



MINUTES
Town of Atherton
CITY COUNCIL
ATHERTON CHANNEL DRAINAGE DISTRICT
MARCH 26, 2009
9:00 A.M
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

SPECIAL MEETING

Mayor Jerry Carlson called the meeting to order at 9:00 a.m.

ROLL CALL

PRESENT: Elizabeth Lewis
Jim Dobbie
Charles E. Marsala
Jerry Carlson
Kathy McKeithen

City Manager Jerry Gruber and City Attorney Wynne Furth were also present.

3. PUBLIC COMMENTS

Lisa Lamb, Atherton resident, stated that City Council meetings should not be held while the general public has to be at work. Lamb added that items on the Agenda are too important to discuss during day time hours when people are unable to attend.

REGULAR AGENDA (Items)

**4. DISCUSSION AND POSSIBLE ACTION REGARDING
COMMITTEE/COMMISSION PROCESS AND SCHEDULING A SPECIAL
MEETING FOR INTERVIEWS (*Continued from the Regular City Council meeting of
March 18, 2009*)**

Wynne Furth, City Attorney, stated that the Council previously revised its rules and procedures for appointing and setting the times for Committees and Commission to help comply effectively with the State Maddy Act. Furth added that the City Clerk analyzed the current Committees and Commissions and found that a number of terms are either vacant or ready to expire. Furth recommended that Council hold a special meeting to conduct interviews for the current applicants to the Town Committees and Commissions.

Vice Mayor Kathy McKeithen questioned what prohibits the Council from allowing the applicants to automatically sit on a Committee if there are more vacancies than applicants. McKeithen concluded her opinion that interviews are not needed if there are fewer applicants than vacancies.

Council Member Elizabeth Lewis stated that the interview process unfolds the specific requirements and duties a person needs in order to sit on the Committee. Lewis added that some applicants may not be aware of their responsibilities, duties and requirements and interviews will help them understand that.

Mayor Jerry Carlson suggested that Council allow the applicants to choose whether they want to appear or not and if they decide not to it wouldn't be held against them. Council Member Jim Dobbie concurred.

Council Member Charles Marsala encouraged Council to make appointments to the Arts Committee and Rail Committee without conducting interviews since the number of applicants is less than the number of vacancies. Mayor Carlson suggested an emergency item to make the appointments.

Furth stated the Brown Act has strict guidelines to adhere by and felt that the Arts and Rail Committee applicants can be allowed to attend and participate for now, but should be officially appointed at a special meeting.

Marsala stated that some Committees will still have vacancies after the appointments are made and asked for clarification on how staff deals with ongoing recruitment for Town Committees.

Furth stated that Council should have the ability to make appointments at any time during the year. She added that Council should urge citizens to apply for appointment to a Committee with the City Clerk. As needed, the item can be placed on the consent calendar at a regular meeting to set an interview.

John Ruggeiro, Atherton resident, stated that the Town Roster is inaccurate and suggested that it be updated.

MOTION – to schedule a Special City Council meeting for April 4, 2009 at 9 a.m. to 1) Appoint members to the Arts and Rail Committee; and 2) Interview and possibly appoint for the General Plan, Audit, Environmental Program, Transportation and Planning Commissions.

M/S McKeithen/Dobbie Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

**5. ADOPTION OF A RESOLUTION APPROVING THE MID-YEAR BUDGET
 ADJUSTMENTS FOR FISCAL YEAR 2008-2009 (Continued from the Regular City
 Council meeting of March 18, 2009)**

Jerry Gruber, City Manager, informed the Council that this is a continued item from the regular City Council meeting.

Louise Ho, Director of Finance gave a Power Point presentation on the mid-year budget. [A copy of the presentation is available in the City Clerks office.]

Ho discussed general fund FY2008-09 budget projections, changes to mid-year review, revenue changes, operating expenditures and changes, fund balance analyses and recommendations.

Carlson asked that if the hours of the Code Enforcement Officer position are cut where it would fall in the operating expenditure reductions. Ho said this would fall under the Building Department expenditures. Gruber stated that it would be a 4-hour reduction through the rest of the fiscal year.

Marsala recalled that \$200,000 was set aside for the new Building Department and approximately \$150,000 for reserve inspection and wondered why the reduction in operating expenses for the Building Department only reflected \$ -84,900. Ho said that the new building department and reserve inspection were not originally budgeted for. Marsala clarified that most of the \$400,000 non-expected revenue is not affecting a need for cut-backs in the Building Department. Ho concurred.

Dobbie stated that he has received calls and emails from the general public saying that Council should be expanding the Code Enforcement Officer hours rather than reducing the hours.

Ho presented the Council with an analysis on the general fund budget shortfall which is projected at a "worse case scenario" of -\$1,512,452.

Ho presented Council with an analysis of projected fund balance for June 30, 2009 of \$6,371,026. She added that the State is looking at possibly bailing out the cities that were affected by the Lehman Brothers investments loss; the Town lost \$282,542. Carlson asked how many other agencies in the Country are asking for the same help. Ho said she will provide this information to the Council.

Carlson asked what assumption was made on the income interest decrease for the year. Ho said she is still working on an assumption but has projected it at approximately -\$200,000.

Lewis stated that the \$1,805,144 that was transferred to the Building Department should not be reflected as a loss because it is still Town money. She added that if the Town had not lost the \$282,542 in investment with Lehman Brothers then there would be an excess.

Ho reviewed the general fund balance through June 30, 2008 and the projected balance for June 30, 2009 with Council. Carlson asked for a detailed statement and definitions of each line item and under what circumstance would certain reserves be used for in the future.

McKeithen clarified that all funds with the exception of the Building Department fund are all monies that come from sources other than the Building Department. Ho said that the Building Department fund is part of the general fund.

Marsala said the numbers from the auditors from 2001 to current show that the Building Department has large surpluses and said that the \$900,000 in surplus from 2001 could be allocated to the Building Department.

Carlson said in the auditors statements there are department costs which the Council needs to know where to allocate to. He said the Council needs to discuss building “service” costs such as retiree health and administrative overhead once the NBS study on Town fees and charges is completed.

Carlson asked staff what they would advise the Council to use as a good number for undesignated reserves. Ho said it would be good to keep it for at least six months.

Ho reviewed changes to other funds which include \$30,000 in business license ordinance review and refund processing, \$48,000 in computer funds, \$14,509 for the road impact fee study and \$20,000 for polling and consulting services for the special parcel tax.

McKeithen asked if the \$30,000 for administrative services should be negotiated. Gruber stated that the \$30,000 is a result of negotiations and felt that if there is a cap staff would need to come back to Council if the cost rises. Lewis questioned whether staff can do the business license refunds. Gruber felt that it would be in the Towns best interest to allow Muniservices to finish the project and put it to rest.

Furth stated that a City is not allowed to incur debt the way a private business is so the other fund amount payments are made for services rendered each year.

Ho reviewed five different options Council had to balance the budget. [A detailed list of these options is available in the City Clerk’s office.]

Lisa Lamb, Atherton resident, stated that in the last year Council and staff has led the general public to believe that the budget is okay and now it seems like that is not the case.

Marsala questioned why the budget projection shows an approximate \$2,000,000 shortfall if the Town is refunding \$680,000 in business licenses. He felt the Town is perceived by the public as not receiving any revenue when in actuality they are. Marsala added that although the reserves are losing \$1,805,144 as a transfer to the Building Department it is still the Town’s money. He concluded that there are increases in some areas and that there is revenue generation.

Marsala asked when the road impact fee study will be completed. Gruber said it should be done in the next 30 days.

Dobbie commented that one of the most important things to the Town is that they do not run out of cash. He added that going forward there is the possibility of a new parcel tax or a new general tax. Dobbie concluded his opinion for a five-year plan in which the Town will continue to be viable under tough circumstances.

McKeithen concurred with Dobbie on the five-year plan with a conservative side. McKeithen stated her feeling that option 5 would be the way to balance the budget. She added that the Fletcher Drainage project is very important to Public Works Department and to Atherton residents. McKeithen said the Park Corp yard remodel, Drainage construction Mandarin, McBain, and completed projects and capital improvement changes and savings have received approval from Public Works to be returned to the general fund. McKeithen added that the money was originally transferred from general fund to capital improvements because it was not needed, but now that there

are no critical projects that need to be done the money should be returned to the general fund. McKeithen concluded that there is no reason not to choose option 5 because it will not change police services or the capital improvement budget and the Fletcher Drainage project will move forward.

Marsala stated his apprehension with the legal budget. He was concerned that there is not enough to defend some of the current legal situations the Town is in. Marsala asked how this can be addressed so the Town does not run low on cash dealing with the legal challenges.

Gruber said staff has taken expenditures to date, and prorated through the rest of the fiscal year, and included a small contingency to anticipate anything that may come up. Gruber concluded that staff felt the need to be fiscally responsible by doing their best to manage the legal costs.

Furth said that her firm just began working with the Town and will not have a good idea of what costs will be until she can complete examining the Town and its records. Furth added that there are legal matters that need to be taken care of promptly which will also result in cost savings for the Town if addressed properly.

Lewis commended Town staff and Department Managers for their effort in reducing costs. Lewis stated that she does not agree with any of the options given to Council and felt that the \$680,000 for business license refunds plus the decrease in current year business license revenue should be line itemed out to general fund reserve because of the business license tax error made by the Town. Lewis added that the left over should go towards the Mandarin and McBain projects or the parcel tax fund. Lewis clarified that the Fletcher Drainage project was only to be deferred for this fiscal year.

Dobbie concurred with McKeithen on option 5.

Marsala said he leans towards option 2 because he feels staff should be able to make decisions on the construction projects. Marsala added his concerns that the Town may need more money for road impact fees and to handle more business license challenges so reserves may need to be held as high as possible and possibly remove funds from the parcel tax.

McKeithen said the special parcel tax would be in general fund and other projects are in the capital improvement fund which would leave more money for the special parcel tax in the general fund. McKeithen concluded that option 5 was recommended by Public Works Director Duncan Jones.

MOTION by Marsala, second by Carlson to adopt option 4 to balance the general fund which consisted of the following:

- 1. \$ 1,161, 827.00 Use of General Fund Reserves.**
- 2. \$ 350,000.00 Transfer from Special Parcel Tax.**
- 3. Total \$ 1,511,827.00**
- 4. The remainder came from cost reduction from staff;**

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

MOTION by Carlson, second by Lewis to adopt a Resolution to approve the Mid-Year budget adjustments for FY2008-09

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

Carlson thanked staff for their efforts in reducing costs and helping put together the mid-year budget for FY2008-09.

6. PROCEDURES FOR COUNCIL MEMBERS TO REQUEST AN ITEM BE PLACED ON A CITY COUNCIL AGENDA (Continued from the Regular City Council meeting of March 18, 2009)

Furth stated that the Council operates in a complex environment because of the changes in the Brown Act. Furth stated that staff has proposed 3 different changes to the Council rules of procedures. First that Council Reports come before public comments, second that when a Town Committee or Commission passes a motion at its meeting requesting Council consideration of an item that is within that Committee or Commission's powers and duties, the City Manager shall place the item on a regular Council agenda no later than two regular meetings following the date of the request; and third that if two or more Council Members prepare a colleagues' memo, the City Manager shall place the item on the Council's agenda within two meetings. The item shall be placed at the end of the Regular Agenda/Public Hearings portion of the Agenda. A colleagues' memo is a written request, no more than two pages in length, presenting an item for consideration and action by the entire Council. Council Members are encouraged to share a draft of the memo with the City Manager prior to final review and shall consult with the City Attorney on the legal adequacy of the title. Completed colleague's memos shall be provided to the City Clerk at noon no later than eight (8) days before the regular Council meeting of the week before the Council meeting at which the item is to be placed on the agenda. It is the Council's policy that colleagues' memos should be analytic and informative. No Council Member shall participate in the preparation of more than one colleague's memo per Council meeting.

McKeithen stated that there is not a provision for a yes or no vote with no discussion and this was a fundamental part of the provision.

Marsala said a yes or no vote would not allow transparency and felt that discussion should be allowed.

Dobbie said he thinks the Council should have the right to a yes or no vote on whether an item be added to the Agenda or not.

Lewis stated the reason this is being discussed is to allow more public transparency of issues that the Council might not be aware of. She added that the ability for Council to bring forth an issue for discussion would give the general public more opportunity to discuss and speak on things that are important to them.

McKeithen felt that if discussion were allowed then Council would really only be hearing one side of the issue because it would be brought by two Council Members and there would be no staff

report which would make it hard to make an informed decision. McKeithen concluded that it should be a yes or no vote on whether to add an item to the Agenda.

Marsala felt that transparency comes by allowing the Council Members to bring the item up and allowing the general public to comment and then voting yes or no. Marsala added that if two Council Members are have an issue they can take it up with the rest of the Council by discussion and from there the entire Council can vote on whether to take it further.

Furth stated that this revision was written to allow adding an item to the Agenda and once it is on the Agenda then Council would have to allow public comment.

John Ruggiero, Atherton resident, stated that this sounds like it would continually expand the Agenda and make the meetings longer.

Lisa Lamb, Atherton resident, stated that she thinks it's a great idea because it gives the public more of a chance to bring important issues to the Council.

Dobbie felt that the Council would make the right decision on whether or not an item should be added to an Agenda and he has no problem with allowing two Council Members to bring an item to the entire Council but the entire Council will have the decision.

Carlson concurred but felt there should be some dialogue on the issue.

McKeithen felt that there are some issues that state a position that would not be appropriate to speak about in front of the general public. She concluded that the Council should have an option to vote no to stop any discussion that should not be had.

MOTION by Marsala, second by Lewis to approve the recommendations from the City Attorney.

AMENDED MOTION by McKeithen, second by Dobbie to amend and approve each item separately. The motion passed 3-2 (Marsala, Lewis)

MOTION to revise Council Rules of Procedures to move Council reports before future Agenda items.

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

MOTION to revise Council Rules of Procedures to allow that when a Town Committee or Commission passes a motion at its meeting requesting Council consideration of an item that is within that Committee or Commission's powers and duties, the City Manager shall place the item on a regular Council agenda no later than two regular meetings following the date of the request

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

MOTION to revise Council Rules of Procedures if two or more Council Members prepare a colleagues' memo, the City Manager shall place the item on the Council's agenda within two meetings. The item shall be placed at the end of the Regular Agenda/Public Hearings portion of the Agenda. A colleagues' memo is a written request, no more than two pages in length, presenting an item for consideration and action by the entire Council. Council Members are encouraged to share a draft of the memo with the City Manager prior to final review and shall consult with the City Attorney on the legal adequacy of the title. Completed colleague's memos shall be provided to the City Clerk at noon no later than eight (8) days before the regular Council meeting of the week before the Council meeting at which the item is to be placed on the agenda. It is the Council's policy that colleagues' memos should be analytical and informative. No Council Member shall participate in the preparation of more than one colleague's memo per Council meeting.

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

7. REVISE CITY COUNCIL RESOLUTION 09-09 BY AMENDING THE RESOLUTION TO REQUIRE REGULARLY SCHEDULED MONTHLY FINANCE COMMITTEE MEETINGS *(Continued from the Regular City Council meeting of March 18, 2009)*

Gruber stated that the Finance Committee tries to meet on the first or second Thursday of each month. Gruber added that he received a request to make these later in the day to allow the general public to attend.

Carlson stated that the request is to fix a date and a time for the Finance Committee meetings. He asked Council what date they prefer.

Dobbie said he feels Finance Committee meetings should only be held when needed. He added that a tentative schedule would work well.

Lewis stated that as a public entity it is the Council's duty to be as transparent as possible especially in these days and times. Lewis felt it is imperative to reach out to the public and allow them to participate in these meeting. She concluded that she is in favor of regularly scheduled finance meetings.

Marsala said that he feels that regularly scheduled evening meetings are very important to have for the general public to be allowed to attend. He added that if there is nothing to be brought up at one of the scheduled meetings it can just be cancelled. Marsala concluded that the items that are on the Finance Committee meetings should be brought by the Council.

McKeithen said that an evening meeting is just as difficult to attend for the public because a lot of them have children. She added that the committee which convenes at 3:30 p.m. has never had so many people show up as they have this year. McKeithen said she is in favor of keeping the Finance Committee meetings the way they are as they have worked fine that way.

MOTION by McKeithen, second by Dobbie to keep the monthly Finance Committee meetings as is and not to require regularly scheduled meetings.

Ayes: 3 Noes: 2 (Lewis, Marsala) Absent: 0 Abstain: 0

8. APPOINTMENT OF AN AD HOC SUBCOMMITTEE OF TWO COUNCIL MEMBERS FOR LEGAL TRANSITION

Gruber stated that since the Town hired a new City Attorney he felt that it is important that the Council be involved in the transition process. He added that the Council should be able to discuss what they feel are important legal issues and funding needs for the legal services.

Dobbie expressed that this is a great idea. Lewis concurred.

Marsala and McKeithen volunteered to serve on the ad-hoc subcommittee.

MOTION by Lewis, second by Dobbie to approve Ad Hoc Subcommittee for legal transition and with consensus appointed Council Member McKeithen and Council Member Marsala to the Ad Hoc Subcommittee.

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

9. ATHERTON CITY COUNCIL TO CONSIDER ENDING CITY COUNCIL MEETINGS AT A DESIGNATED TIME

Gruber said there is no fiscal impact except if a meeting gets continued then staff has to schedule and create new packets.

Carlson said it is illogical for Council meetings to last until midnight.

McKeithen stated that at the previous Council meeting a motion was made at the beginning of the meeting to end the meeting no later than 10:30 p.m. and she felt it made the Council more effective and efficient. McKeithen said a 10:30 p.m. ending time should be conducted on a trial basis.

Furth stated that staff will need to inform Council at the beginning of the meeting which items absolutely need to be addressed by ending time. Gruber said he will begin working with staff to prioritize the items on the Agenda.

Dobbie said that most of the presentations on the Agenda take too long. He added that the general public usually does not come for the presentations and he felt these presentations need to either be moved to the end of the Agenda or only allow presentations once every three Council meetings. Dobbie added that staff needs more authority to make decisions on things that do not need public

comment and input in order to avoid micro-management. He concluded that Council Member discussions should be focused in order to not waste time. Dobbie supported starting the meeting at 6:00 p.m. and ending at 10:30 p.m.

Lewis said that if Council comes prepared then the meetings should be run efficiently. She added that she does not want to see Council rushing through important issues just to end on time. Lewis concurred with Dobbie on ending the meeting by 10:30 p.m.

Marsala said he would like to see things stay the way they are. He added that starting the meeting at 7:00 p.m. will allow the public to attend. Marsala gave his top ten reasons for not changing the meetings start time or end time.

Lewis suggested that Council Reports be written and submitted rather than discussed at the meetings because that takes a long time.

MOTION by McKeithen, second by Dobbie to end Council meetings at 10:30 p.m. on a trial basis, and if there are any presentations to create a special City Council Agenda to begin earlier.

Ayes: 3 Noes: 2 (Lewis, Marsala) Absent: 0 Abstain: 0

10. APPOINTMENT OF DESIGNATED CITY COUNCIL REPRESENTATIVES FOR NEGOTIATIONS WITH THE CITY MANAGER *(Continued from the Regular City Council meeting of March 18, 2009)*

Furth stated that she is not allowed to discuss the City Manager's compensation in Closed Session. She added that Council can appoint one to two members to act as liaison to the Council for negotiations.

Dobbie and Lewis volunteered being on the Committee.

MOTION by McKeithen, second by Carlson to appoint Council Member Lewis and Council Member Dobbie as representatives for negotiations with the City Manager.

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

11. COUNCIL REPORTS

McKeithen informed the Council that the Finance Committee met and reviewed the investment portfolio and policy. She added that the Transportation Committee met and considered redflex camera, no through traffic for Holbrook Lane at County line which will need approval from the County, and safety improvements at Watkins. McKeithen concluded that the Committee voted to put no parking signs at Alameda to 300 Walsh Road, as a safety precaution.

Marsala said the Environmental Programs Committee met at Menlo College and added that April 20th will be National Plan of Action Discussion Night.

Lewis stated that she volunteered at the Green Start event at Menlo College which was a great success.

Carlson said that the Metropolitan Transportation District passed a number of projects and Atherton will be receiving \$3,092,000. He added that the High Speed Rail issue continues on between Caltrain and High Speed Rail to work jointly and make it one project with a minimum of 4 tracks.

McKeithen recognized how well the Police Department is doing on enforcing rules and issuing citations.

12. PUBLIC COMMENTS

None

13. ADJOURN

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

Mayor Carlson adjourned the meeting at 11:55 a.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**