



Item No. 9 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ROBERT BARRON III, FINANCE DIRECTOR

DATE: MAY 20, 2020

SUBJECT: WAIVE THE FINAL READING AND ADOPT ORDINANCE NO. 644, A PROPOSED AMENDMENT TO CHAPTER 2, AUTHORIZING THE CITY MANAGER AND OTHER DESIGNATED TOWN OFFICIALS TO EXECUTE CONTRACTS

RECOMMENDATION

Waive the final reading and adopt Ordinance No. 644, an Ordinance of the City Council of the Town of Atherton Amending Title 2, adding chapter 2.61 relating to authority to execute contracts, authorizing the City Manager and other designated Town officials to execute contracts.

BACKGROUND

The City Council held a public hearing first reading on April 15, 2020 of the introduction of an ordinance to amend chapter 2 of the municipal code authorizing the City Manager and other designated Town officials to execute contracts. With the financing process for the Town's 2020 Certificates of Participation (COPs) underway, staff is presenting an amendment to Title 2 of the Town's Municipal Code regarding contract signature authority to accommodate COPs. It is estimated that the closing and sale of the COPs would proceed in late May to mid-June 2020. Additional items that will need to be approved include an authorizing resolution, site lease, lease agreement, and trust agreement. These will be presented to the Council at the May 20 meeting.

The decision to initiate the sale of the COPs would be made by the staff and the Ad-hoc Committee of Mayor, Vice Mayor and the Chair of the Finance Committee. Once the decision is made for the sale of the COP's, signatures will be required on the necessary financing documents. The attached Ordinance allows for the City Manager to sign these documents.

ANALYSIS

Government Code Section 40602 provides that the Mayor shall be the signatory for the municipal agency. The Section provides that the mayor shall sign:

- A. All written contracts and conveyances made or entered into by the city.

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B. All instruments requiring the city seal.

The Section also provides that the legislative body of the Agency may provide by Ordinance that the instruments described above be signed by an officer other than the Mayor. Through a combination of the Town's Ordinance establishing the role of the City Manager, Title 2, Chapter 2.12 and the Town's Purchasing Ordinance, Title 3, Chapter 3.16, the City Manager is provided the authority to enter into contracts on behalf of the Town up to certain amounts.

For clarity and to accommodate the sale of bond proceeds and the immediacy of when transactions need to occur, staff and Bond Counsel are recommending that the Town adopt the standard Ordinance under Government Code Section 40602 providing that "...all contracts shall be in writing and shall be signed by the Mayor, the City Manager or by any other person authorized by State law, this Code or an ordinance, resolution, motion or contract adopted or approved by the City Council."

Attached is the necessary form of Ordinance that incorporates a new provision into the Town's Municipal Code. The Ordinance authorizes the City Manager and other Town officials to execute contracts and other agreements when authorized by the City Council. The Ordinance adds the following Chapter 2.61, Title 2 to the Atherton Municipal Code:

Sec. 2.61. Authority to Contract

(a) Any contract made or purportedly made by any person shall not be an obligation of the Town unless made in accordance with the provisions of this Section, except as otherwise provided in this Code.

(b) All contracts shall be in writing and shall be signed by the Mayor, the City Manager or by any other person authorized by State law, this Code or an ordinance, resolution, motion or contract adopted or approved by the City Council. No oral contract shall become an obligation of the Town.

(c) For the purposes of this Section, the term "contract" shall refer to any agreement, contract, lease, promise, or other obligation to which the Town is, or is alleged to be, a party and shall include, but not be limited to, any contract for equipment, supplies, services, financing, or public works.

The adoption of the Ordinance will allow for the financing and authorization of the sale of bonds documents to be signed once the notice to proceed for initial sale of bonds is announced. This will allow the City Manager to execute contracts to initiate the Town's 2020 COP's.

POLICY ISSUES

None. This Ordinance is consistent with current practice via the Town's existing Ordinances. The Ordinance codifies the signature authorities into one Chapter of the Municipal Code.

FISCAL IMPACT

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None.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials. The Town maintains an active and up to date Project Website at <http://ca-atherton.civicplus.com/index.aspx?NID=290>.

ATTACHMENTS

Attachment 1: Ordinance No. 644, Adding Chapter 2.61 to Municipal Code Relating to Authority To Execute Contracts

ORDINANCE NO. 644

**AN ORDINANCE OF THE CITY COUNCIL OF THE
TOWN OF ATHERTON ADDING CHAPTER 2.61,
TITLE 2 TO THE ATHERTON MUNICIPAL CODE
RELATING TO AUTHORITY TO EXECUTE
CONTRACTS**

WHEREAS, The City Council of the Town of Atherton (the "Town") wishes to amend the Atherton Municipal Code to authorize the City Manager and other Town officials to execute contracts and other agreements when authorized by the City Council;

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF ATHERTON DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the Town of Atherton hereby adds the following Chapter 2.61, Title 2 to the Atherton Municipal Code, which shall read as follows:

**"Title 2
ADMINISTRATION AND PERSONNEL**

Sec. 2.61. Authority to Contract

(a) Any contract made or purportedly made by any person shall not be an obligation of the Town unless made in accordance with the provisions of this Section, except as otherwise provided in this Code.

(b) All contracts shall be in writing and shall be signed by the Mayor, the City Manager or by any other person authorized by State law, this Code or an ordinance, resolution, motion or contract adopted or approved by the City Council. No oral contract shall become an obligation of the Town.

(c) For the purposes of this Section, the term "contract" shall refer to any agreement, contract, lease, promise, or other obligation to which the Town is, or is alleged to be, a party and shall include, but not be limited to, any contract for equipment, supplies, services, financing, or public works.

Section 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of this Ordinance. The City Council of the Town of Atherton hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 3. The amendment to the Atherton Municipal Code effected by this Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has

no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 1506(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

Section 4. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

* * *

At a City Council Meeting thereof held on the 20th day of May 2020 by the following votes:

AYES:	COUNCIL MEMBERS:
NOES	COUNCIL MEMBERS:
RECUSED:	COUNCIL MEMBERS
ABSENT:	COUNCIL MEMBERS:

Rick DeGolia, Mayor

Attest:

Anthony Suber, City Clerk