



**MINUTES**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**July 20, 2011**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California  
**REGULAR MEETING**

1. **PLEDGE OF ALLEGIANCE**

2. **ROLL CALL** Lewis, Dobbie, Widmer, McKeithen, Carlson

Mayor Dobbie announced that Item 21 would be removed from the agenda and will not be discussed.

Dobbie announced that Police Chief Mike Guerra retired and he thanked Guerra for his dedicated service to the Town and all of his contributions.

3. **PRESENTATIONS** - None.

4. **PUBLIC COMMENTS**

William Grindley, Atherton resident, updated Council on High Speed Rail actions. Grindley attended a trip to Sacramento where the Town has developed many relationships with members of the Assembly and Senate. Grindley said 1 billion of the ARRA funds were voted to go to the flood relief rather than HSR. Secondly, the plan has given way to smaller debt reduction which is good for those who oppose HSR. At the State level, a majority of individuals are beginning to appear with more opposition to HSR. Grindley reviewed 3 decision points with Council.

John Ruggeiro, Atherton resident, said that Al Michaels the former San Francisco Giants sportscaster made a positive comment about Atherton.

Colleen Anderson, Atherton resident, praised John Danielson for going directly to a resident and putting "out the fire." Anderson said that if someone calls in a noise complaint that the officers actually bring out the noise meter and test whether there is a violation. Anderson urged council to reconsider a personnel review board.

5. **REPORT OUT OF CLOSED SESSION**

**ROLL CALL** Lewis, Dobbie, Widmer, McKeithen, Carlson – All Present

**PUBLIC COMMENTS** – None.

**PUBLIC ANNOUNCEMENT OF CLOSED SESSION ITEMS** – Mayor Dobbie made a public announcement of the closed session items.

**CLOSED SESSION**

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Subsection (a) of Government Code Section 54956.9)**  
*Veal v Dere CV 10-10-05456*

City Attorney Conners said that Council received the report and gave direction.

- B. CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Subdivision (a) of Section 54956.9)**  
*Pacific Peninsula Group v. Town of Atherton, and Does 1 through 50, San Mateo Superior Court, Case No. CIV 497841*

Conners reported that there is no reportable action.

**6. CITY MANAGER’S REPORT**

Nothing further to add to written report.

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT - None**

**CONSENT CALENDAR (Items 8-26)**

Council Member Lewis removed 10, 11 and 12.

Vice Mayor Widmer had a comment on Item 17.

- 8. APPROVAL OF JUNE 15, 2011 REGULAR MEETING**  
**Recommendation:** Approve June 15, 2011 regular meeting minutes
- 9. APPROVAL OF BILLS AND CLAIMS FOR JUNE, 2011 IN THE AMOUNT OF \$1,081,141**  
**Recommendation:** Approve Bills and Claims in the amount of \$1,081,141
- 13. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH KIELTY ARBORIST SERVICES FOR CONSULTING TOWN ARBORIST SERVICES**  
**Report:** Town Planner Neal Martin  
**Recommendation:** Approve the attached Professional Services Agreement with Kielty Arborist Services for Consulting Town Arborist services
- 14. AWARD OF CONTRACT FOR PUBLIC WORKS MAINTENANCE AND MAINTENANCE MANAGEMENT SERVICES**  
**Report:** Interim Public Works Director Mike Kashiwagi

**Recommendation:** Award the contract for Public Works Maintenance and Maintenance Management Services to MCE Corporation, and authorize the city manager to negotiate and execute an agreement for a “not to exceed” amount of \$599,000

**15. EMERGENCY STAFFING OF THE BUILDING DEPARTMENT**

**Report:** Interim City Manager John Danielson

**Recommendation:** Receive the report on the actions of the City Manager to staff the Building Department with contract resources to continue to provide inspection and plan review services and authorize the continuation of those services until a consultant is selected to provide those services

**16. APPROVE A CONSULTANT SERVICES AGREEMENT WITH BKF ENGINEERS FOR CONSTRUCTION AND PERMIT COMPLIANCE SERVICES FOR THE UPPER ATHERTON CHANNEL CREEK RESTORATION AND SLOPE STABILIZATION PHASE II PROJECT, IN AN AMOUNT NOT TO EXCEED \$168,353**

**Report:** Interim Public Works Director Mike Kashiwagi

**Recommendation:** Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with BKF Engineers to provide construction and permit compliance services for the Upper Atherton Channel Creek Restoration and Slope Stabilization Phase II Project in an amount not exceed \$168,353

**17. APPROVE AN AGREEMENT WITH EDWIN F. FLINT FOR POLICE CHIEF SERVICES FOR THE TOWN**

**Report:** Interim City Manager John Danielson

**Recommendation:** Approve an agreement with Edwin F. Flint to provide interim Chief of Police services on a month to month basis in the amount of \$14,500 per month, and authorize City Manager to execute a contract on behalf of the Town

Vice Mayor Widmer said he is in full support of Mr. Flint and believes he makes a good addition to the team. Widmer suggested adding a time limit of “up to 6 months,” to the contract and allowing the City Manager to make changes contingent upon Council consent.

City Manager Danielson agreed to those terms.

**18. TOWN RESPONSE TO CIVIL GRAND JURY REPORT ON REGARDING THE USE OF TASERS BY SAN MATEO COUNTY LAW ENFORCEMENT**

**Report:** Chief of Police Mike Guerra

**Recommendation:** Approve the response letter to the San Mateo County Civil Grand Jury regarding the use of Tasers by San Mateo County law enforcement agencies

**19. ADOPTION OF A RESOLUTION APPROVING THE STATEMENT OF INVESTMENT POLICY FOR FISCAL YEAR 2011-2012**

**Report:** Finance Director Louise Ho

**Recommendation:** Adopt a resolution approving the Statement of Investment Policy for FY 2011-2012

**MOTION by Carlson, second by Lewis to approve Items 8,9,13,14,15,16,17,18 and 19. The motion passed.**

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

**PUBLIC HEARINGS (20)**

**20. INTRODUCTION OF REVISIONS TO ATHERTON MUNICIPAL ORDINANCE  
5.20.010 – SOLICITOR PERMITS**

**Report:** Police Chief Guerra

**Recommendation:** Council approve the introduction of proposed revisions to Atherton Municipal Ordinance 05.20.010 for soliciting within the Town limits

City Attorney Conners said that the former Chief brought this item forward for discussion. Conners said that while procedures in city codes is allowed, it competes with the first amendment rights and therefore should be exercised with caution.

Lieutenant Joe Wade said there have been some residents who lodge complaints about solicitors on their property and there isn't much the Police can do about it. Wade said enacting rules to enforce prohibition of solicitor's will allow Police to cite the offender.

Council Member Lewis questioned how many permits are issued per year. Lewis suggested putting a list of permit holders on the Towns website so residents know who is permitted to solicit. Staff said they would report back.

Council Member Carlson asked how residents will be notified about this new legislation. Conners felt that the residents who want the unwanted solicitors will find out once they call the police to report "trespassers."

Council Member Carlson suggested allowing the resident to choose to opt-in or opt-out by putting up a "no solicitor's allowed," sign.

Mayor Dobbie said he is not in favor of having these types of signs posted all over Atherton properties. Dobbie felt that the permit process should remain as is until staff can review further.

Colleen Anderson, Atherton resident, said there are signs that can be made that are very nice looking.

John Ruggeiro, Atherton resident, described a sign his neighbor has on the property.

Council Member Lewis made a motion not to approve the ordinance and to keep the current process intact and add that staff post or email out the permit once one is pulled by a solicitor. Dobbie seconded the motion. Widmer asked to amend the process to allow it to be an infraction. Council agreed. No vote was taken.

Council Member McKeithen asked Danielson how he feels about this. Danielson said he felt signage is intrusive and felt the best thing to do is to clean up the permit process and review the number of permits the Town issues.

Council agreed to table this item to a future agenda.

**REGULAR AGENDA (Item 21)**

**21. IMPLEMENTATION OF TOWN’S LAST BEST AND FINAL OFFER REGARDING CONTRACTING OUT OF BARGAINING UNIT WORK FOR MISCELLANEOUS TOWN EMPLOYEES REPRESENTED BY TEAMSTERS 856**

**Report:** Interim City Manager John Danielson

**Recommendation:** Adopt Resolution 11-19, implementing the Town’s Last, Best, and Final Offer to contract out work currently performed by members of the Miscellaneous Town Employee bargaining unit pursuant to the impasse resolution procedures contained in Municipal Code Sec 2.152.160

This item was removed from the agenda.

**10. PRELIMINARY FINANCIAL REPORT FOR THE TWELVE MONTHS ENDED JUNE 30, 2011**

**Report:** Finance Director Louise Ho

**Recommendation:** Receive the preliminary General Fund Financial Report for the twelve months ended June 30, 2011

Council Member Lewis pointed out that the General Fund exceeded by \$802,000. Lewis said we came through 2010 with more revenue than expected and higher property taxes of \$200,000 and \$430,000 in higher building and plan check revenues. Lewis concluded that Interim Building Official Lockard also found \$155,000 of building deposits that were forfeited as a one-time revenue source. Lewis congratulated staff and thanked them as well.

Council Member McKeithen said this does not include expenses.

**MOTION by Dobbie second by Lewis to receive the preliminary General Fund Financial Report for the twelve months ended June 30, 2011. The motion passed.**

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

**11. SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING CHAPTER 12.16.040 OF THE ATHERTON MUNICIPAL CODE REGARDING REQUIREMENTS FOR THE STORAGE AND REMOVAL OF RECYCLING, COMPOSTING AND GARBAGE CONTAINERS (CARTS)**

**Report:** Interim City Manager John Danielson

**Recommendation:** Waive further reading, and adopt Ordinance adding Chapter 12.16.040 of the Atherton Municipal Code regarding requirements for the storage and removal of recycling, composting and garbage containers (carts)

Interim City Manager Danielson said the Town receives numerous complaints from residents regarding the storage of refuse containers on or near the right of way for long periods of time prior to and after the collection of the containers. Often resident’s report that containers, frequently as many as ten are permanently stored in these areas and if they are removed they are left on areas of the property in full public view.

Danielson felt that this would be used as an administrative citation process after counseling and due-diligence from staff. A citation would only be used when all else fails.

Council Member McKeithen felt that an email circulated to residents didn't describe the whole picture. McKeithen said this proposed ordinance is not for revenue generation. It is a consequence of a lot of people requesting measure put into place for safety concerns and to reduce the number of garbage cans being left out for consecutive days. McKeithen hoped this would be an opportunity to make residents aware that those who are not able to bring their carts out can have Recology do it for them. McKeithen concluded that it is not meant to be used on a proactive basis but to be used after all other mitigation plans have been exhausted.

Vice Mayor Widmer said the current Code Enforcement Officer can help resolve any issues without citing a resident. Widmer added that he does a good job at resolving matters and disputes between neighbors. Widmer agreed that it was a safety and beautification items and citations would be used as a last resort.

Council Member Lewis felt that there has not been enough resident outreach on this legislation. Lewis felt the words in the ordinance were very "cut and dry." She added that even though the Council Members intent is to make sure that citation is a last resort and that the intent is to be very lenient, this language is not included in the ordinance. Lewis suggested sending out a letter to all residents asking them to adhere to certain guidelines and requesting that they be considerate of their neighbors and neighborhood. Lewis concluded that residents could call the Recology hotline to complain about habitual offenders.

Council Member Carlson said it is troubling that there is such a different interpretation between tonight's discussion and the language in the ordinance.

City Attorney Connors said the main reason for the ordinance is to get the cans in and out in a timely manner. Connors added that the intent is not to begin citing everyone.

Mayor Dobbie said the Towns General Plan gives Council the duty to keep the Town rural. Dobbie suggested sending a letter to all residents requesting voluntary compliance. Dobbie concluded that this ordinance gives the Town the leverage to keep it safe and beautiful but we hope not to use it and it is not a source of revenue generation.

Ann Willis, Atherton resident, felt that the idea of this being a "last resort" and that there are exceptions for people who are out of town or unable to move their cans should be in the ordinance.

Steve Nachsteim, Atherton resident, felt Council was ahead of the game. He suggested trying an education and outreach component before implementing the ordinance.

Gino Gasparini, Recology, said that these types of laws are in place in many other jurisdictions in Recology's service areas and have been for years. Gasparini said he is not aware of any fines that have been issued. Gasparini concluded that Recology staff can work with Town staff to insert a notice on the Recology quarterly garbage bills.

Colleen Anderson, Atherton resident, said Recology is a big part of the problem because they leave carts all over the streets. Anderson said the Town has a history of allowing one resident to do one thing and another resident to do it a different way.

Jon Buckheit, Atherton resident, said he has a neighbor who continually leaves cans out. Buckheit said the offenders should have some type of 3-strike rule before being fined. Buckheit concluded that the Town needs a mechanism for recourse.

Council member McKeithen felt the outrage over this issue was misplaced and she doesn't think voluntary compliance alone will work for the Town.

Council Member Carlson suggested tabling the item for six months while staff takes the appropriate actions to contact habitual offenders and seek voluntary compliance.

Interim City Manager Danielson said if residents comply they will do it quickly and if not it will take time. Danielson said staff will take advantage of the Recology insert in the garbage bills. He also suggested personal visits from Recology.

Mayor Dobbie felt there was no reason to delay the passing of this ordinance.

Council Member Lewis felt that if the intent is that this ordinance be used as an administrative citation process after counseling and due-diligence from staff, and that citations would be used only as a last resort, that this language should be embedded in the ordinance. Lewis felt that in the future when there is a new Council and new City Manager they won't know the intent unless it is written into law.

**MOTION by Dobbie, second by McKeithen to waive further reading, and adopt Ordinance adding Chapter 12.16.040 of the Atherton Municipal Code regarding requirements for the storage and removal of recycling, composting and garbage containers (carts). The motion passed.**

Ayes: 3      Nays: 2 (Carlson, Lewis)      Abstain: 0      Absent: 0

**12. ACCEPT THE RECOMMENDATION OF THE AUDIT COMMITTEE TO SET UP AN INTERNAL REVENUE SERVICE (IRS) APPROVED SECTION 115 IRRECOVABLE TRUST TO PREFUND RETIREE HEALTH CARE COST AND TO DIRECT THE FINANCE COMMITTEE TO MAKE RECOMMENDATION ON THE TRUST PROVIDER**

**Report:** Finance Director Louise Ho

**Recommendation:** Accept the recommendation from the Audit Committee to set up an IRS approved Section 115 irrevocable trust to prefund retiree health care cost and to direct the Finance Committee to make recommendation on the trust provider

Council Member Lewis said that last month the Town had an item before Council to adopt a general fund reserve policy to fund GASB 54 to not put it in an irrevocable trust. Lewis asked for clarification.

Finance Director Ho said GASB 54 adopted last month is related to the General Fund and this portion is not part of that. Ho said the Audit Committee is recommending that the City Council approve the setup of a Section 115 trust and direct the Finance Committee to review various provider options so that the \$1,200,000 (FY 2010 and FY 2011) currently held in the Town's pooled cash and investments can be professionally managed to achieve a higher rate of

return which can help to reduce unfunded liability. In addition, the trust would enable rating agencies to perceive the Town's financial position more favorably.

Council Member Lewis asked what the projections are for prefunding on an annual basis.

Ho said about \$800,000 or 8% a year.

Council Member McKeithen said she thinks this is a good idea and something the Town will get credit for.

Vice Mayor Widmer agreed and added that it's time to pay up.

Council Member Carlson asked if this is associated with already retired employees. Ho said it is for already retired employees and eligible retirees.

**MOTION by Dobbie, second by McKeithen to accept the recommendation from the Audit Committee to set up an IRS approved Section 115 irrevocable trust to prefund retiree health care cost and to direct the Finance Committee to make recommendation on the trust provider. The motion passed.**

Ayes: 5 Nays: 0 Abstain: 0 Absent: 0

22. **COUNCIL REPORTS** – Nothing more to add to written report.

23. **FUTURE AGENDA ITEMS** – None.

24. **PUBLIC COMMENTS**

Malcolm Dudley, Atherton resident, said he reviewed all revenues and operating expenses for the Town over the last ten years.

25. **ADJOURN**

**MOTION by Dobbie, second by Widmer to adjourn the meeting. The motion passed unanimously.**

Mayor Dobbie adjourned the meeting at 8:45 p.m.

**Respectfully submitted,**

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**Theresa DellaSanta  
Deputy City Clerk**