



**Minutes**  
**Town of Atherton**  
**CITY COUNCIL**  
**ATHERTON CHANNEL DRAINAGE DISTRICT**  
**FEBRUARY 17, 2010**  
**7:00 p.m.**  
**TOWN COUNCIL CHAMBERS**  
94 Ashfield Road  
Atherton, California  
**REGULAR MEETING**

Mayor McKeithen called the meeting to order at 7:02 p.m.

1. **ROLL CALL**      Lewis, Dobbie, Marsala, McKeithen, J. Carlson

Vice Mayor Dobbie was excused.

2. **PUBLIC HEARING**

**ADOPT RESOLUTIONS 10-06 AND 10-07 APPROVING AN AMENDED MASTER FEE SCHEDULE FOR MISCELLANOUS TOWN FEES**

**Report:** City Manager Jerry Gruber

**Recommendation:** Adopt Resolution 10-06 amending the master fee schedule (excluding building department fees) to reduce certain fees and Adopt Resolution 10-07 amending the master fee schedule to reduce building department fees

Jeanette Hahn, NBS, presented the Council with an amended Master Fee Schedule. Hahn said the amended fee schedule includes a component that deals with indirect services on a Town wide nature that influences individual cost of services from which fees are derived.

Hahn reviewed Council's direction at its February 1 meeting to revise the underlying cost of service analysis. The Council wanted the General Fund to exclusively pay for certain costs that are administrative and governance related in nature even though the costs could be allocable to city wide services.

Hahn said some of the fee schedule has been expanded, in particular, the driveway encroachments, and classes of the grading and drainage permits. Hahn added that there was substantive restructuring done in the Public Works fees over the course of her contract. The intention of the revised schedule will allow flexibility to specific projects to be able to define the fee that matches the level of services used for a specific application. Hahn added that while working on a re-analysis of the Public Works fees she fundamentally changed an underlying assumption that drives the hourly rate that applies for engineering staff in Public Works and this substantially decreased Public Works fees. Changes to the Master Fee Schedule include massive restructuring and substantial decreased fees. Hahn concluded that there are no new fees in the amended Master Fee Schedule.

Council Member Marsala questioned why the Town does not charge the Atherton Civic Interest League (ACIL) for the space they use as an office at Holbrook-Palmer Park. Hahn said she typically views these as leases and not a user fee to be adopted in a fee schedule.

Council Member Lewis thanked Hahn for all of the work she has done. Lewis felt that the Public Works fees seem to be aligned with surrounding jurisdictions and makes it more palpable for a homeowner who needs a driveway improvement. Lewis said Councils goal by deducting administrative overhead was to arrive at a more equitable and accurate calculation of fees being charged for services. Lewis asked if the decreased funds in allocable costs will allow the Town to be able to balance its budget.

Hahn said the overhead costs defined in the plan are costs that are already budgeted and balanced in the General Fund and that do not presume fees would be covering them. It is quantification of a cost of service that can influence fees. Hahn concluded that she feels there are no negative ramifications to the Town's budget because the budget is already balanced to these fees.

Lewis asked, since the Building fees did not go down significantly, were the fees fixed at an initial rate that was factored into a formula being used now. Were the fees fair to begin with, and what is the Building Department's current and projected reserve amount.

Hahn said there are no substantial Building fee modifications because it is essentially the only department that has a chance of recovering a majority of its costs through user fees. Hahn concluded that the projection for the Building reserve is the same as it was in December of 2009. Hahn said staff should continue to monitor the reserve.

Council Member Carlson asked if the column that says *calculated fee amount assuming recovery of 100% of the cost of services* is a fully loaded figure. Hahn said it is fully loaded under the cost of service defined and it took into account the allocable overhead changes. Carlson said he would like to memorialize the conceptual structure of how the Town's costs have been allocated.

Mayor McKeithen said Council needs to decide whether they want to allow the fees identified in Resolution 10-06 to become effective retroactive to January 17, 2010. McKeithen asked Public Works Director Jones if he would recommend refunding all of the fees paid since January 17<sup>th</sup>. Jones said he would not have a problem with a refund and it would be a small amount.

Marsala thanked Hahn for all of her work and appreciated her patience.

Carol Flaherty, Atherton resident, said the encroachment permit for a driveway is too high. Flaherty said a small fraction of staff time goes into the total fee. Flaherty concluded that Council should go back and read the letter Flaherty's Attorney wrote to the Town in August of 2009 and said she is filing suit against the Town.

Colleen Anderson, Atherton resident, concurred with Carol Flaherty and felt the fees to build a driveway are too steep.

Lewis said she called surrounding jurisdictions to find out what their fee is for a minor encroachment permit and they averaged around \$400. Lewis felt comfortable with the current recommended fee.

**MOTION by Marsala, second by Lewis to adopt Resolution 10-06 amending the Master Fee Schedule (excluding Building Department fees) to reduce certain fees and add the fees**

**identified in the resolution to become effective retroactively to January 17, 2010 and adopt Resolution 10-07 amending the Master Fee Schedule to reduce Building Department fees. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**3.      PRESENTATIONS**

**PROCLAMATION TO AMERICAN RED CROSS BAY AREA CHAPTER AND THE SAN MATEO COUNTY AMERICAN RED CROSS LEADERSHIP COUNCIL TO RECOGNIZE MARCH AS RED CROSS MONTH**

Mayor McKeithen presented American Red Cross representatives Cindy Holzman and Tricia Clement with the Proclamation.

Holzman thanked Council and appreciated the time and effort they took in creating the proclamation.

**4.      PUBLIC COMMENTS**

Rosemary Maultbetsch, Atherton resident and Rail Committee member, said she recently ran into some issues with the Town and Caltrans. Maultbetsch said her complaint with the Town has been resolved and thanked Public Works. Maultbetsch encouraged the Town to appoint a staff and Council liaison to oversee the Caltrans improvements at Fair Oaks Lane and defend the Town's character and make sure Caltrans stays on track with the Town's General Plan.

Jon Buckheit, Atherton resident, said he read that there have been nine citizens' complaints against the Atherton Police Department in the last five year and asked how many of the nine complaints were sustained by Police Chiefs responsible for adjudicating them. Buckheit said that the complaint form is intimidating and urged the Town to remove the legal warning on the form. Buckheit concluded that he would like to see a police oversight committee and he is willing to do anything to help put it together.

Colleen Anderson, Atherton resident, reiterated that she hopes Council will take into consideration the smaller lots in the Master Fee Schedule. Anderson said if someone is doing business in Atherton and has a post office box in another city they should be paying the sales tax in Atherton. Anderson thanked City Manager Gruber and Police Chief Guerra for taking the time to meet and discuss her concerns.

Janet Larson, spoke on behalf of the Woodside-Atherton Garden Club, and their opposition to the Redwood City Cargill project.

Pam Goodenough, Atherton resident, spoke in opposition of the Cargill project.

Council Member Lewis read a letter from Redwood City resident Peggy Macleod in opposition of the Cargill project.

Melinda Tevis, Atherton resident, said she read that City Manager Gruber met with Andrea Gemmet following a string of bad press and hoped that the outreach will continue. Tevis said she needs evidence that the Town is starting to understand resident concerns.

**3. PRESENTATIONS - Continued**

**LEAGUE OF CALIFORNIA CITIES PRESENTATION AND INTRODUCTION –  
Foster City Vice Mayor Linda Koelling**

Foster City Vice Mayor Linda Koelling, representing the League of California Cities, is campaigning to get a measure on the November ballot called the Local Taxpayer, Public Safety, and Transportation Act of 2010. Koelling said the State continues to use local funds to take care of their fiscal irresponsibility and we need to band together and send a strong message to Sacramento to stop taking local funds.

Koelling urged Council and citizens to sign a petition and get it back to League representative Rebecca Elliot.

Council Member Marsala asked if the League has asked any California Governor candidates for endorsement. Koelling said Governor Candidate Meg Whitman has been approached.

Mayor McKeithen informed the audience that a meeting will be held on Monday, February 22 at the Pavilion in the Park for a question and answer forum with the City Manager and Chief of Police. McKeithen added that staff will hold an interactive meeting on Monday, March 1 at 6:00 p.m. in the Council Chambers to discuss revenue opportunities for the Town. McKeithen said Council will continue to keep the residents involved and request their thoughts and ideas during the Towns fiscal emergency.

**5. REPORT OUT OF CLOSED SESSION**

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

*John P. Johns v. the Town of Atherton, San Mateo County Superior Court  
Case No. CIV 479972*

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

*Jonathan B. Buckheit v. Tony Dennis, Dean DeVlugt, The Town of Atherton,  
The County of San Mateo, and Does 1-500, inclusive - U.S. District Court for  
the Northern District of California, San Francisco Division, Case No. CV 09-  
5000*

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

*California Tort Claim by Silvester M. Rabic, as Domestic Trustee on Behalf of the J.B.B Trust*

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

*Atherton et al v. High-Speed Rail Authority Case No. 34-2008-80000022*

**E. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Subsection (B) of Government Code Section 54956.9): Unknown number of potential case:**

*Road Impact Fees*

City Attorney Wynne Furth said there was no reportable action from Item A, B, C and D.

Furth reported that Council voted 4-0-1 to authorize filing a petition of error coram nobis in the case of Town of Atherton et al v. High Speed Rail Authority.

**6. CITY MANAGER’S REPORT**

City Manager Gruber said he will work with Rosemary Maultbetsch on the Fair Oaks Lane improvements and meet with her when a time is convenient for both.

Gruber added that he attended a City Managers Conference where they discussed future ballot measures and the League emphasized halting the State from taking any more local funds. Gruber concluded the conference also discussed pension reform and it is important to stay up on future legislation.

**7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT**

**LIBRARY NEEDS ASSESSMENT** – Presentation given by Anne Marie Despain and Anderson Brule Architects

Anne-Marie Despain thanked the Atherton community for their support in helping put together the assessment and for their involvement in the survey. Despain thanked the Anderson Brule Architects for their work on the assessment study.

Pamela Brule and Brad Cox gave a Power Point presentation on the Atherton Library Needs Assessment. [A copy of the presentation is available in the City Clerks Department].

The report indicated that the library can not accommodate an adequate collection of books and materials. It should also increase seating areas, the number of public computers, provide a separate area for events and programs, and create dedicated spaces for children, teens and quiet study. Handicap accessibility improvements are also needed, as well as a reconfiguration of staff offices. Anderson Brule Architects met with focus groups and conducted a survey of people who use the library to complete the report.

Council Member Carlson expressed his concern about the impact high speed rail would have on the library and current parking constraints.

Council suggested staff set up a special meeting to discuss this library needs with the community.

**CONSENT CALENDAR (Items 8-18)**

Mayor McKeithen informed Council that she will recuse herself from item 14 since she lives within 500 feet.

Atherton resident Carol Flaherty asked to remove item 17. Mayor McKeithen moved item 17 to after item 27.

Council Member Lewis removed item 18 seeing that it needed a roll call vote.

Council Member Marsala had a brief question on item 13.

**8. APPROVAL OF JANUARY 11 STRATEGIC WORKSHOP MINUTES, JANUARY 12 STUDY SESSION MINUTES, JANUARY 21 REGULAR MEETING MINUTES AND FEBRUARY 1 STUDY SESSION MINUTES.**

**Recommendation:** Approve January 11, 2010, January 12, 2010, January 21, 2010, and February 1, 2010 City Council Meeting Minutes

**9. APPROVAL OF BILLS AND CLAIMS FOR DECEMBER 2009 IN THE AMOUNT OF \$923,411**

**Recommendation:** Approve Bills and Claims in the amount of \$923,411

**10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR THE MONTH ENDED JANUARY 31, 2010**

**Recommendation:** Accept Monthly Financial Report

**11. TREASURER'S REPORT FOR THE SECOND QUARTER ENDED DECEMBER 31, 2009**

**Report:** Finance Director Louise Ho

**Recommendation:** Accept the Treasurer's Report for the Second Quarter Ended December 31, 2009

**12. APPROVAL OF PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE GARDEN ROOM RENOVATION PROJECT NUMBER 09-025**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Approve the plans and specifications and authorize advertisement for bids for the Garden Room Renovation Project, Project No. 09-025

**13. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR TRAFFIC ENGINEERING SERVICES FOR THE VALPARAISO CROSSWALK AT HOOVER OR VICTORIA TRAFFIC STUDY, IN**

**AN AMOUNT NOT TO EXCEED \$20,600 PLUS A TEN PERCENT CONTINGENCY, FOR A TOTAL AUTHORIZATION OF \$22,660**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Accept the proposal and authorize the City Manager to sign a Professional Services Agreement with Kimley-Horn and Associates, Inc to provide traffic engineering services for the Valparaiso Crosswalk at Hoover or Victoria Traffic Study in an amount not exceed \$20,600, plus a 10% contingency of \$2,060, for a total authorization of \$22,660

Council Member Marsala said he thought the Town was going to omit funding a study.

Public Works Director Jones said staff thought they could get by without having to fund a study but Menlo Park will not approve without a study.

Council Member Lewis said she was frustrated that the Town is right back to where they started almost a year ago because Council tried to push this through without having to fund a study and requested that in the future when it comes to the safety of the Atherton residents to not cut corners.

**15. CONSIDER CONSENT TO ASSIGNMENT OF FRANCHISE COLLECTION AGREEMENT FOR ALLIED WASTE INDUSTRIES, INC. MERGER WITH REPUBLIC SERVICES, INC.**

**Report:** City Manager Jerry Gruber

**Recommendation:** Approve Resolution 10-08 approving the consent to assignment of the Franchise Collection Agreement with Allied Waste Industries Inc. (Allied) to Republic Services, Inc. (Republic) pursuant to their merger

**16. ADOPTION OF A RESOLUTION RESCINDING THE BUSINESS LICENSE PROCESSING FEE ADOPTED BY RESOLUTION 09-04**

**Report:** Finance Director Louise Ho

**Recommendation:** Approve Resolution 10-09 rescinding the business license processing fee adopted by Resolution 09-04

**MOTION by Lewis, second by Carlson to approve the consent calendar except for items 14, 17 and 18. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**Items Removed from Consent Calendar**

**14. DEBELL DRIVE TRAFFIC STUDY**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Direct staff to proceed with the DeBell Drive Traffic Study under the Town's Traffic Program procedures.

Mayor McKeithen recused herself from item 14.

**MOTION by Lewis, second by Carlson to direct staff to proceed with the DeBell Drive Traffic Study under the Town's Traffic Program procedures. The motion passed.**

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

**18.      SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING CHAPTER 1.21 TO THE ATHERTON MUNICIPAL CODE ESTABLISHING ADMINISTRATIVE CITATIONS FOR VIOLATIONS OF THE ATHERTON MUNICIPAL CODE, RELATED STATE CODES AND CONDITIONS ON ENTITLEMENTS**

**Report:** City Manager Jerry Gruber

**Recommendation:** Waive further reading, and adopt Ordinance Adding Chapter 1.21 to the Atherton Municipal Code Establishing Administrative Citations for Violations of the Atherton Municipal Code, Related State Codes and Conditions of Entitlements (Needs roll call vote)

**MOTION by McKeithen to waive further reading, and adopt Ordinance Adding Chapter 1.21 to the Atherton Municipal Code Establishing Administrative Citations for Violations of the Atherton Municipal Code, Related State Codes and Conditions of Entitlements. The motion failed.**

Ayes: 2      Nays: 2 (Lewis, Marsala)      Abstain: 0      Absent: 1 (Dobbie)

**PUBLIC HEARINGS (19)**

**19.      ADOPTION OF RESOLUTIONS JOINING THE CALIFORNIAFIRST PROGRAM; AUTHORIZING THE COUNTY OF SACRAMENTO TO APPLY FOR GRANT FUNDS ON THE TOWN'S BEHALF; AUTHORIZING THE ASSOCIATION OF BAY AREA GOVERNMENTS TO ACCEPT A GRANT AWARD ON ITS BEHALF AND TO ENTER INTO ALL NECESSARY AGREEMENTS TO CARRY OUT QUALIFIED PROJECTS**

**Report:** Town Arborist Kathy Hughes-Anderson

**Recommendation:** Staff recommends that the City Council conduct a public hearing and adopt Resolution 10-10 to become a participating member agency of the CaliforniaFIRST program, Resolution 10-11 to authorize the County of Sacramento to apply for grant funds on behalf of the Town, and Resolution 10-12 to authorize the Association of Bay Area Governments (ABAG) to accept a grant award on its behalf and to enter into all necessary contracts and agreements to carry out qualified projects, recognizing the County of San Mateo as the lead local implementer for all of the local governments in San Mateo County.

Deputy County Manager for Community Services Peggy Jensen and Douglas Alfaro, Program Manager, presented Council with information regarding the CaliforniaFirst Program.

The County has participated in a region wide program through ABAG which coordinates this application to the State energy assistance grant program. ABAG will receive 10.7 million for the project. Atherton can participate by adopting the resolution and joining the CaliforniaFirst program which is a Property Assessed Clean Energy (PACE) finance program. The PACE program allows residents to voluntarily finance the installation of energy and water improvements on their home or business and pay the amount back as a line item on their property tax bill.

Council Member Marsala asked how a home owner applies. Jensen said she will meet with representatives from the program in early March to learn exactly how the process works. Jensen said she anticipates that the program will be up and running by September.

Council Member Lewis said she and the rest of the Environmental Programs Committee are very excited for this program. It is risk free participation and gives Atherton residents the option to take part.

Council Member Carlson asked for more information on the ten percent energy reduction that the home owner has to demonstrate for the loan.

Jensen said it is to create a base line of energy use before the improvements are done. You do the improvements and then another test by the home auditor to see if the improvements intended to be made through the retrofit work are actually achieved.

Douglas Alfaro added that the ten percent is a requirement of energy efficiency from your baseline reduction before you are eligible for financing solar projects such as solar panels.

Mayor McKeithen asked if there is much impact on staff time. City Manager Gruber said the classification study will address some point in time how existing staff will take on more of these responsibilities. Gruber said Town Arborist Kathy Hughes Anderson is heading a lot of environmental programs and is doing a great job in balancing her primary duties as arborist and bringing cutting edge environmental ideas to Council.

**MOTION by Marsala, second by McKeithen to approve Resolution 10-10 to become a participating member agency of the CaliforniaFIRST program, Resolution 10-11 to authorize the County of Sacramento to apply for grant funds on behalf of the Town, and Resolution 10-12 to authorize the Association of Bay Area Governments (ABAG) to accept a grant award on its behalf and to enter into all necessary contracts and agreements to carry out qualified projects, recognizing the County of San Mateo as the lead local implementer for all of the local governments in San Mateo County. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**REGULAR AGENDA (Items 20-27)**

**20.      ADOPT RESOLUTION 10-13 TO SUPERSEDE RESOLUTION 09-09 AND TO EXPAND FINANCE COMMITTEE**

**Report:** City Manager Jerry Gruber

**Recommendation:** To Be Determined

Council Member Lewis said she checked with Hillsborough who has a Finance Committee that consists of seven resident members, one Council Member and the Finance Director who meet four times a year and on an as-needed basis. Members represent expertise in the fields of accounting, investment management and fiscal control. Lewis added that Los Altos has seven volunteers with four year terms who meet monthly on an as-needed basis and Menlo Park has three residents and two council members who meet monthly.

Council Member Marsala said he has been an advocate of expanding the Finance Committee for a long time. Marsala felt that Town residents would help committee members stay on track with the roles and duties of the Finance Committee.

Jeff Wise, Atherton resident, supported changing the structure of the Finance Committee and suggested having three qualified residents.

Council discussed whether the finance charter should be revised and term limits for the resident members.

**MOTION by Lewis, second by Marsala to adopt resolution 10-13 to supersede resolution 09-09 to expand the Finance Committee to add three appointed, qualified Atherton residents with financial expertise for staggered terms of which are one term for one year and two terms for two years and two years thereafter. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**21. ROAD IMPACT FEE REFUND UPDATE**

**Report:** City Manager Jerry Gruber

**Recommendation:** To Be Determined

City Manager Gruber informed Council that staff has added a supplemental report that clearly delineates the proposals in more detail and includes a project timeline.

Council Member Lewis pointed out that under the fiscal impact of the staff report it says the available cash remaining in the Road Impact Fee Fund as of December 31, 2009, totals approximately \$542,000. It is the Finance Director's recommendation that this balance be increased by \$1,113,000 to correct inappropriate charges made in previous years. Lewis said she believes the inappropriate charges reflect the Public Works projects charged to the street corporation facility remodel and the operating transfer to general fund for street repairs and capital improvement project support.

Council Member Marsala felt that correcting inappropriate charges and deciding how far back to refund road impact fees are separate issues and should be taken up separately.

Council Member Marsala questioned whether a supermajority vote is needed to approve the increase by \$1,113,000 to correct inappropriate charges. City Attorney Furth said the money is not coming from a reserve. A supermajority vote will be needed if Council authorizes refunds in excess of the Road Impact Fee Fund, because General Fund reserve would need to be used.

Jeff Wise, Atherton resident and on behalf of the citizens' proposal group, said the citizens group has always assumed that the \$2,733,000 proposed refunds would not all be requested for refund. Wise said the road impact fee fund has a balance of \$1,655,000 and felt it would be appropriate to cap the refund available to the balance available in the fund. Wise added that you can set a period of time when people must apply for a refund and at the end of that time it would be determined by the total number of refunds requested and in the event the refunds requested exceeded the fund then they would be made on a prorated basis. Wise concluded that the citizens' group has asked that the Town acknowledge this was of questionable legality and give refunds to those who are entitled to it.

Jon Venverloh, Atherton resident, thanked Council for their diligent attention to this matter. Venverloh supported Jeff Wise's suggestions.

Denise Kupperman, Atherton resident, said residents pay property taxes for normal and usual use of Atherton roads and asked Council to consider the extensive wear and tear that builders do to Atherton roads. Kupperman felt the road impact fee was legit.

Marsala felt that citizens' group proposal was well thought out and felt it protects the Town and a cap keeps the Town from having to go into reserves.

Mayor McKeithen said she is now in support of refunding the amounts paid after the 40% increase in road impact fee. McKeithen added that equity, the law, public funds and acknowledgement that doing what is right are elements to her support of going back further than she originally had stated.

McKeithen promoted different parameters and time-frames for refunds and added that she was concerned residents may see the refunds as a gift of public funds to builders. McKeithen concluded that all who paid from July or February 2006 to December 31, 2006 receive refunds and from January 1, 2007 to September 17, 2009 if they file within ninety days and lastly anyone who request the proceeds of the 40% rate increase from August 17, 2007 to September 17, 2009.

Council Member Carlson suggested that people receiving the refunds would consider making charitable donations to non-profit organizations such as the Holbrook-Palmer Park Foundation rather than paying all the taxes to the State.

Lewis said Council realized a few years back that the road impact fee was of questionable legality and feels now the Council needs to take the high road and not "nickel" and "dime" the citizens who are owed and make this process simple and fair. Lewis was in support of the citizens' group proposal with a cap.

**MOTION by Marsala, second by Lewis to increase the balance of the Road Impact Fee Fund by \$1,113,000 to correct inappropriate charges made in previous years. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**MOTION by Marsala, second by to accept the citizens' group proposal to refund fees paid between July 1, 2006 through December 18, 2009 for an amount not to exceed 1,655,000 and to be prorated after ninety days if the total applicants dollar value of the refunds exceed the fund. The motion passed.**

Ayes: 3      Nays: 1 (McKeithen)      Abstain: 0      Absent: 1 (Dobbie)

Jeff Wise requested that the Town send information to the public on charitable donations and their options.

McKeithen stated that she did not feel that staff was recommending that these refunds be paid out or finalized. McKeithen added that several years ago Council engaged in extensive research by hiring more than one law firm in writing opinions and researching this issue who advised that it was ok to continue with the road impact fee.

Carlson said if this keeps the Town from further lawsuits then this could save a lot in the long run.

McKeithen said it will be hard for the Town to pass a revenue measure when these refunds could be perceived as a gift of public funds.

City Attorney Furth said staff will come back with further detail on the proposal and the process of how the refunds will be paid.

## **22. DRAINAGE CRITERIA UPDATE REVISITED**

**Report:** Public Works Director Duncan Jones

**Recommendation:** Receive this information and give direction to staff for future actions to update the Drainage Criteria, to modify the maintenance agreement and to modify the Grading, Erosion and Sediment Control Ordinance (Municipal Code Section 8.54).

City Manager Gruber informed Council that Public Works Director Duncan Jones held a community workshop to listen to resident concerns and issues with the drainage criteria and maintenance agreement. Gruber added that the workshop was very well attended.

Public Works Director Jones said the three general topics at the workshop were whether the Town can have a town-wide drainage system, the criteria itself and the maintenance agreement.

Jones said there are cities that have a town-wide drainage system through a storm drain utility user fee and it can be done. Jones added that the current threshold is at 5,000 square feet and the new threshold is 2,500 square feet and if Council decided to put in a town-wide drainage system the criteria would probably change to no increase and run-off from a property. Jones said if this was done he would recommend lowering the threshold to at least 2,500 because anybody with increased impermeable area on their property would over tax the brand new system.

Jones said residents felt the criteria needed to be more clear and consistent and allow options.

Jones concluded that Council can either look into a town-wide system, require every property to have a system, or continue as is with modifications to the criteria and maintenance agreement or possibly remove the agreement entirely and require property owners to submit verification.

Mayor McKeithen was in favor of removing the maintenance agreement and leaving it to the home owner to comply. McKeithen added that she was in support of making the criteria less complicated but would still want to see the home owner record the system with the County Recorders office. McKeithen concluded that she would not support a study and felt staff and Council can work with the community on this.

Council Member Marsala appreciated Jones efforts with the community workshop. Marsala said he is in support of being uniform with other jurisdictions and become less restrictive and more standardized on guidelines.

Council Member Carlson said Jones did a fine job in facilitating the workshop. Carlson was in favor of getting rid of the maintenance agreement and sending a post card reminder to residents on an annual basis to check the system. Carlson suggested working with surrounding agencies on a long-term approach.

Council Member Lewis supported getting rid of the maintenance agreement and sending an annual reminder. Lewis concluded that she is in favor of a study on whether Atherton needs a town-wide drainage system.

Carol Flaherty, Atherton resident, said that the issue is that Atherton does not allow any seepage of water into the ground and that should be revised. Flaherty said when the drainage plan goes to the Town with a soils report there should be an adjustment depending on location, soil condition and where the water table is.

Jon Venverloh, Atherton resident, thanked Council for their efforts and consideration on revising the criteria and possibly removing the maintenance agreement. Venverloh suggested forming a citizens group to work with staff on the details of grading and drainage.

Jeff Wise, Atherton resident, commended Jones for his work in facilitating the workshop in a somewhat hostile environment. Wise suggested studying the criteria as is and researching options and solutions that are more palatable and functional for the residents.

McKeithen directed staff to bring back a decision for rescinding the maintenance agreement. Carlson added the idea of allowing the City Manager to form a citizens committee to work with staff for their input. Council concurred.

**23. ADOPTION OF A RESOLUTION APPROVING THE MID-YEAR BUDGET ADJUSTMENTS FOR FY 2009-10**

**Report:** Finance Director Louise Ho

**Recommendation:** Adopt Resolution 10-12 Approving the Mid-Year Budget Adjustments for FY 2009-10

City Manager Gruber said the figures in the mid-year budget adjustments do not reflect the action taken earlier in this meeting to decrease the Master Fee Schedule.

Council Member Carlson asked if it includes the road impact fee adjustments. City Manager said it does not include the road impact fee adjustments.

Mayor McKeithen suggested voting on the mid-year budget adjustments without the road impact fee. Council concurred to bring the road impact fee adjustment back to Council in March.

**MOTION by Carlson, second by Lewis to adopt Resolution 10-12 approving the Mid-Year Budget Adjustments for FY 2009-10. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**24. STATUS REPORT OF TOWN COMMITTEE AND COMMISSION VACANCIES DUE TO EXPIRE ON APRIL 30, 2010 AND REQUEST TO SCHEDULE A SPECIAL CITY COUNCIL MEETING TO INTERVIEW APPLICANTS**

**Report:** Deputy City Clerk Theresa DellaSanta

**Recommendation:** Schedule a Special City Council meeting sometime between Monday, March 22, 2010 and Friday, April 16, 2010 to interview applicants for the Arts, Atherton Rail, Audit, Environmental Programs and General Plan Committees

Council directed staff to bring back an item to schedule a special meeting for Committee interviews at the March meeting when staff has an idea at approximately how many applicants there are.

**25. TOWN CENTER TASK FORCE COMMITTEE UPDATE**

**Report:** City Manager Jerry Gruber

**Recommendation:** No Action

No Action taken.

**26. RECONSTITUTE CITY COUNCIL AD-HOC COUNCIL COMMUNICATIONS SUBCOMMITTEE TO TOWN COMMUNICATIONS COMMITTEE AND EXPAND MEMBERSHIPS**

**Recommendation:** To Be Determined

Council Member Carlson questioned whether there needs to be a long term standing committee. Council Member Lewis concurred with Carlson and said they will have a draft Council communications policy.

Mayor McKeithen said the advantage of having a standing committee would allow the committee to meet whenever an issue regarding communications arises.

Council concurred to table the item to until after they have reviewed the draft communications policy written by the ad-hoc subcommittee.

**27. AMEND SECTION 5.1 OF THE COUNCIL RULES OF PROCEDURES TO MOVE FUTURE AGENDA ITEMS TO BEGINNING OF THE AGENDA**

**Recommendation:** To Be Determined

Council Member Marsala said he was originally in support of this but no longer is because he felt Council needs to streamline the meetings and take up issues where people are in the audience waiting. Marsala said Council should always be prepared to move items forward if needed.

**17. APPROVAL OF THE THIRD AMENDMENT TO THE PROFESSIONAL /CONSULTING SERVICES AGREEMENT WITH NBS CONCERNING THE TOWN OF ATHERTON'S COMPREHENSIVE FEE STUDY**

**Report:** Finance Director Louise Ho

**Recommendation:** Approve the third amendment to the professional consulting services agreement with NBS concerning the Town of Atherton's comprehensive fee study; and authorize City Manager to execute in an amount not to exceed \$9,300

Carol Flaherty, Atherton resident, said the full cost methodology is unlawful and suggested Council refer to the letter they received from her Attorney Walt McNeil in August of 2009. Flaherty said NBS stuffed too much overhead into the fees and encouraged Council to revisit the fees again. Flaherty concluded that she plans to file a protest against the encroachment permit fees.

Council Member Lewis reiterated that Council approved a revised master fee schedule earlier in the meeting with decreased fees which took out a lot of the loaded costs.

**MOTION by Carlson, second by Lewis to approve the third amendment to the professional consulting services agreement with NBS concerning the Town of Atherton’s comprehensive fee study; and authorize City Manager to execute in an amount not to exceed \$9,300. The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**28.      COUNCIL REPORTS**

Nothing further to add to written reports.

**29.      FUTURE AGENDA ITEMS**

**MOTION by Carlson, second by Lewis to add an item to a future agenda to “affix a second meeting date per month for City Council meetings in lieu of special meetings.” The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

Mayor McKeithen said in the past Council has discussed setbacks. McKeithen requested a status report on driveway gates.

**MOTION by McKeithen, second by Marsala to add an item to a future agenda to “discuss the relationship of R1A to R1B lots and in particular the existing difference in the standards, existing differences among R1B lots and possible changes.” The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**MOTION by McKeithen, second by Marsala to add an item to a future agenda to “form a police review committee or Police Auditor.” The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**MOTION by Marsala, second by Lewis to add an item to a future agenda to “review the Cargill /DMB development plan.” The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**MOTION by Marsala, second by Lewis to add an item to a future agenda to “direct General Plan Committee to review and update the Towns home occupancy Ordinance.” The motion passed.**

Ayes: 4      Nays: 0      Abstain: 0      Absent: 1 (Dobbie)

**30.      PUBLIC COMMENTS**

None.

**31.      ADJOURN**

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

Mayor McKeithen adjourned the meeting at 11:34 p.m.

**Respectfully submitted,**

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**Theresa DellaSanta**  
**Deputy City Clerk**