



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

November 17, 2004

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor McKeithen called the meeting to order at 7:01 p.m.

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

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

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

Mayor McKeithen announced that Item No. 7 would be taken out of order due to a prior commitment of the presenter.

7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

Sandy Levison of the Atherton Crime Prevention Task Force presented an overview of the group's activities.

3. **PRESENTATIONS**

A. Annual Red Ribbon Week Presentation

Police Chief Bob Brennan and Police Reserve Officer Bruce Potts presented awards to the Annual D.A.R.E. Red Ribbon Week poster contest winners from local elementary schools.

B. America Recycles Week Proclamation

Mayor McKeithen read the America Recycles Week Proclamation.

4. COUNCIL REPORTS

- Council Member Janz reported on a recent Housing Endowment and Trust Board meeting regarding a notice of funds availability to solicit developer applications for affordable housing. He further reported that the Caltrain Corridor Subcommittee discussed the furtherance of establishing a “quiet zone” in Atherton and what that would entail. He reported that the Caltrain Corridor Subcommittee recommended that the free parking program at the Atherton Train Station be expanded to allow overnight parking in order to further encourage train ridership from the station, and that this item was on tonight’s agenda for Council action.
- Council Member Marsala announced that Proposition 1A passed, which was sponsored by the League of California Cities. The Library Board met and the Town of Portola Valley is rebuilding their civic center and considering funding for their new library. He further stated that he was at a party in the Town and the police showed up four times due to noise complaints and the police handled the matter professionally.
- Council Member Carlson did not have a report.
- Vice Mayor Conwell reported on the Annual Criminal Justice Council Awards Dinner, which was well received. Measure A was discussed at the C/CAG meeting. He further reported that the Criminal Justice Council heard from a man who was a felon who reported on his experience with being allowed to vote in elections, and stated that more needed to be done in relation to re-integrating convicted felons back into society.
- Mayor McKeithen did not have a report.

5. PUBLIC COMMENTS

John Ruggeiro, Atherton, remarked on the election outcome of the parcel tax.

6. STAFF REPORTS

- City Attorney Marc Hynes had requested the presence of a taxation attorney, Mr. Hutton, at tonight’s meeting but he was not able to attend.

CONSENT CALENDAR (Items 8-16)

City Manager Robinson noted a correction to Item No. 16 on the Consent Calendar, in the Recommendation on the Agenda, the appointment is to the General Plan Committee, not the Arts Committee.

Mayor McKeithen stated that regarding Item No. 14, train riders utilizing the overnight parking should let the Police Department know how long they will be parking their cars in the train station lot, in order that their cars will not be considered abandoned vehicles.

MOTION – to approve the Consent Calendar as presented with the correction to Item No. 16.

M/S Conwell/Janz

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

8. APPROVED MINUTES OF SPECIAL AND REGULAR MEETINGS OF OCTOBER 20, 2004

9. APPROVED BILLS AND CLAIMS FOR OCTOBER 2004 IN THE AMOUNT OF \$1,263,724

10. ACCEPTED MONTHLY FINANCIAL REPORT FOR OCTOBER 2004

11. ACCEPTED QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDED SEPTEMBER 30, 2004

12. HELD SECOND READING AND ADOPTED ORDINANCE NO. 551 RATIFYING, IN PART, ORDINANCE NO. 29 OF THE MENLO PARK FIRE PROTECTION DISTRICT PERTAINING TO FIRE SPRINKLER SYSTEM REQUIREMENTS

Adopted Town of Atherton Ordinance No. 551 ratifying, in part, Ordinance No. 29 of the Menlo Park Fire Protection District pertaining to Fire Sprinkler System Requirements

13. ADOPTED RESOLUTION NOS. 04-23 AND 04-24 AUTHORIZING APPLICATION FOR ROBERTI-Z'BERG-HARRIS URBANIZED AREA NEED BASIS PROGRAM GRANTS TO REHABILITATE THE HOLBROOK-PALMER PARK CARRIAGE HOUSE RESTROOMS, KITCHEN AND SECOND FLOOR AND TO RECONSTRUCT THE HOLBROOK-PALMER PARK TENNIS COURTS AND COMMITTING THE REQUIRED THIRTY PERCENT LOCAL MATCH

Adopted Resolution Nos. 04-23 and 04-24 authorizing staff to submit applications for Roberti-Z'berg-Harris Urbanized Area Need Basis (RZH) program grants to rehabilitate the Holbrook-Palmer Park Carriage House restrooms, kitchen and second floor and to reconstruct the Holbrook-Palmer Park tennis courts and committing the required thirty percent (30%) local match.

14. APPROVED RECOMMENDATION FROM THE CALTRAIN CORRIDOR SUBCOMMITTEE TO ALLOW OVERNIGHT PARKING AT THE ATHERTON TRAIN STATION

Approved recommendation from the Caltrain Corridor Subcommittee to allow overnight parking at the Atherton train station to accommodate riders utilizing Caltrain service to San Francisco and San Jose International Airports as part of the

free parking promotion at the station previously approved on a trial basis by the City Council.

15. APPROVED RECORDATION AND REMOVAL OF THE OLD GAZEBO IN HOLBROOK-PALMER PARK

Accepted recommendation of the Park and Recreation Commission and authorized Park staff to record by digital photography and remove the old gazebo in Holbrook-Palmer Park.

16. GENERAL PLAN COMMITTEE APPOINTMENT

Approved the recommendation of the Screening Committee to appoint a resident, Todd Beardsley, to the General Plan Committee.

REGULAR AGENDA

17. CONSIDERATION OF REQUEST FOR DRAINAGE IMPROVEMENTS AT 401 FLETCHER DRIVE

Dr. Frank Novak, resident and property owner 401 Fletcher Drive, stated that due to drainage issues in his area, three of his olive trees are being damaged. He stated that he makes olive oil from these trees, and he requested the Town's assistance with addressing the drainage problems on his property.

Council Members asked questions of Dr. Novak and staff regarding options to address this issue.

With respect to city liability, City Attorney Marc Hynes responded that the city only would have liability as a result of water being directed there from a city facility, or from development approved by the city without having the water handled on site, and that the flows appear to be historic.

Dr. Novak inquired as to how he had authority to have work done on the public right-of-way.

Public Works Director Jones responded that he could apply for an encroachment permit.

MOTION – to waive the fee for an encroachment permit to allow Dr. Novak to have the drainage work done himself.

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

The motion failed.

Council Member Carlson stated that the Town has no legal liability for this problem, and that waiving the fee would set a poor precedent. He further stated that the Town was in an era of fiscal uncertainty and that waiving the fee was not a good use of city resources.

Bill Johnson, a neighboring resident, stated that the amount of runoff has tripled since new developments took place in their neighborhood and that he lost three oak trees.

Mayor McKeithen stated that she and Council Member Janz would welcome a meeting with Dr. Novak and Mr. Johnston on this issue, and that Building Official Mike Hood would also be invited to meet with them.

Council Member Carlson stated that when there is a new development, all of the new run-off water from the site is supposed to be handled on the property, and there may be a legal remedy for Mr. Novak with respect to the uphill properties.

18. CONSIDERATION OF FINANCE COMMITTEE RECOMMENDATIONS REGARDING REVENUE ENHANCEMENT OPTIONS – DISCUSSION AND POSSIBLE ACTION REGARDING SPECIAL MUNICIPAL ELECTION

Finance Director John Johns presented the staff report and presented four options to the City Council for revenue enhancement, each of which would require a vote of the residents: a renewal of the parcel tax; a special assessment for public safety; a utility users' tax; and adopting a gross receipts-based business license tax for the real estate and construction industries. He stated that after an analysis of the options, that staff believed that adopting a gross receipts-based business license tax for the real estate and construction industries was the most viable option.

Council Member Janz stated that there is inequity in every type of tax, and that a utility users' tax has a higher degree of equity. He stated that any tax should not be used to indicate approval of a City Council's performance, and that the parcel tax failed in part because it was not marketed enough. He stated his support for an amendment to the business license tax.

Council Member Marsala stated that the Town is in uncharted waters without a survey of the residents. He also stated that he was concerned about getting information out in the Winter season, and that a June ballot may be worth considering. He is in favor of going ahead with amending the business license tax, but feels that it will be a difficult sell.

Council Member Carlson stated that he would comment on the issue after Public Comments.

Vice Mayor Conwell stated that he was not in favor of re-submitting the Parcel Tax to the voters. He is more in favor of a tax on real estate commissions since the commissions generated in this town are very large sums.

Comments from the public were taken next.

Jan Simonds, Atherton, stated that she would be more in favor of a combination of taxes, such as a smaller parcel tax and the real estate tax, as to not burden any one group.

Sam Goodman, Atherton, queried as to whether Vice Mayor Conwell was talking about real estate commissions. Vice Mayor Conwell responded that he was discussing commissions.

Jack Ringham, Atherton, stated that he was in favor of taxing real estate commissions, and that a tax to the voters needs a publicity campaign.

Mike Barsotti, Atherton, asked why the proposed tax is being called a business license tax and asked how it would be administered.

City Attorney Hynes stated that the business to be taxed is the title insurance company.

Jerry Carlson, Atherton, stated that the ACIL was shocked by the election outcome and that they would be in favor of a future parcel tax.

Todd Beardsley, Atherton, stated that he was in favor of taxing real estate commissions.

Jack Ringham, Atherton, further stated that we need a campaign to get a tax passed.

Council Member Janz stated that the tax would most likely fall on the buyers.

Council Member Marsala stated that a commission tax would open us up to challenges, and that he would like a survey of the residents.

Council Member Carlson stated that this is the culmination of an ongoing search for a solution to the city's budget issues, and that a majority of the residents want to maintain the services that we enjoy. The business license tax amendment is a long-term solution and it was based on a bare bones budget. He further stated that this would be a maximum tax to be assessed.

Vice Mayor Conwell stated that in relation to taxing real estate commissions, the voters might appreciate that the people who make the money pay the tax.

Mayor McKeithen stated that she supports the business license tax amendment. She stated that the real estate and construction industries gain because of the type of community that Atherton maintains. She does not want the Town to be held hostage to the parcel tax every four years.

At 9:35 p.m., Mayor McKeithen called for a recess, and reconvened the meeting at 9:44 p.m.

19. DISCUSSION AND CONSIDERATION OF A SPECIAL MUNICIPAL ELECTION ON MARCH 8, 2005 (ORDINANCE NO. 552, RESOLUTION NOS. 04-25 AND 04-26)

Assistant to the City Manager/Acting City Clerk Linda Kelly presented the staff report and explained that should the Council wish to pursue a Special Election to submit to the voters an amendment to the business license tax ordinance on March 8, 2005, the following actions would be required:

- 1. Motion adopting a Resolution Declaring a Fiscal Emergency**
- 2. Motion to introduce, read by title only, waive further reading, and adopt an Ordinance Calling an Election to Submit to the Voters an Ordinance Amending Sections 5.12.150, 5.12.160 5.12.080 and 5.12.140 of the Atherton Municipal Code Relating to the Business License Tax**
- 3. Motion adopting of a Resolution setting priorities for filing written arguments regarding a City Measure and directing the City Attorney to prepare an impartial analysis**

MOTION – Adopt a Resolution Declaring a Fiscal Emergency (Resolution No. 04-25), as amended, with the eighth “Whereas” clause amended to read as follows:

**“WHEREAS, Article XIII, Section C(2) of the California Constitution provides that a general tax may be considered at a special election under circumstances where the regular legislative body has determined that an emergency exists.”
(Underlined word added)**

M/S Conwell/Marsala

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

Mayor McKeithen read into the record the title of the proposed ordinance.

AN ORDINANCE OF THE TOWN OF ATHERTON CALLING AN ELECTION TO SUBMIT TO THE VOTERS AN ORDINANCE AMENDING SECTIONS 5.12.080, 5.12.140, 5.12.150 AND 5.12.160 OF THE ATHERTON MUNICIPAL CODE RELATING TO THE BUSINESS LICENSE TAX (ORDINANCE NO. 552)

Council Members requested several amendments to the Ordinance.

City Attorney Hynes was requested to read the amendments into the record, which he did as follows:

Under Section 2 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), “5.12.140” should be inserted before “Delinquent tax—penalty.”

Section 3 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), the first line is to be amended to read “SECTION 3. Section 5.12.150 of the Atherton Municipal Code is hereby deleted in its entirety and replaced with a new section to read:”

Section 3 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), the “A.” before the first sentence which begins with “Persons or firms conducting...” is to be deleted.

Section 3 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election), the word “firms” after “Grounds keeping and landscaping” is to be deleted, and the following should be added after the list of businesses in Category I: “Other businesses not otherwise identified within this Section 5.12.150.”

The existing Section 4 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) should be deleted and the remainder of the Sections are to be renumbered.

The existing Section 5 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) becomes Section 4, and the first line is to be amended to read “SECTION 4. Section 5.12.160 of the Atherton Municipal Code is hereby deleted in its entirety and replaced with a new section to read:”

In the new Section 4, the “A.” in the paragraph after “Tax Designated” is to be deleted. “3. Category III” of this same section is to be amended to read: “.53 percent of the face value of each title insurance policy issued by Category III businesses insuring the title of real property located within the Town (to be a charge payable by the transferor and/or transferee to be remitted by the title insurance or escrow company within five days after collection thereof by the title insurance or escrow company).”

The existing Section 6 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) should be deleted and the remainder of the Sections are to be renumbered.

The existing Section 7 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) is to be renumbered as Section 5.

The existing Section 8 of the proposed Ordinance to the Voters (within Section 3 of the Ordinance Calling the Election) is to be renumbered as Section 6.

The Condensed Statement of the Measure in Section 4 of the Ordinance Calling the Election is to be amended to read: “Shall the Atherton Business License Tax Ordinance be amended to enact increases to the existing business license tax and revise the taxed business categories in order to raise monies for general purposes such as, but not limited to, public safety services and capital improvement projects that otherwise would be reduced due to the loss of other local tax revenues?”

MOTION – to introduce, read by title only, waive further reading, and adopt an Ordinance Calling an Election to Submit to the Voters an Ordinance Amending Sections 5.12.150, 5.12.160 5.12.080 and 5.12.140 of the Atherton Municipal Code

Relating to the Business License Tax, as amended with the changes as stated by the City Attorney (Ordinance No. 552).

M/S McKeithen/Carlson

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

Regarding the proposed Resolution setting priorities for filing written arguments regarding a City Measure and directing the City Attorney to prepare an impartial analysis, Council Members Carlson and Marsala will work together to write an argument in favor of the measure to be presented to the Council at the next Regular Council meeting for approval by all the Council.

MOTION – Adopt a Resolution setting priorities for filing Written Arguments regarding a City Measure and directing the City Attorney to prepare an impartial analysis, as amended to (1) authorize all of the Members of the City Council to author and sign the argument in favor of the measure, and (2) including the amended question to the voters to read in conformance with the amended question as stated in the Ordinance Calling the Election, as follows:

“Shall the Atherton Business License Tax Ordinance be amended to enact increases to the existing business license tax and revise the taxed business categories in order to raise monies for general purposes such as, but not limited to, public safety services and capital improvement projects that otherwise would be reduced due to the loss of other local tax revenues?”

(Resolution No. 04-26)

M/S McKeithen/Carlson

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

Mayor McKeithen stated that the Town needed to set up public meetings to discuss the measure in order to inform the residents. The first meeting should be in January. She suggested that the publication of the Athertonian be delayed in order to inform residents about the January meeting and other meetings to be scheduled.

20. PUBLIC COMMENTS

Bob Jenkins, Atherton, stated that the ACIL could assist in advocating for the measure.

21. ADJOURNMENT

Mayor McKeithen adjourned the meeting at 10:17 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk