



Item No. 2 Town of Atherton

CITY COUNCIL STAFF REPORT – STUDY SESSION

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: GEORGE RODERICKS, CITY MANAGER
ROBERT BARRON III, FINANCE DIRECTOR**

DATE: MARCH 5, 2014

SUBJECT: REVENUE ENHANCEMENT ALTERNATIVES I

RECOMMENDATION

Review and discuss; assist staff with narrowing the focus of the list.

BACKGROUND

When the City Council approved the balloting of the Parcel Tax for the November 2013 Election, the Council asked that there be a future discussion of revenue alternatives and a more thorough discussion of the parcel tax rate. Staff advised that it was appropriate to have these discussions in concert with the 2014/2015 budget discussions so that the discussion include not only revenue alternatives, but also expenditure reduction options, a budget reserve policy, impacts on Town operations and a good handle on future capital project needs.

This Staff Report and the Staff Report on the proposed Reserve Policy kicks off the 2014/2015 Budget Process. This Report is Part I of the revenue alternative discussion. **The intent of this Report is to provide the Council and public with a well-rounded education on the various types of revenue alternatives that are available and the process for implementation of each.**

It is anticipated that the Council will be able to eliminate some of the alternatives strictly from a policy perspective and assist staff with narrowing the focus of the list so that we can concentrate additional efforts on estimating revenue potential more accurately and identify next steps should the Council decide to move forward with any alternative.

From a public engagement and meeting process, the 2014/2015 Budget process looks as follows:

March 5, 2014 Study Session (Joint Meeting with Finance Committee)

- Discussion of the Proposed Reserve Policy

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- The proposed reserve policy will provide the Council with a framework for allocation of its unassigned general fund reserve. When there is an amount beyond the Town's basic reserve requirement (35%), the Finance Committee's policy asks the Council to walk through an analysis of capital improvement needs, underfunded pension obligations, underfunded retiree health obligations, and considerations for reduction in the parcel tax revenue requirements.
- Discussion of Revenue Alternatives Part I
 - A general discussion of various options and some clarification to staff on which ones to apply more focus.

March 19 Regular Meeting & April 2 Study Session

- Civic Center Project Master Plan (Capital Project Impact and Needs Analysis)
- Bicycle | Pedestrian Master Plan (Capital Project Impact and Needs Analysis)
- Park Master Plan (Capital Project Impact and Needs Analysis)

May 7 Study Session

- Drainage Master Plan (Capital Project Impact and Needs Analysis)
- Revenue Enhancement Alternatives Part II
 - A more detailed discussion of the focused options together with an implementation schedule and revenue projection for each.
 - It is anticipated that following this meeting, staff will proceed with a Staff Report recommending implementation of one or more of the alternatives.

May 21 Regular Meeting

- Budget Kick-Off Report Part I
 - Staff Report covering the 2014/2015 Budget discussing the Town's General Fund and Operations Budget along with any alternatives for expenditure reduction.

June 4 Study Session

- Budget Report Part II
 - Staff Report focusing on Capital Projects Needs and Special Funds Budgets
- Parcel Tax Discussion
 - A discussion of the Parcel Tax proposed needs and expenditures along with a discussion of what rate(s) to set for the 2014/2015 tax year.

June 18 Regular Meeting

- Final Budget Report – Adoption
 - In this Report, the staff recommendation would be for adoption of the budget with any included expenditure reduction scenarios as well as a recommendation for approval to pursue various selected revenue alternatives.

- Staff Report to Set Parcel Tax Rate
 - Following the City Council’s discussion of June 4, the Staff Report would recommend a Resolution to Set the Parcel Tax Rate for the 2014/2015 Tax Year.

FINDINGS | DISCUSSION

There are numerous revenue alternatives for Town consideration. Some are more logical than others with respect to their application in Atherton and others, while possible, would not generate sufficient revenue to make their implementation worthwhile for consideration.

The information in this Report provided as a general outline of many of the alternatives together with a summary of the process for implementation. The Report categorizes each option as to whether it is a tax, fee, grant, or assessment. In general, those are the specific categories from which a jurisdiction may derive revenue. The lead-in to each section provides an overview of how each would need to be implemented, e.g. City Council Public Hearing, Proposition 218 Protest Election, General Election, or other mechanism.

This is not a primer on general local government finance and the Report does not delve into the details of the Town’s current expenditures in any given category. The Report assumes that the reader has an understanding of basic governmental finance and postpones the expenditure discussion for the budget process itself.

In addition, there are many existing revenue streams via State subventions that are connected directly to State legislation and priorities that the Town cannot easily or at all adjust, e.g. Vehicle License Fees, Proposition 172 Sales Tax Rates, Educational Revenue Augmentation Funds (ERAF), property taxes, Gas Tax, Measure A, or Surface Transportation Program funds. These revenue streams are not addressed in this Report other than by way of reference and general summary.

As the Council is aware from the Fee Study recently conducted, fees, such as water, sewer, garbage, and ministerial or discretionary permits, are limited to the cost of providing the service for which the fee is intended. Taxes are not limited in the same way. Major sources of revenue for day-to-day operations and services come from property taxes, sales and use taxes, utility user taxes, transient occupancy taxes, business license taxes, franchise fees and other similar such taxes.

When evaluating each of the revenue alternatives, for comparison purposes, the table below provides a thumbnail of the Town’s major general fund revenue categories and their percent of overall general fund revenues.

General Fund Category	Revenue	%
Basic Property Taxes (Secured & Unsecured)	\$5,728,860	52.9%
Excess ERAF	\$700,000	6.5%
Property Tax In Lieu of VLF	\$768,250	7.1%
Property Transfer Tax	\$313,738	2.9%

General Fund Category	Revenue	%
Other	\$72,100	0.7%
Total Property Tax	\$7,582,948	70.1%
Sales & Use Tax	\$117,810	1.1%
Proposition 172 Local Safety	\$47,430	0.4%
In Lieu/Triple Flip	\$74,868	0.7%
Total Sales Tax	\$240,108	2.2%
Franchise Taxes – Utilities	\$234,600	2.2%
Franchise Taxes – Cal Water	\$106,590	1.0%
Franchise Taxes – Garbage	\$312,834	2.9%
Franchise Taxes – Cable	\$116,841	1.1%
Total Franchise Taxes	\$770,865	7.1%
Intergovernmental Revenues (VLF, SB90, etc.)	\$38,629	0.4%
Business Licenses	\$163,200	1.5%
Home Occupation Permits	\$816	0.0%
Zoning & Planning Fees	\$178,046	1.6%
Total Planning Fees	\$178,862	1.7%
Building Permit Fees	\$749,595	6.9%
Grading & Drainage	\$69,930	0.6%
Plan Check Fee	\$378,945	3.5%
Other	\$27,825	0.3%
Total Building Fees	\$1,226,295	11.3%
Police Fees/Fines	\$88,297	0.8%
Encroachment Permits	\$171,360	1.6%
Other Permits	\$66,948	0.6%
Total Public Works Fees	\$238,308	2.2%
Park Fees	\$70,788	0.7%
Miscellaneous (fees, leases, minor grants)	\$216,174	2.0%
Total Operating Revenues	\$10,814,475	\$10,814,475

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In addition to the above revenues, the Town's General Fund receives 60% of the Parcel Tax dedicated to public safety services at \$1,116,000. This represents 10.3% of the Town's basic revenues to the General Fund – the \$10.8 million – and 9.4% when added to the total.

As the Council moves through the list, it is also important to recognize the source of the revenue. For example, user fees for rentals at the Park may generate more revenue from non-resident users, whereas a utility user tax, an increase to the franchise fee, licenses and permits, etc. will come from residents. Some have an easily identifiable source, others do not.

Tax Revenue Alternatives

Tax revenue is an important source of funding. Taxes fall into one of two categories: general or special. The Town can use tax revenue from a general tax for any legitimate public purpose. *A simple majority of voters must approve any decision to impose, increase, or extend a general tax.*

A special tax differs in that it is a tax imposed for a specific purpose. *A two-thirds (2/3rds) vote is required to adopt, increase, or extend a special tax.* The distinction between general and special taxes was created under Proposition 13 in 1978, and in 1996, Proposition 218 clarified the differences even further.

	General Tax	Special Tax
Use of Revenues	Unrestricted Use	Specific Purposes Only
Voter Approval Required	Majority	Two-Thirds
Other Requirements	Must be consolidated with a regularly scheduled general election of City Council members.	Funds must be segregated.

In any given year, if the Town desires to collect a previously approved tax at a rate lower than what was authorized by the voters, the Town needs to be very clear in its official actions that the rate is being “suspended” for a certain period of time and not being permanently lowered. The Parcel Tax is one example of a special tax that can be lowered temporarily. If the Town collects a previously approved tax at a rate lower than was authorized by the voters without a statement that clarifies the intent and purpose of the suspension, a future increase back to the approved amount may trigger a Proposition 218 vote requirement.

Property Taxes

Description: An ad valorem tax imposed on real property and tangible personal property.

Authority: California Constitution

General/Special Tax and Use of Revenues: Ad valorem property taxes are general taxes.

The property tax is a tax on certain kinds of property based on its value (ad valorem). Property taxes are considered a State tax administered by counties. Cities do not impose property taxes

and they cannot increase the property tax except in very limited areas. Taxable property includes “real property” (land and the buildings that are on it), as well as things like boats, aircraft and business equipment. Under Proposition 13, the maximum tax rate permitted on real property for general purposes is one percent (1%) of the property's assessed value. For property that has been owned prior to 1978-79 (pre-Proposition 13), the starting point is what the property was worth in 1975-76. There is an annual adjustment for inflation that cannot exceed two percent per year. Proposition 13 also prohibits the enactment of any additional ad valorem property tax, transaction tax or sales tax on the sale of real property.

Changes in assessed value above the two percent limit are allowed for the market value of improvements. Property that declines in value may be reassessed downward. In 1978, California voters approved Proposition 8 that allows the County Assessor to reduce the value of properties below their Proposition 13 taxable values when the real estate market declines. However, such reductions may be recaptured as the market improves. County Assessors have procedures for requesting a downward adjustment in value that would result in a reduction in the property tax.

Proposition 13 transferred the authority to determine where property tax revenues go to the Legislature. Generally, property taxes are allocated within a county based upon the historical share of the property tax received by local agencies prior to Proposition 13. However, those allocations have changed over the years; the most significant change being the ERAF property tax shift. Proposition 1A restricts the Legislature to following certain procedures before allocating property tax from counties, cities, and special districts to schools; and before changing the allocations between counties, cities, and special districts. This measure protects against future reduction or diversion of property tax and sales tax.

In 1992, in response to a severe budget deficit, the State met its legal obligation to fund schools by diverting specified amounts of local property taxes into an “Education Revenue Augmentation Fund” or ERAF in each county. ERAF funds are then transferred to local school entities. Although intended as a temporary measure, the tax shift remains in effect. In fiscal year 2007-08 the tax shift cost cities, counties and special districts more than \$7 billion. In counties where the property values are sufficient such that revenue to the State is enough to meet its obligation under Proposition 90, a portion of the ERAF funds are returned to the local agencies from whence they came. That is the case in only three counties in the State (Marin, Napa, and San Mateo). Because ERAF is a State-created fabrication, the funds held by the State are always in jeopardy of being reclaimed by the State to the detriment of the agencies within the three counties noted above.

The Town receives approximately \$5.6 million in secured and unsecured property tax revenue, another \$750,000 through the State’s Property Tax | VLF Swap and still another \$700,000+ in ERAF revenue – overall, approximately \$7 million. The Town is not able to adjust its property tax revenue receipts and, while at this time we receive more in ERAF than we budget, we consistently budget conservatively given the ups and downs in property tax projections year to year.

Due to the nature of Atherton being surrounded by other jurisdictions, it has a contiguous sphere of influence and there is no opportunity for growth by new development. The only growth

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anticipated is through the purchase of existing properties, razing of existing homes and new homes being reconstructed on the property. This increases assessed property values, but tax increase speculation is not a good measure for revenue augmentation as it puts too much reliance on the speculative sale and change of ownership of the property.

Because the Town cannot make adjustments to the basic property tax, staff does not consider adjustments to revenues received from property taxes a likely source for revenue augmentation.

Sales and Use Tax

Description: A tax imposed on the total retail price of any tangible personal property.

Authority: California Constitution

General/Special Tax and Use of Revenues: The basic 1% local Bradley-Burns rate is a general tax. It is unrestricted revenue and is put into the Town’s General Fund. Local Transactions and Use Tax rates, discussed next, are imposed locally and are not considered the same as the basic Bradley-Burns sales and use taxes.

The Board of Equalization administers the allocation of sales and use taxes. The distribution of local sales and use tax revenues are “settled” on a quarterly basis, with monthly estimated “advance” payments and a subsequent settlement payment to cover the difference between estimated and actual collections.

The components of the **California Sales and Use Tax** is as follows:

State: General Fund	4.4375%
State: Local Revenue Fund	1.5625%
State: Local Public Safety Fund	0.50%
Local: County Transportation Fund	0.25%
Local: City/County General Funds	0.75%
Statewide Base Rate	7.5%
Local: Transactions and Use Taxes	Up to 2% combined
Total Sales and Use Tax Rate	From 7.5% to 9.5%

Through various State subventions and formulaic allocations, the Town receives funds from some of the above categories (gas tax, Proposition 172 Public Safety, and the Proposition 57 “Triple Flip.”

The current Town Sales and Use tax rate is 9.00%. The Town receives approximately \$47,000 in Proposition 172 Sales Tax for Public Safety, \$75,000 in Proposition 57 “Triple Flip” In Lieu Sales Taxes which is .25% tax, and \$167,000 in Gas Tax. The Town’s revenue from the basic local sales tax (the 1% above) is \$118,000.

Since the Town is unable to make adjustments to any of the above, staff does not consider adjustments to revenues received from the basic sales tax formula a likely source for revenue augmentation.

Transactions and Use Tax

Description: A tax imposed on the total retail price of any tangible personal property.

Authority: California Constitution

General/Special Tax and Use of Revenues: Locally enacted, by ordinance and election, transactions and use taxes may be levied as general taxes (unrestricted use) or special taxes (restricted uses). The local transactions and use taxes are considered “add-on” taxes and administered in tandem with the sales and use taxes discussed above.

Transactions and use taxes will generally apply to merchandise that is delivered in a jurisdiction that imposes such a tax. In general practice, the application of the tax and its collection will not differ from the basic sales and use tax. However, in the case of the sale or lease of a vehicle, vessel, or aircraft, a transactions and use tax is charged and allocated based on the location in which the property will be registered.

The Town can impose transactions and use taxes at a rate of 0.25% or a multiple thereof up to the maximum of 2% (including any amount imposed by the County and Local Districts). The current rate stands at 9% such that the Town can only impose a tax at a rate of 0.5%. There are three existing San Mateo County Transactions and Use Taxes ongoing at 0.5% each. In San Mateo County, Half Moon Bay has imposed a 0.5% tax and the City of San Mateo has a 0.25% tax. If imposed for a general purpose, the tax must be approved by a majority vote of the electorate. If imposed for a specific purpose, the tax must be approved by a two-thirds vote.

Because the Town does not have retail, the imposition of a local transaction and use tax measure would likely only affect purchases with a local registration point for vehicles, vessels, or aircraft, the local sale of art, and Internet purchases. The tax is charged and allocated based on the location in which the property will be registered. The Town will only be allowed to increase a tax of 0.5% because a local tax may not exceed the more than 2% above the State Tax of 7.5%. The increase in tax augmentation would most likely be through the registration of the purchased vehicle, vessel or aircraft and would be done at the time of purchase. This could be an increase in revenue if residents purchase new vehicles frequently. Determining the fiscal possibilities for the tax would require additional research, but it is unlikely that this would be a significant revenue alternative.

Staff does not consider the levy of a transaction and use tax a likely source for revenue augmentation.

Business License Tax

Description: A tax on businesses for the privilege of conducting business within the City.

Authority: Government Code

General/Special Tax and Use of Revenues: Business license taxes may be imposed as general taxes or special taxes. When imposed for regulatory purposes they can be imposed as regulatory fees with the revenues limited to covering the cost of the regulatory program.

The typical business license tax is based on gross receipts or levied at a flat rate, but sometimes based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors. The Town's business license is levied at a flat rate by category of business ranging from \$25 to \$250 depending on the timing of the application and category. The Town's business license would likely be considered a tax because it is not imposed as a regulatory fee to cover the costs of administering the program.

There are limitations to the imposition of a business license tax that covers such operations as insurance companies, banks, financial corporations, non-profit organizations, utilities, and highway carriers.

Most cities in California impose a business license tax. On average, the business license tax provides around 3.1% of the City's revenues. For Atherton, due to the lack of a retail sector, revenues are limited to approximately \$163,000 per year or 1.5% of total revenues. The Town can, and should, make adjustments to its business license tax to address the variances of categories and business types together with the possibility of adjusting the tax rate itself. However, significant revenue enhancement is unlikely due to the nature of business in Atherton only being general contractors, sub-contractors or sole proprietors.

Staff does not consider an increase in the Town's business license tax to be a likely source for significant revenue augmentation.

Utility Users Tax

Description: A tax imposed on the use of utility services.

Authority: Government Code

General/Special Tax and Use of Revenues: Utility users taxes may be imposed as a general or special tax. Nearly all existing utility user taxes have been imposed as general taxes.

The Town can impose a utility user tax on the consumption of utility services, including, but not limited to, electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation and cable television. The Town can set the rate of the tax and determine the use of the revenues received.

Most utility user tax rates range from 1% to 11% and vary amongst the particular utilities to which the tax applies. The most common rate is 5% applied to all utilities. On average, the utility

user tax provides about 15% of general-purpose revenue in cities and towns that levy it. In San Mateo County (2013), there are five communities with an active utility user tax.

Agency	Rate	Revenue
Daly City	5% base across all sectors, excluding sanitation	\$6,779,160
East Palo Alto	5% base across all sectors, excluding sanitation	\$1,591,204
Menlo Park	2.5% telephone, 3.5% remainder, excluding sanitation	\$1,148,454
Portola Valley	4.5% base across all sectors, excluding sanitation & water	\$723,214
Redwood City	4% telephone, 5% electricity & gas, 4% CATV excluding sanitation & water	\$9,681,668

Determining the exact fiscal possibilities for the tax would require additional research, but it is likely that this could be a significant revenue alternative on par with the parcel tax. For Portola Valley, the Utility Users Tax represents a cost of \$188.29 per capita (2010-11 data). As of August 2013, there are 154 cities/towns that have enacted a Utility Users Tax. Most are on telephone, electricity, and gas.

Staff considers the implementation of a utility users tax to be a viable alternative significant revenue augmentation.

Transient Occupancy Tax

Description: A tax imposed on occupants for the privilege of occupying room(s) in a hotel, motel, inn, etc.

Authority: Revenue and Tax Code

General/Special Tax and Use of Revenues: Transient occupancy taxes may be imposed as general taxes or special taxes. Nearly all transient occupancy taxes have been imposed as general taxes.

Cities may impose the transient occupancy tax (TOT) on persons staying 30 days or less in a hotel, motel, inn, tourist home, or other lodging facility. Rates are set at a city's discretion and may include a specific amount as well as a percentage. Over 400 cities impose a TOT. The most common rate is 10% while some are as high as 15%. Communities with higher TOT rates are typically those dependent on the tourist industry.

In order for the Town to impose a TOT it would first need to allow the industry to operate in the community. A way to do this is to permit, through zoning, the operation of "bed and breakfast" inns. There is no clear indication that this would be a successful change and there would likely be significant hurdles to such a dramatic change in allowed uses within a residential area.

Because of the significant land use and general plan issues involved, staff does not consider the imposition of a transient occupancy tax a likely source for future revenue augmentation.

Real Property Transfer Tax

Description: A tax imposed on the purchaser of real property based on the value of that property.

Authority: Charter Cities, California Constitution

General/Special Tax and Use of Revenues: Property transfer taxes may be imposed as general taxes or special taxes.

Charter cities may enact a real property transfer tax. Courts have determined that such a tax, when enacted by a charter city, does not violate the State Constitution or Government Code that prohibits a transaction tax on the sale of real property, but applies only to general law cities.

Twenty-two (22) charter cities impose a property transfer tax. All cities have imposed a documentary transfer tax. The documentary transfer tax provides about 2% of general purpose revenue on average. In small communities, it provides less than 1/10 of 1% of general revenues, except fast-growing or wealthy communities. For Atherton, the documentary transfer tax provides about 4% of our property tax revenues, \$313,000.

For the twenty-two (22) charter cities, the real property transfer tax provides about 10-15% of general revenues. San Mateo has a property transfer tax set at \$5.00 for each \$1,000 in value. Albany's is set at \$11.50 for each \$1,000, Berkeley at \$15.00 and Piedmont at \$13.00. Rates vary significantly with most at \$1.00 or less.

If the Town established a Real Property Transfer Tax at \$10.00 for each \$1,000 in value this could represent a significant source of revenue for the Town. In 2012, there were 83 transfers of ownership with a sales value of \$420,568,545. At \$10.00 for each \$1,000 in value that represents \$4.2 million in revenue. Sales vary significantly from year to year such that the amount of revenue could have large swings dependent on the sales market.

A final hurdle beyond the election requirement for the implementation of a real property transfer tax is the requirement that at this time, the Town needs to be a charter city to enact the tax.

Should the Town move in the direction of become a charter city, staff considers the real property transfer tax a likely source for future revenue augmentation.

Parcel Tax

Description: Special *non ad valorem* tax on parcels of property generally based on either a flat per-parcel rate or a variable rate.

Authority: Government Code

General/Special Tax and Use of Revenues: Parcel taxes may be levied for general purposes or restricted to a particular purpose. However, regardless of use, parcel taxes require two-thirds voter approval.

A parcel tax is a particular type of tax based on either a flat per-parcel rate or a rate that varies depending upon use, size, and/or number of units on each parcel. The Town's parcel tax is a rate that varies. A parcel tax that is based on value violates Proposition 13's 1% limit on ad valorem property taxes. The State Constitution specifies that only two types of taxes may be imposed upon a parcel of property – 1) an ad valorem property tax imposed pursuant to Proposition 13, and 2) a special tax receiving two-thirds voter approval. As a result, parcel taxes are considered special taxes.

For the parcel tax, the taxpayer need not actually use the services, but can be required to pay the tax based on the mere availability of the services. However, if the services are used, a parcel tax must be proportional to the use of services by the taxpayer. Although parcel taxes are imposed to support a wide variety of city services, among available revenue alternatives, parcel taxes are not as common as other locally imposed taxes. Parcel taxes are however, the primary method of collecting additional operating revenues for schools and special districts because of their more limited taxing authority.

The Town has a parcel tax that raises approximately \$1,860,000 per year. Revenue from the parcel tax is dedicated to capital infrastructure (40%) and public safety (60%), \$744,000 and \$1,116,000, respectively. The Town's parcel tax rate is a variable rate dependent on use and size of a particular parcel. The Town must return to the voters every four years to renew the tax and annually, has the option of setting the rate at or below the rate approved by voters.

In any given year, if the Town desires to collect at a rate lower than what was authorized by the voters, the Town needs to be very clear in its official actions that the rate is being "suspended" for a certain period of time and not being permanently lowered. If the Town collects at a rate lower than was authorized by the voters without a statement that clarifies the intent and purpose of the suspension, a future increase back to the approved amount may trigger a Proposition 218 vote requirement.

The Town must set the rate each June in order to be placed on the County's tax rolls for the following tax year. If the Town were to eliminate or reduce the existing Parcel Tax, it is recommended that it be replaced with another stable revenue stream that would return the same amount (\$1,860,000) every year. The current Parcel Tax revenues do not vary year to year and are unaffected by swings in the market. Other tax revenues, such as property transfer taxes, sales tax, or business licenses do result in revenue swings due to market conditions. *Staff considers adjustments to revenues received from the parcel tax as a likely source for future revenue augmentation if the Town chose to revise the amount of the parcel tax.*

Benefit Assessment Districts

Description: A charge levied on real property for a local public improvement or service that specially benefits that property.

Authority: State Constitution, Government Code

Use of Revenues: Revenues must be used for the specific purpose for which they are collected.

Benefit Assessment Districts (also called Special Assessment Districts) are levied to pay for specifically identified public improvements or services that specially benefit the properties or businesses subject to the assessment. Most commonly this is in the area of landscaping, lighting, utility undergrounding, vector control, or flood control.

The key distinction between a benefit assessment and other types of revenue measures, such as taxes or fees, is that an assessment is based on the special benefit that a property will derive from the improvement or service provided by the assessment.

As mentioned above, examples of typical districts include landscaping, street improvements, lighting, utility undergrounding, vector control, sewer, flood control, or drainage. The rationale is that the assessed property receives a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for a few, and the few specially benefited should not be subsidized by the general public.

Assessments are levied consistent with the requirements of Proposition 218 and are typically collected on the property tax rolls. An agency can create an assessment district that includes only a small portion of the jurisdiction or the boundaries of the district may be coterminous with the boundaries of the jurisdiction (citywide).

Under the various assessment laws, a city typically must re-levy the assessments each year at a public meeting. The re-levy process is less onerous than the initial creation of the district; however, in order to increase or extend a benefit assessment, Proposition 218 must be followed.

There are various State laws that come into play in the creation of assessment districts and each was created for specific purposes. These include: the Streets & Highways Code, Proposition 218 (notice, protest and hearing provisions), Special Assessment Investigation, Limitation and Majority Protest Act, Improvement Act of 1911, Municipal Improvement Act of 1913, Improvement Bond Act of 1915, Landscape and Lighting Act of 1972 (landscaping, lighting, and park and recreational facilities), and the Benefit Assessment Act of 1982 (drainage, flood control, street lighting and maintenance).

Staff has previously outlined for the Council the process by which we would form a Utility Underground Assessment District. Utility Underground Districts are formed as Assessment Districts consistent with the above.

In general, the process for formation of assessment districts is as follows:

1. *Initiation.* Proceedings are initiated by petition signed by the persons proposed to be assessed or by action of the City Council.

2. *Preparation of Engineers' Report.* A registered professional engineer must prepare a report for presentation to the legislative body containing the information required by the applicable assessment law. Most typically, a description of the improvements, a cost estimate for the improvements, a diagram depicting the boundaries of the district, the method of spreading the assessments, and an assessment roll listing all the parcels.
3. *Intention Resolutions.* Before sending notice of the proposed assessment and the public hearing on the assessment, the City Council must approve one or more required resolutions that declare the Town's intent to levy the assessments, approve the Engineers' Report, schedule the public hearing, and make other findings as required by law.
4. *Recordation of the Boundary Maps.* Where required, the City Council must record the boundary map of the district.
5. *Public Notice.* The City must give notice to the record owners of any affected parcel by mail at least 45 days prior to the date of a public hearing on the proposed assessment. The notice must include:
 - a. The total assessment of the district.
 - b. Charge for each parcel.
 - c. Duration of the assessment.
 - d. Reason for the assessment.
 - e. Basis of calculation.
 - f. Date, Time, Place of Hearing.
 - g. Summary of voting procedures and effect of majority protest.
6. *Public Hearing.* On the date stated in the notice, the City Council must conduct a public hearing to consider any and all objections or protests to the proposed assessment. Sealed ballots must be returned before conclusion of the public hearing and tabulated after the conclusion of the public hearing. Ballots must remain secret until the close of the public hearing and must be made public after they are tallied.
7. *Protest Procedures.* No assessment may be imposed if a "majority protest" exists. A majority exists if ballots submitted in opposition exceed ballots submitted in favor of assessment with the ballots weighted according to proportional financial obligation of the affected property.
8. *Levy of Assessment.* After complying with the notice, protest and hearing requirements, the City Council would adopt a resolution that establishes the district and levies the assessment.
9. *Recordation.* For bonded assessments, the Town is required to record the assessment with the County as a levy against the property.
10. *Cash Collection.* Once approved, notice is given to property owners that they have 30 days to pay their assessments in cash in full. The Town can then issue bonds for all assessments that remain unpaid.
11. *Issuance of Improvement Bonds.* The Town can issue bonds secured against the unpaid assessments. Annual assessment installments are collected on the property tax roll to pay the debt service on the bonds.

There are various areas for which the Town could utilize assessment districts. For example:

- Street Lights
- Bicycle and Pedestrian Paths

- Park Improvements
- Drainage Improvements

Benefit assessment districts are viable source for capital improvement projects as well as ongoing maintenance of improvements. The amount of the assessments would vary dependent on the improvements considered and could be imposed as an ongoing revenue stream for maintenance of the improvements. *Staff considers adjustments to revenues received from an assessment district as a likely source for future revenue augmentation for specific purposes.*

Fees, Charges, and Rates Revenue Alternatives

User and Regulatory Fees

Description: A fee paid to a municipality by a person to receive a particular public service, including fees paid for municipal utility services.

Authority: State Constitution, Government Code

Use of Revenues: Revenues must be used for the specific purpose for which they are collected.

Fees for utility service can include both one-time fees, such as a connection fee, and an ongoing service fee – commonly called rates. Fees for the ongoing water, sewer, refuse collection, drainage and other services usually have a direct connection to land ownership and are likely property-related fees subject to Proposition 218.

User fees are commonly charged in connection with participation in a program or activity – such as a fee for recreation services or classes. The amount of revenue generated from the fee may not exceed the estimated reasonable cost of providing the service or, in the case of a regulatory fee, mitigating the impact of the fee payer’s activity. The Town’s recently completed Fee Study assures that our fees are currently in line with this requirement. Regulatory fees must be reasonable, fair and equitable in nature and proportionately representative of the costs incurred by the Town. The Town can include not only the direct cost but also any incidental costs that may be incurred.

Although facility rental fees are called “fees,” they are more akin to rents received for the use of a facility. Facility rental fees for the use of public property are considered rent and are generally set at the discretion of the public agency. They can be set at comparable market rates for similar rental venues.

The Town already imposes fees for services based on the fee study. These fees are based on the direct and indirect costs for providing the service and cover any service the Town offers. However, as the Council is aware, we are expanding rental opportunities at Holbrook-Palmer Park through a 3rd-party vendor and will be evaluating rental rates as that contract progresses. One such additional revenue at the Park could be a day use permit for areas of the park, for example picnics or birthday parties. Significant revenue enhancement is not likely with a day use

permit, but the addition would allow the Town to recover costs for any operational expenses for the use of park areas.

Staff believes that the Town is charging appropriate fees for all of its services. However, staff also believes that additional revenue can be generated through park uses. As the 3rd-party contract evolves, staff will evaluate the established rental rates to ensure that they are commensurate with market conditions for similar venues. While this will not be a significant source of revenue, these revenues will offset current General Fund expenditures dedicated to park maintenance and capital improvements.

Property Related Fees

Description: A levy imposed on a parcel or upon a person as an incident of property ownership for a property-related service.

Authority: State Constitution, Government Code

Use of Revenues: Revenues must be used for the specific purpose for which they are collected.

Proposition 218 created a “sub-set” of fees and charges known as “property-related fees.” When dealing with this sub-set of fees, there are substantive and procedural requirements imposed. There are specific exemptions such as:

- Development Impact Fees
- Electric or Gas Service Fees
- User Fees for Service Delivered to the User that are *not* property-related
- Utility Connection Fees or Capacity Fees
- Regulatory Fees

The Town’s refuse collection fees are subject to the requirements of Proposition 218 as they are “property-related” fees.

Staff does not consider the imposition of property-related fees to be a likely source for future revenue augmentation. However, as the requirements promulgated under the Regional Water Quality Control Board pursuant to the National Pollution Discharge and Elimination Systems Act (commonly known as stormwater regulations) evolve, staff may consider moving forward with a property-related fee to offset the cost of regulation and monitoring.

Development Impact Fees

Description: Dedications of property or fees, other than taxes or special assessments, charged to compensate for new demands on public resources resulting from the development of land and property and imposed as a condition of development approval.

Authority: State Constitution, Government Code

Use of Revenues: Revenues must be used for the specific purpose for which they are collected.

California land use law allows the levy of development impact fees to mitigate or provide in lieu compliance. These include such theorized fees as traffic impact, school impact, road impact, or park dedication fees. When imposing such a fee, the agency must make certain specific findings supported by a fee study to tie the fee imposed to the Town's general plan and/or capital improvement program. Generally, such fees may be levied for the construction of capital improvements connected with the development, but may not be levied for continued maintenance or operation.

Given the Town's strict residential development codes and limited non-single-family development opportunity in the community, the ability for the Town to impose development impact fees is limited. However, in the past, the Town had imposed a Road Impact Fee. The Town stopped collection of the fee due to legal concerns with its adoption and methodology. Current permits *do not* include a road impact fee component. If the Council feels that pursuing a proper Road Impact Fee is worthwhile, staff can pursue additional information for consideration. *Absent the possibility of a Road Impact Fee, staff does not consider the imposition of development impact fees to be a likely source for future revenue augmentation.*

Regulatory Fees

Description: A charge imposed on a regulated action to pay for the cost necessary to regulate the activity or mitigate the impacts of the fee payer on the community.

Authority: State Constitution, Government Code

Use of Revenues: Unrestricted.

Regulatory fees are imposed to benefit and protect the community, in its entirety, from the deleterious and damaging effects of a particular activity. As articulated earlier, regulatory fees are limited to covering the cost of the program. The cost funded by the fee may include all costs incident to the issuance of the license, permit, investigation, inspection, administration, and maintenance of a system of supervision and enforcement. It does not matter if a fee does not benefit those charged as long as the fee is commensurate with the burden imposed by the activity of those charged. Example of regulatory fees include:

- Development processing fees (building permits, zoning variance, planning services, etc.)
- Parking permits
- Alarm permits
- False Alarm Fees
- Alarm Monitoring Fee
- Commercial regulation permits
- Solicitor, peddler, or vendor permits

Of the above fees the Town can institute alarm permit fee for residents who have a security alarm system in their home. While we charge for the initial connection, the Town does not charge for the monitoring (unlike the private sector).

In addition, the Town does not charge a fee for false alarm response. The Town could develop a schedule that allows a certain number of false alarms in a given period without charge but beyond that amount there is fee. The Town could also consider metering or permit parking at Town Center during business hours.

The Town's recent fee study addressed all current Town fees to ensure they were compliant with the requirement for program cost recovery. While there may be areas that the Town can expand its fees – such as with the upcoming mobile food vendor permit, alarm permit fees, monitoring fees, false alarm response fee, and parking permit fees - *staff does not consider the expansion of regulatory fees to be a likely source for significant future revenue augmentation. For any new service provided or proposed, staff would recommend a commensurate cost recovery fee to ensure fiscal neutrality.*

Other Revenue Alternatives

Franchise Fees

Description: Payment to a municipality as “rent” or “toll” for the use of the streets and rights of way of a municipality.

Authority: Public Utilities Code; Public Resources Code

Use of Revenues: Unrestricted.

There are numerous utilities governed by the franchise fee provisions: cable and video, solid waste, electric, gas, water, and oil.

For cable and video, the State has intervened with the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). A state-issued franchise grants the right to provide video service and to use the public rights of way in the area specified by the franchisee. In exchange, the franchisee must pay a franchise fee to cities that own that right-of-way. The Town may and does require encroachment permits and regulate the time, place and manner of any activity. The franchise fee is regulated by the State at 5% of gross revenues or the percentage paid by an incumbent cable operator under a prior franchise agreement, whichever is less. The Town receives approximately \$115,000 per year from the cable franchise.

For solid waste, the Town may also impose a franchise fee. The fees charged for the service delivery are considered property-related fees as described above and changes to those fees are subject to the requirements of Proposition 218. The franchise fee is a pass-thru fee. The Town charges a franchise fee of 10% and receives approximately \$313,000 per year from the refuse franchise. The Town can increase its solid waste franchise fee.

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Franchise fees from state-issued gas, electric, telephone and oil franchises are limited to 2% of the franchisee's gross annual receipts. The CalWater franchise fee is set at 2% and other utilities at 1%. The Town receives approximately \$340,000 per year from these franchises.

Since the Town is limited in its ability to make adjustments to any of the above, staff does not consider adjustments to revenues received from franchise fees to be a likely source for significant revenue augmentation.

Licenses and Permits

Description: Licenses or permits are issued to regulate activities within a jurisdiction.

Authority: State Constitution, Government Code

Use of Revenues: Unrestricted.

Cities may regulate various activities and may charge fees to cover the costs of the regulatory services and programs. As mentioned prior, regulatory fees are limited to covering the cost of the regulatory program. Business licenses have been discussed earlier in this Report as a tax.

Staff does not consider the expansion of licenses or permits to be a likely source for significant future revenue augmentation. For any new service provided or proposed, staff would recommend a commensurate cost recovery fee to ensure fiscal neutrality.

Fines, Forfeitures and Penalties

Description: Revenues received and/or bail monies forfeited upon conviction of a misdemeanor or municipal infraction.

Authority: Penal Code, Government Code

Use of Revenues: Generally unrestricted.

Fines paid and bail moneys forfeited following conviction of a misdemeanor or infraction committed within Town limits are generally allocated to the jurisdiction in which the offense occurred. The Town can establish the bail amounts for specific violations.

In addition, a violation of a municipal code may be cited as a criminal misdemeanor or infraction. If a civil citation is issued, the Town may and does establish the amount of the penalty. The Town may retain the entire amount of the citation.

The Town also administers parking citations. The Town establishes the violation amounts and retains all of the revenue (less the cost to process the citation).

The Town receives approximately \$15,000 in vehicle code fines and about \$41,000 in other fines and forfeitures via the County allocation.

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While controversial, the Town could address issues along El Camino Real through the installation of a red light camera. The Town could contract with the City of San Mateo for the processing of red light photo enforcement citations.

Staff does not consider the expansion of fines, forfeitures and penalties to be a likely source for significant future revenue augmentation. Should there the Town encounter specific enforcement issues, particular penalties may be raised to ensure compliance; however, staff does not recommend a wholesale increase of penalties and fines as a revenue alternative.

Rents, Royalties and Concessions

Description: Revenues from rental or use of Town property or resources.

Authority: State Constitution, Government Code

Use of Revenues: Unrestricted.

The Town can receive revenue from a variety of payments for the use by a private person or enterprise of public property. For example, the Town rents facilities at the Park and receives revenue from this rental. Other communities have larger facility availability and/or varietal rental agreements. For example, communities with bus shelters, refuse services, or bus services may rent space for advertising. The Town could lease property for wireless communications such as the lease at Town Hall.

The Town is limited in this regard but could consider leases of additional space for wireless communications at the Park or within the new Civic Center. The Town could consider installing bus shelters along bus routes through the Town and leasing advertising space. The Town could consider the lease of commercial space within the new Civic Center for book sales (friends of the Library) or a coffee shop.

Commercial advertising and commercial uses in Atherton are a sensitive political topic. While there may be appropriate areas and acceptable uses, allowing these uses should involve a broader public discussion. *At this time, absent specific policy-driven direction, staff does not consider commercial rents or royalties to be a likely source for significant future revenue augmentation. However, expansion of rental revenue from the Park, as discussed above, could generate revenue dedicated to the Park to offset existing General Fund expenditures.*

Gifts

Description: Contributions to the Town for a specific public purpose.

Authority: Government Code

Use of Revenues: Depends on the nature and stipulations of the gift.

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The Town may accept or reject any gift, bequest or devise made to or for the Town, or to or for any of its officers in their official capacities or in trust for any public purpose. If the gift, bequest or devise does not limit the uses to which the property received or the income or increase from it may be put, it may be put to any uses the Town desires.

Gifts to the Town are considered charitable contributions and are tax-deductible, so long as the gift is for entirely public purposes. *At this time staff does not consider gifts to be a continuing source of revenue augmentation; however, gifts will be the significant funding component of the Civic Center Project.*

FISCAL IMPACT

None.