



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL DRAINAGE
DISTRICT
September 30, 2010
10:00 A.M.
Town Council Chambers
94 Ashfield Road
Atherton, California
Special Meeting

Mayor McKeithen called the meeting to order at 10:07 a.m.

ROLL CALL **Lewis, Dobbie, Marsala, McKeithen, Carlson**

All present.

PUBLIC COMMENTS

Jon Buckheit, Atherton resident, said he spoke under public comments two weeks ago at Closed Session about his experiences with the Police Department and he received a letter from attorneys who represent the Town warning him that he should not make negative comments about Police Officers. Buckheit said he believes this is a violation of his first amendment rights.

REGULAR

Mayor McKeithen noted that in order to save on legal fees the meeting will begin with item 2 and end with item 1.

2. APPROVAL TO PUBLISH REQUEST FOR PROPOSAL FOR CODE ENFORCEMENT SERVICES

Report: City Manager Jerry Gruber

Recommendation: Approve publishing a Request for Proposal for Code Enforcement services for the Town of Atherton

City Manager Gruber said Staff elaborated on the RFP to include a broader definition of services requested in order to allow non-profit agencies to bid.

Council Member Lewis asked what the selection process is and if resident input will be a part of the process. Lewis asked if Staff has thought about using Police Officers for code enforcement purposes.

City Manager Gruber said Staff is receptive to community input to the process. Gruber said Staff will consider the option of using police for code enforcement purposes.

Vice Mayor Dobbie said residents call him often for code violations and he thinks it is important to have these services available to the residents.

Mayor McKeithen said this idea of having a Police Officer perform code enforcement services was discussed years ago and it was determined that having officers perform these services has a “chilling effect” for people who do not want a Police Officer in their home. McKeithen said residents want these services performed in a friendly and neighborly way. (Mayor McKeithen suggested edits to the RFP. Staff took note and will implement the changes.)

Council Member Lewis said a Police Officer performing these services does not have to be in uniform. Lewis added that Police Officers should be viewed as protectors and friends and not as a threat.

Council Member Marsala suggested that when Council Members receive code violation calls to defer them to Code Enforcement so Staff can track the hours.

Jon Buckheit said that once a Police Officer is admitted into a home they are obligated to do searches on your home that could put the homeowner or the Town in a conflict.

Colleen Anderson, Atherton resident, hopes that the new Code Enforcement Officer targets safety issues and reduces the formation of conflicts between neighbors.

Gene Elsbery, Atherton resident, described a very positive experience he had with the current Code Enforcement Officer.

Bill Widmer, Atherton resident, encouraged Council to work with Chief Guerra on viable options.

MOTION by Carlson, second by Dobbie to approve publishing a Request for Proposal for Code Enforcement Services for the Town of Atherton with changes made by the Mayor and with an application deadline of November 1st to be sent to City Clerk’s Department. The motion passed.

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

3. APPROVAL TO PUBLISH REQUEST FOR PROPOSAL FOR BUILDING OFFICIAL SERVICES

Report: City Manager Jerry Gruber

Recommendation: Approve publishing a Request for Proposal for Building Official Services for the Town of Atherton

City Manager Gruber suggested for reasons of consistency to send out the Building Official RFP simultaneously with the RFP for Code Enforcement Services and have the same application deadline.

Council Member Lewis pointed out that Staff is requesting approval to publish the RFP and approval to continue the current temporary services.

Mayor McKeithen said she was concerned about having a temporary Building Official but after speaking with the current temporary Building Official she no longer feels this way. McKeithen said the current temporary Building Official is a wonderful asset to the Town.

Council Member Lewis said the new temporary Building Official is very knowledgeable and she would be interested in hearing the public's impression of him.

MOTION by Carlson, second by Lewis to continue the current temporary services and approve publishing a Request for Proposal for Building Official Services for the Town of Atherton with an application deadline of November 1st to be sent to City Clerk's Department. The motion passed.

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

4. RECOMMENDATION BY TOWN CENTER TASK FORCE FOR APPROVAL TO PUBLISH REQUEST FOR STATEMENT OF QUALIFICATIONS FOR DESIGN OF A NEW TOWN CENTER

Report: City Manager Jerry Gruber

Recommendation: Approval to publish Request for Statement of Qualifications for design of a new Town Center

Council Member Lewis explained that an extensive presentation was made at the last Council meeting. Lewis said there were a few revisions to be made and Council agreed to bring it back for final approval once the document was revised.

Council agreed that questions regarding the SOQ should be sent to Public Works Director Duncan Jones and submittal of SOQ's should be sent to the City Clerk's office. Council changed the word "value" in section 5D to "cost."

Council Member Lewis informed Council that the next Town Center Task Force meeting will be held on October 12th where the Task Force members will determine a timeline for publication and a deadline submittal.

MOTION by Lewis, second by Carlson to approve publication of Request for Statement of Qualifications for design of a new Town Center with the changes agreed to by Council and allow the Town Center Task Force to determine a publication timeline and deadline submittal. The motion passed.

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

5. DISCUSSION OF CITY MANAGER SEPARATION, NEXT STEPS AND RECRUITMENT OF BUILDING OFFICIAL, CODE ENFORCEMENT AND ANY OTHER POSITIONS DURING THE TRANSITION

Recommendation: To Be Determined

Mayor McKeithen said that as of October 22nd City Manager Jerry Gruber will no longer be with the Town. McKeithen said she contacted the League of California Cities to see if they had any Interim City Managers and they do not. McKeithen said Management Partners and IPM in Arizona both have Interim City Managers available. McKeithen suggested putting out an ad for an Interim City Manager.

Council Member Carlson said he believed this is an opportunity to find experienced, retired City Managers who may be looking for a six month position.

Council Member Lewis said she sent a memorandum to the Mayor outlining her suggested method on searching for a City Manager. Lewis said now is the time for true transparency and it is a good way to get the residents involved in the course of selecting the next City Manager and the process needs to be identified clearly and very early on. Lewis said she is sad to see Gruber go and he has done a great job at assembling the Staff that has made amazing positive progress for the Town over the last couple of years. Lewis concluded that it is time for the Town to surround themselves with bright individuals in the community who can help advise the Town in the process.

Council Member Marsala said Council needs to separate two topics with one being what to do in the meantime and the other being what to do in the future. Marsala said he has been impressed by Assistant City Manager Eileen Wilkerson who he believes is capable of running the Town while there is a void. Marsala said with the Management staff the Town currently has he is confident that Wilkerson can run the Town during the recruitment period for a regular City Manager. Marsala suggested a professional recruiting firm for the process of selecting a regular City Manager because it gives a feeling of impartiality. Marsala concluded that a clear timeline should be established.

Council Member Carlson said an experienced City Manager with a proven track record who is not a candidate for the job allows Council to consider everyone for the job later on. Carlson added that Council should set specific goals for an Interim City Manager.

Vice Mayor Dobbie agreed with the idea of advertising for an Interim City Manager. Dobbie added that an advantage of an Interim who is not a candidate is that it does not inhibit qualified individuals from applying because they feel there is an inside candidate. Dobbie concluded that when it comes time to recruit for a final City Manager the job needs to be very attractive in order to get good quality, experienced individuals applying for the position.

Mayor McKeithen said the Town needs someone who can look at the litigation, potential outsourcing, and five-year financial plan and be able to add their knowledge to it. McKeithen said it is very important not to rush into trying to find a permanent City Manager. McKeithen discussed past experiences with a professional firm doing the recruitment for the position of City Manager and it has been biased in the past. McKeithen said she believes that it might be time to begin running the Town like a business and an individual from a private firm should be considered. McKeithen concluded that Council has the obligation to appoint the City Manager position and so they should have the first look at applications and afterward citizens should have the same opportunity.

Bill Widmer, Atherton resident, said he agrees there needs to an Interim with a “fresh set of eyes” as Council suggested. Widmer added that private business practice should be considered because municipalities usually lag on industry standard procedures.

Jon Buckheit, Atherton resident, said the Town should recruit a resident of their own community who will do the job because they care about the Town.

Colleen Anderson, Atherton resident, asked that when Council begins recruitment to not allow potential personal friendships with applicants to make their decisions. Anderson concluded that Gruber had a true level of compassion and she hopes the next City Manager will as well.

Jeff Wise, Atherton resident, said the City Manager is really critical and this is a very important issue for Council. He agreed that an Interim City Manager should be recruited. Wise concluded that he thinks residents should be involved in the process.

Council Member Lewis read two letters (written by Atherton residents Marylue Timpson and Steve Dostart) into the record.

Council Member Carlson said City Manager Gruber is leaving on October 22nd and suggested that Council meet on Saturday, October 16th to accomplish appointing an ad-hoc committee to assist the process of soliciting interest in the Interim City Manager position and request letters of intent and resumes within two weeks. Carlson said residents should be allowed to submit their specifications and submit letters by that deadline as well so the process continues to move along.

Council Member Marsala said he believed the process used when Ralph Freedman was selected as Interim City Manager many years ago worked well for Council and the community. Each Council Member was able to select one candidate to the Committee and the process flowed well and allowed for diversity.

Vice Mayor Dobbie said it is very important to separate the Interim and the final City Manager position and advertising for the Interim should be done promptly.

Council discussed setting up an Ad-hoc Committee to write a specification for the Interim position and agreed to advertise the specification quickly. Council agreed that compensation will be open.

Council Member Carlson said the ad should be broad to allow a range of applicants and subsequently Council will have a chance to get more detailed with the applicants. Mayor McKeithen suggested putting out the previous RFP with a deadline and then working with the residents who are interested in working on the RFP for a permanent City Manager.

Mayor McKeithen, Vice Mayor Dobbie and Council Member Lewis expressed interest in sitting on the Committee.

Council Member Marsala said given that Vice Mayor Dobbie and Council Member Carlson are up for re-election, that Mayor McKeithen and Council Member Lewis should be the Ad-hoc Committee members for creating the Interim City Manager specification because it gives the Town the ability to have adversity.

Mayor McKeithen felt that since Council Members Lewis and Carlson are on the City Attorney Search Committee that Vice Mayor Dobbie should be on the Interim City Manager Committee.

Mayor McKeithen appointed herself and Vice Mayor Dobbie to work on the Interim City Manager process and the permanent City Manager process.

Carlson clarified that the Ad-hoc Committee should be created to solicit interest in the Interim job and solicitation from citizens to sit on the Committee. Carlson said if the Mayor agrees Council should proceed that way with McKeithen and Dobbie as the Ad-hoc Committee members. Mayor McKeithen said okay.

Gene Elsbrey, Atherton resident, suggested that the current City Manager draft a specification for Council.

City Manager Gruber said there is a current job description for the City Manager position and he can get that to the Committee right away.

Colleen Anderson said that from the public's perspective there has been a real divide on Council and the idea of McKeithen and Lewis on the Ad-hoc Committee is a good one.

Jeff Wise requested clarification on what the Ad-hoc Committee is doing. He said if the Committee is only approving the advertisement and soliciting resident input then two weeks is not enough time to get very many applicants for the Interim position.

Mayor McKeithen said the Ad-hoc Committee would not cull any of the applicants, Council and the public will do that. It is only a clearing house to solicit documents and bring them to the residents. McKeithen added that citizens will be involved in creating the RFP for the permanent City Manager as well.

Council Member Carlson suggested having the Ad-hoc Committee put together their specifications for the City Manager so the entire Council can discuss.

Council Member Lewis said the Town is being very optimistic thinking that they can hire a good, qualified individual in two weeks. Lewis said the Town has an Assistant City Manager who can step into the role on an Interim basis.

Jon Buckheit said it is a challenge to get people to apply in such a short period of time and the Mayor should go to the newspapers and media to solicit residents to apply.

Mayor McKeithen said the Ad-hoc Committee will give it a try by working on the specifications and discuss those specifications at the next meeting. McKeithen said the Ad-hoc Committee will create criteria for resident Committee members and discuss it in Open Session for review and edits. Afterward the Committee will proceed with the RFP for a permanent City Manager and resident specifications. McKeithen concluded that resumes should be sent straight to the City Clerk.

Council Member Lewis suggested redacting applicant's names and assigning a number to each application. Lewis said a scoring matrix should be created for evaluating the applicants on an objective basis.

Mayor McKeithen opposed a matrix because there may be qualities in an applicant that were not included on the matrix.

MOTION by Carlson, second by Dobbie to proceed with forming an Ad-hoc Committee comprised of McKeithen and Dobbie to work on specifications from the current City

Manager job description for the position of Interim City Manager, create criteria for selecting residents to the Committee and discuss, review and edit both at a special City Council meeting in two weeks. The motion passed.

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

[Note for historical purposes:

The Town's City Attorney spoke with the Mayor on Friday, October 8, 2010 in part because the time needed to prepare the advertisement was longer than anticipated, and there was concern that there was insufficient time for candidates to respond if the ad hoc subcommittee kept to the original time table. The Mayor realized that the deadline could be extended for a short period of time after Jerry Gruber's departure, with the assistant city manager serving as interim city manager until the interim city manager search process was completed.

The Mayor realized that this was a deviation from the timetable authorized by the City Council, but the City Council had also authorized the creation of an *ad hoc* committee to make needed decisions during the time before the next council meeting.

The Brown Act makes it impossible for the Mayor to consult with her colleagues, but it was apparent from council discussion at the last council meeting that a council majority has confidence in the current Assistant City Managers ability to be Interim City Manager. It was therefore concluded that the best choice was to modify the timetable.]

1. REVIEW AND DISCUSS CITY ATTORNEY REQUEST FOR PROPOSAL PROCESS; DISCUSS COMPOSITION, AND REVIEW WORK IN PROGRESS BY AD-HOC LEGAL SERVICES COMMITTEE

Report: City Manager Jerry Gruber

Recommendation: To Be Determined.

City Attorney Furth recused herself due to a conflict of interest with being the Town's current City Attorney.

Council Member Carlson said he and Council Member Lewis created a very detailed Request for Proposal and an advertisement for qualifications for Committee members.

Council Member Lewis said that the RFP was created so that any attorney who would be applying for the position would have a clear understanding of what the Town wants such as avoiding and mitigating litigation and controlling legal expenses. A clear understanding of high speed rail issues, Public Records Act and the Brown Act, and how to conduct Council meetings in a high degree of transparency are a few of the issues of concerns in the RFP.

Mayor McKeithen said her biggest concern is making sure a new attorney will reach out to the residents and really listen to them as people who may know more then we think and she would like something to that effect included in the RFP. McKeithen said "following through with residents" and being "open-minded" would be a good way to put it.

MOTION by McKeithen, second by Lewis to approve the content of the Request for Proposal for a City Attorney. The motion passed.

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

Council discussed the advertisement for criteria to select Committee members. Council disagreed on an edit in section three to add the word “corporations.”

[3. Experience in recruitment, selection and hiring (or making hiring recommendations) of counsel for public entities, or corporations.]

Council Member Lewis felt it would preclude someone from applying if others are more qualified who had that specific experience.

Mayor McKeithen did not feel it made a difference if they know public sector law.

Vice Mayor Dobbie said that in his experience if you are recruiting for a private corporation you are going to look for an entirely different type of attorney.

Council Member Lewis felt it should be narrow since there are only going to be three members on the Committee and those members should have experience in recruiting in the public sector only.

MOTION by McKeithen, second by Dobbie to publish the recruitment ad created by the Ad-hoc Committee for resident Committee members to a Legal Counsel Services Committee with an application deadline of November 5th and bring the applications back to Council for review at the November 17, 2010 City Council meeting; and add the word corporations to section 3 of the criteria. The motion passed.

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

ADJOURN

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

Mayor McKeithen adjourned the meeting at 12:27 p.m.

Respectfully submitted,

**Theresa DellaSanta
Deputy City Clerk**