



MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
DECEMBER 16, 2009

7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California
REGULAR MEETING

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

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL** Lewis, Dobbie, Marsala, McKeithen, J. Carlson
- 3A. **CITY COUNCIL REORGANIZATION**

SELECTION OF MAYOR AND VICE MAYOR

Deputy City Clerk Theresa DellaSanta opened the nominations for the Office of Mayor.

Mayor Carlson nominated Vice Mayor McKeithen for the Office of Mayor. Council Member Dobbie seconded the nomination.

Deputy City Clerk DellaSanta asked for any other nominations from the floor.

MOTION to close the nominations and elect Vice Mayor McKeithen as Mayor. The motion passed.

Ayes: 5 Opposed: 0

Deputy City Clerk DellaSanta opened the nominations for the Office of Vice Mayor.

Council Member Lewis nominated Council Member Marsala for the Office of Vice Mayor. Council Member Marsala seconded the nomination.

Deputy City Clerk Theresa DellaSanta asked for any other nominations from the floor. Vice Mayor McKeithen nominated Council Member Dobbie for Office of Vice Mayor. Council Member Carlson seconded the nomination.

MOTION to close the nominations and elect Council Member Marsala as Vice Mayor. The motion failed.

Ayes: 2 Lewis, Marsala Opposed: 0

**MOTION to close the nominations and elect Council Member Dobbie as Vice Mayor.
The motion passed.**

Ayes: 3 Carlson, Dobbie, McKeithen Opposed: 0

OATH OF OFFICE - Mayor and Vice Mayor

Deputy City Clerk DellaSanta administered the Oath of Office to Mayor Kathy McKeithen and Vice Mayor Jim Dobbie.

Council Member Lewis said she had the pleasure of working both locally and regionally with former Mayor Carlson during her first year on Council. Lewis added that she would like to have had former Mayor Carlson continue as Mayor because he has represented Atherton with very high professionalism, integrity and dignity. Lewis concluded that Carlson has been a role model for future Mayors and thanked him for his tenure as Mayor.

Council Member Marsala added that former Mayor Carlson was very active with the League of California Cities and attended numerous meetings which have put the Town in a good position to help the Town advocate construction of High Speed Rail the right way. Marsala said that he has enjoyed working with Carlson and thanked him for his work.

Mayor McKeithen read a proclamation to former Mayor Carlson for his service and dedication during his term as Atherton Mayor.

Mayor McKeithen stated her goals and priorities for the Town during her tenure as Mayor. McKeithen said she would like to see greater efficiency so people will like to attend Council meetings, cover matters thoroughly, stay on topic, be prepared and explain findings to the public. McKeithen said she will aim for transparency in the Town and hopes the public will get more involved in discussions with Council and staff and listen and learn from each other.

MESSAGE FROM OUTGOING MAYOR

Former Mayor Carlson said it has been a genuine learning experience during his tenure as Mayor. Carlson said he appreciates the passage of the parcel tax and feels it buys some time for Council to get a hold of their long term financial goals. Carlson thanked Council, staff, family and Town residents for their confidence and support during his term as Mayor.

3B. PRESENTATIONS

PROCLAMATION TO RETIRED POLICE CHIEF GLENN NIELSEN

Mayor McKeithen read a proclamation to retired Police Chief Glenn Nielsen.

**OATH OF OFFICE – Police Chief Mike Guerra
Sergeant Sherman Hall**

Deputy City Clerk DellaSanta administered the oath of office for Police Chief Mike Guerra and Sergeant Sherman Hall.

CERTIFICATE OF APPRECIATION TO JEFFREY N. PETIT FOR LEGAL SERVICES TO THE ATHERTON ARTS COMMITTEE

Mayor Kathy McKeithen read the certificate of appreciation to Jeffrey N. Petit.

LEAGUE OF CALIFORNIA CITIES LEADERSHIP IN ACTION AWARD TO COUNCIL MEMBER CHARLES MARSALA

City Manager Jerry Gruber gave background on the League of California Cities Leadership Award which is intended to be a means by which mayors and council members can enhance their effectiveness as elected officials. Council Member Marsala was one of three elected officials statewide who completed the third and final level of the Mayors and Councilmembers Academy – the Leadership in Action level.

Barbara Pierce, League of California Cities representative, said that there are 2500 Mayors and Council Members in the State of California and since 1997 only 59 have completed all three levels. Pierce said that Council Member Marsala has joined a very elite group of dedicated public officials. Pierce congratulated Council Member Marsala and presented him with his leadership award and thanked him for his dedication to the State and his community.

4. PUBLIC COMMENTS

Heyward Robinson, Menlo Park Council Member, congratulated Council Member Carlson for his work as Mayor during the past year. Robinson said there is a lot of common interest between Menlo Park and Atherton, particularly High Speed Rail and hopes the Cities can unite and work together on several different projects. Robinson congratulated Mayor McKeithen and Vice Mayor Dobbie in their new positions.

John Ruggeiro, Atherton resident, on behalf of the Atherton Civic Interest League (ACIL) commended the new Mayor and Vice Mayor, the former Mayor, new Police Chief and former Police Chief and hopes that everyone succeeds in their new positions.

Loren Gruner, Atherton resident, applauded the Town for looking at the issues of speed on Fair Oaks Lane and Public Works Director Duncan Jones for putting together an informative public workshop on the issue.

Carol Flaherty, Atherton resident, stated that she felt at the November Council meeting that residents may have been confused when they thought the encroachment permit was part of the Building Department fees and as a result nobody commented. Flaherty said that when you have a circular driveway the fee that was passed would double to approximately \$2,600 to connect your driveway to the street. Flaherty requested Council look at the encroachment permit when they revisit the fee schedule.

5. REPORT OUT OF CLOSED SESSION

Atherton resident Jon Buckheit and Atherton resident Melinda Tevis spoke under public comment.

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Subsection (a) of Government Code Section 54956):

B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – pursuant to Government Code Section 54957(b)(1)

Title: *City Attorney*

**C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Subsection (b) of Government Code Section 54956.9):
One (1) potential case:**

Jonathan Buckheit –Claim No. GL060595

City Attorney Wynne Furth reported that there was no reportable action from the Regular Closed Session and that the Closed Session is continued until later that evening.

6. CITY MANAGER’S REPORT

Council Member Marsala asked for an update on the Hoover crosswalk. Public Works Director Duncan Jones said he met with Menlo Park officials to review the scope of work from the Towns consultant and the project is moving forward.

Council Member Marsala asked for an update on the non-school event guidelines and the historical artifacts ordinance. City Manager Gruber said he will provide a status update to Council by next week.

Council Member Marsala asked if there has been any research on the recent discussions about second meters. City Manager Gruber said he will add it to the list of discussion items for the strategic workshop.

Council Member Lewis asked for update on the Walsh Road resident’s evacuation plan from the Office of Emergency Services. City Manager Gruber will provide that to Council.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

● **Census Coordinator Margot Grant – San Mateo County**

Margot Grant, San Mateo County Census Coordinator, gave a Power Point presentation on the importance of participation in the 2010 census count. [A copy of the presentation is available in the City Clerks office].

REGULAR AGENDA (Items 8-10)

ITEMS CONTINUED FROM REGULAR NOVEMBER 18, 2009 COUNCIL MEETING

8. DRAINAGE CRITERIA UPDATE

Report: Public Works Director Duncan Jones

Recommendation: Receive information and give direction to staff for future actions to update the Drainage Criteria and to modify the Grading, Erosion and Sediment Control ordinance

(Staff will recommend Council continue this item to a Public Workshop)

City Manager Gruber stated that staff recommends holding a public forum workshop in order to allow residents to discuss the drainage criteria with Town staff.

Mayor McKeithen recommended compromising on a date that is good for staff and the residents. She suggested that residents put their thoughts and comments in writing so staff can be prepared to respond. McKeithen concluded that some residents may want to bring their Attorneys for input as well.

Council Member Marsala suggested returning to the previous maintenance agreement that was in place before 2007 which had less constrictive requirements. Marsala felt that by reverting back to the previous maintenance agreement the Town would have time to research and understand the new criteria and at the same time returning to the previous maintenance agreement would be fair to the residents.

Council Member Carlson was in favor of holding a public workshop and requested that staff be clear on what is required for the drainage system.

Council Member Dobbie supported a public workshop and felt that staff should solicit questions before the meeting in order to be further prepared at the workshop.

Council Member Lewis felt that the drainage criteria needs further public input and supported Marsala's idea of reverting back to the maintenance agreement in place before the change in 2007. Council Member Lewis suggested making revisions to the study that was done a few years back and at the same time possibly putting utilities underground and looking at the future of Atherton by investing in infrastructure.

MOTION by Lewis to rescind the current maintenance agreement and revert back to the previous agreement in place before September 2007. The motion was not seconded.

Mayor McKeithen opened up for public comment.

John Rugeiro, Atherton resident, said that this is as much a Caltrans problem as it is the Town and Caltrans should be contacted and involved.

Jon Venverloh, Atherton resident, said it is fair to characterize the current drainage requirements as a miniature Public Works project and it lays a high burden on private home owners.

Kimberley Sweidy, Atherton resident, said she is concerned that there is no guarantee on Town work. Sweidy said the Town should either be responsible for their actions or not. Sweidy supported the idea of beautifying Atherton as an ultimate goal and putting utilities underground. Sweidy said she would volunteer her time to work together with a Drainage task force.

Carol Flaherty, Atherton resident, supported the idea of a public workshop and written comments in advance of the meeting. Flaherty spoke of the drainage criteria as it relates to her own personal situations.

Loren Gruber, Atherton resident, supported a public workshop and felt that Council should take part to better understand the requirements. Gruner concluded that different areas in Town should have different requirements.

Joe Comartin, Atherton resident, said there are a lot of unreasonable notions in the maintenance agreement.

Denise Kupperman, Atherton resident, said that a public workshop is a great idea and staff should be prepared to have information and suggestions readily available at the workshop. Kupperman said to look at County, State, and Federal requirements, the history of the drainage criteria, and the requirements of Woodside and Portola Valley.

Jeff Wise, Atherton resident, said there are a lot of problems with the ordinance itself, he felt that the immediate concern is the maintenance agreement. Wise supported eliminating the maintenance agreement as currently written and revise the maintenance agreement to only what is required by the current ordinance.

Kelly Freese, Atherton resident, suggested Council consider all residents who have been subject to these erroneous requirements instead of considering claims only from here forward.

Mayor McKeithen closed public comment.

Public Works Director Jones said he supports a workshop to inform residents of the requirements and to listen to their concerns. Jones said before 2007 there were no criteria in place and the criterion was put into place to make it more uniform. Jones encouraged residents to bring their architects to the public workshop.

Council Member Marsala asked why so many residents have left the Building Department misinformed about the criteria. Public Works Director Jones said he has had little discussions with architects and has started asking the engineers to talk to the architects about alternatives which would cost less and be more environmentally sound.

Council Member Marsala asked if trees are being killed by the design if the drainage criteria. Public Works Director Jones said most of the systems are designed to avoid impact on trees.

Council Member Marsala asked approximately how long it will take before this issue is resolved. Public Works Director Jones said a workshop can be held shortly after the first of the year. He said there is an annotated version of the criteria that says where the criteria came from and that will be updated based on the new permit which became effective October 14, 2009 and lowered the threshold from 10,000 to 2,500 which is lower than expected. Jones said various other criteria in the new permit will be reinstated in the drainage criteria and provided to the residents either at the workshop or to a potential task force.

Council Member Dobbie said rescinding something at this time with lack of full knowledge is not appropriate and he supports a public workshop and the creation of a task force.

Council Member Carlson said he supports a public workshop with maximum public input.

Mayor McKeithen said she is hopeful that people put their comments in writing whether they attend or not and if they wish to join a task force they can do so to stay actively involved in the issue.

Council Member Lewis said the maintenance agreement is overreaching, erroneous, and should be removed.

City Attorney Wynne Furth said the drainage criteria were adopted under a procedure established by ordinance and can only be amended by resolution which was not brought to Council. Furth did not recommend rescinding the agreement at this time. Furth said it is possible to go back to residents who signed the current agreement and offer them a new one if one is adopted by the Town.

MOTION by Marsala, second by Lewis to request a Resolution at the January meeting to rescind the Ordinance put into place in 2007 and revert back to what was in place before that and research a fair maintenance agreement. The motion failed.

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

MOTION by McKeithen, second by Carlson to consult with the public and hold a workshop sometime toward the end of January 2010. The motion passed.

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

9. COUNCIL OF CITIES DECEMBER MEETING – COUNCIL GUIDANCE ON VOTING MATTERS

Report: City Manager Jerome D. Gruber

Recommendation: Council to give guidance direction to San Mateo County Council of Cities representative on voting matters at the December 18, 2009 annual holiday dinner

Council Member Carlson said that the Mayor is the official representative of the Council of Cities on voting matters and if the Mayor can not attend a form provided by the City Selection Committee should be completed designating a delegate. Carlson said the SamTrans Board seat is a very important position as well as the Transportation Authority. He felt Burlingame Council Member Terry Nagel would make a great candidate. Carlson concluded that Council Member Lewis has applied for the HEART Board which he fully supports.

Council Member Lewis said she supports Burlingame Council Member Terry Nagel for the open seat on the Transportation Authority as well as Burlingame Council Member Jerry Deal or Menlo Park Council Member Heyward Robinson. Lewis concluded that she supports Hillsborough Council Member Christine Krolik to the City Selection Committee.

Mayor McKeithen said she would not be in Town and designated Mayor Carlson as the voting delegate at the Council of Cities meeting December 18, 2009 meeting.

Mayor Carlson said the Council of Cities dinners are hosted by San Mateo County Cities and Atherton has not held one since 2006. He suggested Mayor McKeithen choose a date to host a dinner in 2010.

10. APPROVAL OF RESOLUTION RESCINDING RESOLUTION 05-34 AND DIRECTING REFUND OF FEES PAID ON OR AFTER AUGUST 20, 2009

Report: City Attorney Wynne Furth

Recommendation: Adopt Resolution 09-50 Rescinding Resolution No. 05-34 (Establishing a Road Impact Fee) and Directing Refund of Fees Paid on or after August 20, 2009

City Attorney Wynne Furth said the road impact fee seeks to address the problem that heavier equipment used on construction projects in Atherton has an impact on the life span of roads. The Town started charging the fee in 2000 to help offset the increased cost of maintaining the Town's streets. The fees have been used exclusively to maintain the Town's road, but the fee is of questionable legality. Furth said the Town is authorized by one set of rules to charge impact fees to address the increased burdens on public infrastructure that arises from new construction, however there is another statute that says fees should not be charged for the use of public roads. Furth concluded that that because the law is uncertain staff recommends repeal of the resolution and refunds of fees paid in the last 90 days and protests made within 90 days of payment of the fee.

Council Member Marsala said there was a 40% increase in 2007 without ever having done a study and he supports rescinding the resolution as a compromise.

Carol Flaherty, Atherton resident, spoke of her documented correspondence and attendance the last two years with staff and Council regarding a road impact fee study. Flaherty said she never received any response on whether she will receive her road impact fee back. Flaherty said it is not right to limit refunds for the last 90 days because it is not fair to those who paid it before then. Flaherty concluded by asking Council to do the right thing.

Joe Comartin, Atherton resident, voiced his support toward Carol Flaherty's words and feels it is unethical to treat the residents this way. Comartin said it looks like the Town is reluctant to take action until faced with lawsuits.

Jon Venverloh, Atherton resident, said it is very important to maintain trust in government and so often governments abuse their power because they can but it doesn't mean they should. He asked how it is fair and ethical to limit refunds to people who paid the fee within the last 90 days.

Loren Gruner, Atherton resident, said this is a tough situation and encouraged Council to fix the problem and avoid costly lawsuits.

Jeff Wise, Atherton resident, said that by limiting refunds to those paid in the last 90 days or those who pay under protest, given the recent history of the Town and its fees, would suggest that it would be prudent for all of us to only pay fees under protest. Wise supported transparency and working together to make a better Town.

Denise Kupperman, Atherton resident, said she paid an off-haul fee and somehow was never notified that it was rescinded and that some people received refunds and some did not. Kupperman said to have not been advised is wrong.

David Macadoo, Menlo School, said Menlo School paid a significant amount on an active project for a road impact fee and when he became aware that the fee was questionable nine months later he submitted a letter of refund. Macadoo said he would feel distressed to find out that he did not make a timely protest.

Jeff Wise said he would be open to running a task force of residents who would work with the Town to fix this problem.

Mayor McKeithen closed public comment.

Mayor McKeithen asked City Attorney Furth how this situation differs from business license refunds and road excavation refunds. Furth said the law that governs the business license refund tax is for one year. The rules that apply to impact fees were adopted in a long series of negotiations between property developers and local governments to deal with infrastructure problems. Furth said the legislation that emerged said that when permits were issued there would be only a 90 day period to protest them and if you did not protest then the city or county knows with certainty it can use the money, but only for purposes for which it was collected.

City Attorney Furth stated that the Town collected approximately \$5,170,000 in road impact fees, while expenditures totaled \$4,740,000. Furth concluded that the recommendation on refunds was made to Council based on the refund laws; if Council wishes to take other factors into consideration then a further concern would be the Towns fiscal situation and ability to make refunds.

City Attorney Furth said when a town adopts a road impact fee it is required to do a series of studies which shows the impact on roads as result of construction. Furth said that was done in 2000 by DKS associates and again in 2005 by Kimley-Horn Associates. However the fee was calculated using building permit fees as a factor and when the Town increased the Building fees at a later date that indirectly increased the road impact fee without doing a nexus study.

Council Member Marsala felt that this should be taken up with two motions; one by rescinding the road impact fee and one by setting an appropriate time frame limit in refunding the fees. Marsala stated the possibility of refunding back to 2007 when there was a 40% increase as a compromise.

MOTION by Marsala, second by Lewis to Adopt Resolution 09-50 Rescinding Resolution No. 05-34 Establishing a Road Impact Fee and Directing Refund of Fees Paid on or after September 18, 2009. The motion passed.

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

MOTION by Marsala, second by McKeithen to study the best method for the length of time to refund the road impact fees at the January 11, 2010 strategic planning workshop and for staff to engage the community before January 11, 2010 for their input and ideas.

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

Mayor McKeithen suggested that Jeff Wise work with the City Manager in soliciting comments from residents impacted by the road impact fee.

Council Member Lewis requested that staff gather how much has been collected in road impact fees since the 2007 fee increase.

Vice Mayor Dobbie said so many people are talking about fairness and it is obvious that large trucks do more damage then small cars. He felt that some citizens' are subsidizing road repairs that are caused by large trucks that are mainly hired by builders and developers. Dobbie concluded that fairness would conclude the people who are doing the damage should pay for it.

CONSENT CALENDAR (Items 11-25)

Council Member Lewis had a comment on Item 11 and Item 15.

11. APPROVAL OF NOVEMBER 18, 2009 MEETING MINUTES

Recommendation: Approve November 18, 2009 Meeting Minutes

Council Member Lewis said the minutes reflect that Atherton Dames representative Denise Kupperman said that there was a clause in the Park that says the Park is to be self sufficient. Council Member Lewis clarified that the Park Will does not state that; rather it says that Atherton shall at its own cost and expense maintain property suitable for a high class recreational park.

12. APPROVAL OF BILLS AND CLAIMS FOR NOVEMBER 2009 IN THE AMOUNT OF \$1,114,702

Recommendation: Approve Bills and Claims in the amount of \$1,114,702

13. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED NOVEMBER 30, 2009

Recommendation: Accept Monthly Financial Report

14. TREASURER'S REPORT FOR THE FIRST QUARTER ENDED SEPTEMBER 30, 2009

Report: Finance Director Louise Ho

Recommendation: Accept the Treasurer's Report for the First Quarter Ended September 30, 2009

15. APPROVE A CONSULTANT SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR TRAFFIC ENGINEERING DESIGN SERVICES FOR THE ENCINAL/MIDDLEFIELD TRAFFIC SIGNAL PROJECT, IN AN AMOUNT NOT TO EXCEED \$64,350 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$70,785

Report: Public Works Director Duncan Jones

Recommendation: Accept the proposal and authorize the City Manager to sign a Consultant Services Agreement with Kimley-Horn and Associates, Inc. to provide traffic engineering design services for the Encinal/Middlefield Traffic Signal Project in an amount not exceed \$64,350, plus a 10% contingency, for a total authorization of \$70,785

Council Member Lewis asked if the study being conducted by Kimley Horn and Associates on the light at Encinal and Middlefield is being funded at all by Menlo Park. Public Works Director Jones said Menlo Park approved an MOU with the Town the previous night.

Council Member Lewis asked if the light will help with traffic problems at intersections at Linden and Watkins and James at Middlefield. Public Works Director Jones said he has discussed this with the traffic engineers who will equip the traffic signals with the same GPS capabilities at the other three signals and time this signal so there are gaps to assist people to get out of Linden and Watkins and James at Middlefield.

16. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE THE FLETCHER RIDGEVIEW DRAINAGE AND STREET PROJECT NUMBER 08-010

Report: Public Works Director Duncan Jones

Recommendation: Approve the plans and specifications and authorize advertisement for bids for the Fletcher Ridgeview Drainage and Street Project, Project No. 08-010

17. **AWARD OF CONTRACT TO NORTHERN CALIFORNIA FENCE FOR THE TENNIS COURT FENCE FABRIC REPLACEMENT PROJECT NUMBER 09-013 IN AN AMOUNT NOT TO EXCEED \$22,900 PLUS A TEN PERCENT CONSTRUCTION CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$25,190.00**
Report: Public Works Director Duncan Jones
Recommendation: Award the contract for the tennis court fence fabric replacement, project number 09-013 to Northern California Fence, the low bidder, for \$22,900.00, with a 10% construction contingency of \$2,290.00, for a total authorization of \$25,190.00; and to authorize the City Manager to sign the contract on behalf of the Town
18. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MARK THOMAS & COMPANY, INC. FOR SURVEYING SERVICES FOR THE STREET RECONSTRUCTION PHASE 7 PROJECT, IN AN AMOUNT NOT TO EXCEED \$68,190 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$75,009**
Report: Public Works Director Duncan Jones
Recommendation: Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Mark Thomas & Company, Inc. to provide Surveying services for the Street Reconstruction Phase 7 Project in an amount not exceed \$68,190, plus a 10% contingency, for a total authorization of \$75,009
19. **ADOPTION OF RESOLUTION ACCEPTING THE 2009/2010 SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND (SLESF) CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS) GRANT**
Report: Police Chief Mike Guerra
Recommendation: Adopt resolution 09-51 accepting the recommended expenditures of the remaining balance of FY 2009-10 Supplemental Law Enforcement Services Fund (SLESF), Citizen's Option for Public Safety (COPS) Grant in the amount of \$106,468.19 in accordance with state requirements
20. **RESULTS OF ATHERTON'S GOVERNMENT OPERATIONS EMISSIONS INVENTORY**
Report: Town Arborist Kathy Hughes Anderson
Recommendation: Accept the Results of Atherton's Government Operations Emissions Inventory
(Continued from November 18, 2009 Regular City Council meeting)
21. **REJECT CLAIM OF D.C. EXPRESS AND DEEPAK CHAND**
Report: Assistant City Manager Eileen Wilkerson
Recommendation: Adopt Resolution 09-52 rejecting claim of D.C. Express, Inc. and Deepak Chand
22. **PROCLAMATION APPROVING A WORKING RELATIONSHIP AGREEMENT WITH THE COUNTY OF SAN MATEO CENSUS 2010**
Report: Assistant City Manager Eileen Wilkerson
Recommendation: Approve the attached proclamation approving agreement with the County of San Mateo Census 2010

23. APPROVAL OF THE CONSULTANT SERVICES AMENDMENT WITH CRW FOR PROGRAMMING THE PROPOSED MASTER FEE SCHEDULE AND FOR INTERFACE WITH SPRINGBROOK FINANCIAL SOFTWARE IN AN AMOUNT NOT TO EXCEED \$8,000 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$8,800

Report: Building Official Mike Wasmann

Recommendation: Approve the consultant services amendment with CRW for programming the adopted master fee schedule and for interface with Springbrook financial software; authorize City Manager to execute the agreement in an amount not to exceed \$8,800

24. REAPPOINT SAMUEL LERNER AS TOWN TRUSTEE TO SAN MATEO COUNTY MOSQUITO AND VECTOR CONTROL DISTRICT

Report: City Manager Jerry Gruber

Recommendation: Reappoint Samuel Lerner as Town Trustee to San Mateo County Mosquito and Vector Control District

25. AMENDMENT TO RESOLUTION 09-09 TO INCREASE AUDIT COMMITTEE FROM FIVE (5) MEMBERS TO SIX (6) MEMBERS

Report: City Manager Jerry Gruber

Recommendation: Amend Resolution 09-09 to Increase Audit Committee members from Five (5) to Six (6) Members

MOTION by Dobbie, second by McKeithen to approve the consent items. The motion passed.

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

REGULAR AGENDA (Items 26-32)

26. FISCAL YEAR 2008-09 AUDITED FINANCIAL REPORTS AND MEMORANDUM ON INTERNAL CONTROL AND REQUIRED COMMUNICATIONS

Report: Finance Director Louise Ho

Recommendation: Accept FY 2008-09 Basic Financial Statements, Report on Compliance with San Mateo County Measure A Funds, Agreed Upon Procedures Report on Compliance with the Proposition 111 Appropriations Limit, and the Memorandum on Internal Control and Required Communications

Finance Director Louise Ho said Maze and Associates Representative Mark Wong was in attendance to give Council a brief summary of his report.

Mark Wong, Maze and Associates gave Council a concise presentation on the fiscal year 2008-09 audited financial reports.

Council Member Lewis thanked Wong and his associates for the report and said the report is much clearer than audit reports the Town has received in the past.

Council Member Marsala said the fund balance of unreserved show \$769,057 in future building inspections. Marsala said he feels this should be designated under other governmental funds. Marsala asked if it is common to have building funds under general fund. Wong said if it is not a special tax then it normally gets rolled into general fund.

Finance Director Ho referred to GASB 54 which specifically addressed what can be designated as special revenue fund. Ho said because the building fund is for the community it is specified as a general fund and to put this amount of money into a special fund would not follow GASB 54 requirements.

MOTION by McKeithen, second by Dobbie to Accept FY 2008-09 Basic Financial Statements, Report on Compliance with San Mateo County Measure A Funds, Agreed Upon Procedures Report on Compliance with the Proposition 111 Appropriations Limit, and the Memorandum on Internal Control and Required Communications. The motion passed.

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

27. COUNCIL GUIDANCE ON ITEMS FOR STRATEGIC PLANNING MEETING ON JANUARY 11, 2010

Report: City Manager Jerry Gruber

Recommendation: Receive Direction from Council on priorities for 2010 Strategic Planning Workshop

City Manager Gruber said he listed some items in his staff report in order to stimulate conversation with Council and give them opportunity to give feedback to staff on what they feel are the most important items for the strategic planning workshop.

Council Member Carlson said he would like to see a discussion about a second calendar day per month meeting, possibly in a workshop format because there is too much going on for Council to get everything done in one meeting per month.

Council Member Lewis said there is “housecleaning” that needs to be discussed. The historical artifacts ordinance and the beautification of the Park should be revisited.

Mayor McKeithen said she would like to discuss the future of the Park, possible cost savings in having a Town employee as the Town Planner, a possible citizen oversight committee of the Police, should smaller lots be treated differently than larger lots, and how can the Town better manage legal costs which continue to escalate.

Council Member Dobbie said that Council needs to set out their priorities for this meeting and also get results from the priorities.

Council Member Marsala said he would like to discuss transparency, reserves, inflation from Building Department surpluses, Town finances, and setting deadlines for direction given to staff.

No action was taken.

Mayor McKeithen moved that Items 29 and 31 be taken up next.

29. ADOPTION OF RESOLUTION DECLARING THE RESULTS OF NOVEMBER 3, 2009 ELECTION

Report: City Manager Jerry Gruber

Recommendation: Adopt a Resolution declaring the results of the Special Municipal Election for Measure “S” approved by a 2/3rd vote and Measure “T” approved by a majority vote which were adopted by the voters on November 3, 2009

Deputy City Clerk DellaSanta read the results of the elections for the record. The results of the November 3, 2009 election were as follows:

The number of YES votes for Measure S was 1,426 and the number if NO votes was 403. The number of YES votes for Measure T was 1,252 and the number of NO votes was 547.

MOTION by Carlson, second by McKeithen to adopt a Resolution declaring the results of the Special Municipal Election for Measure “S” approved by a 2/3rd vote and Measure “T” approved by a majority vote which were adopted by the voters on November 3, 2009.

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

31. STATUS REPORT ON TOWN OF ATHERTON et al. v. California High-Speed Rail Authority AND RELATED PROCEEDINGS FOR PROPOSED HIGH-SPEED RAIL LINE

Report: City Attorney Wynne Furth

Recommendation: Receive report on status of litigation and related proceedings, receive any public comment, and provide further direction if needed

Council reviewed and received the report on status of litigation and related proceedings. No action was taken.

28. HISTORICAL RECONCILIATION OF BUILDING DEPARTMENT COSTS OF SERVICE

Report: Finance Director Louise Ho

Recommendation: Review and accept the findings of NBS on the historical reconciliation of Building Department costs of service; provide direction to staff on the NBS recommended action 2. Defer Known and Justified Fee Increases, action 3. Proceed with Known and Justified Fee Decreases, and action 4. Revisit Financial Performance in 2010/2011

Jeanette Hahn, NBS, gave a Power Point presentation of the historical reconciliation of Building Department costs of service. [A copy of the presentation is available in the City Clerks office]. The purposed of the analysis was to evaluate the collection and proper expenditure of the Town’s building permits and related fees to ensure the (a) Town is optimizing the use of fee-based revenues for the compete array of obligations and operational requirements of the Building Department and (b) collected fee-based revenue indeed are only spent on expenditures related directly and indirectly to the Building Department.

Council Member Marsala said when you take the \$153,500 per year for building fee revenue and add three percent to it compounding you get 1,760,118. Marsala said he accepts that number as part of this report.

Council Member Marsala said the Town spent a large amount of money on contract services in 2007 because they were short-staffed.

Hahn said there was a large increase in expenditures in FY2006-07 but most of it was recorded attributed to Planning which was taken out of the calculation because it was not appropriate to include Planning in the building fees.

Council Member Dobbie said it looks like revenue keeps going down and expenses are not.

Hahn said typically when she works for cities, in periods of decline, the spending is always a fiscal year or two behind. Hahn reviewed a Power Point slide in which she suggested an operating reserve based on what she calls core skills, which means when the Town experiences a period of decline or inactivity this would allow Council not to have to make snap decisions regarding revenues and allows the Town to keep sufficient revenue to not erode the important capabilities. Hahn concluded that this would be a temporary reserve, and includes staffing reductions, which would buy Council time to make future decisions.

Council Member Marsala asked if staffing reductions were made would the percentage of overhead be reduced as well. Hahn said she presumed if the Town was in a period of distress then there would be policy decisions made about certain expenditures that would immediately go away and overhead would certainly be one of them.

Council Member Marsala asked if Council decided against staff reductions, could they decide to not fund future building. Hahn said she would recommend that. Hahn added that it is important to know that reserves are meant to be used, so if you never intend to break the threshold then you should not have a reserve at all.

Mayor McKeithen said that Hahn's report states that Town records indicate \$8.10 million in applicable expenditures recorded to the Building Department, including salaries and benefits and questioned whether the benefits included unfunded retirement and health. Hahn said no because it was not funded at that point. Mayor McKeithen said the report also says no additional obligations or requirements related to the Building Department have been identified that would immediately draw upon unrestricted cash surplus and asked if the unfunded liabilities are unrestricted cash.

Finance Director Louise Ho said the unrestricted cash surplus could be used for any unfunded liability if Council sets it aside during the budget process for that intended purpose. Ho said for the FY2009-10 budget Council had already approved prefunding GASB 45 for unfunded retiree liability at \$500,000.

Mayor McKeithen asked if that can be done for the Building Department. Finance Director Ho said the Building Department already has a piece of the \$500,000.

Mayor McKeithen said right now Council is thinking of using the funds for reducing future fees and she is concerned because of the legalities and wondered if there would be an issue with reducing future fees. McKeithen stated that due to overpayments in earlier years the Town is subsidizing future building with the overpayment from past overpayments. City Attorney Furth said there is an issue of equity, but also of practicality and this is what the law calls for.

Hahn said she felt it is a legitimate expense and suggested that it be presumed as a historical cost in two ways; 1.) That Council agrees to take what is available and set it aside for building department, and 2.) Only look at obligations since 2000.

Council Member Marsala said the \$153,500 set aside for future buildings would be allowed to be spent down by charging lower fees and asked if it could be spent down by using the funds for expense of future funding of the new building.

City Attorney Furth said NBS's task was to make sure the Town attributes to the building department revenue only the costs that are appropriately charged over a particular period of time. This is why the unfunded retiree medical liabilities are an appropriate charge to operations but only for obligations accrued in those years. Furth added that similarly you can only charge that share of the building cost that is properly loadable on those years.

Council Member Marsala said that if fees will be lowered going forward and there will not be enough funds for the building department's share of a new building then the fees should stay the same so the building department's share of a new building can be funded.

Hahn said she would not suggest receiving any more than \$153,500 annually because she would not want to see the cash surplus further diminished by further setting aside money for the building departments share of a new building.

City Manager Gruber asked what the Town can expect to see in the Building Department fees which will be brought to Council in January.

Hahn said if Council accepts all findings in this report then they will be asked to defer what was proposed in terms of fee increases until at least the next fiscal year and NBS would ask that the Council proceed with the few fee categories that are decreasing. Hahn said she will also suggest that Council move forward with decreases in the valuation multiplier for non-habitable construction and remodeled residential construction.

Mayor McKeithen felt that moving the burden of unfunded retiree and liabilities costs is inequitable and since it is a known cost it should be paid just for the years to which the surplus is applicable.

Council Member Carlson clarified that Council would like NBS to calculate what the accrued amount should be to capture the unfunded liability amounts and see what impact it would have. Mayor McKeithen agreed and added only to which the surplus is applicable and if there happens to be a surplus beyond that then she would suggest reducing fees moving forward.

Council Member Lewis suggested the possibility of keeping building fees flat and come in line with the excess charges of other fees then revenue and building activity could be stimulated and we can move forward in 2010.

MOTION by Marsala, second by McKeithen to accept the following findings in the historical reconciliation of Building Department costs of service report: 1. Review and accept findings and 3. Proceed with known and justified fee decreases. The motion passed.

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

Mayor McKeithen said Council will defer the known and justified fee increases at least until the strategic planning workshop and determine what to do with the surplus and at the same time determine if Council should revisit the Financial Performance in 2010-11.

30. AGREEMENT FOR CONVERSION FROM A FIRM-FIXED/PERFORMANCE BASED CONTRACT POSTAL UNIT TO A CONTRACT ACCESS RETAIL SYSTEM PERFORMANCE-BASED CONTRACT POSTAL UNIT

Report: Assistant City Manager Eileen Wilkerson

Recommendation: Authorize the City Manager to enter into an Agreement with the United States Postal Service for conversion from a firm-fixed/performance based contract postal unit to a contract access retail system performance-based contract postal unit

Assistant City Manager Eileen Wilkerson said the Town received a letter from the United States Post Office which proposed a contract modification which would reduce the revenue the Town receives from \$51,762 to approximately \$10, 612.62 and extend the terms for termination of the Agreement from 90 days to 120 days. Wilkerson concluded that there is a possibility that the USPS will close the contract station in Atherton. Wilkerson said she recommends signing the agreement to allow staff to research further.

Mayor McKeithen said by signing the agreement the Post Office will remain open but the Town would continue to lose revenue during that period. Assistant City Manager Wilkerson said yes, but it would allow for public input and a detailed survey of who the Post Office is serving. Wilkerson concluded that staff did do a less detailed survey by looking at return addresses and the Town serves more residents of Menlo Park and Redwood City than Atherton residents.

Mayor McKeithen suggested putting an article in the Athertonian informing residents of what is happening.

Loren Gruner, Atherton resident, said Atherton already lost the train and hoped her community would not lose the Post Office too.

Council concurred on directing staff to look at ways to increase revenue at the post office.

MOTION by McKeithen, second by Dobbie to authorize the City Manager to enter into an Agreement with the United States Postal Service for conversion from a firm-fixed/performance based contract postal unit to a contract access retail system performance-based contract postal unit.

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

32. COUNCIL REPORTS

Council Member Lewis handed out a review of the SFO Community Roundtable statement of purpose and objective and some accomplishments to her colleagues for informational purposes.

33. FUTURE AGENDA ITEMS

Council Member Lewis requested that expansion of the Finance Committee be added to the January Agenda.

34. PUBLIC COMMENTS

None.

35. **ADJOURN**

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

Mayor McKeithen adjourned the meeting at 10:59 p.m.

Respectfully submitted,

Theresa DellaSanta
Deputy City Clerk