



Item No. 2 Town of Atherton

CITY COUNCIL STAFF REPORT – STUDY SESSION AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

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

DATE: JANUARY 18, 2017

SUBJECT: CIVIC CENTER PROJECT – REVIEW, DISCUSS AND PROVIDE STAFF WITH FEEDBACK REGARDING FUNDING STATUS AND OPTIONS RELATED TO MEASURE L – PART II

RECOMMENDATION

Review, Discuss and provide staff with feedback regarding funding status and options for the Civic Center Project – specifically related to Certificates of Participation and Measure L.

BACKGROUND

When Measure L was approved in November 2012 it stated as follows:

“Should the Town of Atherton use funds primarily from private donations to construct a new Town Center? Other funding sources might include funds derived from Building fees or future grant money, but would not use general fund or parcel tax money.”

The summary and impartial analysis of the measure stated that a “YES” vote restricts the types of funds that could be used for the new Town Center improvements. Donations must account for at least 50% of the total funds. Building fees or future grant money may be used for the remainder. Other funding sources cannot include general fund tax money or parcel tax funds without further voter approval.

At the January 18 Study Session, the Council directed staff to move forward with drafting a ballot measure, tentatively planned for June 2017, to modify the provisions of Measure L to allow the use of General Funds toward the project. Staff is crafting that draft language for Council adoption at the February 15 Regular Meeting. Preliminary language is included in the discussion below.

The Council also directed that staff investigate in more detail the requirements for Certificates of Participation and provide Council with further opportunity for discussion to create a funding plan for the Civic Center.

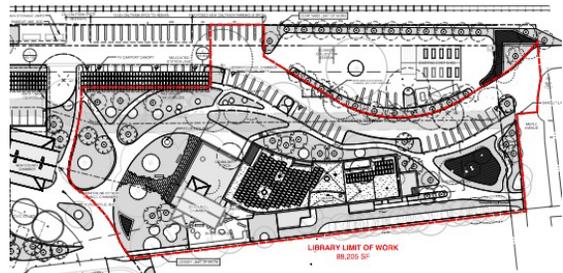
Lastly, Measure X (2013) – the Special Parcel Tax – does not allow the use of the parcel tax funds for the Town Center. In addition to being restricted via Measure L, the specific language of Measure X prevents the use of the funds for the Project. If the Council wanted to consider the use of the Special Parcel Tax for the project, it would need to amend the language of the Parcel Tax itself (November 2017); or, reallocate the funding percentages to fund more of the Town’s public safety costs to free up General Funds (assuming revisions to Measure L). Special Parcel Tax funds may be used for “...public safety and crime prevention services and capital improvements for street, drainage and flood control projects...”

FINDINGS/ANALYSIS

Summary of Estimated Project Cost

The project has completed 100% Design Development and the final cost estimate is underway. This will be presented to the Council at the February 15 Council Meeting for consideration. At that point, the Council will have the most accurate estimate of project cost to date. The estimate assumes a project award date of late Fall 2017, prevailing wage, a 20-month construction (completing in FY 2019), and no phasing requirements. The estimate does not include substantial changes to the corporation yard, does not include loose furniture and fixtures, and does not include any scope changes (to include those approved by Council at the last meeting).

Also, these costs do not include the Library portion of the project as the Library is separately and fully funded. The overall project site is approximately 234,940 square feet. The Library, based on location and allocated square footage, is responsible for approximately 88,205 square feet of that total. This includes an allocated portion of the required site work. The Library is designed as a sustainable facility to the maximum extent possible given its funding.



The remainder of the project improvements fall under Measure L funding requirements – Administration, Community Development, Police, Public Works, and Council Chambers and associated site work. Except for specific, Council-identified items for inclusion in the base project, these areas are designed as sustainable but only to meet the requirements of the California Green Building Code. Further, specialty items and next-level site amenities are all add-alternates or removed from the design entirely. Sustainability elements that go beyond the California Green Building Code requirements are also identified as add-alternates. Specific sustainability items to be designed as add-alternates per Council direction are:

- Energy Monitoring Systems
- Micro-Grid System
- Photovoltaic Systems
- Mechanical Chilled Water Thermal

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These add-alternates have cost estimates, but construction would only proceed with allocated funding. Bid documents must include detailed design in order to be included as an add-alternate for the project. Grant approval will also require detailed design drawings.

The table below is a summary of the cost estimates provided at the January 18 Council Meeting.

Civic Center Project Funding Plan	
Item/Fund	Amount
Design Cost Estimate (50% DD)	\$2,590,000
Construction Cost Estimate (50% DD)	\$21,847,000
Total Design & Construction Cost	\$24,437,000
Atherton Now Donation (29% of total)	(\$7,000,000)
Remaining Requirement	\$17,437,000
Application of Revenue from Building Fees	(\$2,935,000)
Remaining Requirement	\$14,502,000
Allocation of FY 2016/17 ERAF	(\$1,103,185)
Allocation of FY 2017/18 ERAF (Estimated)	(\$1,000,000)
Allocation of FY 2018/19 ERAF (Estimated)	(\$1,000,000)
Remaining Requirement	\$11,398,815
Existing General Fund Unallocated Surplus	(\$4,663,980)
Remaining Requirement	\$6,734,835
Existing CIP Unallocated Surplus	(\$4,423,138)
Remaining Requirement	\$2,311,697
Remaining Requirement to be met by a combination of Additional Donation Receipts, Annual Budget Revenues over Expenditures, and Short-term Certificates of Participation – without the addition of new tax burdens	

The remaining \$2.3 million+ funding requirement could be met through: 1) the use of increased donations from Atherton Now; 2) excess General Fund Revenues over Expenditures; and/or 3) issuance of Certificates of Participation.

Staff anticipates that the Town’s current revenue picture will be maintained; however, it is also anticipated that there will be increases to employment costs and overall operating expenditures. These excess revenue funds are used to maintain the Town’s positive financial picture. In FY 2016/17, there is an anticipated \$1,285,323 in General Fund Revenues over General Fund Operating Expenditures. This is *before* the addition of and transfers into the General Fund of ERAF and the 20% Parcel Tax allocated to Public Safety. It is anticipated that this revenue over expenditure trend will continue but the amount may fluctuate year to year. These funds may be committed to the Project funding gap or to a COP financing alternative. Over the period of construction (FYs 2017/18, 2018/19, & 2019/20) the Town could accumulate \$2-\$3 million in

excess revenues over expenditures. Allocation of these funds does not affect the Town's required 35% reserves for operations and emergencies.

Certificates of Participation (COP)

COPs are financing techniques that provide short- or long-term financing through a lease or installment sale agreement. Typically, local governments use COPs when issuing and leasing property to themselves. Under California law, COPs do not constitute indebtedness and do not require voter approval. The Town's positive cash flow stream can be used as a guarantee for the lease payment.

In simplified form, for a traditional COP, the Town would create a Public Finance Authority (PFA) – typically the City Council itself. The PFA leases the new facility to the Town. The Town pays the lease obligation to the PFA via a bank trustee who in turn pays the COP investors. COP financing structures are generally used for financing of major public projects such as Administration Buildings, Water and Sewer Systems, Public Safety Facilities, Schools, Courthouses, etc. A COP is a viable option to close the small funding gap for the project. A financial consultant would be hired to assist the Town with the financing measure.

Attached is a narrative from the Town's Finance Director providing a broad overview of Certificates of Participation.

Special Parcel Tax

At the January 18 Study Session, the Council eliminated the option of any new tax increase dedicated to the Project. However, the Council also discussed the use of the Town's Parcel Tax. As discussed above, if the Council wanted to consider the use of the Special Parcel Tax directly for the project, it would need to amend the language of the Parcel Tax itself (November 2017); or, reallocate the funding percentages to fund more of the Town's public safety costs to free up General Funds (assuming revisions to Measure L). Amending the language of the Special Parcel Tax to add a surcharge would result in a new tax. However, reallocation of the contribution toward public safety would not.

Use of the Town's unallocated surplus' or general funds do not impact the nearly \$5.73 million in capital projects over the next 4 years directly funded by the Town's Special Parcel Tax. However, if the November 2017 Parcel Tax is not successful in its current form, the \$5.73 million in capital projects related to streets, drainage, and flood control projects would be put in jeopardy. These include the annual Road Maintenance Program (\$2.6 million over 4 years), planned drainage improvement projects (\$2.2 million over 4 years), Bridge Improvements (\$125,000) and Bicycle/Pedestrian Improvement Projects (\$800,000 over 4 years).

From a timing perspective, if Measure L is revised in June 2017 and the Town is able to bid the Project in late Fall 2017 and the renewal of the Special Parcel Tax in November 2017 fails; staff would not recommend that the Council award the Project using all of the unallocated surplus'. It is critical that the Special Parcel Tax is renewed in order to sustain the Town's Capital Improvement Project Plan. Without the Special Parcel Tax, some or all of the Town's current surplus should be used to fill in the need for basic capital projects. The Town reviews the allocation

of the Parcel Tax each June. After completion of the Project in 2019, the Council should carefully review the allocation of the Parcel Tax and balance it against the then financial outlook to determine if it should be allocated at 100% or less.

Value Engineering

Once the Project is approved for 100% Design Development (February 15, 2017), staff and the CCAC Project Management Ad Hoc Committee will begin the task of identifying areas of the project that can be considered for value engineering. These may include landscaped areas, materials, exterior and interior features, etc. Some of these areas may result in an exterior aesthetic change. If so, these would be returned to the Council via the CCAC for consideration.

At the January 18 Study Session, it was also suggested that the Town could delay implementation of portions of the project, such as the new Council Chambers, in an effort to save funds in the short-term.

It would be appropriate for the Council to have a high-level conversation around what would be acceptable and what would not with respect to significant project changes or phased construction. Staff does not have sufficient detail at this time to provide the Council with vetted cost estimates for impact. Staff does not recommend that the Council consider a reduction in the functional spaces of the facility as these spaces are based on minimum needs and have been reviewed and reduced to the maximum extent possible.

Measure L

At the January 18 Study Session and Regular Meeting, the Council discussed modifications to Measure L. In that discussion the Council targeted June 2017 as the possible Special Election for the measure. At this time, there may be limited, if any, other measures on the June 2017 ballot and the County of San Mateo now has a “vote by mail” process that the Town may use for the measure. Staff is still trying to nail down the cost estimate for the Special Election. That estimate will be a part of the February 15 Staff Report.

City Council discussion points for consideration of the ballot measure include:

- Identification of key areas of the Town’s Funding Plan and Message
- Discussion of Ballot Measure Language
- Discussion of a Committee to craft the Ballot Argument
- Creation of a Campaign Committee and Process

A starting point possible ballot measure language could be:

“Should the Town of Atherton be allowed to use available general funds to fund the remaining funding need of the new Town Center? Other funding sources include private donations, grants, and building fees; but the Town would not use any of the Town’s parcel tax or mandatory reserves.”

The ballot argument language would address issues related to a funding plan (shown above) and the issue of no new project-specific taxes.

POLICY FOCUS

Staff is seeking policy feedback on the funding plan, Measure L, and project alternatives.

FISCAL IMPACT

None at this time.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the item is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

ATTACHMENTS

Certificates of Participation Overview

CERTIFICATES OF PARTICIPATION

Certificates of Participation (COP's) are a method of structuring and distributing tax-exempt leases to investors by dividing the rental payments and lease into fractionalized interests or shares for individual sale to investors. The share is represented by a formal certificate, much like a bond. COPs can be placed privately or sold publicly. COPs are sold for large asset financing and tend to be used more for real property rather personal property acquisitions.

The structure of COP financing starts with a public agency embarking on a construction project. The agency then enters into a tax-exempt lease with a specifically-formed JPA, leasing company, bank or other lessor. For example, the Town of Atherton would create the Atherton Public Financing Authority (APFA), a JPA and enter into a tax-exempt lease with the APFA. The APFA participates in the construction of the building project and leases the new building (the Civic Center) back to the Town via a financing lease. The APFA issues the COPs for sale to investors as marketable securities. The APFA has rights to receive lease payments which are assigned to a trustee. The trustee (a bank) implements and produces to an underwriter, COPs within the lease payments. Within these lease payments are designated tax-exempt interest to investors. The underlying proceeds of the COPs are used by the Town to build the new Civic Center. The process looks as follows –

1. The Town identifies the leaseable asset, the purpose for incurring debt, and the amount of debt to be incurred.
2. The Town leases or transfers the leaseable asset/building to a lessor (APFA).
3. The APFA leases the building back to the Town.
4. The APFA's right to receive lease payments are transferred to a Trustee (bank).
5. The Trustee executes Certificates of Participation which are sold to members of the public.

Legal Authority

In tax-exempt lease financing, a public agency is using its authority to acquire or dispose of property, rather than its authority to incur debt. This provides long-term financing through either a lease or lease-purchase agreement that legally does not constitute debt within the State constitutional debt limitation.

A tax-exempt lease may be used to finance any property that the public agency has the statutory authorization to lease. Only land and depreciable property may be leased. Leased property is the capital asset to be used by the public agency for its own operations. A key characteristic of a tax-exempt lease that distinguishes it from bond indebtedness is a non-appropriation clause. This is a fiscal funding clause where payments of the lease are dependent upon an annual appropriation by the governing body. A lessee is not in default under the lease if it does not appropriate funds. Under State law rental payments are classified as operating expenses and not as debt. If there is no appropriation in a given year, the lessee (town) loses use and possession of the asset (building).

The Town of Atherton in its intent to issue Certificates of Participation must form a public financing authority. Under California State law cities may issue tax-exempt revenue bonds through the formation of a public financing authority. The financing authority is created by Resolution of the Town. Within the Resolution, authorization is given to the City Council to be officers of the Authority. The Authority would meet similar to the City Council – similar to the way the Town

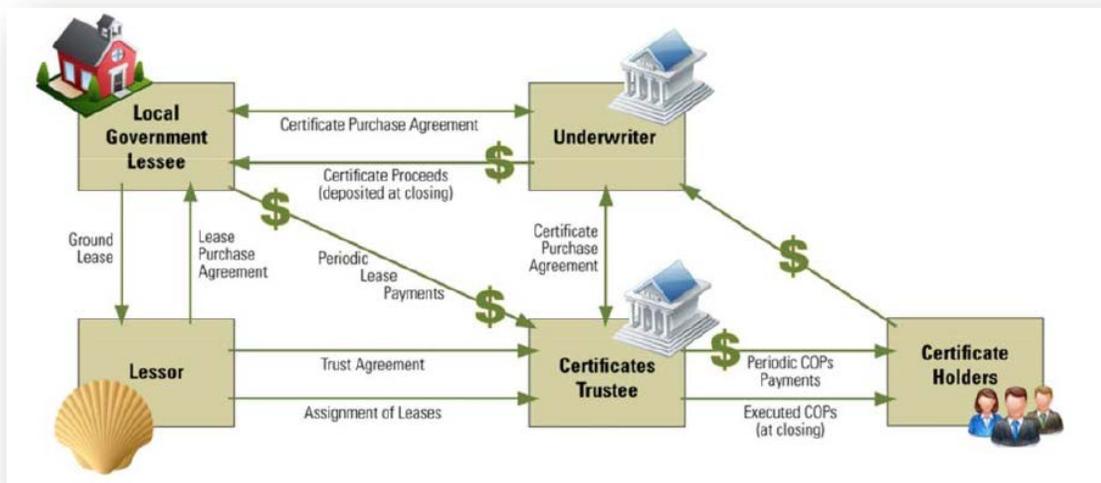
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handles the Atherton Channel District Board. Once the COP is retired, the Financing Authority may be disbanded or fall dormant.

Certificates of Participation require no voter approval. They are implemented quickly and are very flexible. There is no established new revenue for COPs. They are a General Fund liability for the appropriation of making lease payments. COP financing could require abatement risk insurance for rental interruption. Below is a diagram of the Certificates of Participation process:



Process for Issuance of a COP

The process for issuing COPs begins with a financing team. In considering a COP, the finance team will incur costs (often referred to as a cost of issuance).

Roles and Responsibilities of Principal Participants in Municipal Financing

- **Issuer** – The Atherton Public Finance Authority (APFA) would be the Issuer of the COP.
- **Bond Counsel** – The Town would hire Bond Counsel to provide legal advice to the APFA and to draft the primary COP documents.
- **Financial Adviser** – The Financial Adviser would provide advice to the APFA on pricing and terms for the COPs.
- **Underwriter (Placement Agent/Purchaser)**- The Underwriter provides financial advice to the APFA, structures the financing, sets the price, and sells the COPs to interested investors.
- **Credit Rating Agency**- The CRA provides a credit rating for the bonds. (Standard & Poor's/Moody's)
- **Trustee (Fiscal Agent)** – The Trustee is often a commercial bank who administers bond payments and redemptions.
- **Discloser Council** – The Council prepares the Official Statement describing the security and its risk for investors.
- **Insurer** – The Town may need “rental interruption insurance”

- During the process of COP financing, considerations will need to be made on the size and term of the financing. A consideration will be how much of an annualized lease payment the Town's General Fund can bear. This will factor into how much should be considered for the overall COP and the length of repayment.

In issuing COPs, a credit rating of the agency will need to be done. The Town will need to do a credit presentation and credit rating agencies will review the Town's financials and conduct interviews. It takes approximately 10 days to do the rating. The more fund reserves the Town maintains, the better credit rating can be expected. The purpose of the rating is the issuer's ability to repay the COPs through maturity. This includes analyzing the credit quality of the bonds and assigning a rating. The credit rating, once the bonds are issued, is continuously reviewed to assess the credit quality of the COPs. COP financing takes approximately 90 days from start to finish.

Protection for Default

With tax-exempt lease financing, there is typically a requirement to maintain the last year of debt service set aside. This is normally held by the Trustee. The COP could include an insurance factor or the Town could create a cash reserve on its own. Another option would be to get bond insurance, as the insurance protects the investor. If the Town defaults, the Trustee could charge us a default interest rate. The cost of an insurance policy would be factored into the annual lease payment.

Who Buys the COPs?

The Town can condition who the COPs are sold to. The Underwriter can create a separate sale to Atherton residents first and then open it up to others. The Town can structure the COPs in a way that depending on the orders for the bonds, interest rates can be adjusted.

Financial Assistance

In preparation of COP financing it would be prudent that the Town solicit the help of a Financial Consultant Adviser. This professional would assist the Town in conducting a comparison of finance alternatives, and solicit proposals from underwriters, trustees, and other individuals that will participate in the process. The Advisor will also assist the Town in conducting an analysis of proposals and forecasts.