



## Item No. 1 Town of Atherton

### **CITY COUNCIL STAFF REPORT – SPECIAL MEETING AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**THROUGH: GEORGE RODERICKS, CITY MANAGER**

**FROM: THERESA DELLASANTA, CITY CLERK**

**DATE: AUGUST 21, 2018**

**SUBJECT: CONSIDER AND TAKE ACTION ON OPTIONS IN ELECTIONS CODE 10229 REGARDING THE PROVISION IF NO ONE OR ONLY CANDIDATE FILES; APPOINTMENT TO OFFICE**

### **RECOMMENDATION**

That Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
  2. Appoint to the office any eligible voter if no one has been nominated.
  3. Hold the election if either no one or only one person has been nominated.
- No. 2 is not applicable because three individuals have been nominated.  
A resolution is included in the packet if the Council chooses option 1*

### **BACKGROUND**

As of the 5:00 pm., August 10, 2018 nomination period deadline, three candidates for City Council (Bill Widmer, Mike Lempres, Rick DeGolia) qualified for the open seats to be voted on at the General Municipal Election on Tuesday, November 6, 2018.

Elections Code 10229 states that if there are not more candidates than offices to be elected at a municipal election, one of the following courses of action may be taken by the City Council:

1. Appoint to the office the person who has been nominated;
2. Appoint to the office any eligible voter if no one has been nominated; or
3. Hold the election if either no one or only one person has been nominated.

The Council does not have the option to take action on number 2, since there are three nominees for the three available seats.

By resolution, the City Council may appoint Bill Widmer, Mike Lempres, and Rick DeGolia to the offices to which they were nominated. The persons appointed shall qualify and take office and serve exactly as if elected at a municipal election for the office.

A notice of publication that there are not more candidates than offices to be elected must be published in a newspaper of general circulation for at least five (5) days before City Council can take action on EC 10229. A notice ran in the San Mateo Examiner on August 15, 2018.

If the City Council does not take action to appoint the candidates by the 75th day before the election, August 23, EC 10229 states that the election will be held. This would allow for write-in candidates.

Public notification of the nomination period consisted of a Notice of Election published in the Local newspapers in three languages (English, Spanish, Chinese), several electronic newsflashes, and a blurb in the town-wide newsletter, the Athertonian.

### **POLICY CONSIDERATIONS**

If the Council chooses to cancel the election the three nominees would assume office in December and serve exactly as if elected at the election.

If Council chooses not to cancel the election nomination papers for write in candidates can be accepted from September 10 to October 23.

### **FISCAL IMPACT**

\$30,000 is included in the proposed Fiscal Year 2018/19 City Council budget for the November 6, 2018 election.

### **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.

### **COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_ has or X has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)

Cancelling November 2018 Election

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\_\_\_\_ Transportation Committee (meets every other month)

**ATTACHMENTS**

- Resolution Cancelling the Election
  - Notice that there are not more candidates than seats

**RESOLUTION NO. 18-xx**

**RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON, CALIFORNIA,  
PROVIDING FOR THE APPOINTMENT TO THE OFFICES OF THIS TOWN THAT WERE  
TO BE ELECTED ON TUESDAY, NOVEMBER 6, 2018**

**WHEREAS**, pursuant to Section 10229 of the Elections Code of the State of California, as of the close of the nomination period on August 10, 2018, there are not more candidates than offices to be elected and that Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible voter if no one has been nominated.
3. Hold the election if either no one or only one person has been nominated.

**WHEREAS**, only three candidates were nominated for the three City Council seats to be filled at the November 6, 2018, election; therefore the City Council may take action pursuant to No. 1 or No. 3 above; and

**WHEREAS**, there are no other offices to be filled at the November 6, 2018 election, and no measure has qualified to be submitted to the voters at the November 6, 2018 election;

**WHEREAS**, on August 10, 2018, after 5:00 p.m., the City Clerk delivered to the City Council the certificate required by California Elections Code Section 10229, which is attached hereto as Exhibit A; and

**WHEREAS**, a notice was published in a newspaper of general circulation pursuant to law.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the Town of Atherton, California, does hereby declare, determine and order as follows:

**Section 1.** That pursuant to Section 10229 of the Elections Code of the State of California, the following action is being taken:

- (a) The following persons are being appointed to the offices to which they were nominated, and the election scheduled to be held on Tuesday, November 6, 2018, is now cancelled:

Bill Widmer, City Council  
Mike Lempres, City Council  
Rick DeGolia, City Council

**Section 2.** The persons appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

*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 this 21st day of August, 2018, by the following vote:*

AYES: Council Members:  
NOES: Council Members:  
ABSENT: Council Members:  
ABSTAIN: Council Members:

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Cary Wiest, Mayor

ATTEST:

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Theresa N. DellaSanta, City Clerk

APPROVED AS TO FORM:

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William Conners, City Attorney

**EXHIBIT A**

**TOWN OF ATHERTON  
NOTICE THAT THERE ARE  
NOT MORE CANDIDATES THAN OFFICES TO BE ELECTED**

**NOTICE IS HEREBY GIVEN** that pursuant to Section 10229 of the Elections Code of the State of California, relating to the General Municipal Election in the Town of Atherton to be held on Tuesday, November 6, 2018:

As of the close of the nomination period on August 10, 2018, there are not more candidates than offices to be elected.

That Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible voter if no one has been nominated.
3. Hold the election if either no one or only one person has been nominated.

No. 2 is not applicable because three individuals have been nominated.

**The City Council will meet on Tuesday, August 21 at 8:00am in the City Council Chambers at 94 Ashfield Road, Atherton, CA to take one of the above courses of action as allowed by EC 10229. An agenda will be available through the City Clerk's Office by Friday, August 17.** The persons appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

If, by the 75<sup>th</sup> day before the municipal election, no person has been appointed to the offices pursuant to (1) or (2) above, the election shall be held.

If the City Council makes an appointment pursuant to Section 10229, Elections Code, the City Clerk shall not accept for filing any statement of write-in candidacy that is submitted after the appointment is made.

/s/ Theresa N. DellaSanta  
Theresa N. DellaSanta, City Clerk