



MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
MAY 21, 2008
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Janz called the meeting to order at 7:05 p.m.

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

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

City Manager Jerry Gruber and City Attorney Marc Hynes were also present.

3. **PRESENTATIONS**

- A. **Proclamation Declaring May 18-24, 2008, National Public Works Week**

Mayor Janz read and presented the Proclamation declaring National Public Works Week May 18-24, 2008, to Public Works Director Duncan Jones.

Public Works Director Duncan Jones accepted the proclamation and noted that Steve Tyler, Superintendent of Streets, and Troy Henderson, Public Works Supervisor, were also present.

- B. **Recognition of Outgoing Committee/Commission Members**

Mayor Janz noted that outgoing Audit Committee Member Robert Oster, Park and Recreation Commissioner Rodney Washburn, Mosquito Abatement and Vector Control Board Member Doris Kellett, and Transportation Subcommittee Member Robert Huber were awarded Certificates of Appreciation for their service to the Town.

C. GreenSTART Environmental Awards

Valerie Gardner, Chair of the GreenSTART Program, along with Mayor Janz, Council Member Marsala, and Town Arborist Kathy Hughes Anderson presented award certificates from Mayor Janz, certificates from the California Legislature, and monetary awards for GreenSTART projects from Laurel School, Encinal School, Hausner School, Menlo-Atherton High School, and Phillips Brooks School.

4. PUBLIC COMMENTS

David Brett, Atherton, spoke regarding traffic on Barry Lane and asked Council to review the speed limit to possibly lower it.

Elizabeth Lewis, Atherton, commended the Town for implementing the volunteer e-mail notification system on the Town's website. She spoke regarding the upcoming June 3 election and the issue of lawn signs.

James Dobbie, Atherton, noted the candidates had met with the Town's Code Enforcement Officer and came to an agreement regarding lawn signs.

Randy Lamb, Atherton, commended the ACIL for the great debate opportunity with the candidates. He reiterated his concerns regarding the Watkins and El Camino intersection and suggested implementing some type of traffic calming before a serious accident occurred. He asked for a follow-up report regarding former Finance Director John Johns with regard to Council Members. Lastly, he found it ironic that some people had a problem with the exuberance of those putting up campaign signs that could ultimately cost the Town money. He encouraged the Town to support freedom of speech.

5. REPORT OUT OF CLOSED SESSION

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

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

**Lamb vs. Town of Atherton, et al.
Superior Court of California, San Mateo County, CIV 461630**

There was no reportable action taken.

B. CONFERENCE WITH LEGAL COUNSEL – Anticipated Litigation, Initiation of Litigation pursuant to Subsection (c) of Government Code Section 54956.9

**Three (3) potential cases
There was no reportable action taken.**

C. LIABILITY CLAIMS – pursuant to Government Code Section 54956.95

Claimant: Joseph and Mele Genaro

Agency Claimed Against: Town of Atherton

The claim was considered and by unanimous vote of the Council, the claim was denied.

City Attorney Hynes indicated the need for Council to add an item to the evening's Regular Agenda that came up within the past 24 hours. Due to the impending visit of Senator John McCain the next day, there was a need for temporary closure of a street. The California Vehicle Code, Section 21101(e), gave authority to the City Manager or his designee to temporarily close streets when it was advantageous to do so in order to maintain public safety. The code required that the designation be made by ordinance or resolution. A 2/3 vote of Council was needed to add and item and adoption of a resolution to the agenda.

MOTION – to add an item to the Regular Agenda regarding the adoption of a resolution allowing for temporary street closures

M/S McKeithen/Carlson

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

6. CITY MANAGER'S REPORT

City Manager Jerry Gruber queried Council on the need to schedule a Special meeting regarding the budget on June 11, 2008. Regarding Item No. 17 on the Regular Agenda, he noted Dr. Goodman would not be available until 9:00 p.m. and asked that the item be taken up later in the evening. City Manager Gruber reported on numerous meetings and events he attended during the month. The recruitments for Police Chief, Finance Director, and Assistant City Manager were progressing. He explained the new e-mail notification system. About 30 to 40 people had signed up currently.

Police Chief Bob Brennan spoke regarding a residential burglary that occurred the previous day. Two suspects had been arrested within an hour.

Council Member Marsala suggested putting a "bump" sign up on Barry Lane to make people aware of the bridge.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Atherton Tree Committee

Rachel Croft, Chair of the Tree Committee, gave a brief report regarding the committee's activities: Celebrated Arbor Day at Selby Lane School and planted two oak trees and replaced another tree; and held a second charette regarding Trees for El Camino. The committee received a 2008 California Releaf Grant to continue its newsletter.

CONSENT CALENDAR (Items 8-16)

Regarding Item No. 12, Council Member McKeithen queried whether the policy included Council Members. City Attorney Marc Hynes said it did not. Council Member McKeithen also noted a new Attorney General's opinion of May 19, 2008, regarding police officers and public vs. private interests. City Attorney Hynes would provide a report to Council. Mayor Janz noted that a communication between a constituent and an individual Council Member could be treated as confidential if it was marked as "confidential." He suggested that the advice be noted on the website and in the *Athertonian*.

Regarding Item No. 9, Council Member Marsala asked whether credit card statements could be added to the report. Regarding Item No. 10, he asked for a breakdown of funds regarding training, subscriptions, etc., by individual. He suggested setting up a Facilities Fund to receive donations.

Regarding Item No. 15, Mayor Janz submitted minor edits to the letter to State Senator Joe Simitian.

MOTION – to approve the Consent Calendar as presented.

M/S Carlson/McKeithen

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

- 8. APPROVED MINUTES OF THE SPECIAL CITY COUNCIL CLOSED SESSION MEETING OF APRIL 10, 2008; THE SPECIAL CITY COUNCIL CLOSED SESSION AND REGULAR CITY COUNCIL MEETINGS OF APRIL 16, 2008**
- 9. APPROVED BILLS AND CLAIMS FOR APRIL IN THE AMOUNT OF \$ 980,868**
- 10. ACCEPTED MONTHLY FINANCIAL REPORT FOR APRIL 2008**
- 11. ACCEPTED QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDING MARCH 31, 2008**
- 12. APPROVAL OF AN AMENDMENT TO THE TOWN'S E-MAIL POLICY**
(Continued from the City Council meeting of April 16, 2008.)

Approved by motion, an amendment to the Town's E-E-Mail, Internet, and On-Line Service Use Policy pertaining to the retention and deletion of e-mail.

- 13. ADOPTION OF A RESOLUTION MODIFYING SOCIAL EVENT FEES AT HOLBROOK-PALMER PARK**

Adopted Resolution No. 08-15, "A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON MODIFYING FEES FOR SOCIAL EVENTS AT HOLBROOK-PALMER PARK"

14. APPROVAL OF CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$109,269.64 FOR THE VALPARAISO AVENUE OVERLAY PROJECT NUMBER 06-001

Approved contract change orders in the amount of \$109,269.64 for the Valparaiso Avenue Overlay Project, Project No. 06-001.

15. APPROVAL OF LETTER TO STATE SENATOR JOE SIMITIAN SUPPORTING C/CAG-SPONSORED SENATE BILL (SB) 348

Authorized the Mayor to sign the letter to State Senator Joe Simitian supporting C/CAG-Sponsored Senate Bill (SB) 348

16. REPORT FROM THE CITY MANAGER REGARDING HIS FIRST 100 DAYS

Accepted report.

16A. ACCEPT AND APPROVE THE RECOMMENDATION OF THE CITY COUNCIL SCREENING COMMITTEE FOR AN APPOINTMENT TO THE TRANSPORTATION/TRAFFIC SUBCOMITTEE

Accepted the recommendation of the City Council Screening Committee to appoint A. Erwin Ericksen to the Transportation/Traffic Subcommittee

PUBLIC HEARINGS

NONE

REGULAR AGENDA (Items 17-20)

17. ANNUAL FINANCIAL REPORT FOR FISCAL YEAR 2006/2007

Interim Finance Official Bill Yeomans introduced Brian Kelly, Auditor, Caporicci and Larsen.

Brian Kelly explained the Town's and auditors' responsibilities as they related to the audit. After review and analysis of all aspects of the Town's finances, the auditors issued an unqualified opinion for the 2006/07 Financial Report. The Financial Statements were fairly presented in all material aspects, significant accounting policies had been consistently applied, estimates were reasonable, and disclosures were properly reflected in the Financial Statements. Other key points: 1) there were no disagreements with management; and 2) there were no material weaknesses in internal controls; although, there were some control deficiencies which resulted in a letter to management. He distributed a draft Management Letter. The overview of the 2006/07 Financial Statements, Governmental Activity, resulted in a reduction of fund balances by \$1.7 million mainly due to increased capital project expenditures. The Property Tax Revenue and Special Assessment Revenue was approximately 51% of the governmental revenues. The Undesignated Fund balance in the General Fund

represented 51% of the General Fund expenditures, a significantly high Undesignated Fund balance, which was a good position to be in. The draft Letter to Management was prepared and presented to the Audit Committee which provided responses. Management was preparing responses to the recommendations as well.

Interim Finance Official Yeomans outlined management's responses to the Management Letter. Brian Kelly would incorporate the responses into the Management Letter for Council approval.

A discussion ensued regarding having contingency plans and policies in place in the event the City Manager and/or Finance Director were unavailable for an extended period of time. City Manager Jerry Gruber said internal controls were put in place to keep the Town functioning, e.g. having the City Clerk as a signatory. Additionally, there were more resources available through RGS and I.E.D.A.

Dr. Sam Goodman, Chair of the Audit Committee, said the committee met on May 6 and had an opportunity to look through all of the Financial Statements prior to the evening's meeting. The committee also had an opportunity to see an early draft of the auditors' Management Letter. The most important element for the Audit Committee was that there was nothing of materiality. There was a discussion regarding pension expenses and whether costs would increase due to poorer performance of investments. The City Manager and Interim Finance Official agreed to provide the Audit Committee with CalPERS' actuarial report. Property tax revenue could be reduced if homeowners requested lower assessments. The Audit Committee recommended that Council accept the auditors' statements and opinions.

John Rugeiro, Atherton, questioned a statement that certain public figures made comments to the press pertaining to suspected fraudulent activities which resulted in further delay in the release of the Financial Statements. He asked who the public figures were.

Brian Kelly said the reference was to news articles that had come to the auditors' attention. The auditors needed to perform due diligence with regard to the information and found the information in the press had no material impact on the Financial Statements.

Vice Mayor Carlson queried what the additional cost was for the outside auditors due to the delays.

Interim Finance Official Yeomans said the cost was under \$10,000.

Council Member Marsala asked whether the auditors found any truth to an allegation in the newspapers that \$144,000 was unaccounted for in the Building Department.

Brian Kelly said an examination of the Building Department two years prior indicated some discrepancies and recommended the Town management perform an investigation. The amount was less than \$144,000 and was due to incorrect invoicing.

Council Member McKeithen noted for the record that she and Vice Mayor Carlson were not the public figures making comments to the press that resulted in the extra expenditure and delay, which was \$15,000.

Mayor Janz said the unusual situation that existed in the Town last summer (the retirement of the City Manager and the absence of a Finance Director) should be noted in management's response to the Management Letter that the situation was a rare occurrence and unlikely to happen again.

Brian Kelly outlined new Governmental Accounting Standards Board (GASB) requirements.

No action taken. The Management Letter would be returned to Council for approval on the June agenda.

Mayor Janz called for a recess at 9:25 p.m. The meeting was reconvened at 9:37 p.m. Mayor Janz moved Item No. 19 forward to be heard before Item No. 18.

19. ADOPTION OF A MASTER RESOLUTION GOVERNING COMMITTEES/COMMISSIONS

City Attorney Marc Hynes noted the most recent revisions to the Master Resolution Governing Committees/Commissions were before Council that evening, dated April 23, 2008. The Audit Committee reviewed the resolution regarding its powers and duties and suggested some changes which were included in the staff report. The changes could be added if Council so desired.

Vice Mayor Carlson suggested combining Section 5, Powers and Duties, with Section 4, Composition and Terms, placing the powers and duties under each committee.

William Grindley, Atherton, agreed with Vice Mayor Carlson's suggestion. He noted some items that needed clarification: 1) Regarding the Crime Prevention Task Force and the Heritage Committee, he noted they there was no indication where they were included; 2) Regarding the Rail Committee, the Traffic/Transportation Subcommittee, and the Screening Committee, he queried what chartered the committees; 3) Regarding the Town Center committee, he queried whether it was the Facilities Committee; and 4) Regarding Council Members' terms on the Screening Committee, the question marks needed clarification.

Lou Paponis, Atherton, asked for clarification regarding why the Council was referred to as "City" Council and not "Town" Council.

City Attorney Marc Hynes explained that the Town was a General Law City and as such, its Council Members were City Council Members, the attorney was the City Attorney, and the manager was the City Manager.

Jean Schaaf, Atherton, Arts Committee, was confused with the current the relationship between the Arts Committee and the Park and Recreation Commission. In the past,

the Arts Committee gave periodic reports to the Park and Recreation Commission. She would like the issue clarified.

Valerie Gardner, Atherton, Environmental Programs Committee (EPC), believed there were differences between the committees and how they worked. She found the document to be mission driven with some committees not just acting in an advisory capacity. The EPC only had one role, i.e. to act in an advisory capacity. She queried whether the EPC would have an opportunity for more input.

Council discussion ensued regarding keeping committees consistent with parity among them. There was debate as to how much empowerment should be given to committees without having Council approval for every event/program. The EPC was invited to submit suggestions/changes for the resolution.

Direction to the City Manager to schedule a Study Session prior to the Special City Council meeting regarding the budget on June 11, 2008.

18. DISCUSSION AND POSSIBLE APPOINTMENT OF A BLUE RIBBON TASK FORCE TO SOLICIT INPUT AND EVALUATE THE FEASIBILITY OF A NEW TOWN CENTER; DISCUSSION AND POSSIBLE CREATION OF A COMMITTEE TO EVALUATE THE FEASIBILITY OF FUNDRAISING OPTIONS FOR A NEW TOWN CENTER

City Manager Jerry Gruber presented a staff report. The Facilities Committee met on March 28, 2008, to discuss a process to develop a new Town Center. Council directed the Facilities Committee to prepare recommendations for the Blue Ribbon Task Force as to its composition and fundraising options. The staff report contained an outline of what had been accomplished over the years regarding a new Town facilities beginning in 1995 with a space needs analysis.

Council Member McKeithen suggested adding to the analysis whether the funding should be private or public funding. Under No. 7, Public Support, she wanted to add the methodology to determine public support with a question mark after the word "Referendum." She believed there was a need to determine how the majority of the Town felt about the design and funding or whether they wanted a new Town Center at all. She queried the inclusion of the ACIL as an interested party in the Task Force.

Mayor Janz believed the ACIL was the only Town-wide organization.

A discussion ensued regarding whether the Design Committee and Fundraising Committee should report to the Task Force or to the Facilities Committee. Council Member Marsala said the intent was for the committees to report to the Facilities Committee. Council Member McKeithen felt strongly with regard to the Fundraising Committee that either the Finance Committee or Finance Director be involved. City Manager Gruber suggested the Finance Director could attend the Facilities Committee meetings to provide a nexus.

Council Member Marsala responded to Mayor Janz' question that the Facilities Committee would select the members of the Fundraising and Design Committees.

A discussion ensued regarding the Brown Act and whether the Fundraising and Design Committees would be subject to it. In the interest of keeping everyone informed, agendas would be posted even though as ad hoc committees, they would not be subject to the Brown Act. The Blue Ribbon Task Force, however, would be subject to the Brown Act.

Vice Mayor Carlson thought the idea of a new facility needed to be made a goal and objective of the Council. At the Council's Workshop, Mr. Neu noted the Council agreed to try to establish the political, economic, and operational feasibility of creating a Town Center. He believed the Town's residents needed to be brought into the starting position since many might not be aware new facilities were being considered. He thought two questions needed to be asked: 1) Were residents living in Atherton today sufficiently aware of the need for new Town facilities; and 2) if the answer was "yes," what size of project would be appropriate, etc.

Mayor Janz thought the first task of the Task Force would be to address Vice Mayor Carlson's questions. People would have differing opinions and answers depending upon what it would look like and how it would be financed.

Mayor Janz was willing to take the next step of assembling the Blue Ribbon Task Force to enable it to address the concerns. The Task Force would report to the Facilities Committee and the City Council. He suggested adding economic feasibility and operational feasibility to the 9 items, making 11 items.

MOTION – to approve creation of the Blue Ribbon Task Force charged with the duties as set forth in the staff report and edited to include economic feasibility and operational feasibility

M/S Janz/McKeithen

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

20. ADOPTION OF A RESOLUTION AUTHORIZING THE TEMPORARY CLOSURE OF STREETS (Added to the agenda because an urgent need arose within the past 24 hours as noted above.)

Police Chief Bob Brennan said residents had been notified of the street closure and the street would be open to residents. Due to a recent ruling, protestors could not be retained in designated areas; however, when the street was closed, protestors could be retained outside the boundary of the closure.

William Grindley, Atherton, thought the word temporary should be further defined to mean temporary for the duration of the event.

City Attorney Marc Hynes said the word temporary was used in State law that allowed for the temporary closure for the purpose of the event, i.e. the event described the closure.

Valerie Gardner, Atherton, suggested a method of notification other than by mailer was needed. In the case of Marsh Road being closed, residents would like advance notice.

Public Works Director Duncan Jones said Marsh Road was being closed due to public works issues and signage would be posted.

City Attorney Hynes said there were existing codes in the Municipal Code relating to public works street closures.

MOTION – to adopt Resolution No. 08-16, “A RESOLUTION OF THE TOWN OF ATHERTON PERTAINING TO TEMPORARY CLOSING OF STREETS”

M/S McKeithen/Carlson

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

21. COUNCIL REPORTS

- **Council Member McKeithen said the Finance Committee met on May 7 where several issues related to the budget were discussed, i.e., format, policy goals, upcoming budget process, facilities construction fund, parcel tax monies, School Resource Officer, etc., debt vs. lease of temporary buildings, and directed hiring a specialist with regard to PERS.**
- **Mayor Janz said one goal from the Council’s Workshop was to explore the idea of the feasibility of annexing any unincorporated areas into the Town, e.g., economically via sale tax revenue and possibly facilitate the Town’s ability to provide additional housing to enable the Housing Element approved by the state. He contacted Supervisor Rose Jacob Gibson and the Mayor of Redwood City who were favorable to the idea.**
- **Council Member Marsala said the Earth Day Eve Open House was attended by over 200 people. He participated in a League of Cities Bocce Ball Tournament on April 24. On May 4, was GreenSTART Day and Sacred Heart School had its own fair. He attended the Town’s staff appreciation dinner, which was well done.**
- **Vice Mayor Carlson noted Arbor Day at Selby Lane School was very well attended. He attended the ABAG Spring General Assembly where housing and being close to transit were discussed in an effort to reduce miles per trip. He had breakfast with Supervisor Rich Gordon and discussed the possibility of annexation. Supervisor Gordon was enthusiastic and supportive of looking further into it. He attended a HEART event where grants were available to provide affordable housing to city/county employees.**
- **Council Member McKeithen attended the Office of Emergency Services meeting where the annual budget was discussed. A slight increase of 5% was included for Atherton, based upon real property assessment.**

- **Council Member Marsala noted the upcoming June 3 election and his work on Measure O, which would regenerate \$200,000 per year for Holbrook-Palmer Park.**

22. PUBLIC COMMENTS

There were no public comments.

23. ADJOURNMENT

Mayor Janz adjourned the meeting was at 11:11p.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**