton, we respectfully urge that the Council can more appropriately address such matters by way of a variance issued in a case by case manner.

Based on our review of the Ordinance, a related Planning Commission Staff Report for the October 27, 2004 meeting ("Staff Report"), a sample deed ("Deed") and other background information submitted by an adjacent property owner at 439 Walsh Road (copies of which are attached hereto), we are concerned that the Ordinance:

- Confers an overly broad right to abutting property owners based on an inaccurate or incomplete interpretation of CCSF's property interest, and the limited reserved rights encumbering CCSF property. Assumptions that CCSF property is open space are inaccurate, and CCSF reserves the right to construct structures and improvements on our property. See Part A., below.
- Creates a potential public safety hazard by allowing reduced or zero setback requirements. See Part B., below.
- Imposes a burden on CCSF property by exacerbating encroachments and the unlawful and unauthorized use of CCSF property. See Part C., below.
- Runs afoul of various provisions of CEQA. See Part D., below.

For these reasons, my client respectfully requests that the Council cease all steps relating to considering and/or adopting the Ordinance. We respectfully suggest that the Ordinance is unnecessary and overly broad. Requests by individual property owners regarding adjustment of setback requirements can be handled by variance pursuant to an established zoning procedure, and considered on a case-by-case basis, without linking that analysis to a separate property interest in third party property.

A. Covenants in Favor of Grantor are Deed Specific and Limited in Scope.

The portion of CCSF's property located in Atherton was deeded to CCSF prior to 1952 by separate grantors, pursuant to various deeds. Analysis of any reserved rights benefiting parcels adjacent to CCSF's property must be determined on a case-by-case basis by reviewing the particular deed to CCSF in the chain of title for each such parcel.¹

¹ Atherton's Staff Report and the Ordinance appear to assume that all the deeds governing CCSF's property located in Atherton contain reserved rights and covenants similar to those in the

Under the sample Deed, CCSF received fee title to the property, together with all right of the grantors to an adjoining portion of Walsh Road. In addition, CCSF obtained certain rights of ingress and egress across adjacent lands of the grantors, the right to cut fences and install gates for the convenience of CCSF's use of its property, and the right to protect its pipes and other structures or improvements. Attachment 3, p. 1, paragraphs 1-2.

We recognize that the Deed also contains certain covenants in favor of the grantors, including the right to use the deeded property for agricultural use and for fences, roads and utilities to cross over (but not along) the deeded property. Attachment 3, p. 2, sections 1-2. However, those surface rights are limited in scope, apply only to the extent that CCSF is not otherwise using the property, and are conditioned upon non-interference with CCSF's use of the property.

Under California law, courts look to the objective intent of the parties, as evidenced by the language of the deed, in interpreting the rights and obligations of the grantor and grantee.² Another guiding principal of construction provides that encumbrances on property cannot be enlarged to increase the burden on the servient property; such rights must be used so as to impose as slight a burden as possible on the servient estate.³ Given the express language in the Deed, the agricultural use right benefiting the grantor initially applies "until such time as the City requires said land for construction purposes," and thereafter, the grantor's use right pertains only to "such parts of said parcel of land as are not actually needed by the City for the construction, maintenance, repair, operation, renewal and replacement of its aqueduct pipe lines and other structures or improvements, appurtenances and appliances...."

CCSF completed initial construction of the Bay Division 3 and 4 pipelines in this area in 1952 and 1967, respectively. Accordingly, under the express and unambiguous terms of the Deed, the rights of abutting property owners to use CCSF's property for agricultural purposes apply only to the extent that CCSF does not need the area for construction, maintenance, repair, and replacement of its pipelines or any other structures or improvements.

Similarly, cross over rights in the Deed permit the grantor to construct, maintain, and use, fences, roads and utilities over and across the deeded property (but not along in the direction of the City's pipe line or lines); however, the exercise of those rights remains subject to the prior approval of the City's Public Utilities Commission, and is conditioned upon not interfering with, damaging or endangering "in any way any aqueduct pipe lines, and other structures and improvements, appurtenances or appliances, of City." Attachment 3, p. 2, section 2. Again, based on the plain and unambiguous language in the Deed, the grantor's rights are qualified and limited in scope.

One could further argue that the original intent of these reserved rights is no longer being served. At the time CCSF acquired the property, the Hetch Hetchy right-of-way ran through the middle of larger undeveloped tracts of agricultural land. The reservations served to allow the grantor to continue farming on the surface of the right-of-way and to construct and use roads, fences and utilities across the right-of-way to contain livestock and otherwise access to the remainder of their ranch. However, with increasing development over the past 50 or more years, the area surrounding CCSF's property has become primarily residential. Most abutting property owners no longer use their property for agricultural purposes, nor do they have a need (or right) to cross onto property on the opposite side of the right-of-way. Thus, the original intent behind the reservations is arguably no longer being fulfilled.

sample Deed provided by the owners of 439 Walsh Road. Therefore, our analysis set forth herein focuses on the sample Deed. However, please note that this assumption may or may not be accurate; other properties located adjacent to CCSF property may be governed by separate deeds with differing or lesser rights.

² See California Civil Code Sections 1066, 1105, 1636-1639; City of Manhattan Beach v. Superior Court, 13 Cal. 4th 232, 238 (1996).

³ Scruby v. Vintage Grapevine, Inc., 43 Cal. Rptr. 2d 810.

Meanwhile, the surface of CCSF's right-of-way has remained largely undeveloped. However, we must alert the Council that CCSF property is not dedicated open space. The Deed analysis contained in the Staff Report erroneously concludes that CCSF agreed not to construct improvements above ground with the exception of pipe line appurtenances, and further states that this strip of land cannot be improved upon with buildings and provides an open space buffer between properties. See Attachment 1, pp. 1-2. CCSF specifically disputes this analysis.

As detailed above, the reserved surface rights in the Deed apply only to the extent CCSF does not need the property. Such rights do not restrict the ability of CCSF to construct future improvements on the surface. In fact, the language in the Deed specifically contemplates the protection and non-interference with CCSF's "aqueduct pipe lines **and other structures or improvements, appurtenances and appliances....**" [Emphasis added] Attachment 3, p. 2, section 2. We recognize that a covenant exists in the Deed requiring that the "...tops of all of City's pipe lines and conduits shall be laid below the surface of the ground and covered to a depth of not less than 15 inches, excepting pipe line appurtenances which may be constructed flush with or above the surface of the ground." Attachment 3, p. 3, section 5. However, under the plain language of the Deed, this covenant applies only to "pipelines and conduits" being underground; it does not preclude other surface structures or improvements. Therefore, this covenant should be construed narrowly so as to limit the burden on CCSF property, and should not be deemed to apply to any other structures or improvements.

In summary, we reiterate that CCSF owns the right-of-way in Atherton in fee, with no open space restrictions. Reserved rights encumbering CCSF property are limited in scope, apply only to the extent that CCSF is not otherwise using the property, and are conditioned upon non-interference with CCSF's use of the property. CCSF reserves the right to make full use of its property in any lawful manner, including construction, maintenance and replacement of existing and future pipeline facilities or other improvements or structures on our property.

B. Proposed Ordinance Creates a Potential Public Safety Hazard by Allowing Reduced or Zero Setback Requirements.

If the Ordinance is adopted, homeowners likely will build up to the shared property line. In the event PUC also constructs improvements along this portion of the right of way, there is the potential for non-conforming private structures without adequate clearance as may be required under the Atherton Building Code, the Uniform Building Code and any applicable fire code provisions.

As set forth in Section A. above, CCSF owns its property in fee and reserves the right to construct future pipeline facilities or other improvements or structures on its property. As a municipality, CCSF is not subject to local planning and zoning constraints. While CCSF often cooperates voluntarily with local jurisdictions, it would not be required to observe Atherton's setback requirements. Furthermore, CCSF's Public Utilities Commission ("PUC") is embarking on a significant Capital Improvement Program ("CIP") designed to enhance, protect and preserve the integrity of the Hetch Hetchy water delivery system for future generations. We anticipate significant improvements and construction projects throughout our Hetch Hetchy right of way holdings, which may include the Atherton area.

Therefore, the potential exists for structures and improvements to be constructed above and/or below the surface of CCSF's property at or near the property line. We believe this presents the potential for non-conforming private structures without adequate clearance, thereby creating a potential safety and fire hazard for this area. Furthermore, given the location of the existing underground pipelines in this area and clearance needs, any future pipeline(s) may be aligned near the property line. Any structures or improvements on adjacent property that are located at or near the lot line may end up in close proximity to high volume, high pressure aqueduct lines, thereby increasing the possibility of damage to property and the people living there in the event of any breaks or leaks occurring in the pipe lines.

C. Exacerbation of encroachments and the unlawful and unauthorized use of CCSF property.

We appreciate that the Staff Report and your City Attorney's communications with us indicate that the Council's consideration of the Ordinance is proceeding on the understanding that no construction of improvements other than as described in the surface rights may be done on CCSF's property. However, we note that the Ordinance does not explicitly state this, nor does it include reasonable measures to protect CCSF from such encroachments.

In PUC's experience in managing the Hetch Hetchy right of way, we have identified a direct connection between increasing development pressure along the right of way, and an increase in unauthorized and unlawful encroachments onto our property. These encroachments range from fences and backyard extensions to landscaping, putting greens, play structures, and portions of houses and other structures. Collectively, they pose a significant threat to our ability to access and maintain the Hetch Hetchy water delivery system. Currently, numerous encroachments exist along CCSF's right of way on the peninsula, many of which will need to be removed as our CIP program progresses.

Adoption of the proposed Ordinance likely will encourage or exacerbate this problem. By reducing or eliminating setback requirements for abutting property owners, the Ordinance naturally encourages those owners to view CCSF's property as their property and to extend their backyard or side yard improvements into the right-of-way. In particular, we are concerned with the possibility of error in connection with location and construction of home improvements. Additionally, CCSF faces increasing liability risk with unauthorized use of our property, as well as significant cost and expense in connection with policing and bringing enforcement actions to compel removal of such encroachments.

D. The Ordinance does not fit within the specific terms of CEQA categorical exemption Class 5 and no cumulative impacts analysis has been performed to determine the reasonably foreseeable environmental consequences of the ordinance.

According to the Atherton Planning Commission staff report, the proposed Ordinance has been determined to be exempt from the provision of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15305, Class 5. CCSF disagrees with this conclusion and feels that additional environmental review must be undertaken before Atherton can adopt the proposed Ordinance.

The Class 5 exemption (14 CCR Section 15305) can be used only if the Ordinance would "not result in any change in land use or density." Based on our review of the proposed Ordinance, it will directly lead to new residential projects that will increase density. For example, the City Council's recent authorization that allowed 439 Walsh Road to use more of its side yard adjacent to the CCSF right-of-way for an addition will result in an intensification of lot coverage. Depending on the Atherton zoning laws, secondary units or other similar uses and residential remodels or additions also may be allowed under the proposed Ordinance. These activities could increase population density and will result in more lot coverage and impervious surfaces, which in turn impacts surface runoff, visual resources, and wildlife corridors.

In addition, CCSF is unaware of any analysis done to address the cumulative impact that this Ordinance will have on the environment as it relates to the properties in Atherton that are adjacent to the right-of-way. The record indicates that there may be 15 or so properties affected. Given that there are so few properties affected, it should not be difficult to quantify the reasonably foreseeable environmental consequences of the Ordinance and to formulate mitigation measures should such analysis identify environmental impacts. Foregoing such analysis until each individual project is proposed would result in impermissible project segmentation of the environmental analysis for this Ordinance. Further, should such analysis reveal impacts requiring mitigation, then the identification and evaluation of the effectiveness of the mitigation would be impermissibly deferred. There is a long line of CEQA case law that requires the environmental analysis of a "project" to include the cumulative effects of the whole action and to avoid deferral of mitigation for environmental impacts.

For these reasons, CCSF believes that Atherton cannot rely on the Class 5 categorical exemption. Rather, it should undertake new and more comprehensive environmental analysis prior to any action on the proposed Ordinance.

E. Conclusion

In light of the above, my client respectfully requests the following:

1. If you disagree with this opinion, please advise us, in writing, within thirty (30) days of receipt of this letter, of any disagreement and the basis for it;
2. That the Council cease all steps relating to considering and/or adopting the Ordinance, given that it is unnecessary, overly broad, poses a potential public safety hazard, exacerbates unauthorized and unlawful encroachments onto CCSF property, and runs afoul of CEQA. Modification of setback requirements can be more appropriately addressed by way of variance considered on a case-by-case basis without linking such entitlements to encumbrances on third party property; and
3. In the event that you disagree and decide to move forward with adopting the Ordinance, we would request that you consider implementing reasonable conditions and protective measures to protect CCSF from encroachments by abutting homeowners. Specifically, we would like the issuance of any permits or approvals of any plans for improvements to property benefited by the Ordinance to be conditioned upon:
 - (a) A complete and accurate current survey depicting the abutting property and any improvements thereon, and its relationship to CCSF's property. Said survey should be recorded and a copy submitted to CCSF;
 - (b) No structure shall be allowed within 10 feet of CCSF's property line;
 - (c) No doors or pathways shall open directly onto CCSF's property;
 - (d) No private means of access to or use of CCSF's property shall be allowed unless the abutting property owner can demonstrate to the satisfaction of the City of Atherton and PUC that they have a legal right to such access;
 - (e) No encroachments of any kind, including without limitation any structures, additions, fences, awnings, decks, patios, driveways, pathways, parking areas, overhanging improvements, outer buildings, play structures, landscaping, irrigation improvements, or any other encroachments, shall be allowed onto CCSF property by the abutting property owner, regardless of size, scope or nature of any such encroachment, without the prior written consent from the PUC, in its sole and absolute discretion;
 - (f) In the event that a property owner exceeds their rights under any permit issued by Atherton and encroaches upon CCSF property, the City of Atherton and the property owner would be responsible and liable to CCSF; and
 - (g) The Ordinance shall not extend to calculations for purposes of satisfying minimum lot sizes.

If you agree with our analysis and instead decide to address side yard and rear variances on a case-by-case basis, we also respectfully request that you consider implementing these proposed conditions and protective measures (items (a)–(g)). We view these measures as reasonable and prudent, given the increasing development pressure occurring along CCSF's right-of-way. Consequently, CCSF makes a standing request that our Public Utilities Commission receive prior written notice of any zoning application, or hearing concerning a permit or other land use entitlement, including but not limited to CEQA compliance, on property located adjacent to CCSF's property in Atherton. All such notices should be sent to the following address:

San Francisco Public Utilities Commission
Real Estate Services
1155 Market Street, 4th Floor
San Francisco, CA 94103
Attn: Director of Real Estate Services.

In conclusion, CCSF has been a good neighbor to adjacent property owners for many years, and we value our relationship with other local jurisdictions. We look forward to working with our regional partners in addressing matters of importance related to the Hetch Hetchy water delivery system. We thank you for your time and attention and respectfully urge that you do not adopt the Ordinance. Should you wish to discuss this matter, please feel free to contact me at 415-554-4725.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Hazel Brandt
Deputy City Attorney

Enclosures

cc: Marc Hynes (via overnight mail and facsimile)
Cheryl Davis (via facsimile)
Gary Dowd (via facsimile)
Joe Naras (via facsimile)
Jane Herman (via facsimile)
Betsy Lauppe Rhodes (via facsimile)
James Marks (via facsimile)
John Malamut
Vicki Clayton



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: ATHERTON FINANCE COMMITTEE
JAMES H. ROBINSON, CITY MANAGER
JOHN P. JOHNS, FINANCE DIRECTOR**

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: COMMITTEE AND STAFF RECOMMENDATIONS FOR A PROPOSED
ORDINANCE TO RENEW THE PARCEL TAX**

RECOMMENDATION:

- Adopt an ordinance calling for a special election on June 7th, 2005 to renew the Atherton Parcel Tax for a term of either five or seven years with no change in the current maximum levy.
- Consider and provide direction to staff regarding proposed adjustments to road impact fees related to excavation and landscaping

INTRODUCTION:

The following discussion was originally presented at the February 7th, City Council study session. At the aforementioned study session, the City Council had the opportunity to hear testimony of the Finance Committee as well as members of the public. However, the City Council action was deferred to the February 16, 2005 publicly noticed hearing.

DISCUSSION:

At its regularly scheduled meeting of January 19th, the City Council requested the Finance Committee, in consultation with the City staff, to prepare a recommendation to the City Council regarding the amount and duration of a proposed ordinance to renew the Atherton Parcel Tax.

Pursuant to the Direction of Council, staff met with the Finance Committee on January 26th and February 2nd to review an extended version of the intermediate range financial plan.

The extended version of the intermediate range financial plan incorporates approximately \$1.4 million in budgetary savings that the City Council has approved since February 2001 in order to preserve current service levels without sacrificing to existing financial reserves. (The following table provides an itemization of budget savings.)

Description	Budgetary Savings
Adjusting building fees to attain full cost recovery.	\$200,000
Increasing the level of reimbursement from the Gas Tax fund for road maintenance activities performed with resources provided by the General Fund.	\$100,000
Re-negotiating intergovernmental service agreements with the US Postal Service and with Caltrans	\$50,000
Eliminate funding for three full-time equivalent positions (two in Police and one in Administration).	\$312,000
Allocating general fund direct and indirect costs to the Town's capital improvement program.	\$310,000
Increasing compliance with the Town's business license enforcement	\$150,000
Using contractors in-lieu of a permanent staff to perform routine park maintenance.	\$30,000
Establish road impact fund operating transfer at 50 percent of street operating budget	\$200,000
Place a cap on accumulated compensated absences (to be negotiated with city employees).	\$40,000
Reduce unfunded pension liabilities	\$40,000
Total	\$1,432,000

In looking forward to a proposed renewal of a parcel tax, the Finance Committee has considered the following options:

- No change in the scope, duration or amount of the parcel levy;
- Providing an exemption for a select group of residents, such as senior citizens or low income households; and,
- Extending the duration of the parcel tax from four years to five or seven years.

With respect to the first option, the Finance Committee determined that it would be preferable to establish a parcel tax renewal cycle that would occur at a time other than a general election.

With respect to the second option, the Finance Committee noted that the Audit Committee had considered such an exemption in formulating its April, 2004 recommendations on the parcel tax. The Audit Committee chose not to recommend that an exemption be granted to a specific category of homeowners over concerns that such an exemption would result in financial instability due to uncertainties as to how exemptions might affect the income stream from the parcel tax.

Additionally, the Finance Committee had the opportunity to review a stratification of property assessments by property classifications. This analysis indicates that:

- 884 households or 34 percent of the taxable parcels in Atherton have an assessed value of \$500,000 or less.
- While comprising 34 percent of the total number of taxable parcels, the 884 homes with an assessed value of \$500,000 or less comprise only 7 percent of the total assessed value of taxable parcels in Atherton.

Under the provisions of Proposition 13 the assessed value of real property are capped at 2 percent per year unless subject to a change in ownership. Accordingly, the data above suggests that a substantial portion of long-term Atherton residents receive substantial benefit in the form of reduced assessments.

In assessing the merits of renewing the parcel tax for a duration of longer than four years the Finance Committee took note of the fact that, beyond 4 years, an increasing proportion of the parcel tax proceeds would be required to fund current operations.

The effect upon the availability of funding for current operations and capital projects that a renewal of the parcel tax at the current levy but for a longer duration is illustrated in the following table.

	FY 2005	FY 2006	FY 2010	FY 2012
Parcel Tax Levy	\$1,856,000	\$1,856,000	\$1,856,000	\$1,856,000
Less Operating Transfer to General Fund	799,000	818,999	1,146,148	1,222,635
Equals funds available for Capital Projects	\$1,057,000	\$1,037,001	\$709,852	\$633,365
Percentage of Parcel tax proceeds for Capital Projects	57%	56%	38%	34%
Percentage of Parcel tax proceeds for continuing operations	43%	44%	62%	66%

As indicated in the preceding table, if the parcel tax were renewed for an additional five years, at the current level, the amount of parcel tax proceeds needed for continuing operations would increase from \$799,000 in FY 2004-05 to \$1,146,148 in FY 2009-10. Accordingly, the amount of funds available to support capital projects would amount to \$709,852 or \$347,148 less than the amount of funds currently derived from the parcel tax. If a parcel tax were renewed for seven years, the percentage of funds available for current capital projects and current operations would amount to 34% and 66% respectively.

The preceding analysis indicates that should the Council desire to seek a renewal of the parcel tax beyond four years at the \$750 level and to place a priority on the use of such proceeds to

finance current operations, alternative sources of funding will be required to maintain the current level of investment in the Town's capital improvement program.

The Finance and Public Works Departments have retained an engineering consultant to examine possible adjustments to the road impact fee ordinance. Staff has further indicated that adjustments to the Town's road impact fee are warranted in light of the accelerated rate of deterioration that has been observed on residential and collector streets during the past several years that appears to be a result of increased construction and excavation activity.

Staff has had the opportunity to review a preliminary draft of a road impact fee report that has been issued by the consulting engineer. (A final report from the consultant along with recommended adjustments to the road impact fee ordinance will be forthcoming in March). Based upon a review of the consultant's work product, staff has determined that the amount of funds available from a renewal of the parcel tax at the \$750 level combined with an adjustment to Atherton's road impact fee ordinance would provide for a higher level of funding for road improvements, despite the need to direct a greater percentage of funds to current operations.

The following table provides a comparison of the availability of funding from road impact fees and from the parcel tax under two scenarios:

- a) No change in either the allocation of parcel tax funds or the scope and amount of road impact fees during fiscal years 2006 through 2010; and,
- b) A reallocation of parcel tax proceeds sufficient to meet the Town's funding requirements for current operations, combined with an adjustment to road impact fees during fiscal years 2006 through 2010.

	(a) No change in the allocation of parcel tax proceeds or road impact fees	(b) Increased proportion of Parcel Tax revenues to fund current operations combined with modifications to Road Impact Fees	Increase (Decrease) in Funding Available for Road Improvements (b) – (a)
Parcel Tax Levy (FY 2006 through FY 2010)	\$9,280,000	\$9,280,000	\$0
Plus Estimated Road Impact Fees	2,000,000	5,000,000	3,000,000
Less Funds Directed to Current Operations	(3,995,000)	(5,009,876)	(1,014,876)
Equals total funds available for Road Improvements	\$7,285,000	\$9,270,124	\$1,985,124

As indicated in the preceding table, scenario (b), an adjusted allocation of parcel tax proceeds combined with a change in the road impact fee ordinance, would generate an additional \$1,985,124 to support improvements to Atherton's roads during fiscal years 2006 through 2010.

CONCLUSION:

The intermediate range financial plan has been revised to reflect the following assumptions:

- A renewal of the parcel tax for a duration of between five and seven years;
- No change in the amount of the parcel tax levy (i.e. retention of the current rate per parcel for each of the 11 categories of parcels subject to assessment); and,
- An operating transfer from the Parcel Tax Fund equivalent to the level of funding needed to maintain existing service levels while preserving existing financial reserves.

Under the preceding assumptions, the amount of funds available to support the Town's capital improvement program would decline from \$1,057,000 in FY 2004-05 to \$709,852 in FY 2009-10. Accordingly, alternative sources of funding in the amount of \$347,000 annually would be needed to maintain the current level of investment in the Town's infrastructure.

In March of 2005, staff will be submitting proposed changes to Atherton's road impact fee ordinance. Such changes are expected to generate an additional \$600,000 annually for road improvements. As such the amount of funds that would be made available from revisions to Atherton's road impact fee structure would be sufficient to offset the effect of an increased proportion of parcel tax proceeds being directed to continuing operations.

Prepared by:

Approved by:

John P. Johns, CPA
Finance Director

James H. Robinson
City Manager

Attachment : General Fund Revenue and Expenditure Analysis Fiscal Years 2005 through 2012

Attachment 1
General Fund Revenue and Expenditure Analysis
Fiscal Years 2005 through 2012

Revenue Category	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	2010	2011	2012
Property Tax	\$ 3,517,254	\$ 3,447,013	\$ 3,598,682	\$ 3,757,024	\$ 3,922,333	\$ 4,094,915	\$ 4,275,092	\$ 4,463,196
Sales Taxes	120,000	123,600	127,308	131,127	135,061	139,113	143,286	147,585
Other Taxes	757,010	880,210	915,418	952,035	990,117	1,029,721	1,070,910	1,113,746
Licenses and Permits	1,796,699	1,706,864	1,723,933	1,741,172	1,758,584	1,776,170	1,793,931	1,811,871
Fines and Forefeitures	14,700	14,994	15,294	15,600	15,912	16,230	16,555	16,886
Aid from other Agencies	215,176	195,176	195,176	195,176	195,176	195,176	195,176	195,176
Service Charges	335,900	339,259	342,652	346,078	349,539	353,034	356,565	360,130
Use of Money and Property	274,622	255,147	318,530	350,221	350,221	350,221	350,221	350,221
Other Revenues	13,086	13,086	13,086	13,086	13,086	13,086	13,086	13,086
Total Revenues	\$ 7,044,447	\$ 6,975,349	\$ 7,250,078	\$ 7,501,519	\$ 7,730,028	\$ 7,967,666	\$ 8,214,821	\$ 8,471,896
<i>Revenue Growth</i>	<i>2.2%</i>	<i>-1.0%</i>	<i>3.9%</i>	<i>3.5%</i>	<i>3.0%</i>	<i>3.1%</i>	<i>3.1%</i>	<i>3.1%</i>
Expenditure Category								
Contingency - Non Departmental	81,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Council	20,204	21,012	21,748	22,617	23,296	23,995	24,715	25,456
Manager	528,226	509,355	529,729	550,918	567,446	584,469	602,003	620,064
Attorney	156,228	164,039	172,241	180,853	186,822	192,987	199,355	205,934
Finance	405,597	381,821	397,094	412,977	425,367	438,128	451,272	464,810
Building	1,018,929	1,059,686	1,102,074	1,146,157	1,180,541	1,215,957	1,252,436	1,290,009
Police	4,036,909	4,166,385	4,333,041	4,606,362	4,744,553	4,886,890	5,033,497	5,184,501
Public Works	1,805,972	1,894,211	1,969,979	2,048,778	2,110,242	2,173,549	2,238,756	2,305,918
Total Expenditures	\$ 8,053,065	\$ 8,296,510	\$ 8,625,906	\$ 9,068,664	\$ 9,338,267	\$ 9,615,975	\$ 9,902,033	\$ 10,196,692
<i>Expenditure Growth</i>	<i>10.6%</i>	<i>3.0%</i>	<i>4.0%</i>	<i>5.1%</i>	<i>3.0%</i>	<i>3.0%</i>	<i>3.0%</i>	<i>3.0%</i>
Surplus (Deficiency) of Revenues over Expenditures	(1,008,618)	(1,321,160)	(1,375,828)	(1,567,145)	(1,608,239)	(1,648,309)	(1,687,212)	(1,724,796)
Add (subtract) Operating Transfers In (out)								
Parcel Tax	799,000	818,999	873,667	1,064,984	1,106,078	1,146,148	1,185,051	1,222,635
Library Fund Operating Transfer	-	-	-	-	-	-	-	-
Police on the Street	-	-	-	-	-	-	-	-
Gas Tax/Road Impact Fees	352,161	352,161	352,161	352,161	352,161	352,161	352,161	352,161
CIP Support	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000
Subtotal Operating Transfers	1,301,161	1,321,160	1,375,828	1,567,145	1,608,239	1,648,309	1,687,212	1,724,796
Beginning Fund Balance	6,045,697	6,338,240	6,338,240	6,338,240	6,338,239	6,338,239	6,338,239	6,338,239
Ending Fund Balance	\$ 6,338,240	\$ 6,338,240	\$ 6,338,240	\$ 6,338,239				
Less Reserve Requirements:								
Insurance	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Cash Flows and Contingencies	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000	3,200,000
Building Inspections	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000
Comensated Absences	476,850	405,323	344,524	292,846	301,631	310,680	320,000	329,600
Equals Unreserved Fund Balance	\$ 1,561,390	\$ 1,632,917	\$ 1,693,716	\$ 1,745,394	\$ 1,736,608	\$ 1,727,559	\$ 1,718,239	\$ 1,708,639
Increase (Decrease) in Fund Balance	\$ 292,543	\$ (0)	\$ 0	\$ (0)				



Town of Atherton

CITY COUNCIL STAFF REPORT

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

FROM: LINDA KELLY, ASST. TO CITY MANAGER/ACTING CITY CLERK

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: ORDINANCE CALLING A SPECIAL ELECTION FOR JUNE 7, 2005 TO
PLACE A MEASURE BEFORE THE VOTERS REGARDING A
RENEWAL OF THE PARCEL TAX**

RECOMMENDATION:

- (1) **Hold public hearing** regarding the consideration of the possible adoption of an ordinance calling a Special Election for June 7, 2005, placing a tax measure before the voters, including but not limited to the potential consideration of an ordinance authorizing the levy of a Special Parcel Tax for Municipal Services and Capital Improvements, and expenditures of funds derived from such a tax.
- (2) Should the City Council wish to call a Special Municipal Election on June 7, 2005 for a renewal of the current Parcel Tax, it is recommended that one of the attached ordinances be selected to reflect the Council's desired length (five- or seven-year tax), plus any amendments as desired by the Council, and **adopt the ordinance**. A roll call vote is required.

BACKGROUND:

Per the California Elections Code, March 11, 2005 is the last day to call an election to be held on June 7, 2005. The current Council meeting of February 16, 2005 is the last regular meeting before the deadline.

Attached is a calendar of important election dates and deadlines.

Tonight's public hearing has been noticed in accordance with State law through a public notice in the *Almanac* and through postings throughout Town.

The attached draft ordinances reflect (1) a five-year parcel tax and (2) a seven-year parcel tax. Furthermore, the ballot question to the voters in the draft ordinances has been revised since the November 2004 election to read as follows:

“Shall an ordinance renewing the current Town of Atherton Parcel Tax which provides funding for Town general purposes such as, but not limited to, police and public safety services and capital improvement projects be adopted?”

If the Council desires to amend this wording, now would be the appropriate time to do so.

FISCAL IMPACT:

The County Elections Official has provided the estimate of \$19,000 in order to conduct a Special Election on June 7, 2005. The mid-year budget adjustments approved by the City Council included an authorization to utilize \$19,000 from the Appropriation for Contingencies Account (101-00-3702-000) for election expenses.

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager

Attachments: Notice of Public Hearing
June 7, 2005 Special Election Calendar
Draft Ordinance Calling a Special Election (five-year tax)
Draft Ordinance Calling a Special Election (seven-year tax)



Town of Atherton NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that the City Council of the Town of Atherton will hold a Public Hearing at a regular meeting on Wednesday, February 16, 2005, commencing at 7:00 p.m. in the City Council Chambers, 94 Ashfield Road, Atherton, CA for the purpose of considering:

Consideration of the possible adoption of an ordinance calling a Special Election for June 7, 2005, placing a tax measure before the voters, including but not limited to the potential consideration of an ordinance authorizing the levy of a Special Parcel Tax for Municipal Services and Capital Improvements, and expenditures of funds derived from such a tax.

INTERESTED PERSONS may appear and be heard, or written comments may be submitted to the Atherton City Council, c/o City Clerk, 91 Ashfield Road, Atherton, CA 94027, prior to the meeting. Comments may also be faxed to the Town Administrative Offices at (650) 688-6528, or e-mailed to lkelly@ci.atherton.ca.us. Contact Linda Kelly, Acting City Clerk, for additional information regarding the City Council meeting, at (650) 752-0529.

June 7, 2005 Special Election Calendar

January 19, 2005	Regular January City Council Meeting
January 27, 2005	Clerk to submit Public Hearing Notice to <i>Almanac</i> for publication on February 1, 2005
February 1, 2005	Public Hearing Notice to be published in <i>Almanac</i> and Notice to be posted on Town bulletin boards
February 16, 2005	Regular February City Council Meeting – Hold Public Hearing (required if a Parcel Tax Election). Adopt Ordinance calling election for June 7, 2005. Adopt Resolution regarding ballot arguments for June.
March 11, 2005	Last day to adopt ordinance calling Special Election requesting consolidation of the Special Election with the County Board of Supervisors for June 7th election
March 16, 2005	Regular March City Council Meeting – Council to consider/approve Primary Argument in Favor of measure, if Council previously designated themselves as the author of the argument via Resolution adopted 2/16/05
March 21, 2005	Primary Arguments Due regarding City Measure
(Date to be determined)	Special Council Meeting – Council to consider/approve of Rebuttal Argument, if an argument has been submitted against the measure.
March 31, 2005	Rebuttal Arguments Due regarding City Measure
April 20, 2005	Regular April City Council Meeting
April 28 – May 17, 2005	Sample Ballot Pamphlet Mailing Period
May 9 – May 31, 2005	Absentee Voter Ballots applied for/mailed between these dates
May 18, 2005	Regular May City Council Meeting
June 7, 2005	Election Day for Special Election regarding City Measure
June 15, 2005	Regular June City Council Meeting
July 5, 2005	Last day for County to certify election results
(Date to be determined)	Notice of Public Hearing regarding Annual Budget Adoption and (if measure passes) Establishing a Special Tax for Municipal Services
(Date to be determined)	Public Hearing to Adopt FY 05-06 Annual Town Budget If measure passes, hold Public Hearing regarding establishing a Special Tax for municipal services for FY 05-06 (Hearing must be held

	following adoption of FY 05-06 budget)
<i>July 20, 2005</i>	<i>Regular July City Council Meeting</i>

R:\DATA\ELECTION\June 7, 2005 Special Election\June 8, 2005 Election Calendar.doc

Draft based on a 5-year tax

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF ATHERTON
CALLING AN ELECTION TO SUBMIT TO THE VOTERS AN ORDINANCE
AUTHORIZING THE RENEWAL OF A SPECIAL TAX FOR MUNICIPAL SERVICES
AND CAPITAL IMPROVEMENTS, FOR THE EXPENDITURE OF FUNDS
DERIVED FROM SUCH TAX**

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

SECTION 1. ELECTION CALLED. The City Council of the Town of Atherton submits the following ordinance to the voters of the Town of Atherton at a Special Election to be held on Tuesday, June 7, 2005.

SECTION 2. FULL TEXT OF MEASURE. The complete text of the proposed ordinance shall be:

**“AN ORDINANCE OF THE TOWN OF ATHERTON
AUTHORIZING THE RENEWAL OF A SPECIAL TAX FOR
MUNICIPAL SERVICES AND CAPITAL IMPROVEMENTS AND FOR THE
EXPENDITURE OF FUNDS DERIVED FROM SUCH TAX**

The people of the Town of Atherton do ordain as follows:

SECTION 1. AUTHORITY TO ADOPT MEASURE. This ordinance and the tax authorized herein are adopted pursuant to the provisions of the California Constitution, Articles XIII A §4, XIII B §4 and XIII C §2, and pursuant to Sections 50075, 50076, 50077 and 53722 et. seq. of the California Government Code.

SECTION 2. AUTHORIZATION TO LEVY SPECIAL TAX. If, in any fiscal year commencing on or after July 1, 2005, the City Council shall determine that municipal services such as police protection, street repair and maintenance, drainage facility repair and maintenance are necessary for the public good, welfare, and safety, and that the cost of providing such services will exceed the amount of funds generated through other revenue and income which are counted under the limit of the Town for such services calculated in accordance with the provisions of Article XIII B of the California Constitution, as provided for in the adopted budget, and/or if capital improvements are required, the cost of which exceeds the amount of funds generated through other revenues and receipts, and/or if amounts should be required to augment operational and capital needs of the Town, then it may levy a special tax for such fiscal year on each parcel of property within the Town in the manner provided herein. This special tax shall be in addition to the annual tax rate allowed by law.

SECTION 3. DETERMINATION OF AMOUNT TO BE RAISED. Each year following adoption of the Town’s annual budget, the City Council will determine the total amount of expenditures necessary to provide adequate levels of municipal services and capital improvements and deduct therefrom the projected revenue to be gathered from sources other

than this special tax. The difference, if any, shall be the maximum amount of funds to be derived from the tax authorized by this ordinance for such year.

SECTION 4. MAXIMUM TAX RATE/METHOD OF ASSESSMENT. After determining the amount of tax to be raised under Section 3, the City Council shall apportion said amount among the parcels of real property within the Town not exempted by law as follows:

		MAXIMUM TAX IN GIVEN YEAR				
		2005-06	2006-07	2007-08	2008-09	2009-10
1.	For each dwelling on a parcel with an area of less than 1/4 acre:	450	450	450	450	450
2.	For each unimproved parcel with an area of less than 1/4 acre:	225	225	225	225	225
3.	For each dwelling on a parcel with an area of 1/4 acre or more, but less than 1/2 acre:	570	570	570	570	570
4.	For each unimproved parcel with an area of 1/4 acre or more, but less than 1/2 acre:	285	285	285	285	285
5.	For each dwelling on a parcel with an area of 1/2 acre or more, but less than 2 acres:	750	750	750	750	750
6.	For each unimproved parcel with an area of 1/2 acre or more, but less than 2 acres:	375	375	375	375	375
7.	For each dwelling on a parcel with an area of 2 acres or more:	960	960	960	960	960
8.	For each unimproved parcel with an area of 2 acres or more:	480	480	480	480	480
9.	For each private club:	10,000	10,000	10,000	10,000	10,000
10.	For each parcel available for tax owned by a utility which serves the Atherton community:	450	450	450	450	450
11.	For each parcel available for tax owned by a utility which does not directly serve the Atherton community:	750	750	750	750	750

The records of the San Mateo County Assessor, as of each year, shall determine whether or not any particular lot is unimproved for purposes of this ordinance.

SECTION 5. HEARING, TAX LIEN AND INCLUSION IN CITY TAXES. Prior to levying a special tax under this ordinance in any fiscal year, the City Council shall conduct a public hearing on the proposed tax. Such hearing shall be conducted after the City Council has adopted an annual budget for that year. Notice of such hearing shall be posted in at least three public places within the Town of Atherton at least fifteen days prior to the hearing. All of the information and material which the City Council intends to consider at such hearing and the amount of tax to be raised shall be made available to the public by being on file in the office of the City Clerk for at least fifteen days prior to said hearing. Following said hearing, the City Council may adopt a resolution fixing the amount of tax to be raised which shall not exceed the amount contained in the material on file in the Clerk's office. Any tax levied under this ordinance shall become a lien upon the properties against which it is assessed and collectible in the manner provided by applicable law and by the levying resolution.

SECTION 6. COLLECTION. The City Council may elect to have any special tax authorized under this Chapter either collected by the Town or, in the alternative, by the Tax Collector of San Mateo County. If the services of the Tax Collector of the County of San Mateo are elected, the special tax may only be included on the annual tax bill sent out by such Tax Collector. A certified copy of the resolution electing to use the service of the Tax Collector of San Mateo County shall be filed with said Tax Collector prior to September 1st of the fiscal year for which the tax is assessed and shall include a list of all parcels of real property to be taxed and the amount of each parcel.

SECTION 7. INCREASE APPROPRIATIONS LIMIT. Pursuant to California Constitution Article XIII B, the appropriations limit for the Town of Atherton will be increased by one and one-half times the aggregate sum authorized to be levied as a special tax in each of the years covered by this ordinance.

SECTION 8. FUNDING AND EXPENDING PROCEEDS. Proceeds of any tax levied under this ordinance shall be deposited in a Special Fund and expended only for the purposes stated in this ordinance.

SECTION 9. UNEXPENDED RESIDUE. In accordance with Section 2(b) of Article XIII B of the California Constitution, all revenues received by the Town in a fiscal year and the fiscal year immediately following it in excess of the amount which may be appropriated by the Town in compliance with Article XIII B during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

SECTION 10. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. DURATION AMENDMENT OR REPEAL. The authorization to levy a tax under this ordinance shall commence with the Fiscal Year 2005-2006, beginning July 1, 2005

and shall continue through and including June 30, 2010. This ordinance or any provision thereof may only be amended or repealed by approval of two-thirds of the voters voting on the proposition at any initiative or referendum election.

This ordinance shall be adopted if approved as an initiative measure by two-thirds of the voters voting at a Special Election to be held on Tuesday, June 7, 2005, and go into effect ten (10) days after the City Council has, by resolution, declared that such initiative measure was approved by two-thirds of the voters voting thereon.”

SECTION 3. CONDENSED STATEMENT OF MEASURE. The manner in which the proposed measure shall appear on the ballot shall be:

“Shall an ordinance renewing the current Town of Atherton Parcel Tax which provides funding for Town general purposes such as, but not limited to, police and public safety services and capital improvement projects be adopted?”

Yes _____ No _____

SECTION 4. PUBLICATION. This ordinance shall be posted in at least three public places within the Town of Atherton, and shall become effective immediately upon its passage and approval. The City Clerk is authorized and directed to give notice of election in accordance with Chapter 2 (commencing with section 12100) of Division 12 of the California Elections Code.

SECTION 5. CONSOLIDATION. Due to the economics involved, the public interest would best be served by consolidating such Special Election with any other elections to be held on Tuesday, June 7, 2005 and by contracting with the County of San Mateo for election services. The Town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to consolidate said Special Election with any other election to be held on June 7, 2005. The City Manager 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 Special Election.

SECTION 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of the ordinance are declared to be severable.

SECTION 7. EFFECTIVE DATE. This ordinance calling an election shall become effective immediately upon its adoption by the City Council of the Town of Atherton.

* * * * *
* * * * *

I hereby certify that the foregoing ordinance was adopted at a regular meeting of the City Council of the Town of Atherton held on February 16, 2005, by the following roll call vote:

AYES: Councilmembers:

NOES:
ABSTAIN:
ABSENT:

Councilmembers:
Councilmembers:
Councilmembers:

William R. Conwell, Mayor
Town of Atherton

ATTEST:

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney

Draft based on a 7-year tax

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF ATHERTON
CALLING AN ELECTION TO SUBMIT TO THE VOTERS AN ORDINANCE
AUTHORIZING THE RENEWAL OF A SPECIAL TAX FOR MUNICIPAL SERVICES
AND CAPITAL IMPROVEMENTS, FOR THE EXPENDITURE OF FUNDS
DERIVED FROM SUCH TAX**

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

SECTION 1. ELECTION CALLED. The City Council of the Town of Atherton submits the following ordinance to the voters of the Town of Atherton at a Special Election to be held on Tuesday, June 7, 2005.

SECTION 2. FULL TEXT OF MEASURE. The complete text of the proposed ordinance shall be:

**“AN ORDINANCE OF THE TOWN OF ATHERTON
AUTHORIZING THE RENEWAL OF A SPECIAL TAX FOR
MUNICIPAL SERVICES AND CAPITAL IMPROVEMENTS AND FOR THE
EXPENDITURE OF FUNDS DERIVED FROM SUCH TAX**

The people of the Town of Atherton do ordain as follows:

SECTION 1. AUTHORITY TO ADOPT MEASURE. This ordinance and the tax authorized herein are adopted pursuant to the provisions of the California Constitution, Articles XIII A §4, XIII B §4 and XIII C §2, and pursuant to Sections 50075, 50076, 50077 and 53722 et. seq. of the California Government Code.

SECTION 2. AUTHORIZATION TO LEVY SPECIAL TAX. If, in any fiscal year commencing on or after July 1, 2005, the City Council shall determine that municipal services such as police protection, street repair and maintenance, drainage facility repair and maintenance are necessary for the public good, welfare, and safety, and that the cost of providing such services will exceed the amount of funds generated through other revenue and income which are counted under the limit of the Town for such services calculated in accordance with the provisions of Article XIII B of the California Constitution, as provided for in the adopted budget, and/or if capital improvements are required, the cost of which exceeds the amount of funds generated through other revenues and receipts, and/or if amounts should be required to augment operational and capital needs of the Town, then it may levy a special tax for such fiscal year on each parcel of property within the Town in the manner provided herein. This special tax shall be in addition to the annual tax rate allowed by law.

SECTION 3. DETERMINATION OF AMOUNT TO BE RAISED. Each year following adoption of the Town’s annual budget, the City Council will determine the total amount of expenditures necessary to provide adequate levels of municipal services and capital improvements and deduct therefrom the projected revenue to be gathered from sources other

than this special tax. The difference, if any, shall be the maximum amount of funds to be derived from the tax authorized by this ordinance for such year.

SECTION 4. MAXIMUM TAX RATE/METHOD OF ASSESSMENT. After determining the amount of tax to be raised under Section 3, the City Council shall apportion said amount among the parcels of real property within the Town not exempted by law as follows:

MAXIMUM TAX IN GIVEN YEAR

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
1. For each dwelling on a parcel with an area of less than 1/4 acre:	450	450	450	450	450	450	450
2. For each unimproved parcel with an area of less than 1/4 acre:	225	225	225	225	225	225	225
3. For each dwelling on a parcel with an area of 1/4 acre or more, but less than 1/2 acre:	570	570	570	570	570	570	570
4. For each unimproved parcel with an area of 1/4 acre or more, but less than 1/2 acre:	285	285	285	285	285	285	285
5. For each dwelling on a parcel with an area of 1/2 acre or more, but less than 2 acres:	750	750	750	750	750	750	750
6. For each unimproved parcel with an area of 1/2 acre or more, but less than 2 acres:	375	375	375	375	375	375	375
7. For each dwelling on a parcel with an area of 2 acres or more:	960	960	960	960	960	960	960
8. For each unimproved parcel with an area of 2 acres or more:	480	480	480	480	480	480	480
9. For each private club:	10,000	10,000	10,000	10,000	10,000	10,000	10,000
10. For each parcel available for tax owned by a utility which serves the Atherton community:	450	450	450	450	450	450	450
11. For each parcel available for tax owned by a utility which does not directly serve the Atherton community:	750	750	750	750	750	750	750

The records of the San Mateo County Assessor, as of each year, shall determine whether or not any particular lot is unimproved for purposes of this ordinance.

SECTION 5. HEARING, TAX LIEN AND INCLUSION IN CITY TAXES. Prior to levying a special tax under this ordinance in any fiscal year, the City Council shall conduct a

public hearing on the proposed tax. Such hearing shall be conducted after the City Council has adopted an annual budget for that year. Notice of such hearing shall be posted in at least three public places within the Town of Atherton at least fifteen days prior to the hearing. All of the information and material which the City Council intends to consider at such hearing and the amount of tax to be raised shall be made available to the public by being on file in the office of the City Clerk for at least fifteen days prior to said hearing. Following said hearing, the City Council may adopt a resolution fixing the amount of tax to be raised which shall not exceed the amount contained in the material on file in the Clerk's office. Any tax levied under this ordinance shall become a lien upon the properties against which it is assessed and collectible in the manner provided by applicable law and by the levying resolution.

SECTION 6. COLLECTION. The City Council may elect to have any special tax authorized under this Chapter either collected by the Town or, in the alternative, by the Tax Collector of San Mateo County. If the services of the Tax Collector of the County of San Mateo are elected, the special tax may only be included on the annual tax bill sent out by such Tax Collector. A certified copy of the resolution electing to use the service of the Tax Collector of San Mateo County shall be filed with said Tax Collector prior to September 1st of the fiscal year for which the tax is assessed and shall include a list of all parcels of real property to be taxed and the amount of each parcel.

SECTION 7. INCREASE APPROPRIATIONS LIMIT. Pursuant to California Constitution Article XIII B, the appropriations limit for the Town of Atherton will be increased by one and one-half times the aggregate sum authorized to be levied as a special tax in each of the years covered by this ordinance.

SECTION 8. FUNDING AND EXPENDING PROCEEDS. Proceeds of any tax levied under this ordinance shall be deposited in a Special Fund and expended only for the purposes stated in this ordinance.

SECTION 9. UNEXPENDED RESIDUE. In accordance with Section 2(b) of Article XIII B of the California Constitution, all revenues received by the Town in a fiscal year and the fiscal year immediately following it in excess of the amount which may be appropriated by the Town in compliance with Article XIII B during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

SECTION 10. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. DURATION AMENDMENT OR REPEAL. The authorization to levy a tax under this ordinance shall commence with the Fiscal Year 2005-2006, beginning July 1, 2005 and shall continue through and including June 30, 2012. This ordinance or any provision thereof may only be amended or repealed by approval of two-thirds of the voters voting on the proposition at any initiative or referendum election.

This ordinance shall be adopted if approved as an initiative measure by two-thirds of the voters voting at a Special Election to be held on Tuesday, June 7, 2005, and go into effect ten (10) days after the City Council has, by resolution, declared that such initiative measure was approved by two-thirds of the voters voting thereon.”

SECTION 3. CONDENSED STATEMENT OF MEASURE. The manner in which the proposed measure shall appear on the ballot shall be:

“Shall an ordinance renewing the current Town of Atherton Parcel Tax which provides funding for Town general purposes such as, but not limited to, police and public safety services and capital improvement projects be adopted?”

Yes _____ No _____

SECTION 4. PUBLICATION. This ordinance shall be posted in at least three public places within the Town of Atherton, and shall become effective immediately upon its passage and approval. The City Clerk is authorized and directed to give notice of election in accordance with Chapter 2 (commencing with section 12100) of Division 12 of the California Elections Code.

SECTION 5. CONSOLIDATION. Due to the economics involved, the public interest would best be served by consolidating such Special Election with any other elections to be held on Tuesday, June 7, 2005 and by contracting with the County of San Mateo for election services. The Town of Atherton does hereby request the Board of Supervisors of the County of San Mateo to consolidate said Special Election with any other election to be held on June 7, 2005. The City Manager 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 Special Election.

SECTION 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of the ordinance are declared to be severable.

SECTION 7. EFFECTIVE DATE. This ordinance calling an election shall become effective immediately upon its adoption by the City Council of the Town of Atherton.

* * * * *
* * * * *

I hereby certify that the foregoing ordinance was adopted at a regular meeting of the City Council of the Town of Atherton held on February 16, 2005, by the following roll call vote:

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

William R. Conwell, Mayor
Town of Atherton

ATTEST:

Linda Kelly, 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: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/ACTING CITY CLERK

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: RESOLUTION SETTING PRIORITIES FOR FILING WRITTEN
ARGUMENTS REGARDING A CITY MEASURE AND DIRECTING THE
CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS**

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution setting priorities for filing written arguments regarding a city measure on the June 7, 2005 Special Election ballot, and directing the City Attorney to prepare an Impartial Analysis of the measure in accordance with the California Elections Code.

BACKGROUND/ANALYSIS:

In accordance with California Elections Code Section 9282, the City Council must determine whether it wishes to exercise its rights to author and sign ballot arguments regarding the measure. The argument for or against a ballot measure shall not exceed 300 words. The final date for filing a **direct argument** is 5:00 p.m. on Monday, March 21, 2005.

With respect to rebuttal arguments, if any person submits arguments against a City measure, and an argument has been filed in favor of a City measure, copies of argument against the City measure will immediately be sent to the person or persons filing the argument in favor of the City measure. The person or persons filing the arguments in favor of a City measure may prepare and submit a rebuttal argument not to exceed 250 words. Upon receipt of the proponent's direct argument in favor of the measure, a copy shall be sent to the person or persons filing the argument against the City measure who may submit a rebuttal argument not to exceed 250 words. The final date to submit a **rebuttal argument** to the City Clerk is 5:00 p.m., Thursday, March 31, 2005.

If all of the Council Members wish to sign the argument in favor of the measure, it is suggested that a less-than-a-quorum committee convene to write the argument and bring it to the Council for approval and signature at the next regular Council meeting on March 16, 2005, in order to meet the March 21, 2005 deadline.

The draft resolution as attached gives the Council the alternatives of appointing one or more, or all, of the Council Members to write the argument. Staff is asking for direction on this matter and the resolution will be finalized as appropriate. The resolution needs to be enacted upon at the present Council meeting if the Council wishes to designate itself or one of its members.

In addition to the Council, any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against any city measure. If more than one argument for or against is submitted to the City Clerk, the City Clerk shall select the argument in favor and the argument against to be printed in the sample ballot in accordance with California Elections Code Section 9287.

The proposed resolution also directs the City Attorney to prepare an **impartial analysis** of the measure, which would be due in the Office of the City Clerk by 5:00 p.m. on March 21, 2005. The impartial analysis may not exceed 500 words in length.

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager

Attachments: Draft Resolution regarding Ballot Arguments and Impartial Analysis
Form of Statement to be filed by Author of Argument

Resolution No. 05-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON, CALIFORNIA, SETTING PRIORITIES FOR FILING
WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND
DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL
ANALYSIS**

WHEREAS, a Special Municipal Election is to be held in the Town of Atherton, California, on June 7, 2005, at which there will be submitted to the voters the following measure:

“Shall an ordinance renewing the current Town of Atherton Parcel Tax which provides funding for Town general purposes such as, but not limited to, police and public safety services and capital improvement projects be adopted?”

Yes _____ No _____

NOW, THEREFORE, the City Council of the Town of Atherton, California, does resolve, declare, determine and order as follows:

1. That the City Council authorizes

[All Members of the City Council

(OR)

(Name certain Members of the City Council)]

to file a written argument in favor of the City measure as specified above, accompanied by the printed name(s) and signature(s) of the person(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk, which is set for March 21, 2005.

2. That the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, unless the organization or salaries of the office of the City Attorney are affected. The City Attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the City Attorney, the City Clerk shall prepare the impartial analysis. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments (March 21, 2005).

3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 16th day of February, 2005 by the following vote:

<i>AYES:</i>	<i>COUNCILMEMBERS:</i>
<i>NOES:</i>	<i>COUNCILMEMBERS:</i>
<i>ABSENT:</i>	<i>COUNCILMEMBERS:</i>
<i>ABSTAIN:</i>	<i>COUNCILMEMBERS:</i>

William R. Conwell, Mayor
Town of Atherton

ATTEST:

Linda Kelly
Acting City Clerk

APPROVED AS TO FORM:

Marc Hynes
City Attorney



Town of Atherton

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

**FROM: LINDA KELLY, ASSISTANT TO THE CITY MANAGER/
ACTING CITY CLERK**

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

**SUBJECT: DISCUSSION AND CONSIDERATION – SELECTION OF DATES FOR
COMMUNITY INFORMATIONAL MEETINGS (SPECIAL COUNCIL
MEETINGS) REGARDING THE JUNE 7, 2005 SPECIAL ELECTION**

RECOMMENDATION

Discuss and select dates for holding community informational meetings regarding the June 7, 2005 Special Election.

BACKGROUND

The City Council previously indicated that community meetings should be set up in order to inform the residents about the upcoming ballot measure. These “town hall” style meetings will be for the purpose of information and discussing the measure, not advocacy on behalf of the Town of Atherton.

It is suggested that Council Members check their calendars for any conflicts and select those dates which are preferable.

A list of potential dates, times, and locations will be provided to the Council prior to the meeting.

Prepared by:

Approved by:

Linda Kelly

James H. Robinson

Assistant to the City Manager/
Acting City Clerk

City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF FEBRUARY 16, 2005

SUBJECT: REVIEW AND APPROVAL OF RESIDENT SURVEY REGARDING CALTRAIN

RECOMMENDATION:

It is recommended that the City Council review the attached draft survey prepared by the Caltrain Corridor Ad Hoc Sub-Committee, and if appropriate, approve of the survey and direct staff to conduct the survey.

BACKGROUND/ANALYSIS:

In light of the issues involving Caltrain and changes to service levels, the Town's Caltrain Corridor Ad Hoc Sub-Committee is proposing that a survey be sent to all Town residents (see attached). The survey is proposed to have a cover letter which informs the residents of the reason for the survey, changes to Caltrain services, what Caltrain does and how Caltrain has improved. The survey itself consists of seven questions designed to measure residents awareness of Caltrain, usage of Caltrain, and opinion on the value of the service. One attachment to be mailed with the survey would be a photocopy of the current Caltrain timetable.

The Committee believes that the survey will yield valuable information which will assist the Committee in its mission through receiving input on the opinions/desires of the residents with respect to Caltrain issues.

FISCAL IMPACT:

The cost of conducting the survey is estimated to be \$4,400. This includes the printing of the survey and envelope inserts, the outgoing and return envelope, outgoing postage and postage-paid return envelope, plus tabulation of the survey results. If the survey is approved by the Council, the survey could be mailed to the residents by mid-March, with the results available

approximately five to six weeks later, in late April. Funds were not specifically budgeted for this purpose, but are available in the General Fund.

Attachment: Draft Survey

To the Citizens of Atherton

This is a survey designed to assess Atherton citizens' opinions about Caltrain service as it affects the Town of Atherton and our individual needs and concerns. Recently, Atherton lost some key Caltrain stops at its station based upon declining ridership. But some local heroic action forestalled additional service cuts with a "use it or lose it" promise.

Most people don't like to do opinion surveys, so right up front, we will tell you why you should take the time for this one. Most people fall into two separate but important categories.

First, home property values are an important consideration for you, your spouse or your heirs.

Second, they are already senior citizens, or someday they will be senior citizens, and mobility will be of vital importance to them.

We have seen dramatic changes in the past few years, many of which are related to the reasons for this Survey:

- increasing costs for new highways and maintenance for existing roads;
- decreasing funds for new freeways, bridges, etc.;
- higher vehicle speeds on city streets and freeways;
- increased environmental regulation;
- increasing energy costs;
- high profile news articles about seniors involved in accidents;
- plans within the licensing agency to increase frequency and intensity of testing for senior drivers;
- our life span is getting longer.

So, we need to think seriously about what Caltrain service means to us.

What Caltrain Does (See attached schedule/service information)

- Caltrain connects to all BART destinations, including SFO Airport, at the Millbrae Intermodal Station.
- Caltrain connects to San Francisco's Municipal Light Rail System at the Fourth and King Streets Station, with destinations not only on the Embarcadero but Muni's underground and above ground rail system throughout San Francisco.
- Caltrain connects to the San Jose Airport via a free buss shuttle service from Santa Clara.
- Caltrain connects to San Jose's Light Rail at Mountain View, San Jose, and Tamien.

- At San Jose, Caltrain connects to Amtrak's Seattle to Los Angeles intercity train, the ACE trains to Stockton and the Capital Corridor Trains to Sacramento, with connections at Oakland to the San Joaquin trains to Bakersfield.
- Caltrain connects with SamTrans buses at eight (8) passenger stations in San Mateo County.
- Caltrain connects with Santa Clara's VTA bus system at thirteen (13) passenger stations between Palo Alto and Gilroy.
- Caltrain provides wheel chair access, bicycle storage and luggage racks on all trains.

How Caltrain Has Improved

Caltrain has made over \$500 million in capital improvements in the past 10 years, including:

- New and upgraded Station facilities (including ADA accessibility improvements)
- New Passenger Cars (Total fleet now 110)
- New Locomotives (Total fleet now 29)
- Overhaul and upgrading of all older cars & locomotives
- Replacement and major upgrading of tracks, signals, bridges, etc.
- Created over 10 miles of new main tracks to enable express trains, including the new "Baby Bullet" train, to overtake and pass local passenger trains.
- Installed new "Proof of Purchase" ticketing system, which provides easy to use automated ticket vending machines at passenger stations.

Now that you are aware of Caltrains' service and its importance to you and the Town of Atherton, please help us by answering the enclosed survey questions. There will be a drawing for free Caltrain tickets from among those opinion surveys that are returned to the Town of Atherton.

ATHERTON CALTRAIN STATION CITIZEN SURVEY

1. Are you using the Caltrain Service now? ___ Yes ___ No
2. If yes, how frequently? ___ daily ___ once or twice a week ___ once or twice a month.
3. Do you use Caltrain on the weekend? ___ Yes ___ No
4. If you are not currently using Caltrain, under what circumstances would you consider using the service in the future?

5. What factors do you consider important in making a decision to use Caltrain? (Please rank in order of importance, with "1" the most important)

___ Available parking

___ Cost of tickets

___ Scheduled arrivals and departures

___ Travel time

___ Frequency of service

___ Other (please describe)

6. Do you feel that Caltrain service to Atherton is a valuable asset and worth preserving?
___ Yes ___ No

7. If "yes", why? If "no", why not?

Optional:

Name: _____

Address: _____



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 FEBRUARY 16, 2005

SUBJECT: LICENSE AGREEMENT – BEAR GULCH COMMUNICATIONS SITE

RECOMMENDATION:

Approve License Agreement between California Water Service Company and the Town of Atherton for a license authorizing Town's use of California Water Service Company reservoir site for communications equipment and tower and authorize City Manager to execute agreement on behalf of the Town.

BACKGROUND:

The Chief of Police and the District Manager for the California Water Service Company Bear Gulch District have discussed an agreement which would allow the Town to continue to occupy a small part of the California Water Service Company reservoir site in the Bear Gulch District. The site is located at 120 Reservoir Road, Atherton. The equipment which the Town will maintain and operate consists of a 16 inch triangular mast 40 feet high, and related equipment which is described in Exhibit A to the License Agreement. As a result of Water District site modifications, the existing tower had to be removed and relocated. An agreement did not exist for the existing tower.

ANAYSIS:

Although not yet confirmed, I believe that the License Agreement will require that the Town pay a nominal fee for a five-year term of the license. The Town has requested that this five year term be renewable in five year increments.

The License Agreement provides that either party may terminate the agreement upon 30 days written notice to the other. Paragraphs 6 and 9 provide shorter termination rights on behalf of the District in the event that is required by the California Public Utilities Commission or because of the Town's failure to comply with electro-magnetic field emission standards.

The Town is obliged to maintain and repair the premises and keep them in condition (paragraph 7 of the agreement). Paragraph 8 prohibits storage, generation or disposal or use of hazardous substances as defined in the paragraph. The Town is obliged to indemnify the District for any costs, including legal fees, related to proceedings resulting from hazardous material clean-ups, removal or remediation.

Paragraph 10 is a general liability and indemnification provision. Paragraph 11 requires maintenance of insurance providing commercial general liability in an amount of 2 million dollars. The water company has been asked to recognize the Town's ABAG Plan as satisfying this insurance requirement.

FISCAL IMPACT:

Costs of license fee, maintenance of equipment and site clean-up upon termination of the License Agreement. Total fiscal impact to the Town is \$2,500.

Prepared by:

Approved by:

/s/ Marc G. Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachments: License Agreement; Exhibits A and B

License Agreement

This Agreement is made as of January __, 2005 (the "Effective Date") by and between California Water Service Company, a California public utility water corporation, ("Licensor") and the Town of Atherton ("Town") ("Licensee").

- 1. Grant of License; Use of Premises.** Licensor hereby grants to Town a license to install a [number] inch diameter pole, [number] feet in height, a pole mounted retro reflector, and the additional equipment described and depicted on Exhibit A (collectively, the "Equipment"), at Licensor's property described as [address], San Mateo County, California ("Licensor's Property"), at a location more particularly shown on Exhibit B attached hereto and by this reference incorporated herein (the "Premises"). This License herein granted shall include the right of Town to access the Premises for installation, maintenance and repair of the Equipment, upon reasonable notice to Licensor. Town shall comply with all Licensor's security requirements and procedures applicable to Licensor's Property. Town may ascertain such procedures, from time to time, from Licensor's District Manager for its Bear Gulch District. Town may also periodically install additional compatible equipment at the Premises, with the prior written approval of the Licensor, which shall not be unreasonably

withheld. Town shall use the Premises only as permitted in this Section 1, or otherwise approved in writing by Licensor.

2. **Interference with Licensor's Use of Licensor's Property.** Town's installation of its permitted Equipment, use of the Premises and operation of its approved Equipment thereon shall be conducted at all times in compliance with all applicable Federal, State and local laws, ordinances, regulations, codes and rules (collectively, "Laws"), and in a manner that does not damage or disturb the water tank, pipelines, utility lines, communications systems, or other equipment which exists on Licensor's Property, or interfere in any other manner whatsoever with any existing use of Licensor's Property by Licensor. Both parties agree to use their best efforts to resolve any interference and if this interference cannot be resolved within a reasonable time, then either Licensor or Town shall have the right to relocate the Equipment on Licensor's Property to a location approved by Licensor and Town or to immediately terminate this Agreement and remove the Equipment without any further liability for payment under this Agreement. Town shall retain title to any and all Equipment placed on the Premises by Town.
3. **License Fee.** Town will pay the sum of \$_____ to the Licensor for the period from January ____, 2005 through [date], such amount to be paid within ten days after execution of this Agreement by both parties.
4. **Term of Agreement.** This Agreement shall be for a term beginning January __, 2005 and ending [date], unless terminated by one or both of the parties, as provided in Sections 2, 5 and 6. If this Agreement is terminated, Town agrees to remove all its Equipment from Licensor's Property and return the Premises to its substantial original condition, less reasonable wear and tear, unless otherwise agreed by the parties.
5. **Termination Without Cause.** Either Licensor or Town may terminate this Agreement at any time, upon thirty days prior written notice to the other party (notwithstanding the immediate termination rights under Section 2 and Section 6 of this Agreement). Notice to the Licensor shall be given to California Water Service Company, 1742 North First Street, San Jose, CA 95112, Attn: Director of Corporate Real Estate. Notice for Town shall be given to Town of Atherton 91 Ashfield Rd. Atherton CA. 94027, Attention: Town Manager.
6. **California Public Utility Code '851 Termination Right.** This Agreement is made pursuant to the authority of and upon, and is subject to the conditions prescribed by General Order No. 69-C of the Public Utilities Commission of the State of California dated and effective July 10, 1985, which General Order No. 69-C, by this reference, is hereby incorporated herein and made a part hereof. Without limiting the generality of the foregoing, General Order 69-C provides in part that all public utilities covered by the provisions of PUC '851 ... are "authorized to grant easements, licenses or permits for use or occupancy, on, over or under any portion of the operating property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and services of such public utilities to and for their ...consumers. ... *Provided, however,* that each such grant ... shall be made conditional upon the right of the grantor, either upon order of this Commission or upon its own motion to commence or resume the use of the property in question whenever, in the interests of its service to its patrons or consumers, it shall appear necessary or desirable so to do."

In accordance with the foregoing, this Agreement may be terminated by Licensor at any time by notice from Licensor or the Commission to Town if Licensor requires the use of the Premises for public water service purposes. Such termination shall be upon such notice to Town as is reasonable to permit Licensor to use the Premises for the necessary or desirable public water service purposes.

7. **Repairs and Maintenance.** Town shall, during the term of this Agreement at Town's sole expense, maintain and repair the Premises in a clean, orderly and good condition, reasonable wear and tear excepted. Town

accepts the Premises as being in good and sanitary order, condition and repair, and shall surrender the Premises to Licensor in clean and good condition, reasonable use and wear thereof excepted, upon the expiration or earlier termination of this Agreement. Town accepts the Premises in their current "as is" condition and Licensor expressly disclaims any representation or warranty whatsoever, express or implied, regarding the condition of the Premises or the suitability thereof for Town's use.

8. **Hazardous Substances.** Town shall not cause, or allow any of Town's employees, agents, or contractors to cause or permit any Hazardous Substances, as defined herein, to be brought upon, stored, generated, disposed of or used on or about the Premises. Town shall comply with all Environmental Laws, as hereafter defined, and immediately advise Licensor in writing of: (i) any notices of violation or potential or alleged violation on or about the Premises of any Environmental Law which are received by Town from any governmental agency; (ii) any and all inquiry, investigation, enforcement, clean-up, removal or other governmental or regulatory actions instituted or threatened relating to Town and the Premises; and (iii) all claims made or threatened by any third-party against Town relating to any Hazardous Substances brought upon, stored, generated, disposed of or used by Town on or about the Premises. Licensor shall have the right to inspect the Premises and to conduct tests and investigations to determine whether Licensee is in compliance with this Section 8.

As used herein, "Hazardous Substances" means any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Law as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). Hazardous Substances shall include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

As used herein, "Environmental Laws" means any present and future federal, state and local law (whether under common law, statute, rule, regulation or otherwise), requirement under any permit issued with respect thereto, and other requirements of governmental authorities having jurisdiction thereunder relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.), as heretofore or hereafter amended, and the regulations promulgated thereunder.

Town shall indemnify, protect, defend (by counsel acceptable to Licensor) and hold harmless Licensor and its partners, directors, officers, employees, shareholders, lenders, agents, contractors and each of their respective successors and assigns (individually and collectively, ("Indemnities")) from and against any and all claims, judgments, causes of action, damages, penalties, fines, taxes, costs, liabilities, losses and expenses arising or incurred at any time during or after the term of this Agreement as a result (directly or indirectly) of or in connection with (a) Town's breach of any prohibition or provision of this Section 8 or (b) the presence of Hazardous Materials on, under or about the Premises as a result (directly or indirectly) of Town's activities, or failure to act in connection with the Premises.

This indemnity shall include, without limitation, the cost of any required or necessary investigation of on-site conditions; repair; cleanup; remediation; removal; restoration; detoxification; personal injury and property claims; sums paid in settlement of claims; the payment of liens; diminution in value of the Premises; damages for the loss of or restriction on use of the Premises; reasonable attorneys' fees, paralegals' fees, court costs, consulting fees and experts fees; and the preparation of any closure or other required plans, whether any such actions are required or necessary prior to or following the termination of this Agreement. Neither the written consent of Licensor to the presence of Hazardous Substances on, under or about the Premises nor the strict compliance by Town with all Environmental Laws shall excuse Town from its obligation of indemnification pursuant hereto. Town's obligations pursuant to the indemnity provided herein shall survive the termination of this Agreement.

9. **Electro-Magnetic fields and Radio Frequency Emissions.** Licensor shall have the right to terminate this Agreement at any time, upon ten (10) days prior written notice to Town if (a) Town's use of the Premises is not in compliance with (i) the standards for emissions of electromagnetic fields ("EMFs") set forth by the Federal Telecommunications Commission ("FCC"), the California Public Utilities Commission (the "CPUC") or any

other governmental agency having jurisdiction over EMFs and/or Town's equipment, and (ii) the standards for radio frequency emissions ("RF Emissions") set forth by the FCC, the CPUC or any other governmental agency having jurisdiction over RF Emissions and/or Town's equipment (whichever is more stringent), as such standards may be modified from time to time by the FCC or the CPUC or (b) the California Department of Health Services ("DHS") or any successor governmental agency with jurisdiction over health and safety issues related to potable water provided from the water facilities on Licensor's property suspends or revokes Licensor's permit to provide potable water from the facilities on Licensor's Property based in whole or in part on a determination that Town's use of the Premises presents a material risk to the public health or safety or to the safety of Licensor's water supply provided from Licensor's Property. Notwithstanding the foregoing, this Agreement shall not be terminated if Town ceases operation of the equipment within said ten (10) day period, thereafter commences efforts to bring the equipment into compliance (it being understood and agreed that Town may intermittently operate the equipment solely in order to conduct intermittent testing during cessation of operations) and does not recommence operations of the equipment until it is brought into compliance.

10. **Liability and Indemnification.** Town shall be responsible for any and all liability, loss or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Town, its officers, agents, employees or authorized representatives. Without limiting the foregoing, Town hereby agrees to indemnify, defend (through counsel approved by Licensor) and hold Licensor harmless from and against all liabilities, losses, costs and expenses incurred by Licensor and claims made against Licensor for injury or death to persons or damage to property of whatsoever kind or nature (including, without limitation, reasonable attorneys fees and costs) which are in any way connected with (a) Town's use or occupancy of the Premises or the streets, sidewalks and alleys adjacent thereto; (b) any negligent act or omission of Town; or (c) any breach of this Agreement by Town; or (d) the presence of Hazardous Materials on, under or about the Premises as a result (directly or indirectly) of Town's activities, or failure to act in connection with the Premises or the equipment installed on the Premises by Town. The foregoing indemnity shall survive the termination of this Agreement with respect to any claims or liability of Town arising from Town's occupancy of the Premises.
11. **Insurance.** Town shall procure and maintain, at Town's sole expense during the term of this Agreement Broad Form Commercial General Liability policy for the Premises insuring against any public liability incident to the use of or resulting from any accident occurring in or about the Licensed Premises. The liability limits under such insurance shall be not less than \$2,000,000.00 for any one person injured or for any one occurrence, and \$2,000,000.00 for property damage. Prior to entry on Licensor's Property, Town shall provide a certificate evidencing such insurance coverage, naming Licensor as an additional insured and providing that such policy may not be cancelled on less than 30 days prior written notice to Licensor.
12. **Unlawful Use, Waste and Nuisance; Compliance with Laws.** Town shall not use or occupy the Premises for any unlawful purpose or in any manner that will constitute waste, a nuisance or unreasonable annoyance to Licensor, tenants of any building located on or adjacent to Licensor's Property or occupants of any property adjacent to or in the vicinity of Licensor's Property. Town shall, at Town's sole cost, comply with all statutes, ordinances and regulations of public entities applicable to Town's use of the Premises or Town's Equipment on the Premises, including without limitation, the Americans With Disabilities Act and OSHA and all requirements of Licensor's and/or Town's liability insurers.
13. **Liens and Claims.** Town shall at all times keep the Premises and Licensor's Property free from liens and claims arising out of services rendered or materials supplied by third parties to Town. If Town fails to

discharge any lien within ten (10) days from the filing thereof, Licensor may, in addition to any other rights and remedies Licensor may have, bond or pay such lien or claim without inquiring into the validity thereof, and all sums so paid or advanced by Licensor, including reasonable attorneys' fees, shall be repaid by Town to Licensor on demand.

14. **No Assignment.** Town shall not assign, transfer, mortgage or otherwise encumber this Agreement or Town's interest herein, or any part hereof, or sublet or permit the Premises, or any part thereof, to be occupied or used by any person or entity other than Town, its agents, contractors and employees.

15. **No Waiver Implied.** The failure of Licensor to terminate this Agreement following a default by Town shall not constitute a waiver by Licensor of any subsequent breach of this Agreement by Town or of the benefits of any of the provisions hereof or in any way subject Licensor to legal disability. If Licensor waives in writing any default by Town, such waiver shall not be construed as a waiver of any other covenant or condition set forth in this Agreement, or of any future breach of the same covenant or condition set forth in the waiver.

16. **Entire Agreement; Modifications.** This Agreement contains and embodies the entire agreement of the parties hereto with respect to the Premises and supersedes all prior agreements, negotiations and discussions between the parties hereto. Any representation, inducement or agreement that is not contained in this Agreement shall not be of any force or effect. This Agreement may not be modified or changed in whole or in part in any manner other than by an instrument in writing duly signed by both parties hereto.

17. **Representatives.** For the purpose of this Agreement, Licensor's technical representative will be Fred Rios, phone 408/367-8326. The Town technical representative will be Town of Atherton Chief of Police, 650.752.0500.

In witness whereof, the parties have executed this Agreement as of the Effective Date.

For the Licensor: California Water Service Company

By: _____ Date

(Print Name and Title)

By: _____ Date

(Print Name and Title)

For Town of Atherton By: _____ Date
(Print Name and Title)

Attachments: Exhibit A, Equipment List
Exhibit B, Map of Location

EXHIBIT A

Equipment List

Description	Model #
Antenna: weight [#]lbs., wind loading surface [#] square feet	
Paging transmitter: [name] controller, cabinet size #' w x #' h x #'d	
Cable and connectors for antenna connections	
Future addition: GPS receiver (will fit in Nucleus cabinet)	

Page 1 of 1

EXHIBIT B

Site Plan of Licensor's Property showing location of Town's Equipment

(To be provided at or prior to the City Council meeting)



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: CITY COUNCIL MEETING OF FEBRUARY 16, 2005

SUBJECT: CONSIDERATION AND DISCUSSION – MEMBERSHIP IN THE PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE

RECOMMENDATION

Consider and discuss membership in the Peninsula Traffic Congestion Relief Alliance.

BACKGROUND

At the regular meeting of January 19, 2005, Christine Maley-Grubl, Executive Director of the Peninsula Traffic Congestion Relief Alliance, spoke to the Council regarding the Alliance's activities and requested that the Town consider joining the organization. The Alliance is funded through C/CAG and the Transportation Authority. Its mission is to reduce the number of single-occupancy vehicles traveling through the County and to improve air quality.

Mayor Conwell suggested that membership in the Peninsula Traffic Congestion Relief Alliance be placed on a future agenda to ascertain Council interest in joining the group.

According to Ms. Maley-Grubl, there would be no cost to the Town as a result of joining the Peninsula Traffic Congestion Relief Alliance.

Attachment: Annual Report FY 2003-04 – Peninsula Traffic Congestion Relief Alliance