



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
MARCH 16, 2005

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

- 7:00 P.M.** 1. **PLEDGE OF ALLEGIANCE**
- 7:03 P.M.** 2. **ROLL CALL** Janz, Marsala, Carlson, Conwell,
McKeithen
- 7:05 P.M.** 3. **PRESENTATION**

 Housing Endowment and Regional Trust of San Mateo County
(HEART)
- 7:20 P.M.** 4. **COUNCIL REPORTS**
- 7:30 P.M.** 5. **PUBLIC COMMENTS** (only for items which are not on the
agenda –
 limit of three minutes per person)
- 7:40 P.M.** 6. **STAFF REPORTS**
- 7:45 P.M.** 7. **COMMUNITY ORGANIZATION ROUNDTABLE REPORT**
(Directed by Resolution Nos. 99-6 and 02-31)

 The Friends of the Atherton Library
- 7:55 P.M.** **CONSENT CALENDAR** (Items 8 - 15)
8. **APPROVAL OF MINUTES OF SPECIAL AND REGULAR
MEETINGS OF FEBRUARY 16, 2005**
9. **APPROVAL OF BILLS AND CLAIMS FOR FEBRUARY
2005 IN THE AMOUNT OF \$632,274**

10. ACCEPTANCE OF MONTHLY FINANCIAL REPORT FOR FEBRUARY 2005

11. APPROVAL OF INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF ATHERTON AND TIM WULFF FOR PLAN CHECKING SERVICES FOR FISCAL YEAR 2004-05

Agreement for Plan Checking Services **Recommendation: Approve the Independent Contractor between the Town of Atherton and Tim Wulff for Fiscal Year 2004-2005.**

8:00 P.M. **PUBLIC HEARINGS** (Items 12 - 13)

12. CONSIDERATION OF REVISIONS TO ROAD IMPACT FEE AND EXCAVATION FEE – RECOMMENDATION FROM THE FINANCE COMMITTEE AND PUBLIC HEARING

impact fees grading. **Recommendation: Adopt a resolution adjusting existing road and extending such fees to excavation and**

FEE **A. DISCUSSION AND CONSIDERATION – LANDSCAPE**

implementing a landscaping and/or grading. **Recommendation: Receive direction from Council on surcharge on road impact fees related to**

13. FINAL PARCEL MAP – 69 MOULTON AVENUE

Recommendation: Continue the public hearing on the Final Parcel Map at 64 Moulton to the April 20, 2005, City Council meeting.

8:45 P.M. **REGULAR AGENDA** (Items 14 - 19)

14. ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 17.20.040 REGARDING THE USE OF THE HETCH-HETCHY PROPERTY FOR SETBACK PURPOSES

Recommendation: Hold first reading of Ordinance amending Atherton Municipal Code Section 17.20.040 regarding the use of the Hetch-Hetchy property for setback purposes, and waive reading of Ordinance beyond title.

9:00 P.M. 15. NEXTG FRANCHISE AGREEMENT

Recommendation: Consider right-of-way use agreement authorizing NEXTG Networks of California, Inc. to install and maintain micro-cellular optical repeater equipment on facilities in the Town owned by the Town and/or third parties. Authorize the City Manager or designee to take all necessary action to execute the agreement on behalf of the Town.

- 9:20 P.M. 16. ATHERTON CALTRAIN STATION PARKING LOT FEE ELIMINATION – REPORT BACK AFTER SIX MONTH TRIAL PERIOD (Trial period began 10/1/04)**

and Recommendation: Consider a continuation of the free parking overnight parking at the Caltrain parking lot.

- 9:30 P.M. 17. CONSIDERATION OF COUNCIL WRITTEN ARGUMENT IN FAVOR OF JUNE 7, 2005 SPECIAL ELECTION BALLOT MEASURE**

Recommendation: Consider draft ballot argument, revise if appropriate, and adopt the argument.

- 9:45 P.M. 18. SELECTION OF A REPRESENTATIVE TO SERVE ON THE BOARD OF THE PENINSULA POLICY PARTNERSHIP**

Recommendation: Discuss and consider the selection of a Town representative to serve on the Board of the Peninsula Policy Partnership (P³) organization,

- 9:50 P.M. 19. CONSIDERATION OF THE ATHERTON HERITAGE ASSOCIATION’S REQUEST REGARDING IDENTIFICATION OF TOWN ARTIFACTS**

Recommendation: Discuss and consider the Atherton Heritage Association’s request to identify and protect heritage artifacts on public and private property.

- 10:00 P.M. 20. PUBLIC COMMENTS**

- 10:05 P.M. 21. ADJOURNMENT**

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

☞ Please contact the City Clerk’s Office at 650.752.0529 with any questions
Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk’s Office at (650) 752-0529. Notification of 48

hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



Draft MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
February 16, 2005
7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Conwell called the meeting to order at 7:00 p.m.

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

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

ABSENT: Kathy McKeithen (arrived at 8:15 p.m.)

Mayor Conwell announced that Council Member McKeithen would be arriving later in the meeting.

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

3. **PRESENTATION**

Caltrain – Report on Hold-Out Stations: The Council received a presentation by Al Fong of Caltrain, who explained Caltrain’s plans to eliminate the “hold-out” status of stations along the Caltrain route, Atherton being one of them. Due to the current configuration, one train cannot pass while a train going the opposite direction is stopped at the Atherton station, for safety reasons. Mr. Fong and Duncan Jones, Public Works Director, explained the design elements in the remodel of the Atherton train station, which would include new lighting, a signalized pedestrian crossing, a display message board, ADA accessibility, new platforms and fencing. The following audience members commented on the plan:

Greg Conlon, Atherton Caltrain Corridor Ad Hoc Subcommittee, asked for clarification on the four quadrant gates.

Rosemary Maulbetsch, Atherton Caltrain Corridor Ad Hoc Subcommittee, stated that the designs needed to be scaled down for Atherton as the proposed modifications are too urban.

Council Member Carlson queried Mr. Fong regarding the safety requirements, and Mr. Fong gave responses regarding what is required to ensure the safe crossing of passengers.

Council Members requested clarification on the State legislation regarding establishing quiet zones (no train horns being used), and Mr. Fong stated that he did not have extensive information on this at the present time and he would look into getting more information on this. He further stated that the current operational practice is to blow the horn when approaching a station.

4. COUNCIL REPORTS

- Council Member Janz reported that he attended a High Speed Rail Board Meeting in Sacramento in January, where a report was reviewed on the Environmental Impact Report (EIR) and possible changes to be made. The significance of the changes was that it left open the idea of how and where to connect Los Angeles and San Francisco. He stated that he made a presentation at the meeting, stating that the Town prefers that High Speed Rail not go through the Town, and if it had to go through, we prefer that it go underground. He continued that the Caltrain Subcommittee met on February 1st and as a result a proposed Caltrain resident survey is on the agenda tonight as Item 18. On February 2nd, Caltrain Subcommittee Member Rosemary Maulbetsch, Public Works Director Jones and Council Member Janz attended a meeting with representatives from Menlo Park, Redwood City, Palo Alto and Mountain View to discuss items of common interest and joint concern regarding the Caltrain corridor. The next meeting will be held on March 2nd to discuss quiet zones.**
- Council Member Marsala reported that in January he attended the Atherton Dames new residents' party. He also attended a meeting in Mountain View regarding the Governor's proposal to change public retirement plans from defined benefit to defined contribution.**
- Council Member Carlson reported that on February 9th the General Plan Committee met, and the topic was possible revisions to the special events ordinance. The ordinance is still undergoing review by the Committee, and is not yet at a point for Council consideration.**
- Mayor Conwell reported that at the San Francisco Airport Noise Roundtable meeting last week, the Vice Mayor of Portola Valley reported that he tracked violations of aircraft altitude for a year and presented a report of his findings. At the Criminal Justice Council meeting, they heard a presentation from the County Probation Department regarding the juvenile justice hall and how they are working with those juveniles with mental health and substance abuse problems. He added that last week he heard a presentation regarding road maintenance and conservation, which emphasized that if we let our road surfaces go too far, it can cost five to six times over the typical**

amount to repair and bring them up to normal condition. He noted that he recently had lunch with Menlo College President Carlos Lopez and Stedman Graham, a motivational speaker who is Oprah Winfrey's boyfriend.

5. **PUBLIC COMMENTS**

- Jerry Carlson, Atherton, stated that at the Atherton Civic Interest League (ACIL) meeting last week, County Supervisor Rich Gordon spoke regarding the day laborer issue at Fifth Avenue and El Camino Real. A temporary shelter is being erected on Middlefield and \$20,000 is proposed for County appropriation with another \$11,000 raised from merchants and a private foundation. The goals of the center will be to reduce the visibility of the workers and provide a safer site for the workers. A center manager will be selected and the center will be open in 30 to 60 days. He further stated that Supervisor Gordon passed along kudos to Council Member Janz for his work on the Caltrain issue.
- Doris Kellett, Atherton, stated that she asked where the new shelter would be located, and was notified that the location was a secret, and that she does not want it near the Atherton homes adjacent to Middlefield. Mayor Conwell stated the location would be in the County not in the Town of Atherton. Chief Bob Brennan stated that the center would be located near Fifth Avenue and Middlefield near the tool rental places.

6. **STAFF REPORTS**

- City Manager Robinson stated that this Thursday the County will hold another meeting regarding a proposed revenue measure, either sales tax or a parcel tax, to maintain existing parks in the County. He also stated that on February 28th at 7:00 p.m. there will be a meeting in the Chambers to discuss proposed improvements to Selby Lane, and there are letters being sent to residents who would be affected along the roadway. The improvements will include the walkway swale and drainage, which would help both pedestrians and drivers. He further noted that Item No. 20 .D. on the agenda has an error in the date and it should state June 7, 2005 instead of March 8, 2005 for the Special Election.
- City Attorney Hynes reported out of closed session as follows:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Initiation of litigation pursuant to Government Code Section 54956.9(c):
3 potential cases

By unanimous vote of those present at the closed session (Council Member McKeithen absent), initiation of litigation was approved.

First case: Barking dog at 102 Fair Oaks.

Second case: Violation of the heritage tree ordinance at 28 Isabella.

Third case: Violation of the heritage tree ordinance at 26 Selby Lane.

For both tree cases, civil action would be brought against the property owners and criminal action against the persons conducting the cutting.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

Marion Oster, President, Atherton Heritage Association, presented an overview of the association's activities. The Heritage Room is open on Tuesdays from 10:00 a.m. to Noon and currently there are 15 members volunteering with historical work. Among other items, a variety of historical photos, maps, books and newspaper clippings are available as resources for people conducting research. Mrs. Oster also stated that the group is trying to put together an inventory of the historical artifacts located on private property throughout Town, in hopes that owners will consider maintaining these historical items, such as fountains, gates, etc.

CONSENT CALENDAR (Items 8 - 18)

In response to Council Member questions, the following was clarified by staff regarding the consent calendar items:

- **Item No. 14, Purchase of Police Vehicles:** the equipment will cost \$10,000 per vehicle, and the mileage on the cars to be phased out is 85,000 and 67,000 and one needs a transmission. The cars that are not used for emergency will be maintained for a longer period.
- **Item No. 12, Contract for Tennis Professional Services:** the tennis fees are going into the Tennis Fund.

Council Member Janz noted that on Item No. 18, Caltrain Hold Out Station Resolution, he did not disagree with Caltrain Subcommittee Member Rosemary Maulbetsch's comments on the design of the hold-out station, but Caltrain has a standard method of modifying the stations, and he is interested in Caltrain moving forward with the modifications since it shows they are interested in keeping the Atherton station open.

MOTION – to approve the Consent Calendar as presented.

M/S Janz/Carlson
Abstain: 0

Ayes: 4 Noes: 0 Absent: 1 (McKeithen)

- 8. APPROVED MINUTES OF SPECIAL AND REGULAR MEETINGS OF JANUARY 19, 2005 AND SPECIAL MEETING OF FEBRUARY 7, 2005**
- 9. APPROVED BILLS AND CLAIMS FOR JANUARY 2005 IN THE AMOUNT OF \$637,948**
- 10. ACCEPTED MONTHLY FINANCIAL REPORT FOR JANUARY 2005**
- 11. ACCEPTED INVESTMENT REPORT FOR QUARTER ENDED DECEMBER 31, 2004**

Noted, received and filed.

12. APPROVED CONTRACT FOR TENNIS PROFESSIONAL SERVICES AT HOLBROOK-PALMER PARK

Approved a two-year contract for services of Tennis Professional Alan Margot.

13. SECOND READING AND ADOPTION OF ORDINANCE NO. 554 – ADDING CHAPTER 1.22 TO THE ATHERTON MUNICIPAL CODE PERTAINING TO CLAIMS AGAINST THE TOWN OF ATHERTON

Waived further reading and adopted Ordinance No. 554.

14. PURCHASE OF POLICE VEHICLES FOR FY 2005-06

Authorized the Town to “piggy back” on the City of Redwood City’s bid in order to purchase two marked patrol vehicles and related equipment for the Fiscal Year 2005-06, for a total cost of \$65,788.16.

15. APPROVED PLANS AND SPECIFICATIONS AND AUTHORIZED ADVERTISEMENT OF THE 2004 STREET RECONSTRUCTION PHASE 2 PROJECT, NO. 04-002

Approved the plans and specifications, and authorized advertisement of the contract for the 2004 Street Reconstruction Phase 2 Project, No. 04-002.

16. APPROVED PLANS AND SPECIFICATIONS AND AUTHORIZED ADVERTISEMENT OF THE SELBY LANE RECONSTRUCTION PROJECT, NO. 04-004

Approved the plans and specifications, and authorized advertisement of the contract for the Selby Lane Reconstruction Project, No. 04-004.

17. RESOLUTION NO. 05-31 IN SUPPORT OF MENLO COLLEGE DIRECTIONAL SIGNAGE ON INTERSTATE 280 AND BAYSHORE FREEWAY 101

Adopted Resolution No. 05-31 requesting Senator Joseph Simitian’s assistance to help secure directional signs on both Interstate 280 and Bayshore Freeway 101 for Menlo College.

18. RESOLUTION NO. 05-32 APPROVING CALTRAIN’S PROPOSED “HOLD-OUT” STATION MODIFICATIONS AND ADVOCATING THE INSTALLATION OF FOUR-QUADRANT GATES AT FAIR OAKS DRIVE AND WATKINS AVENUE TO IMPROVE GRADE CROSSING SAFETY

Adopted Resolution No. 05-32 approving Caltrain’s proposed “Hold-Out” station modifications and advocating the installation of four-quadrant gates at Fair Oaks Lane and Watkins Avenue.

PUBLIC HEARINGS (Items 19 - 20)

19. ORDINANCE AMENDING ATHERTON MUNICIPAL CODE SECTION 17.20.040 REGARDING THE USE OF THE HETCH HETCHY PROPERTY FOR SETBACK PURPOSES

Recommendation: After public hearing, consider comments from the City and County of San Francisco, and determine whether to introduce the ordinance as written or amended waiving reading beyond title. Alternatively, the City Council may decide to take no action pending further developments of the Hetch Hetchy Right-of-Way.

City Attorney Marc Hynes introduced the item, explaining that the proposed ordinance would allow property owners bordering the Hetch Hetchy right-of-way to use the right-of-way for purposes of calculating setback requirements. In the 1950's the City and County of San Francisco acquired the Hetch Hetchy property up and down the Peninsula for the underground pipe system to route water from the Hetch Hetchy Reservoir to the City and County of San Francisco. The property is an 80-foot wide strip. The City and County of San Francisco owns the property underneath and allows certain uses on top of the property. The Planning Commission recommends City Council approval of the ordinance.

Mayor Conwell opened the public hearing.

John Aiken, Atherton, stated that the Town should preserve the property value of owners who built on the right-of-way.

Gary Dowd, Director of Real Estate, Public Utilities Commission, City and County of San Francisco, stated that the action of adopting the ordinance would set a dangerous precedent and urged the Council not to adopt the ordinance. If the 96-inch diameter water line had a break, there could be a public safety issue and there is a need to protect the Hetch Hetchy system from further encroachment.

Council Member McKeithen arrived at 8:15 p.m.

Marcelo Mottes, Atherton, stated his disagreement with the City and County of San Francisco on this issue, and there is a 10-foot access easement that runs the length of his property on each side of the 80-foot right-of-way. He further stated that if the ordinance is not adopted, the existing encroachments would be considered nonconforming.

John Sisson, Atherton, asked for copies of the map of showing the right-of-way. He also stated that in Lloyd Park, the Town owns a 25-foot strip of property in the middle of the street and he was told that the property owners were responsible for the trees and other vegetation on the strip.

MOTION – Hold first reading of the ordinance – AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTION 17.20.040 OF THE ATHERTON MUNICIPAL CODE REGULATING SETBACKS IN

**CONNECTION WITH RESERVED SURFACE RIGHTS ON THE HETCH
HETCHY RIGHT OF WAY WITHIN THE TOWN OF ATHERTON**

Mayor Conwell requested that City Attorney Hynes clarify the 10-foot setback line for access to the Hetch Hetchy property and the building of accessory structures to the property line, and review the status of every property (as to whether there is an additional easement outside the 80-foot right of way) between the first and second reading and provide this information to the Council.

M/S McKeithen/Carlson

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

20. CONSIDERATION OF REVENUE ENHANCEMENT OPTIONS - PUBLIC HEARING REGARDING PARCEL TAX ORDINANCE FOR JUNE 7, 2005 ELECTION

A. CONSIDERATION OF FINANCE COMMITTEE AND STAFF RECOMMENDATION REGARDING REVENUE ENHANCEMENT OPTIONS

Recommendation: Consider and discuss options.

B. PUBLIC HEARING - ORDINANCE CALLING A SPECIAL ELECTION FOR JUNE 7, 2005 TO PLACE A MEASURE BEFORE THE VOTERS REGARDING A RENEWAL OF THE PARCEL TAX

Recommendation: After public hearing, adopt ordinance calling Special Election for June 7, 2005. Hold roll call vote.

C. RESOLUTION SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

Recommendation: Decide whether to authorize the City Council to write ballot argument for the measure, and adopt resolution.

D. SET DATES OF COMMUNITY MEETINGS REGARDING MEASURE

Recommendation: Discuss and select dates for holding community informational meetings regarding the June 7, 2005 Special Election.

City Manager Robinson introduced this item.

Council Member Carlson explained the recommendation of the Finance Committee, which is a renewal of the existing parcel tax for five or seven years at the existing rates. The subsequent renewal of a five or seven year tax would be at an off-year election, not included with a general election.

Vice Mayor Marsala stated that he is concerned that the current rates might limit the Town, since there are proposals to eliminate some local funding for the COPS program at the federal level.

City Manager Robinson, Finance Director Johns, Police Chief Brennan and Public Works Director Jones responded to questions regarding funding availability and cost of capital projects.

Mayor Conwell opened the public hearing.

Jerry Carlson, Atherton, asked that the message be kept simple and that he did not feel that a seven year tax would garner more votes.

James Dobbie, Atherton, stated that the main industry in town is real estate and that if the legalities can be overcome, some form of transfer tax should be considered.

John Rugeiro, Atherton, stated that many people voted against the parcel tax in November or did not vote on the ballot measure at all.

Janet Simonds, Atherton, stated that she is concerned about the increased use of the parcel tax by school districts and other taxing districts, and that the public pension problem needs to be fixed.

Vice Mayor Marsala spoke of the benefits of a longer-term parcel tax.

Council Member Janz stated that the Town should not take chances on a longer tax and that a 20-year tax is problematic since revenue and expenditure estimates out that far are not reliable.

Mayor Conwell stated that we needed to make the issue simple and that he would recommend four years but thinks it would be great to get a five year tax.

Council Member Carlson stated that he hoped a five-year tax would pass, with the commitment that the Town will continue to work on long-term solutions.

MOTION – Read ordinance placing a five-year parcel tax before the voters at a June 7, 2005 Special Election with no change to the current maximum assessments, by title only, waive further reading and adopt the ordinance.

ORDINANCE NO. 555 - AN ORDINANCE OF THE TOWN OF ATHERTON CALLING AN ELECTION TO SUBMIT TO THE VOTERS AN ORDINANCE AUTHORIZING THE RENEWAL OF A SPECIAL TAX FOR MUNICIPAL SERVICES AND CAPITAL IMPROVEMENTS, FOR THE EXPENDITURE OF FUNDS DERIVED FROM SUCH TAX

A roll call vote was held as required by the ordinance.

Motion/Second: McKeithen/Carlson

Janz: Aye

**Marsala: Aye
Carlson: Aye
Conwell: Aye
McKeithen: Aye**

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

Council Member McKeithen made a motion to direct staff to give the City Council a report at the next meeting regarding the road impact fee and the procedures required to enact changes as well as a proposed landscaping and excavation fee ordinance.

Council Member Carlson recommended that the Finance Committee meet on this issue in advance of the next Council meeting.

Mayor Conwell recommended that the road impact fee changes be held in abeyance as to keep the matter of the election straightforward for people to understand.

City Manager Robinson stated that the next action item is the resolution regarding ballot arguments.

Acting City Clerk Linda Kelly explained that the ballot statement is due by March 21, 2005 and staff suggests that the Council appoint a less than a quorum subcommittee to write the argument.

MOTION – Adopt the resolution, authorizing the City Council to write the ballot argument in favor of the measure.

RESOLUTION NO. 05-33 - SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A CITY MEASURE AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

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

The Council authorized the Finance Committee to draft the argument in favor of the measure, to be presented to the Council for adoption at the March 16 regular Council meeting.

Phil Lively, Atherton, spoke from the audience, stating that there is a citizens' committee being established to promote passage of the parcel tax, and that meetings will be set up.

City Attorney Hynes clarified that city facilities for meetings could be used by the citizens' committee, but that city equipment could not be used by the committee.

Regarding setting up times and dates for potential community meetings for public information regarding the parcel tax, each Council Member is to provide the City Manager with those dates and times when he/she is available to meet.

REGULAR AGENDA (Items 21 - 23)

21. REVIEW AND APPROVAL OF RESIDENT SURVEY REGARDING CALTRAIN

Recommendation: Review the draft survey prepared by the Caltrain Corridor Ad Hoc Sub-Committee, and if appropriate, approve of the survey and direct staff to conduct the survey.

City Manager Robinson introduced the item. The Caltrain Corridor Subcommittee has submitted a request to survey the Town residents regarding Caltrain services and usage.

Council Member Janz explained the purpose of the survey and the desire of the Committee to receive feedback from the residents regarding Caltrain service, and he welcomed comments from the Council on the survey.

A few changes to the survey were requested by the Council regarding frequency of usage and which stations residents are taking the train from.

MOTION – Approve the survey as amended and authorize staff to conduct the survey.

There were no comments from the public on this item.

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

22. LICENSE AGREEMENT – BEAR GULCH COMMUNICATIONS SITE

Recommendation: Approve License Agreement between California Water Service Company and the Town of Atherton for a license authorizing Town's use of California Water Service Company reservoir site for communications equipment and tower and authorize City Manager to execute agreement on behalf of the Town.

City Attorney Hynes explained that the agreement is for a five-year term with five-year renewals, and that he is working with the water district's legal counsel on finalizing the agreement. The tower is used by both the Police Department, the Menlo Park Police Department and the Menlo Park Fire District radio communications.

City Manager Robinson stated that a new tower is being put in for the same purpose as an existing tower, which is failing.

In response to Council questions, City Attorney Hynes responded that the hazardous materials liability was minimal, and that the days required for notification of termination of the agreement would be standardized throughout the document to 10 days. Furthermore, he will ensure that Cal Water will agree to ABAG's risk management insurance requirements.

MOTION – Approve License Agreement between California Water Service Company and the Town of Atherton for a license authorizing Town's use of California Water Service Company reservoir site for communications equipment and tower and authorize City Manager to execute agreement on behalf of the Town, subject to the conditions of the five-year extension at a \$1 rate, \$2,500 up-front cost, and acceptance of the ABAG's insurance policy, as amended with the changes described by City Attorney Hynes.

James Dobbie, Atherton, asked if a cell phone antenna could be added to the new tower.

City Attorney Hynes stated that on the next Council agenda there will be an item regarding cell phones.

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

23. PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE

Recommendation: Consider and discuss membership in the Peninsula Traffic Congestion Relief Alliance.

Christine Maley-Grubl, Executive Director, Peninsula Traffic Congestion Relief Alliance, stated that if the Council chose to join the Alliance that she would ask that a Council Member be appointed to the board of directors of the group, which meets every other month on the third Thursday of the month, 8:00–10:00 a.m. The Alliance is funded through Measure A and C/CAG, and 90% of their programming is aimed at employers.

MOTION – Approve Town membership in the Peninsula Traffic Congestion Relief Alliance.

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

Ms. Maley-Grubl stated that an annual board retreat will be held on March 17 at the SamTrans offices in San Carlos. The Joint Powers Agreement will need to be brought back to the Council for approval in order for membership to become official.

24. PUBLIC COMMENTS

Jerry Carlson, Atherton, stated that the Council agenda on the government cable television channel was showing the January Council agenda instead of the February agenda.

City Manager Robinson stated that the Council had received a letter from the Menlo Park Fire District requesting the Council to revisit the fire sprinkler ordinance regarding remodels.

The Council agreed that there was not a need to revisit the fire sprinkler ordinance.

25. ADJOURNMENT

Mayor Conwell adjourned the meeting at 9:52 p.m.

Respectfully submitted,

Linda Kelly, Acting City Clerk



Draft MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
February 16, 2005

6:00 P.M.

Meeting Room
Town Administrative Offices

91 Ashfield Road
Atherton, California

Special Meeting

The meeting was called to order at 6:05 p.m.

ROLL CALL

PRESENT: James R. Janz
Alan B. Carlson
William R. Conwell
Charles E. Marsala

ABSENT: Kathy McKeithen (Excused)

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Initiation of litigation pursuant to Government Code Section 54956.9(c):

3 potential cases

RECONVENE TO OPEN SESSION

Report of action taken.

City Attorney Marc Hynes reported the following during open session:

By unanimous vote of those present at the closed session (Council Member McKeithen absent), initiation of litigation was approved.

First case: Barking dog at 102 Fair Oaks.

Second case: Violation of the heritage tree ordinance at 28 Isabella.

Third case: Violation of the heritage tree ordinance at 26 Selby Lane.

For both tree cases, civil action would be brought against the property owners and criminal action against the persons conducting the cutting.

ADJOURN

The Special Meeting adjourned at 6:45 p.m.

Respectfully submitted,

William R. Conwell
Mayor

TOWN OF ATHERTON

CLAIMS LIST

February, 2005

Payroll Checks	5527 - 5598	\$ 28,627
Electronic Transfers		303,071
A/P Checks	19348 – 19509	300,576
	TOTAL	\$ 632,274

I, James H. Robinson, City Manager of the Town of Atherton, do hereby certify under penalty of perjury that the demands listed above, check numbers 5527 - 5598 (payroll) and 19348 through 19509 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$632,274; are true and correct, and that there are sufficient funds for payment.

James H. Robinson
City Manager

The above claims, check numbers 5527 - 5598 (payroll) and 19348 through 19509 (accounts payable), and electronic transfers for employees federal payroll taxes and fees, inclusive, amount to \$632,274; are true and correct, and are authorized for payment.

William R. Conwell
Mayor, Town of Atherton

SOURCE OF FUNDS

101	General Fund	\$611,576
105	Tennis Fund	237
201	Special Parcel Tax	1,306
202	Transportation	
203	Gas Tax Fund	
210	Road Construction Impact Fees	3,726
211	Park Grants Fund	
213	Library Special Revenue Fund	2,098
401	General Capital Projects	
402	Storm Drainage	
403	Atherton Channel District	1,100
404	Park Playground Improvement	
406	Facilities Construction	
610	Vehicle Replacement	415
611	Computer Maint. & Replacement	4,477
612	Administrative Services	6,863
715	Evans Estate	21
740	Tree Committee	455
	TOTAL	632,274



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF MARCH 16, 2005

SUBJECT: MONTHLY FINANCIAL REPORT, FEBRUARY 2005

RECOMMENDATION:

Receive the Monthly Financial Report for February 2005.

INTRODUCTION:

The attached schedules show revenues and expenditures and fund balance for all funds as of February 28, 2005.

HIGHLIGHTS

General Fund expenditures for the eight months ended February 28, 2005, have amounted to \$4,761,653, or 59% of the \$8,046,585 budgeted for the fiscal year. For the eight months ended February 28, 2005, General Fund revenues amounted to \$5,074,743, or 64% of the \$7,985,565 estimated for the year.

By comparison, General Fund expenditures amounted to 57% of budgeted expenditures for the eight months ended February 28, 2004. Additionally, General Fund revenues amounted to 58% of estimated revenues for the eight months ending February 28, 2004.

FISCAL IMPACT:

None

Prepared by:

Approved by:

John P. Johns
Finance Director

James H. Robinson
City Manager

TOWN OF ATHERTON
Revenue Summary
For the Month ended February 28th, 2005

Fund	Revenue Source	2004-05 Estimate	Current Period Revenues	Year to Date Revenues	% Received
	Property Tax	\$ 3,060,517	21,903	\$ 2,062,440	67%
	Sales and Use Tax	169,906	12,129	99,854	59%
	Other Taxes	893,010	27,530	509,699	57%
	Licenses & Permits	1,606,949	112,523	1,123,394	70%
	Fines & Forfeitures	50,000	4,943	26,364	53%
	Revenue from Other Agencies	144,500	944	199,810	138%
	Charges for Services	354,622	15,935	223,592	63%
	Investment & Rental Income	401,900	70,600	156,272	39%
	Other Revenues	3,000	3,807	22,737	758%
	Total General Fund Revenues	6,684,404	270,314	4,424,162	66%
	Interfund (Operating) Transfers In	1,301,161	-	650,581	50%
101	General Fund Total	7,985,565	270,314	5,074,743	64%
	Special Revenue Funds:				
105	Tennis	7,010	600	2,800	40%
201	Special Parcel Tax	1,858,000	-	1,119,560	60%
202	Transportation	178,500	21,430	145,083	81%
203	Street Improvement (Gas Tax)	147,000	12,517	109,741	75%
209	Law Enforcement	100,000	100,936	100,936	101%
210	Road Construction Impact Fees	400,000	28,445	318,449	80%
211	State Park Grants Fund	220,000	-	54,400	0%
213	Library	200,000	-	14,219	7%
	Total	3,110,510	163,928	1,865,188	60%
	Capital Project Funds:				
401	Capital Improvement	-	-	-	
402	Storm Drainage	-	-	-	
403	Channel Drainage District	48,530	295	27,943	58%
404	Park Playground Improvement	2,205	-	-	0%
405	Middlefield Road Grants	-	-	-	
406	Facilities Construction	-	-	-	
	Total	50,735	295	27,943	55%
	Internal Service Funds:				
610	Vehicle Replacement	66,000	-	33,000	50%
611	Information Technology	98,661	-	49,321	50%
612	Administrative Services	285,815	-	150,074	53%
614	Workers Compensation Insurance	-	-	-	
	Total	450,476	-	232,395	52%
	Trust and Agency Funds:				
715	Evans Creative Design	45,150	-	3,130	7%
740	Tree Committee	-	865	2,785	
	Total	45,150	865	5,915	13%
	Total Revenues	11,642,436	435,402	7,206,184	62%

TOWN OF ATHERTON
Expenditure Summary
For the Month Ended February 28th, 2005

Fund	Description	2004-05	Current Period	Year to Date	%
	Department	Budget	Expenditures	Expenditures	Spent
101	General Fund				
	11 City Council	\$ 20,204	\$ 236	12,335	61%
	12 City Manager	509,226	45,812	340,759	67%
	16 City Attorney	176,228	10,823	82,972	47%
	18 Finance	456,797	21,634	250,678	55%
	25 Building	975,249	69,897	558,667	57%
	40 Police	4,002,909	299,193	2,514,187	63%
	50 Public Works	1,805,972	129,759	1,002,055	55%
	Contingency	100,000	-	-	0%
	Total General Fund Expenditures	<u>8,046,585</u>	<u>577,354</u>	<u>4,761,653</u>	<u>59%</u>
	Interfund (Operating) Transfers Out	-	-	-	0%
101	General Fund Total	<u>\$ 8,046,585</u>	<u>\$ 577,354</u>	<u>\$ 4,761,653</u>	<u>59%</u>
Special Revenue Funds:					
105	Tennis	-	450	4,963	
201	Special Parcel Tax	2,591,910	1,306	1,125,693	43%
202	Transportation	211,120	-	25,000	12%
203	Street Improvement (Gas Tax)	147,000	-	137,929	94%
209	Law Enforcement	100,000	10,036	88,718	89%
210	Road Impact Fees	400,000	3,726	212,398	53%
211	State Park Grants	80,000	-	7,920	10%
213	Library Fund	49,870	2,098	16,927	34%
	Total	<u>3,579,900</u>	<u>17,616</u>	<u>1,619,548</u>	<u>45%</u>
Capital Project Funds:					
401	Capital Improvement	367,902	-	48,925	13%
402	Storm Drainage	21,394	-	2,963	14%
403	Channel Drainage District	48,530	1,100	9,138	19%
404	Park Playground Fund	-	-	-	
405	Middlefield Road Grants	-	-	-	
406	Facilities Construction	-	-	-	
	Total	<u>437,826</u>	<u>1,100</u>	<u>61,026</u>	<u>14%</u>
Internal Service Funds:					
610	Vehicle Replacement	98,853	415	57,189	58%
611	Information Technology	104,625	4,477	16,552	16%
612	Administrative Services	285,815	14,689	204,747	72%
614	Workers Compensation Insurance	-	-	-	
	Total	<u>489,293</u>	<u>19,581</u>	<u>278,488</u>	<u>57%</u>
Trust and Agency Funds:					
715	Evans Creative Design	43,287	21	7,428	17%
	Total	<u>43,287</u>	<u>21</u>	<u>7,428</u>	<u>17%</u>
	Total Expenditures	<u>12,596,891</u>	<u>615,672</u>	<u>6,728,143</u>	<u>53%</u>

TOWN OF ATHERTON
Budget Summary
Fiscal Year 2004-05
As of February 28th, 2005

Fund	Description	Beginning Fund Balance July 1, 2004	Revenues to Date	Transfers to Date	Expenditures To Date	Ending Fund Balance to Date
101	General Fund	6,060,452	4,424,162	650,581	4,761,653	6,373,542
	Special Revenue Funds:					
105	Tennis	11,867	2,800		4,963	9,704
201	Special Municipal Tax	963,223	1,119,560		1,125,693	957,090
202	Transportation	145,636	145,083		25,000	265,719
203	Street Improvement (Gas Tax)	45,050	109,741		137,929	16,862
209	Law Enforcement	12,174	100,936		88,718	24,392
210	Road Construction Impact Fees	632,420	318,449		212,398	738,471
211	State Park Grants	(5,663)	-		7,920	(13,583)
213	Library Special Revenue Fund	1,075,913	14,219		16,927	1,073,205
	Sub Total	2,880,620	1,810,788	-	1,619,548	3,071,860
	Capital Projects Funds:					
401	Capital Improvement	302,895	-		48,925	253,970
402	Storm Drainage	48,225	-		2,963	45,262
403	Channel Drainage District	404,424	27,943		9,138	423,229
404	Park Playground Improvement	1,309	-		-	1,309
405	Middlefield Road Grants	1,514	-		-	1,514
406	Facilities Construction	65,382	-		-	65,382
	Sub Total	823,749	27,943	-	61,026	790,666
	Internal Service Fund					
610	Vehicle Replacement	449,451	33,000		57,189	425,262
611	Information Technology	106,856	49,321		16,552	139,625
612	Administrative Services	122,618	150,074		204,747	67,945
614	Workers Compensation Insurance	10,871	-		-	10,871
	Sub Total	689,796	232,395	-	278,488	643,703
	Trust and Agency Funds					
715	Evans Creative Design	117,129	3,130		7,428	112,831
	Sub Total	117,129	3,995	-	7,428	113,696
	Grand Total	\$ 10,571,746	\$ 6,499,283	\$ 650,581	\$ 6,728,143	\$ 10,993,467



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MICHAEL A. HOOD, BUILDING OFFICIAL

DATE: FOR THE MEETING OF MARCH 16, 2005

**SUBJECT: APPROVAL OF INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN THE TOWN OF ATHERTON AND TIM WULFF FOR
PLAN CHECKING SERVICES FOR FISCAL YEAR 2004-05**

RECOMMENDATION:

Approve the Independent Contractor Agreement between the Town of Atherton and Tim Wulff for Plan Checking Services for Fiscal Year 2004-2005.

BACKGROUND:

The Town Building Department has been utilizing the services of Tim Wulff for plan checking on a month-to-month basis, payable by invoice. At this time, in order to formalize the relationship with the contractor and limit the Town's liability exposure, it is recommended that the attached independent contractor agreement be approved.

The contractor, Tim Wulff, an individual, as a sole proprietor, has provided plan checking services as a sole proprietor. The contractor has provided proof of General Liability insurance in the amount of \$2 million dollars (see attached).

Funds for this expense are budgeted in the adopted Fiscal Year 2004-05 Operating Budget, Building Department, Plan Reviewer Account, in the amount of \$38,000.

Prepared by:

Approved by:

Michael A. Hood
Building Official

James H. Robinson
City Manager

Attachment: Agreement

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE TOWN OF
ATHERTON AND TIM WULFF

This Independent Contractor Agreement ("Agreement") is entered into between the Town of Atherton ("Town") and TIM WULFF ("Contractor").

1. Services of Contractor. Contractor agrees to perform the services described in Exhibit A ("the Services") attached to this Agreement. Contractor will determine the method, details, and means of performing the Services.
2. Compensation. The Town agrees to pay Contractor \$45.00 per hour based upon a monthly itemized invoice Contractor provides to the Town. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation, including all estimated taxes, and shall provide the Town with proof of payment on demand. Contractor indemnifies Town for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Town arising out of Contractor's breach of this provision. Contractor shall be responsible for all expenses incurred in association with the performance of Services.
3. Term of Agreement. This Agreement will be effective as of January 1, 2005. This Agreement will terminate on June 30, 2005, at which time, it may be renewed annually by action by the City Council after receipt and review of responses to a request for proposals, if any. Prior to the termination date, either party may terminate this Agreement by giving 30 days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination shall be effective on receipt of the notice, or 5 days from mailing the notice, whichever comes first. "Material breach" shall include, but not be limited to, the following: a) Town's failure to pay compensation for 20 days after a demand for payment; or b) failure of Contractor to perform the Services to the satisfaction of the Town.
4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor look to Town as his/her employer, or as a partner, agent or principal. Contractor shall not be entitled to any benefits accorded to Town employees, such as workers' compensation, disability insurance, vacation, sick pay, holiday pay, medical insurance, retirement benefits, or any other employee benefit. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, disability, workers' compensation or other insurance as well as licenses and permits usual or necessary for performing the Services. Contractor agrees to perform the Services as needed, but that no more than 1,000 hours will be devoted to performance of the Services in any Town fiscal year (e.g., July 1 to June 30). Consistent with this requirement, Contractor may represent, perform services for, or be employed by any additional persons, or companies as Contractor sees fit.
5. Contractor's Representations. Contractor represents that he/she has the qualifications and ability to perform Services in a professional manner, without the

advice, control or supervision of the Town. Contractor shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction, or control from the Town. Contractor shall have sole discretion and control of Contractor's services and the manner in which performed.

6. Indemnities. Except as set forth below, Contractor shall and does hereby indemnify, defend and hold harmless Town, and Town's Council members, managers, and department heads from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that Town may incur or suffer and that result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties and agreements contained in this Agreement.

Town shall provide legal defense to Contractor in connection with claims related to the exercise of discretion by Contractor in the performance of duties hereunder to the same extent as a regular employee of the Town under the provisions of California Government Code sections 810 through 825.6.

Contractor agrees to maintain minimum limits of insurance no less than the following amounts during the term of this agreement:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

Any deductibles or self-insured retentions must be declared to and approved by the town. The Town may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

7. Notices. All notices to Town shall be directed to: City Clerk, Town of Atherton, 91 Ashfield Road, Atherton, California, 94027. All notices to Contractor shall be directed to: Tim Wulff, 76 Monroe Street #1, Santa Clara, CA 95050.

8. Mediation. Should any dispute rise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs and fees. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.

9. Attorneys' Fees. In the event of litigation between the parties to enforce any provision of the Agreement, the unsuccessful party shall pay the costs of litigation including reasonable attorneys' fees of the successful party.

10. Conflict of Interest. Contractor may serve other clients, but none who are active within the Town or who conduct business that would place Contractor in a "conflict of interest" as the term is defined and understood in State law.

11. Entire Agreement. This Agreement and Exhibit A hereto constitute the entire agreement between the parties. All prior agreements, written or oral, are hereby superseded by this Agreement.

12. Amendment. This Agreement can only be amended by a writing that is signed and dated by both parties and approved by the Town's City Council.

The foregoing is agreed to by:

TOWN:

Dated: _____

William R. Conwell, Mayor

CONTRACTOR:

Dated: _____

Tim Wulff

Approved as to Form:

/s/ Marc Hynes

Marc Hynes, City Attorney

EXHIBIT A

Contractor Tim Wulff, agrees to provide PLAN CHECKING SERVICES for the Town of Atherton. Services include the review of construction plans and projects to verify conformance with the provisions of the Atherton Municipal Code and the 2001 California Building Code. Services shall include meeting with contractors, homeowners, and engineers and maintaining a courteous and professional relationship. Plan checking assignments and general direction will be coordinated by the Building Official.



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: JOHN P. JOHNS, FINANCE DIRECTOR

DATE: FOR THE MEETING OF MARCH 16, 2005

**SUBJECT: CONSIDERATION OF REVISIONS TO ROAD IMPACT FEE AND
EXCAVATION FEE – RECOMMENDATION FROM THE
FINANCE COMMITTEE AND PUBLIC HEARING**

RECOMMENDATION:

Adopt a resolution adjusting existing road impact fees and extending such fees to excavation and grading.

DISCUSSION:

In September 2000, the City Council adopted Resolution No. 00-27 adopting a road impact fee to provide for roadway maintenance and repair related to damages caused by construction activity. Such impact fees were implemented pursuant to staff recommendations and based upon findings contained in a consultant study prepared by DKS and Associates. According to the DKS report, a road impact fee equivalent to ½ of one-percent of the permitted value of new construction was justified in order to recover the cost of maintaining and repairing roads damaged from heavy equipment operating in support of residential construction.

Subsequent to the adoption of the fee recommendations contained within the DKS report, Atherton has collected total of \$2,093,399 in road impact fees, or an average of \$474,272

per year. These funds, combined with proceeds of the Atherton parcel tax, Measure A funds, Gas Tax proceeds, and federal transportation improvement grants, have enabled the Town to expend approximately \$6 million (\$1,485,000 annually) to maintain, repair, and rehabilitate its roads during the past four years. Attachment 1 to this report provides an analysis of road maintenance and rehabilitation expenditures according to financing source from Fiscal Years 1999-00 through 2003-04.

Despite the significant level of investment during the past several years, the Town's roadways have deteriorated further. In fact, the most recently completed pavement condition study indicates that the Town would have had to spend an additional \$672,000 over the past four years to maintain the condition of the roads at their 2000 level.

To ascertain the reasons for the continued deterioration of the Town's surface streets despite the level of investment in road maintenance and repair during the past several years, staff retained the engineering firm of Kimley Horn and Associates. A primary objective of the Kimley Horn study was to reexamine the relationship between building activity and the deterioration of the Town's roads. Staff believed such an examination was warranted in light of the significant increase in the size of homes under construction within Atherton and the increased excavation activity that had been observed to accommodate the construction of basements.

In performing its examination, the consultant used certain engineering calculations to ascertain the damage attributable to construction and excavation activity based upon the following parameters:

- The estimated weight and volume of materials transported to and from construction sites given the size of homes being constructed;
- The volume of earth material being excavated and off-hauled to accommodate basement construction given the number of homes being constructed with basements and the estimated size of such basements;
- The configuration and carrying capacity of vehicles used to support construction and excavation activity; and,
- The estimated number of trips made by construction activity given the carrying capacity of such vehicles.

It should be noted that the approach used by Kimley Horn & Associates to quantify the impact of construction traffic was based upon certain engineering calculations as described above; whereas, the study performed by DKS & Associates in 2000 used certain analytic methods combined with statistical sampling. It should also be noted that Kimley Horn's study was conducted subsequent to a separate road impact analysis conducted by the consulting firm of Hilton, Farnkopf and Hobson (HFH) on behalf of the South Bayside Waste Management Authority. (The purpose of the HFH study was to ascertain the extent to which refuse vehicles operating in support of refuse and recycling activities contribute to the deterioration of surface streets throughout the 13 member South Bayside Waste Management Authority.)

The results of Kimley Horn's study are summarized as follows:

- When taking into account the findings of the HFH study, it is reasonable to conclude that vehicles operating in support of construction within the Town of Atherton account for 87.4 percent of the deterioration of the Town's surface streets. (As indicated in the HFH study, the remaining 12.6 percent of wear and tear is attributable to trucks operated by the Town's refuse haulers.)
- The estimated cost of the deterioration in Atherton's roads resulting from construction and excavation support traffic amounts to \$1,465,485 annually, 45% of which is due to vehicles operating in support of construction and the remaining 55% of which is due to the off-haul of excavated earth.

Given the findings contained within the Kimley-Horn study, staff recommends that existing road impact fees for residential construction be adjusted from the current level of .5 percent of the permitted value of new construction to .71 percent of the permitted value of such construction. Additionally, staff recommends implementation of an excavation surcharge amounting to \$22 per cubic yard of earth excavated and off-hauled for residential construction projects in which the scope of such projects includes the excavation and removal of earth for the construction of basements or other features.

To provide an indication as to how the adjustments described above would affect the cost of residential development within the Town of Atherton, staff has prepared an analysis of permits, licenses, and fees that developers currently pay with those fees that would be paid should the new fee structure be approved. The results of this analysis are presented as Attachment 2 to this report and are summarized as follows:

- Under the Town's existing fee structure (Scenario 1 as depicted on Attachment 2), the cost of all permits, licenses, and fees for a 4,000 square foot project amounts to \$18,600 or 1.86 percent of the permitted value of the new project.
- If a 4,000 square foot home were built without a basement (Scenario 2 as depicted on Attachment 2) the cost of all permits, licenses, and fees would amount to \$20,691 at the recommended road impact fee level of .71 percent of the permitted value of new construction. The \$20,691 in fees paid would represent 2.07 percent of the permitted value of new construction.
- Should a 4,000 square foot home entail the excavation of a basement underneath the entire footprint of the house (Scenario 3 as depicted on Attachment 2), the total fees paid by the applicant would amount to \$36,987 or 3.7 % of the permitted value of the new construction.

CONCLUSION

Despite the expenditure of approximately \$6 million to maintain, repair, and reconstruct Atherton's roads over the past four years, the condition of Atherton's roads have continued to deteriorate.

Based upon an engineering study commissioned by the Town, the additional deterioration in the Town's roads can be attributed to the significant changes in the scope and volume of residential construction during the past several years. In fact, engineering calculations performed by the consultant now indicate that residential construction and excavation account for 87.4 percent of the cost of wear and tear on the Town's roads.

Adjusting current road impact fees equivalent to .71 percent of the permitted value of new construction, and charging \$22 per cubic yard of earth excavated and off-hauled from construction sites, the Town will increase the amount of funds available for the maintenance and repair of city streets by \$663,128.

Prepared by:

Approved by:

John P. Johns, CPA
Finance Director

James H. Robinson
City Manager

- Attachment 1: Analysis of expenditures for roads FY 1999-00 through 2003-04 revenue
- Attachment 2: Road Impact Fee Incremental Revenue Analysis
- Attachment 3: Road Impact Fee Resolution No. 00-27
- Attachment 4: Road Impact Fee Resolution No. 05-__

Attachment 2
Town of Atherton Road Impact Fee Incremental Revenue Analysis

Scenario 1: Current							
Residence Size in Square Feet	Permitted Value	Building Permit	Business License	Road Impact	Excavation Surcharge	Total	As a Percent of Permitted Value
4,000	1,000,000	10,000	3,600	5,000		18,600	1.86%
8,000	2,000,000	20,000	7,200	10,000		37,200	1.86%
12,000	3,000,000	30,000	10,800	15,000		55,800	1.86%
<i>Existing road impact fees based upon \$100 million in new construction</i>						\$ 500,000.00	

Scenario 2: Road Impact Fees Set at full Cost Recovery, No excavation surcharge							
Residence Size in Square Feet	Permitted Value	Building Permit	Business License	Road Impact	Excavation Surcharge	Total	As a Percent of Permitted Value
4,000	1,000,000	10,000	3,600	7,091		20,691	2.07%
8,000	2,000,000	20,000	7,200	14,182		41,382	2.07%
12,000	3,000,000	30,000	10,800	21,273		62,073	2.07%
<i>Total Road Impact Fees based upon \$100 million in residential construction</i>						709,106	

Scenario 3: Road Impact Fees set at full cost recovery, excavation surcharge of \$22 per cubic yard							
Residence Size in Square Feet	Permitted Value	Building Permit	Business License	Road Impact	Excavation Surcharge	Total	As a Percent of Permitted Value
4,000	1,000,000	10,000	3,600	7,091	16,296	36,987	3.70%
8,000	2,000,000	20,000	7,200	14,182	32,593	73,975	3.70%
12,000	3,000,000	30,000	10,800	21,273	48,889	110,962	3.70%
<i>Road Impact Fees and Excavation surcharges based upon \$100 million in residential construction</i>						\$ 1,163,128	

Incremental Revenue Resulting from Excavation Surcharge and Road Impact Fee Modification **\$ 663,128**

RESOLUTION NO. 05-__

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADJUSTING ROAD IMPACT FEES TO PROVIDE FOR ROADWAY MAINTENANCE AND REPAIR RELATED TO DAMAGES CAUSED BY CONSTRUCTION AND EXCAVATION

The City Council of the Town of Atherton hereby resolves as follows:

WHEREAS, the Town of Atherton is required to fund ongoing roadway projects to maintain and repair local roadways;

WHEREAS, Resolution No. 00-27 established a road impact fee in the amount of .5 percent of the permitted value of new construction;

WHEREAS, the City Council has considered an updated analysis performed by City staff in consultation with the engineering firm of Kimley Horn and Associates of the extent to which residential construction and excavation activities contribute to the deterioration on the Town's roadways;

WHEREAS, the City Council has determined that the cost to the Town for increases in maintenance and repair requirements caused by construction traffic should be offset by the collection of fees to cover the costs;

WHEREAS, said analysis performed by City staff in consultation with Kimley Horn and Associates include calculations that show the following fees will cover the costs to the Town for its roadway maintenance and repair resulting from construction activity; and,

WHEREAS, notice of the proposed road impact fee has been noticed consistent with California Government Code Section 66018.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the Town of Atherton that the following fees are to become effective consistent with state law and shall be subject to the requirements and collected as specified herein:

Road impact fees shall be collected at the time of issuance of a building permit by the Building Department. A road impact fee of 0.71% (71 tenths of one percent) of the project valuation shall be paid for all construction projects.

Excavation surcharges will be placed upon road impact fees in the amount of \$22 per cubic yard of earth excavated and off-hauled from a construction site when the scope of residential construction projects include the excavation and removal of earth for the construction of basements or other features requiring such excavation and removal of earth.

Road impact fees and excavation surcharges shall be used to fund roadway projects to maintain and repair local roadways, including normal engineering, administrative overhead and other costs associated therewith. Road impact fees and excavation surcharges shall be retained in a separate fund with all fund accounting and reporting performed consistent with State Law.

The Resolution shall be effective immediately upon adoption; however, the fee established shall become operative 60 days thereafter in accordance with State law. Resolution No. 00-27 is hereby superseded and rescinded.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 16th day of March 2005, by the following vote.

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

William R Conwell
Mayor, Town of Atherton

ATTEST:

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

s/Marc Hynes

Marc Hynes
City Attorney

RESOLUTION NO. 00-27

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADOPTING A ROAD IMPACT FEE TO PROVIDE FOR ROADWAY MAINTENANCE AND REPAIR RELATED TO DAMAGES CAUSED BY CONSTRUCTION ACTIVITY

The City Council of the Town of Atherton hereby resolves as follows:

WHEREAS, the Town of Atherton is required to fund ongoing roadway projects to maintain and repair local roadways; and

WHEREAS, traffic associated with construction activity places a significant burden on local roadways and is a significant cause of roadway damage; and

WHEREAS, the City Council has considered the Construction Traffic Impact Fee Study prepared for it by DKS Associates, which identifies the increase in maintenance and repair required to offset increased roadway deterioration caused by construction traffic; and

WHEREAS, the City Council has determined that the cost to the Town for such increase in maintenance and repair required to offset increased roadway deterioration caused by construction traffic should be offset by the collection of fees to cover the costs; and

WHEREAS, said Construction Traffic Impact Fee Study includes calculations that show the following fees will cover the costs to the Town for its roadway maintenance and repair resulting from construction activity; and

WHEREAS, notice of the proposed road impact fee has been noticed consistent with California Government Code Section 66018.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the Town of Atherton that the following fees are to become effective consistent with state law and shall be subject to the requirements and collected as specified herein:

Road impact fees shall be collected at the time of issuance of a building permit by the Building Department. A road impact fee of 0.5% (one half percent) of the project valuation shall be paid for all construction projects. Road impact

fees shall be used to fund roadway projects to maintain and repair local roadways, including normal engineering, administrative overhead and other costs associated therewith. Road impact fees shall be retained in a separate fund with all fund accounting and reporting performed consistent with State Law.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on the 20th day of September, 2000, by the following vote.

<i>AYES:</i>	<i>5</i>	<i>Councilmembers: Carlson, Conwell, Dudley, Fisher, Huber</i>
<i>NOES:</i>	<i>0</i>	<i>Councilmembers:</i>
<i>ABSENT:</i>	<i>0</i>	<i>Councilmembers:</i>
<i>ABSTAIN:</i>	<i>0</i>	<i>Councilmembers:</i>

Dianne M. Fisher, Vice Mayor
Town of Atherton

ATTEST:

Sharon Barker, City Clerk

Item No. 13



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: FOR THE MEETING OF MARCH 16, 2005

**SUBJECT: 64 MOULTON AVENUE (APN 061-350-020)
TENTATIVE AND FINAL PARCEL MAP**

RECOMMENDATION:

Staff recommends the City Council continue the public hearing to the City Council meeting on April 20, 2005.

INTRODUCTION:

The Planning Commission reviewed the tentative parcel map at their April 26, 2000 meeting. At that meeting, the Commission voted 3-0 to approve the Tentative Parcel Map. The item was then heard by the City Council on appeal at the July 19, 2000 meeting. The City Council voted 4-0 to approve the Tentative Parcel Map with conditions listed in the attached Tentative Parcel Map certificate.

Tentative Parcel Maps expire after two years. The subject approval expired on July 19, 2002 and the applicant did not file an

extension request prior to the expiration. As the approval has expired, the City Attorney has determined that the appropriate process is to be heard by the Planning Commission prior to the City Council's consideration. Staff has scheduled this item for a public hearing at the March 23, 2005 Planning Commission meeting. The Planning Commission's recommendation on the item will be presented to the City Council for consideration at the April 20, 2005 meeting.

Prepared by:

Approved by:

Lisa Costa Sanders

Lisa Costa Sanders
Deputy Town Planner

James H. Robinson
City Manager



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF MARCH 16, 2005

**SUBJECT: AMENDMENT TO ATHERTON MUNICIPAL CODE SECTIONS 17.20.040 AND 17.36.050 REGARDING
THE USE OF HETCH HETCHY PROPERTY FOR SETBACK PURPOSES**

RECOMMENDATION:

Consider proposed revised language to Sections 17.20.040 and 17.36.050 of the Atherton Municipal Code regarding accessory structures. Addition of language to Section 17.20.040 and Section 17.26.050 will constitute introduction for first reading of the ordinance at the March 16, 2005, meeting. A second reading of the ordinance will be scheduled for the regular City Council meeting on April 20, 2005. A motion introducing the ordinance and waiving its reading beyond the title must receive at least three votes to be effective.

BACKGROUND/ANALYSIS:

At the regular City Council meeting on February 16, 2005, the Council considered proposed revisions to sub-Sections 17.20.040(B)(3) and 17.20.040(E)(1) of the Atherton Municipal Code to allow the owners of property with contiguous frontage to the Hetch Hetchy property owned by the City and County of San Francisco (over which the property owner has reserved surface rights) to utilize the Hetch Hetchy property for setback calculation purposes.

An issue has been raised as to whether accessory structures could be constructed immediately adjacent to Hetch Hetchy property in view of this setback calculation. Without further language regulating this activity, it would be possible to erect an accessory structure immediately adjacent to the Hetch Hetchy property. Should the Council desire to address this situation, it is recommended that the following language shown in **bold** be added so that Section 17.20.040 of the Atherton Municipal Code read as follows:

SECTION 1: Section 17.20.040 of the Atherton Municipal Code is amended by adding Sections 17.20.040(D)(3) and 17.20.40(E)(1) to read as follows:

"The property owned by the City and County of San Francisco, known as the Hetch Hetchy property over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the City and County of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property. **Provided, however, that no accessory structure may be erected within ten (10) feet of the Hetch Hetchy property.**"

If the above language is added to Section 17.20.040(D)(3) and (E)(1), I recommend that additional language be added to section 17.36.050(A) of the Atherton Municipal Code. This section regulates the location of accessory structures relative to property lines. The provisions regarding the Hetch Hetchy right-of-way would be called out in subdivision A which is shown as follows. New language appears in **bold**.

"17.36.050 Accessory structures—Yard requirements.

Accessory structures may be located within required side or rear yard setbacks but shall not be closer than ten feet to any side or rear property line, except as provided below. In addition, the following yard requirements for accessory structures shall apply:

A. Except as provided in **Section 17.20.040 pertaining to property owned by the City and County of San Francisco and known as the Hetch Hetchy property**, Sections 17.36.070 through 17.36.090 of this chapter for pools, Section 17.36.040 for athletic courts, and Section 17.36.165 for arbors and trellises, accessory structures may be located as follows:"

1. At least thirty feet behind the front line of the main building or at least one hundred twenty feet from the front property line, whichever is closer to the front property line;
2. Behind the rear line of the main building; and
3. On flag lots, to the front yard setback of the main residence upon issuance of a conditional use permit."

An ordinance showing revisions to both Sections 17.20.040 and 17.36.050 is attached.

FISCAL IMPACT:

Costs associated with the implementation of the ordinance will be borne by applicants.

Prepared by:

Approved by:

/s/ Marc G. Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachment: Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING SECTION 17.20.040 AND SECTION 17.36.050 OF THE ATHERTON MUNICIPAL CODE REGULATING
SETBACKS AND ACCESSORY STRUCTURES
IN CONNECTION WITH THE HETCH HETCHY RIGHT OF WAY WITHIN THE TOWN OF ATHERTON

The City Council of the Town of Atherton does ordain as follows:

SECTION 1: Section 17.20.040 of the Atherton Municipal Code is amended by adding Sections 17.20.040(D)(3) and 17.20.40(E)(1) to read as follows:

"The property owned by the City and County of San Francisco, known as the Hetch Hetchy property over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the City and County of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property. **Provided, however, that no accessory structure may be erected within ten (10) feet of the Hetch Hetchy property.**"

SECTION 2: Section 17.36.050 of the Atherton Municipal Code is amended by revising subsection A to read as follows:

"17.36.050 Accessory structures—Yard requirements.

"Accessory structures may be located within required side or rear yard setbacks but shall not be closer than ten feet to any side or rear property line, except as provided below. In addition, the following yard requirements for accessory structures shall apply.

A. Except as provided in **Section 17.20.040 pertaining to property owned by the City and County of San Francisco and known as the Hetch Hetchy right of way**, Sections 17.26.070 through 17.36.090 of this chapter for pools, Section 17.36.040 for athletic courts, and Section 17.36.165 for arbors and trellises, accessory structures may be located as follows:

1. At least thirty feet behind the front line of the main building or at least one hundred twenty feet from the front property line, whichever is closer to the front property line;

- 2. Behind the rear line of the main building; and
- 3. On flag lots, to the front yard setback of the main residence upon issuance of a conditional use permit."

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any word, sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 4 This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced this 16th day of March, 2005.

Passed and adopted as an ordinance of the Town of Atherton at a regular meeting thereof held on the _____ day of _____, 2005, by the following vote:

AYES, COUNCILMEMBERS: _____
 NOES, COUNCILMEMBERS: _____
 ABSENT, COUNCILMEMBERS: _____
 ABSTAIN, COUNCILMEMBERS: _____

 William R. Conwell, Mayor

ATTEST:

 Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: MARC G. HYNES, CITY ATTORNEY

DATE: FOR THE MEETING OF MARCH 16, 2005

SUBJECT: NEXTG FRANCHISE AGREEMENT

RECOMMENDATION:

Consider right-of-way use agreement authorizing NEXTG Networks of California, Inc. to install and maintain micro-cellular optical repeater equipment on facilities in the Town owned by the Town and/or third parties. Authorize the City Manager or designee to take all necessary action to execute the agreement on behalf of the Town.

BACKGROUND:

NEXTG, a Delaware corporation, has approached the Town with the request for a non-exclusive franchise to place micro-cellular optical repeater equipment on Town-owned street light poles or other Town-owned structures in the public right-of-way. Permission is also sought to use property owned by third parties with their consent for property located in the public right-of-way. Persons who use NEXTG's equipment reportedly receive better cell phone transmissions.

After the Town was presented with a form of franchise agreement from NEXTG, it was learned that the City of San Diego had entered into a franchise agreement with NEXTG. A copy of the San Diego agreement was obtained and compared with the draft agreement which had been provided to Atherton. Following a series of discussions with the attorney for NEXTG, agreement was reached to incorporate provisions from the San Diego agreement into the Atherton agreement which Town Staff desired. The only significant difference between the San Diego agreement and the one which accompanies this report is a request by NEXTG for two options to extend the agreement for periods of five years each (see paragraph 2 of the agreement, pages 2 and 3). The San Diego agreement provides for one extension.

Attached as background information are copies of my memorandum dated February 2, 2005, and the January 27, 2005, agreement prepared by NEXTG incorporating changes requested by the Town.

ANALYSIS:

In return for written authority to use the Town's public right-of-way, NEXTG proposes to PAY THE Town an amount of \$500.00 for the use of each decorative pole owned by the Town (decorative poles are defined in paragraph 1.2 of the agreement, page 1). Additionally, NEXTG will pay the sum of \$300.00 for the use of each other type of municipal facility. NEXTG will also pay, on a monthly basis, five percent (5%) of NEXTG's gross revenues from the provision of services or sale of services within the Town of Atherton market. Provisions for Consumer Price Index (CPI) adjustment along with the other compensation terms are set out in paragraph 4 of the agreement at pages 4 and 5.

The term of the agreement is for a period of 10 years with two options to renew. Each option is for an additional term of five years (paragraph 4.1.1, page 5).

NEXTG bears the risk of loss or damage of its equipment (paragraph 5.9 of the agreement, page 7). NEXTG agrees to indemnify the Town, its councilmembers, officers and employees (paragraph 6 of the agreement, pages 7 and 8). The Town's liability is specifically limited in paragraph 6.2 (page 8 of the agreement) for damage arising from Town negligence or willful misconduct of its employees. In no event is the Town liable to indirect or consequential damages.

NEXTG will provide a performance bond covering cost of construction in the sum of \$2,500.00 for each facility upon which equipment has been installed. A continuing faithful performance bond which appears as Exhibit B is to be negotiated by the parties.

The amount of this bond should be sufficient to cover anticipated payments for a period of at least six months and costs to remove NEXTG's equipment from the Town's right-of-way in the event NEXTG should discontinue business operations. The Council may recall that the Town has previously had experience with a company called Metrocom which installed equipment on Town utility

poles and later declared bankruptcy. Costs of removing the Metrocom equipment had to be assumed by the Town. In speaking with the Director of Public Works, we have determined the sum of \$150.00 per pole should cover costs of removal of equipment from a single pole. While the number of poles which NEXTG desires to utilize is not presently known, it is recommended that Staff be authorized to utilize this per pole cost times the number of poles used to develop a figure which will be added to the amount of a six month **franchise** payment for the amount of the bond. The six month payment figure will be developed by the Department of Finance in negotiations with NEXTG.

Paragraph 8 (page 9 of the agreement) requires that NEXTG obtain and maintain insurance in an amount of not less than \$2 million annual aggregate.

Paragraph 10 of the agreement (page 10) provides that the agreement may be terminated by either party upon 45 days prior written notice to the other on any material default. A requirement of notice of default is set out in paragraph 10 along with an opportunity to cure (page 10). Paragraph 11 (page 10) of the agreement provides that it may not be assigned by NEXTG without the express written consent of the Town.

FISCAL IMPACT:

This agreement shall result in a positive cash flow to the Town. The precise amounts are not known, inasmuch as they will be based upon revenues from Atherton residents utilizing NEXTG services.

Prepared by:

Approved by:

/s/ Marc G. Hynes

Marc G. Hynes
City Attorney

James H. Robinson
City Manager

Attachments:

February 2, 2005 Memo

January 27, 2005 Agreement and Exhibits A and B

ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

LEONARD J. SIEGAL
HAROLD S. TOPPEL
STEVEN G. BAIRD
MARC G. HYNES

660 WEST DANA STREET
P.O. BOX 279
MOUNTAIN VIEW, CALIFORNIA 94042
TELEPHONE (650) 967-6941
FACSIMILE (650) 967-1395

J.M. ATKINSON (1892-1982)
L.M. FARASYN (1915-1979)

MEMORANDUM

TO: City Manager, Town of Atherton
FROM: City Attorney
RE: NextG Right-of-Way Use Agreement
DATE: February 2, 2005

Enclosed is the "final" version of a right-of-way use agreement which has been prepared by NextG following my memorandum to them requesting the addition of a number of provisions which the City of San Diego had negotiated in a similar agreement. NextG has complied with our requests in most all respects. The principal difference is that they explain the \$500.00 per pole figure in San Diego was reached because all of those attachments were on decorative poles in San Diego. NextG proposes a \$500.00 charge for decorative pole attachment, but a \$300.00 amount for the "average" pole (my words regarding "average"). (See paragraph 4.1.)

The notice provisions of paragraph 9 need to be completed for the Town. There are references to "City" instead of Town in Recital C and paragraph 5.2, line 5, which I will point out to NextG.

As to term, NextG requests two options to extend for periods of five years each. (Paragraph 2.) The San Diego agreement had provided for one extension.

Please note Exhibits A and B. Exhibit B envisions a dollar amount to be negotiated. Do we have any history as to what it costs the Town to remove the boxes placed on utility poles by Metricom? I seem to recall that there was something in the amount of

\$100 per box to remove and dispose of that equipment. Assuming we have numbers like that, or anything else related to Metricom, that would be a beginning for us to develop a number for Exhibit B.

Except as set above, this matter is ready for the March 16, 2005, agenda, providing that we have reached agreement on the faithful performance bond amount in paragraph 7.2, and there are no other objections to the agreement. Please review it and let me know if you have questions or concerns.

Respectfully,

MGH:cwb

cc: Director of Public Works
Director of Finance

MARC G. HYNES



Town of Atherton

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 16, 2005

SUBJECT: ATHERTON CALTRAIN STATION PARKING LOT FEE ELIMINATION – REPORT BACK AFTER SIX-MONTH TRIAL PERIOD (Trial period began 10/1/04)

RECOMMENDATION

It is recommended that the City Council consider a continuation of the free parking and overnight parking at the Caltrain parking lot.

BACKGROUND

In September 2004, the City Council eliminated the then current parking charge of .50 cents per day in an effort to encourage use of the Atherton Station and to help generate ridership on Caltrain. The City Council approved the elimination of the parking fee on a trial basis through March 31, 2005.

In addition in November 2004, the City Council approved a recommendation of the Caltrain Corridor Committee to allow overnight parking at the Atherton Station to accommodate Caltrain riders in route to the SFO and San Jose Airports. The free overnight parking was available for extended periods of up to 7 days to again encourage use of the Atherton Station.

As part of this experiment, substantial publicity occurred and notices were sent out regarding the Daily Free Parking and Free Parking for extended periods. This publicity included articles in the *Athertonian*; articles on the Town and Caltrain web sites; and numerous articles in the *Palo Alto Daily News*, *The Almanac*, *The San Mateo County Times*, and other local newspapers.

CONCLUSION:

While the Town staff does not have any supporting numbers of parking lot usage before and after the Parking Lot experiment, it is recommended that the Free Parking and Overnight Parking experiment be continued. Caltrain is currently evaluating Fare Increases and further reduction of stops at stations with limited ridership. A hearing by Caltrain will be held on April 7, 2005. Atherton could be faced with further reduction of stops at the Atherton Station.

FISCAL IMPACT

Parking Lot fees were generating approximately \$2400 annually. Continuation of the above experiment will reflect a small impact on revenues but should be evaluated against the desire to retain future stops at the Atherton Station.

Attachment 1: Staff Report from the City Council Meeting of November 17, 2004

Attachment 2: Staff Report from the City Council Meeting of September 15, 2004



Town of Atherton

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF NOVEMBER 17, 2004

SUBJECT: APPROVAL OF RECOMMENDATION FROM THE CALTRAIN CORRIDOR SUBCOMMITTEE TO ALLOW OVERNIGHT PARKING AT THE ATHERTON TRAIN STATION

RECOMMENDATION

Consider approval of a recommendation from the Caltrain Corridor Subcommittee to allow overnight parking at the Atherton train station to accommodate riders utilizing Caltrain service to San Francisco and San Jose International Airports as part of the free parking promotion at the station previously approved on a trial basis by the City Council.

BACKGROUND

The Town of Atherton recently approved free parking in the Caltrain public parking lot to encourage ridership in an effort to ensure the continuation of Caltrain service in Atherton. The free parking was approved at the September 15, 2004 City Council meeting on a trial basis through March 31, 2005.

The Caltrain Corridor Subcommittee now wishes to expand the free parking to allow for overnight parking for those connecting at local area airports. Members of the Committee have on several occasions mentioned the convenience of using Caltrain from Atherton

to SFO and San Jose airports. In an effort to publicize this convenience and encourage additional ridership from the Atherton station, it has been proposed that overnight parking be allowed at the station. It was recommended that the residents' permit lot, as well as the public parking lot, be available for overnight parking. The proposal has been discussed with the Police Department and they have no objections to it.

FISCAL IMPACT

The provision of overnight parking does not create any additional financial impacts on the Town.

Attachment 2

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF SEPTEMBER 15, 2004

SUBJECT: CONSIDERATION OF ELIMINATION OF ATHERTON CALTRAIN STATION PARKING LOT FEE

RECOMMENDATION

It is recommended that the Town eliminate the .50 cent daily charge for parking at the parking lot directly adjacent to the Atherton Caltrain Station in an effort to encourage train use and ridership.

BACKGROUND

The Atherton Caltrain Corridor Committee has recommended that the City Council consider the elimination of the current parking charge at the Caltrain Station Parking lot on a trial basis to help promote ridership from the Atherton station. Parking would still be available in the resident parking lot just north of the City Hall Parking lot.

A survey of the parking lot on Friday of last week indicated some 12 cars parked in the Station. It is anticipated that elimination of the parking lot fee would generate an increased ridership but not have an overwhelming impact on parking availability.

FISCAL IMPACT

The Town currently charges .50 cents for parking at the station which generates approximately \$2,400 a year in parking revenue. Currently, most other stations are charging \$1.50 per day for parking.





Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
JAMES H. ROBINSON, CITY MANAGER**

FROM: LINDA KELLY, ASST. TO CITY MANAGER/ACTING CITY CLERK

DATE: FOR THE MEETING OF MARCH 16, 2005

**SUBJECT: CONSIDERATION OF COUNCIL WRITTEN ARGUMENT IN FAVOR OF JUNE 7, 2005 SPECIAL
ELECTION BALLOT MEASURE**

RECOMMENDATION

Consider draft ballot argument for June 7, 2005 Special Election, revise if appropriate, and adopt the argument.

BACKGROUND

At its meeting of February 16, 2005, the City Council adopted Resolution No. 05-33, through which the City Council authorized all Members of the City Council to file a written argument in favor of the June 7, 2005 ballot measure for a renewal of the parcel tax. At that meeting, the Council also directed the Council's Finance Committee, Council Members Carlson and McKeithen, to draft a ballot argument to be presented to the City Council at the current meeting for full Council consideration. Attached is a draft argument provided by Council Members Carlson and McKeithen.

The deadline to file arguments is Monday, March 21, 2005; however, in order to meet the Brown Act's requirements of the City Council as a whole making a collective decision on the argument in a public meeting, the approval of the argument is required at this meeting before the argument may be officially filed.

With respect to rebuttal arguments, if any person submits an argument against the measure, copies of the argument against the measure will be sent to the persons filing the argument in favor of the measure (the City Council), after the deadline for filing the arguments, March 21st. Furthermore, copies of the argument in favor of the measure would be sent to the person or persons filing an argument against the measure. The City Council may prepare and submit a rebuttal argument not to exceed 250 words. Conversely, a person or persons filing the argument against the measure may submit a rebuttal to the Council's direct argument in favor. The final date to submit a rebuttal argument to the City Clerk is 5:00 p.m., Thursday, March 31, 2005.

On the occasion that an argument against the measure is filed, and a rebuttal argument is desired, it is suggested that a less-than-a-quorum subcommittee be appointed to draft the rebuttal for review and approval by the Council as a whole.

Moreover, if a rebuttal argument is desired, **a Special Meeting would need to be called during the period of March 22 through March, 31, 2005**, in order to meet the deadline of Thursday, March 31, 2005.

The Council should also be aware of a new law effective January 1, 2005 regarding rebuttal arguments. "The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument."

As an option, if the Council wanted to authorize another person or persons to prepare, submit and sign a rebuttal argument, a motion could be made to that effect at the March 16, 2005 meeting.

Prepared by:

Approved by:

Linda Kelly
Assistant to the City Manager/
Acting City Clerk

James H. Robinson
City Manager

Attachments: Draft Argument submitted by Finance Committee
Resolution No. 05-33
Form of Statement to be filed by Author of Argument

DRAFT

Argument in Favor of Measure _____

For more that two decades, the Atherton parcel tax has been a critical source of income to the Town. Currently set at \$750 per one to two acre parcel of property, it raises for the Town about \$1.8 million a year. We ask for your yes vote for renewal of Atherton's parcel tax at its present level.

Atherton has acted prudently with the tax revenues of its residents, and has received four consecutive unqualified annual financial audits. Wherever possible, state and federal grants have been sought to supplement Town revenues. Nonetheless, faced with increasing costs and continuing shifts of more local property taxes to the state, even with the parcel tax Atherton has been required to make \$1.4 million in budget cuts and adjustments since February 2003. In the most recent agreement with employees, no salary increases were given. Moreover, the Town has continued to reduce and consolidate staff, including police, and outsource work. The Town has fewer employees today, including in the Police Department, than at any other time in recent years.

While a majority of residents supported continuation of the parcel tax last November, it failed to obtain the two-thirds vote necessary for passage. Consequently, Atherton now faces a cumulative \$5.9 million budget deficit by 2009, elimination of nearly all its financial reserves, curtailment of road repair, and further police and other staff reductions. Failure to renew the parcel tax places in jeopardy continued essential city services. These are simply the facts.

As The Almanac has editorially observed, while "the town has been managed frugally during the last year," nonetheless "Atherton needs the parcel tax just to keep the doors of local government open." Please support renewal of the parcel tax at its present level and vote Yes.

William R. Conwell, Mayor

Charles E. Marsala, Vice Mayor

James R. Janz, Council Member

Kathy McKeithen, Council Member

Alan B. Carlson, Council Member

FORM OF STATEMENT TO BE FILED BY

AUTHOR OF ARGUMENT

All arguments concerning measures filed pursuant to Division 9, Chapter 3 (beginning with § 9200) of the Elections Code shall be accompanied by the following form statement **to be signed** by each proponent, and by each author, if different, of the argument:

The undersigned proponent (s) or author(s) of the primary argument (in favor of) Measure _____ at the Special Municipal Election for the Town of Atherton to be held on June 7, 2005, hereby state that the argument is true and correct to the best of (his/her/their) knowledge and belief.

Sign Name	Print Name	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**All Authors must print his/her name and sign this form (EC 9600)
AND
Print his/her name and sign the Argument itself (EC 9283)**

Further, pursuant to Election Code § 9219, printed arguments submitted to the voters shall be titled either “Argument In Favor Of Measure __” or “Argument Against Measure __”.

Likewise, printed rebuttal arguments submitted pursuant to Election Code §§ 9220 and 9285 shall be titled either “Rebuttal To Argument In Favor Of Measure __” or “Rebuttal to Argument Against Measure __”.



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 16, 2005

SUBJECT: SELECTION OF A REPRESENTATIVE TO SERVE ON THE BOARD OF THE PENINSULA POLICY PARTNERSHIP

RECOMMENDATION

Discuss and consider the selection of a Town representative to serve on the Board of the Peninsula Policy Partnership (P³) organization.

BACKGROUND

At the meeting of May 19, 2004, the City Council voted to join the Peninsula Policy Partnership, known as P³, which is an organization in San Mateo County designed to bring agencies together to find mutual solutions to many interdependent issues. The annual dues of \$2,000 have been paid for Fiscal Year 2004-05.

At this time, the P³ is requesting that a Town of Atherton representative be appointed to serve on the P³ Board of Directors. It is requested that the representative appointed be a Council Member or the City Manager. Meetings are held on the fourth Wednesday of every other month from 12 Noon to 1:30 p.m. in San Mateo. The next board meeting is scheduled for Wednesday, March 23, 2005.

Attached is a letter from the Peninsula Policy Partnership plus some information posted on the web regarding the group.

Attachments

About the Peninsula Policy Partnership (P3)

Business, government, labor, education and environmental leaders agreed to join forces and create the Peninsula Policy Partnership. P3, formerly known as the Economic Vitality Partnership, an offshoot of Samceda, the voice of Business on the Peninsula, was originally created in 1994, with an eye toward bringing together various segments of the community to address economic vitality and quality of life issues in San Mateo County.

Equally funded by the County of San Mateo, cities within the county, and Samceda as the business partner, the Peninsula Policy Partnership reaches out to the greater community and includes representation from labor, the environment, education, and others. The P3 Board, which is comprised of two County Supervisors; city officials; business, labor, transportation, education, and environmental leaders, seeks to propose and develop consensus on public policies aimed at improved awareness, communication, and quality of life on the San Mateo Peninsula. Part of its mission will also be to ensure that the area's prosperity is shared by all segments.

Our vision is to build consensus on issues and activities that promote the Peninsula's high quality of life, prosperity, and well-being.

Contact Information

We encourage you to contact us with any questions or needs you may have.

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650-377-4824

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County of San Mateo

Partner Cities

Town of Atherton

Town of Colma

City of Daly City

City of Menlo Park
City of Millbrae
City of San Bruno
City of San Carlos
City of San Mateo
City of South San Francisco

Samceda



Town of Atherton

CITY COUNCIL STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES H. ROBINSON, CITY MANAGER

DATE: FOR THE MEETING OF MARCH 16, 2005

SUBJECT: DISCUSSION AND CONSIDERATION OF THE ATHERTON HERITAGE ASSOCIATION'S REQUEST REGARDING IDENTIFICATION OF TOWN ARTIFACTS

RECOMMENDATION

Discuss and consider the Atherton Heritage Association's request to identify and protect heritage artifacts on public and private property.

BACKGROUND

The City Council received a letter from Marion Oster, President of the Atherton Heritage Association, requesting to work with the Town in identifying, preserving and protecting artifacts with historical significance throughout Town.

Attached to her letter is a list of artifacts that the Heritage Association has determined are on public and private property. Mrs. Oster is requesting the Town's assistance in identifying the existence of the artifacts with the Building Department to alert property owners and contractors who apply for permits of any artifacts that may be on their property. She is also requesting that the Town consider a regulation that would protect these artifacts.

Attachment