



## Town of Atherton

### **CITY COUNCIL STAFF REPORT – STUDY SESSION**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: GEORGE RODERICKS, CITY MANAGER  
THERESA DELLASANTA, CITY CLERK**

**DATE: FEBRUARY 5, 2014**

**SUBJECT: CITY COUNCIL HANDBOOK**

#### **RECOMMENDATION**

Review and Discuss the City Council handbook and Code of Conduct.

#### **BACKGROUND | DISCUSSION**

##### Council Handbook

Staff developed a City Council Handbook for current members of City Council and new and future members of City Council. The handbook has been prepared to provide a convenient source of information about the functions and activities of City Council. It is intended to assist Council Members in carrying out their roles, as well as to provide useful information to prospective Council Members and other interested citizens.

The handbook incorporates information pertaining to the Ralph M. Brown Act, the City Council Code of Conduct, and Conflict-of-Interest Code information. The following documents will be attached as appendices:

- A. City Council Rules of Procedure – Revised by City Attorney
- B. Code of Conduct
- C. Resolution Governing Committees and Commissions
- D. Rosenberg's Rules of Order
- E. City Council approved policies

This evening, the Council should review and discuss the handbook and provide any feedback as necessary. After making any additional revisions, staff will return the handbook to the Council at an upcoming meeting for adoption.

Additionally, staff will return to Council at a future meeting date with a nepotism policy addressing Council appointees as well as employment of relatives of staff members to be incorporated into Appendix E.

The policy would read as follows:

*The residents of Atherton are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. Town officials must be permitted to fulfill their duties to represent the public to the greatest extent possible unless circumstances exist where such engagement is impermissible.*

*It is the policy of the Town to restrict the hiring and/or employment of relatives of Town employees and restrict the appointment of relatives of City Council members committees or commissions or other appointed positions.*

*A "relative" is defined as a spouse, domestic partner, child, step-child, parent, step-parent, parent-in-law, legal guardian, brother, sister, step-brother, step-sister, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, grandchild, grandparent, or any other individual related by blood or marriage living within the same household as the Town employee.*

*An "employee" is defined as any person who receives a Town payroll check for services, full or hourly rendered to the Town.*

*The City Council will not appoint relatives of City Council members to committees or commissions or other appointed positions.*

*Applicants for employment may not be denied the right to file an employment application and to compete in the examination process. Following examination, if the applicant is successfully certified as eligible, he/she may not be employed in a department or office in which a relative, as defined above, is employed if they:*

- *Perform joint duties; or*
- *Share responsibility or authority; or*
- *Report to the same Supervisor; or*
- *Would be supervised by or would supervise a relative; or*
- *Are related to the cognizant City Council Member, City Manager, or Committee Member with the department or area of responsibility of such City-appointed Committee, or Committee Member.*

*When the eligible applicant is refused employment by virtue of this provision, the name of the eligible applicant shall remain on the eligibility list for openings in the same classification as otherwise provided in these Rules, where no relative is employed, is supervised or supervising*

*the vacant position.*

*When two employees of the Town become married so as to create a situation in which they perform joint duties, share responsibility or authority, report to the same Supervisor, or supervise each other, then every attempt will be made to offer a transfer to another department. In the event a transfer to another department is not accepted and/or unavailable, the employee shall make the decision as to which one shall resign. In the event that neither employee resigns, the least senior employee shall be terminated.*

# **TOWN OF ATHERTON**

## **A HANDBOOK FOR MEMBERS OF THE CITY COUNCIL**

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## 1. INTRODUCTION

Congratulations on your election to office! You have an exciting and very important job ahead of you. As a City Councilmember you are in a key position of leadership in dealing with the many challenges facing the Town of Atherton. Towns and cities perform many of the functions which are of most immediate concern to citizens. These include essential services public safety, sewer and storm drainage, and capital improvement projects.

As City Councilmember's, you share an authority which lends you great influence over the determination of the quality of life of your fellow citizens. The community looks to the City Council to help protect it against a host of natural, social and economic challenges; as well as for providing an attractive and healthy place to live. To fulfill these responsibilities, the City Council enacts local laws, sets policies that direct Town programs and establishes budget priorities.

This handbook has been prepared to provide a convenient source of information about the functions and activities of the City Council. It is intended to assist Councilmembers in carrying out their roles, as well as to provide useful information to prospective Councilmembers and other interested citizens.

## 2. GENERAL INFORMATION

### 2.1 Geography and Demographics

Atherton is a small, rural, and residential community, with no commercial or industrial land-use base. Native live oaks, white oaks, bays, redwoods, cedars, pines and other ornamental trees cover the six square miles of town.

Atherton's population is 6,995 according to the 2011 census. In October 2012, there were 5,052 registered voters and approximately 2,500 households. The median age is 48.2 years.

### 2.2 The History of Atherton

In 1866, Atherton was known as Fair Oaks, and was a [flag stop](#) on the California Coast for the Southern Pacific Railroad between [San Francisco](#) and [San Jose](#) for the convenience of the owners of large estates living north of [Menlo Park](#). The entire area was called Menlo Park. It was part of the [Rancho de las Pulgas](#), which is now southern [San Mateo County](#).

In 1923, Menlo Park wanted to incorporate its lands to include Fair Oaks. During a meeting of the representatives of the two communities, the Fair Oaks property owners maintained their community as a strictly residential area and they would incorporate independently. Both groups rushed to Sacramento but the Fair Oaks committee arrived first. It was at that time they realized that they could not keep the name Fair Oaks, as it was already the name of a town near Sacramento. It was decided to honor Faxon Dean Atherton who had been one of the first property owners in the south peninsula and name the Town for him. Atherton was incorporated on September 12, 1923.

[Faxon D. Atherton](#), originally from Massachusetts, had spent several years as a trader in tallow, hides and merchandise. His friend and business associate, Thomas Lark had written to him about the opportunities, for family and business, on the San Francisco peninsula. Atherton purchased over 600 acres in 1860. His home, "Valparaiso Park", was built several years later.

With the development of the railroad, other San Franciscans established summer homes further south. The dirt roads were usually treacherous in the winter and the families would only visit May through September.

The Mayor of San Francisco, Thomas H. Selby, purchased over 400 acres and called his estate "Almendral". John T. Doyle, an attorney, also built a home off Middlefield Road, "Ringwood". [James C. Flood](#), owner of "Linden Towers" is now known as Lindenwood. The Joseph A Donohoe estate was "Holmgrove" and is now the site of Menlo Atherton High School. James Thomas Watkins' home was "Fair Oaks" which stands today on Alejandra Avenue, after being moved twice.

Edward E. Eyre reigned as first Mayor and in 1928, the residents voted to build a Town Hall, which is still in use today. The early residents sought to build a Town that would be divided into large parcels and would not contain businesses. During the 1920s and 1930s a few of the large land holdings were subdivided, including James Floods' estate in 1938. In the 1940s and 1950s over eighty subdivisions were recorded bringing the era of large estates to a close. Atherton is still a "plain of oaks". Native live oaks, white oaks, bays, redwoods, cedars, pines

and other ornamental trees cover the six square miles of town. There are approximately 50 miles of roads. Ms. Olive Holbrook-Palmer left Holbrook-Palmer Park, a 22 acre parcel, to the Town in 1958. It is an open, tree-covered park, which offers recreational programs and has facilities for functions.

### **2.3 The General Plan**

The General Plan guides the future development of the Town, describes the desired character and quality of the community, sets forth the goals that govern the Town, and states the policies that the Town government will follow to achieve those goals. The Plan's primary goals are to preserve and enhance Atherton as a scenic, rural residential community, to conserve the natural environment and its open space, to protect people and their property from exposure to hazards, to assure access to utility services, to abate noise, to manage and maintain the Town's system of roads, trails, and paths. A copy of the Plan is on file with the City Clerk and on the Town's website (<http://www.ci.atherton.ca.us>), and interested parties are encouraged to peruse it.

### **2.4 The Municipal Code**

The Atherton Municipal Code is the systematized collection of regulatory, penal, and administrative laws of general application. The City Council modifies the Municipal Code by introducing and adopting ordinances in public meetings (see Chapter 1). The Municipal Code serves as the basic law of the Town. The Municipal Code is available for review from the City Clerk and is also on the Town's website.

## **3. THE STRUCTURE OF TOWN GOVERNMENT**

Atherton is a general law city operating under a council-manager form of government. This provides the Town with policy direction from the City Council and professional administration and policy implementation through the City Manager. Approximately 80% of the towns and cities in California operate under general law, which means they are organized pursuant to state law concerning town government structure contained in the State of California's Government Code.

The general law system of municipal government provides that the Town has no powers except those it receives under a constitutional or statutory grant of authority. The powers so granted are enumerated in Article XI of the California Constitution, which provides two kinds of powers for general law towns. These kinds of powers are the power to regulate people's actions (known as regulatory power) and the power to provide services for the benefit of the Town's inhabitants (known as commercial power).

### **3.1 The City Council**

The City Council is the legislative body of the Town of Atherton, with all the regulatory and corporate powers provided under California state law. The City Council provides the policy direction that guides the operation of the Town, adopts ordinances and resolutions that constitute the local laws of the Town, and sets the Town's priorities through the adoption of an annual budget and the provision of direction to the City Manager. The City Council represents the Town's residents through these actions and through the conveyance of constituent requests and concerns to the Town staff. The City Council also appoints members

to its advisory committees and commissions.

### **3.2 City Council Meetings**

All meetings (except closed sessions as provided by State law) of the Council shall be open to the public. The regular meetings of the City Council are held on the third Wednesday of each month at 7:00 p.m. The regular meeting place of the City Council is 94 Ashfield Road, Atherton, California. If the regular meeting should fall on a legal holiday, the Council shall meet at a time and date so designated by the Council.

#### **Adjourned Meetings**

Any meeting of the City Council may be adjourned to a later date, place, and time provided no adjournment is for a longer period than the next regularly scheduled meeting.

#### **Special Meetings**

Special meetings may be called by the Mayor or by a majority of the Councilmembers. The call for a special meeting must specify the day, hour, and place and shall specify the subject(s) to be considered. Twenty-four hours' notice must be given prior to the meetings. Only matters specified in the notice may be discussed at special meetings. Notice shall be posted as required by law.

#### **Closed Session Meetings**

Authorized closed sessions may be held in accordance with the provisions of the Brown Act (Government Code Section 54954.5).

#### **Study Session Meetings**

The Council meets informally on an as-needed basis on the first Wednesday of the month at 4:00 p.m. for study session meetings. Further, the Council may meet informally in Study Sessions called by the Mayor or the majority of Councilmembers. Study Sessions are open to the public and are meetings for purposes of the Brown Act. Council may not take any formal action at study session meetings. Meeting notice requirements are contained in Section 2.2.

#### **Media Attendance**

All meetings (except Closed Sessions) of the City Council and Commissions shall be open to the media, and may be recorded by tape, radio, television, and photography, provided such recordings do not interfere with orderly conduct of the meetings.

City Council has established Rules of Procedures for the conduct of Council meetings. These rules are included with the handbook as Appendix A.

### **3.3 Election of Councilmembers**

The five members of the City Council are elected at-large to four year terms. Elections occur in November of even-numbered years and the terms are staggered so that no more than three City Council seats are up for election at any one time. New City Councilmembers are sworn in at the first regular meeting after election results are available for canvas, which is usually the December meeting.

### **3.4 Subcommittees**

The Mayor may create and appoint members to standing subcommittees of the City Council with the approval of the Council for the purpose of studying specific issues in more detail and reporting back to the Council with data and recommendations, or ad hoc subcommittees for limited specific purposes without Council approval. All standing subcommittees are subject to the provisions of the Brown Act, while ad hoc subcommittees are not.

### **3.5 Vacancies**

Vacancies occasionally occur as a result of death, resignation or the departure of a Councilmember from the Town. When a person has ceased to be a resident of the Town, that person's office immediately becomes vacant. The City Council must appoint a replacement or call for a special election within sixty days of the occurrence of the vacancy. The special election shall be held on the date of the next regularly established election (provided by State law) or the next regularly established general municipal election to be held throughout the Town. In either case, the special election may not be held less than 114 days from the call of the special election.

### **3.6 Election of Mayor and Vice Mayor**

The Mayor and Vice Mayor are elected from among the Councilmembers by a majority vote of the members of the Council. They serve for a one-year period and at the pleasure of the Council. They may be relieved of their duties by a majority vote of the City Council taken at a duly noticed Council meeting.

### **3.7 Mayor**

The Mayor presides at the City Council meetings and represents the Town as the official head of the Council on public and ceremonial occasions. Other than administrative duties set forth in the Municipal Code, the Mayor and Vice Mayor shall have no additional powers or authority different from other members of the City Council. The principal qualification for the position of Mayor is the ability to effectively preside at meetings. This requires tact, courtesy, and familiarity with parliamentary procedures. The responsibility of the Mayor is to direct the discussion and deliberation of the matters at hand. The Mayor should encourage the input of ideas, clarify ideas, and restate motions in order that all members understand the item on which they are voting. It is the Mayor's responsibility to ensure that the Council is operating within the confines of all applicable rules and regulations. Since the Mayor must preside over meetings, he or she must maintain a certain degree of impartiality and be sure to allow all views on an issue to be expressed. However, the Mayor may also participate in debate, expressing his or her own views, and may make or second motions.

### **3.8 Vice Mayor**

The Vice Mayor acts in the Mayor's absence.

### **3.9 Presiding Officer**

In the absence of both the Mayor and the Vice Mayor, the Councilmembers shall elect a temporary Presiding Officer by majority vote.

### **3.10 City Manager**

The City Manager is appointed by the City Council and is responsible to the City Council as a whole, not to individual Councilmembers. The City Manager serves as the chief executive of the Town, administering its day-to-day affairs. The Manager's responsibilities include enforcement of the Town's laws; preparation and submission of the annual budget to the City Council for approval; hiring, discipline, and dismissal of staff; direction and organization of staff in the execution of Council policies; provision of information and recommendations to the Council; and investigation of complaints concerning the Town's administration. The City Manager attends all meetings of the Council and has the right to take part in all discussions of the Council, but has no vote.

### **3.11 City Attorney**

The City Attorney is appointed by the City Council. The City Attorney acts as legal advisor to the City Council, City Manager, the various Town departments, and all Town commissions, committees and boards. The City Attorney prepares and approves for legality all proposed Town ordinances, resolutions, contracts and other legal documents. The Attorney also represents the Town in litigation and prosecutes violations of the Municipal Code.

### **3.12 City Clerk**

The City Clerk is appointed by the City Manager. The Clerk serves as the Secretary to the City Council at meetings, performs the official recordation of City Council actions, and composes the minutes. The Clerk administers and organizes all municipal elections and coordinates the filing of Political Reform Act conflict of interest statements. The Clerk also manages the Town's records and is responsible for the care and custody of all official records and documents of the Town. Those records include all Town deeds, contracts, leases, ordinances, resolutions, minutes, and the Municipal Code. The Clerk publishes public notices and ordinances as required by law and assists staff and the public in researching information contained in the Town's official records. The Clerk is responsible for ensuring timely responses to Public Records Act requests.

## **4. VOLUNTEER POSITIONS**

The voluntary participation of Atherton's citizens in the operation of the Town government is critical to the City Council's and the Town staff's success in serving the community. The City Council has established several commissions and committees composed mainly of volunteers. Volunteers to specific commissions or committees are appointed by the City Council and charged with the responsibilities of gathering, synthesizing, and analyzing the information relevant to their areas of responsibility and providing the City Council and Town staff with advice and recommendations. The Council and staff rely on this advice for the development and execution of Town policies. Citizen involvement is the hallmark of Atherton government, and the Town encourages all residents to participate.

### **4.1 Commissions and Committees**

A resolution governing committees and commissions has been adopted by City Council and is periodically updated. The resolution includes principles and rules of procedures, appointment

and funding information, and powers and duties of each active committee and commission. The Planning Commission is established by Atherton Municipal Code Chapter 2.36 and the California Government Code.

A list of citizen advisory bodies can be found on the Town's website by accessing the Town Roster of Committees and Commissions and is set forth in a Resolution which establishes and governs Town Committees and Commissions. All citizen advisory bodies are subject to the provisions of the Brown Act. These bodies are charged with the following responsibilities:

- Advise the City Council and the City Manager on matters within their area of responsibility and interest, as prescribed by the City Council and its ordinances and resolutions.
- Help focus attention on specific issues and problems within their scope of responsibilities and recommend actions and alternatives for Council consideration.
- Act as channels of communication and information between Town government and the general public, including groups with interests related to the work of the advisory bodies.
- Consider and assist in reconciling contradictory viewpoints and provide direction toward achievement of Town-wide goals.
- Encourage citizen participation in the definition and formulation of Town goals and actions for their achievement.
- Balance community desires with municipal responsibilities and resources.

#### **4.2 Qualifications and Appointment to Office**

Interested citizens who live within the Town of Atherton are encouraged to submit applications for positions on committees and commissions. The application form is available from the Town staff and includes space for the applicant to state the qualifications, experience, and skills which he or she can bring to the service of the Town. Applications may be submitted at any time. Completed forms are kept on file at Town Hall and may be considered by the City Council when vacancies occur.

Notice of openings and requests for applications for committees and commissions are posted and published annually in "The Almanac", Town website, through e-mail blasts and, if timely, in "The Athertonian". Regular appointments to all bodies are made by the City Council in June of each year at a duly noticed meeting of the City Council. Requests for applications for candidates to fill unexpected vacancies, which occur from time to time, can be solicited when the vacancies arise, or during annual solicitation which typically begins 2-3 months before term expirations.

The members of committees and commissions are appointed by simple majority vote of the City Council.

When making commission and committee appointments, the City Council will favor applicants who do not already belong to another commission or committee. The Council seeks a diversely representative body of membership for each board, commission, and committee so that there will be a broad balance of views. Rather than fill an advisory panel with people who are all dedicated to the same ideas or goals, the Council will attempt to assemble groups of applicants with a variety of interests and experience. Similarly, the Council will attempt to select members from across the Town's geographically diverse make-up. For all of the Town's citizen advisory bodies, the City Council may decide to refrain from appointing candidate(s) if, in its judgment, the qualifications and/or experience of the candidate(s) are insufficient.

When this occurs, the City Clerk will again advertise the vacant position(s) involved and the appointment process will be included on a subsequent City Council agenda.

The Town is grateful for the service of members of a committee or commission, recognizing that the service to the community is voluntary. Even so, it is important to understand the legal requirements that apply to the role because failure to comply may result in stiff penalties. Committee/commission representatives: the City Clerk, the City Attorney, or the City Manager are available to assist with any questions. Their job is to ensure that representatives are able to do the job freely and without apprehension.

An updated list of volunteer committee members is included in the Town Roster, available at the front desk in Town Hall and on the Town's website. It also includes the latest information on the regular meetings days and times for the committees, as well as the approved committee sizes.

### **4.3 City Council Liaisons**

Each of the Town's advisory committees is assigned a City Councilmember to serve as Liaison between the Council and the committee (excluding the Planning Commission and the Park & Recreation Commission). The Mayor makes these appointments in January of each new calendar year.

It is the Liaison's responsibility to attend each meeting of the committee to which he or she is assigned and to provide general guidance, as needed, to the committee as it moves through its meeting agenda. The primary role of the Liaison is to ensure the committee's compliance with the Brown Act and to provide information regarding City Council policy as it pertains to the work of the committee. It is not the role of the Liaison to advocate on behalf of or against items before the committee or to endorse positions or directions that the committee may be considering. If a Council Liaison is unsure how to advise his or her committee, he or she should consult with the City Manager. The Liaison should also report any operational problem his or her committee may be facing at the earliest opportunity so that staff can intervene and provide the needed assistance through the committee chair.

## **5. GENERAL RULES OF OFFICE**

### **5.1 Code of Ethics and Conduct**

Public officers owe an undivided duty to the public they serve and are not permitted to place themselves in a position that will subject them to conflicting duties or expose them to the temptation of acting in any manner other than the best interest of the public. Town officers may not, under any circumstances, use their official position to their own benefit or for the benefit of anyone except the Town itself, nor may they represent the Town in any transaction in which they are personally interested in obtaining an advantage.

A copy of the Council Code of Conduct has been included with this handbook as Appendix B

### **5.2 Conflict of Interest**

In order to fulfill the Town government's undivided duty to serve the public, it is necessary for the Town's officers to diligently avoid any circumstance in which their personal and public interests or responsibilities could come into conflict, or in which Town officers could be

tempted to use their positions for personal gain. State law specifically regulates several areas:

**Interests in Contracts:** Members of the City Council and other public officers may not make any contract with the Town in which they have a financial interest. Such contracts are void and violation may constitute a felony. (Government Code §1090)

**Discounted or Free Transportation Passes:** Office holders in California are strictly prohibited from accepting free passes or discounts from transportation companies. Violation of this prohibition is punishable by forfeiture of office. (California State Constitution)

**The Political Reform Act:** The Political Reform Act (Government Code §§87100, et seq.) forbids a public official from participating in or attempting to influence any governmental decisions or actions in which he or she has a "material financial interest". The Act defines the kinds of interests (which includes interests owned by spouses, dependent children and agents, and certain businesses and trusts) which might cause a conflict and requires public officials to disqualify themselves from decisions which could affect those interests. The Fair Political Practices Commission (FPPC) enforces the Political Reform Act.

**Common Law Doctrine Against Conflicts of Interest:** There is a body of common law regarding conflicts of interest which prohibits a public official from acting, or failing to even avoid the appearance of acting, in an inappropriate manner with respect to his or her interest in any matter.

### **5.3 Statement of Economic Interest**

As established in The Political Reform Act, Councilmembers must file Statements of Economic Interest upon assumption of office, on an annual basis, and when leaving office. The proper forms are supplied by the City Clerk. Members must disclose all investments, business positions, sources of income, and interests in real property which could be materially affected by the decisions made by their commission. The completed statements are kept on file by the City Clerk and are available for public inspection. Since the law permits the Fair Political Practices Commission to impose a penalty for failure to file such statements in a timely manner or correctly, elected officials should be certain the statements are complete, accurate, and submitted on time.

### **5.4 Relations with Town Staff**

The Town staff works under the direction of the City Manager. While the Council as a whole may direct the City Manager, it is not appropriate for individual Councilmembers to provide such direction or to become involved in the administrative or operational concerns of the Town departments. However, the staff will be happy to answer questions and provide whatever assistance they can when authorized to do so by the City Manager.

It is expected that a mutually respectful and professional relationship will be maintained between the staff personnel and the Councilmembers. In the event that a conflict does arise, the problem should be brought to the attention of the Mayor or the City Manager.

## **5.5 Orientation for New Members**

Shortly after election, a general orientation will be provided by the City Manager, City Attorney, and staff. This orientation is intended to acquaint newly elected Councilmembers with Town goals, the responsibilities of the office, current issues before the body, legal issues related to the position, and meeting schedules.

## **5.6 Meeting Attendance**

Government Code Section 36513 (a) If a city councilmember is absent without permission from all regular city council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy. (b) Notwithstanding subdivision (a), if a city council meets monthly or less frequently than monthly and a city councilmember is absent without permission from all regular city council meetings for 70 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

## **5.7 Resignation**

A Councilmember resigns from office before the end of his or her term by submitting a written resignation with the City Clerk. This information will be forwarded to the City Council and the City Manager. Such notice is effective based on its terms, and need not be accepted. It may be withdrawn prior to becoming effective, but once it takes effect, it may not be withdrawn.

## **5.8 Compensation**

Service on Council is purely voluntary. None of the City Councilmembers are paid, although they may be reimbursed for expenses incurred in carrying out official Town business.

## **5.9 Benefits/Insurance/Immunity**

Councilmembers are covered by the Town's Workers' Compensation policy and, in the event of an accident while serving in an official capacity, the member will be required to file an accident report. Members are also covered under the Town's general liability insurance policy for actions taken in the course and scope of their duties. The Tort Claims Act limits municipal liability and Councilmembers are granted immunity by the applicable sections of the California Government Code for good faith actions taken.

## **5.10 Travel Expenses**

Councilmembers are entitled to reimbursement for their own personal reasonable expenses incurred in the performance of his or her duties as a Councilmember. If the reimbursement involves the costs of travel, such as hotels and/or airfare, a request for reimbursement shall be made to the City Manager prior to the occurrence of the travel, in order to ensure that budgetary authority exists. Councilmembers are required by State law to provide a brief report on their paid Town travel at the next available City Council meeting following their return.

## **5.11 Authority of Councilmembers**

Individual members of the Council are not authorized to expend public funds, enter into agreements or contracts, employ staff, sign documents on behalf of the Town, or bind the Town in any way. This authority can only be granted by action of the City Council.

### **5.12 Use of E-mail**

Each member of the City Council will be provided with an e-mail account on the Town's server. The Town's website provides the public with a link to these e-mail accounts and the business cards of each Councilmember includes the Town e-mail account/address. Members of the City Council may request set up of automatic forwards from their Town email account directly to their personal email account.

The Town will retain all incoming and outgoing e-mail messages from the City Council e-mail accounts on the Town's server for two years. These e-mail messages are public records and are subject to disclosure through the provisions of the Public Records Act, with rare exception.

### **5.13 Assignment to Outside Committees, Agencies, and Organizations and as Committee Liaisons**

The Town is represented by individual Councilmembers on a wide variety of outside committees and organization, such as the City/County Association of Governments (C/CAG) and the Association of Bay Area Governments (ABAG). Additionally, each of the Town's standing committees is assigned one or two Councilmembers to serve as its Liaison to the City Council and the staff (see Section 4.3 "City Council Liaisons"). In January of each year, the Mayor makes Councilmember assignments as he or she deems appropriate. Coordination is provided by the City Manager and City Clerk to ensure that there are no schedule conflicts that would preclude a Councilmember from attending the meetings of the bodies to which he or she may be assigned.

## **6. OPERATING PROCEDURES**

The City Council does most of its work in meetings which are open to the public. A detailed set of Rules of Procedure has been established for the conduct of such meetings - See Appendix A. Formal rules may occasionally appear arcane or inconvenient, but they are necessary to guarantee a fair and democratic process. The rules are designed to ensure Atherton's compliance with state law, to guarantee fair and equal treatment of citizens, to encourage citizen participation in civic affairs, and to foster a productive climate which encourages the communication of constructive ideas. Such rules may be temporarily set aside upon a vote of the Council where it is agreed that application of the normal rules may be inappropriate or unfair.

### **6.1 Ralph M. Brown Act**

The Brown Act (Government Code §54950, et seq.) is a state law requiring that almost all local government business be conducted in open and public meetings. This requirement is based upon the belief that the people must remain informed about the activities of government in order that they may retain control over it. The Brown Act applies to the City Council, as well as all Town commissions and committees. Any time a majority of the

members of one of these bodies meets face-to-face or through intermediaries or technological devices (such as phone, fax, e-mail, or letters) to hear, discuss, or deliberate upon any public business, a "meeting" is taking place as defined by the Brown Act. Social events are exceptions to this, so long as public business is not discussed.

With very few exceptions, such meetings must be open to the public and must be announced at least 72 hours ahead of time for a regular meeting and 24 hours ahead of time for a special meeting, with a posted agenda indicating the time and place of the meeting and describing each item of business which is to be discussed with enough clarity to inform the public of what action may be taken. No action may be taken at any meeting unless a quorum is present. Action may be taken by the body only on items which properly and clearly appear on the meeting agenda unless a matter is added by a 4/5 vote where action is required to be taken and the item arose after the agenda was posted. In addition, minutes of the proceedings must be taken for entry into the public record.

The City Council may from time-to-time convene properly agendized Closed Sessions pursuant to Government Code §54954.5 where the public is excluded. Such sessions are allowed for a few limited purposes, including Personnel Sessions, to discuss pending or anticipated litigation, and real property negotiations.

A copy of the Brown Act is distributed to all new Councilmembers and additional copies are available for examination at Town Hall. All members should be sure to understand this law. Staff will be happy to assist in interpreting its requirements.

## **6.2 Limitations on Official Action of the City Council**

While the City Council is the supreme legislative body of the Town, State and Federal law impose certain limitations and restrictions on the powers of the Council. These limitations include:

**Preemption:** As a general law town, the Town of Atherton must comply with state and federal laws and therefore cannot make any rule or regulation which conflicts with or duplicates state or federal law, or conflicts with policies or regulations of the state or federal governments.

**Public Purpose:** All public funds must be expended for a public or municipal purpose of the Town. An improper expenditure (not authorized by law) may result in personal liability of the individual Councilmember.

**Expenditure Limitations:** At present, a State-imposed spending limitation (Gann Appropriations Limit) restricts the expenditure of most revenues to the 1978-79 fiscal year level plus or minus cost of living and population changes. This limitation may be relaxed by vote of the electorate or through the use of funds not subject to the limitation.

**Discrimination:** The Town may not enforce its rules, regulations, or ordinances on a discriminatory basis based on any protected status of any person or group of people. All facilities, rules, regulations and ordinances must be applicable to everyone on an equal basis.

**Civil Liberties:** The state and federal constitutions guarantee certain civil liberties and civil rights, such as the right of peaceful protest, assembly, worship, speech, etc. Municipal

regulations which unreasonably impinge on the lawful exercise of these rights, whether by prior restraint, prohibition, arbitrary regulation or arrest, are invalid.

**Reasonableness:** No municipal action can be arbitrary or excessive in scope.

### **6.3 Tort and Constitutional Rights Liability**

A town enjoys a variety of immunities from liability based on negligence claims. The State Tort Claims Act determines under what circumstances government will be liable for injuries to property and persons not involving constitutional violations, and requires that timely claims be filed ahead of any lawsuit in such matters.

### **6.4 Environmental Impact**

The State Public Resources Code requires the Town to conduct an environmental review before undertaking any public project or approving discretionary private projects. If the environmental review discloses a reasonable probability that the project will have potentially significant environmental impacts, an Environmental Impact Report (EIR) must be prepared in accordance with the California Environmental Quality Act (CEQA). If mitigations can be made ahead of approval, it may be possible to permit a Negative Declaration to be filed indicating that the mitigation measure have reduced potential impacts to less than significant levels. The Planning Staff is generally charged with determining what level of compliance under CEQA is required.

### **6.5 Resolutions**

Routine business and administrative matters are accomplished by motion and resolution. As with motions, resolutions are referenced in the minutes. Resolutions are also separately maintained, numbered in sequence, and preserved in a permanent collection by the City Clerk. Resolutions are usually prepared in advance by the City Manager or the City Attorney. Resolutions can be introduced and enacted at the same meeting.

### **6.6 Ordinances**

Legislative acts of the City Council intended for long-term application or having to do with matters required by law to be created by ordinance, are enacted by ordinance. Pursuant to Government Code §41802, the City Attorney is responsible for the drafting of all ordinances. Ordinances must be adopted at a regular meeting or an adjourned regular meeting. The approval of an ordinance occurs in two stages: Introduction and Adoption.

### **6.7 Effective Date of Ordinances**

Ordinances take effect 30 days from the date of adoption unless otherwise specified in the Ordinance, or in the case of an urgency ordinance which takes effect immediately.

### **6.8 Publication of Ordinances**

The text and voting record of Ordinances are published or posted by the City Clerk within 15 days of adoption. Failure to do so may invalidate the Ordinance. Standard posting sites are the Atherton Library, Atherton's contracted US Post Office station, Atherton Town Hall lobby,

and the Almanac newspaper. An alternative to publishing the full ordinance is to publish a summary of the ordinance. Summaries are prepared by the City Clerk. They are published at least five days prior to City Council adoption and a certified copy of the full text is posted in the City Clerk's office. Within five days following adoption, the summary, including the Council's vote and date of adoption, is republished.

### **6.9 Quorum Requirements**

A quorum must be present in order to conduct any business at a meeting. A quorum is present when a majority of the members of the Council are in attendance. The Mayor must determine that a quorum is present before business may be undertaken, and the quorum must be maintained throughout the meeting in order to continue to carry out business. If a Councilmember is recused from consideration of a certain matter, then he or she is generally not counted in order to achieve a quorum.

If it is known in advance that a quorum cannot be achieved, Councilmembers and interested parties should be notified. A notice must be posted by the City Clerk on the door of the meeting room within 24 hours of the cancellation, advising the public that the meeting has been canceled due to a lack of quorum.

### **6.10 Minutes**

Written minutes constitute the official record of the Council's activities. Minutes are approved by a formal motion of the Council. The minutes should record the minimum required information. They should provide a clear and concise statement of Council actions, including the motions made and the vote thereon. Reasons for making a motion, Council debate and audience reactions should not be included. Minutes include a list of who is present, the times of convening and adjournment, a record of motions made and votes taken, and a description of items discussed.

City Council minutes are to be kept for all meetings. In addition, all meetings are also videotaped and archived. The City Clerk produces the written minutes from these recordings.

### **6.11 Agendas and Agenda Packets**

The City Manager, in consultation with the Mayor and/or the City Staff, schedules items for City Council agendas. Other Councilmembers, as well as members of the public, may also request that certain topics be placed on the agenda; however, the agenda is ultimately the responsibility of the City Manager, and he or she is not required to add items simply because a request has been made. Because of the posting requirements of the Brown Act, requests for additions to the agenda must be made at least 72 hours prior to a meeting.

Prior to each regular or special meeting, the City Clerk compiles an agenda packet which contains the agenda, all staff reports, communications, resolutions, ordinances, and other relevant supporting materials. Agenda packets for City Council meetings will be available at Town Hall at least three days before each scheduled meeting. In addition, the Brown Act requires that the City Clerk print and post the agendas at least 72 hours before regular meetings and 24 hours before special meetings.

The City Clerk's Office posts the City Council agenda at the following locations: (a) Atherton

Town Offices, 91 Ashfield Road (lobby); (b) Atherton Branch Library, 2 Dinkelspiel Lane, (c) Town Council Chambers, 94 Ashfield Road, (d) on the Town's website and through the websites online newflash. The agenda specifies the time, date, and location of the meeting and contains a brief description and proposed action of each item of business to be transacted or discussed at the meeting.

Any citizen may submit written comments to the Council through the City Clerk or City Manager's office. Council will receive copies on the agenda packet provided such comments are received before the scheduled meeting. Written comments can be submitted to the City Clerk or City Manager's office up to the time of the meeting and distributed to the Council and the public at the meeting.

In order to be prepared for the meetings, Councilmembers should read the agenda packet and contact the City Manager with any questions regarding the information presented.

### **6.12 Actions Limited to Posted Agenda**

In general, the City Council cannot take action on any item not appearing on the posted agenda except under rare exceptions permitted by the Brown Act, usually to add critical matters that arose after posting of the agenda.

### **6.13 Public Comments**

Persons wishing to address the Council on any matter within the jurisdiction of the Town and not on the posted agenda are invited to do so during the Public Comment portion of the meeting. This period is limited three minutes per person. The Council is not able to undertake extended discussion of or act on non-agendized items. Such items can be referred to staff for appropriate action, which may include placement on a future agenda.

### **6.14 Public Hearings**

Some actions must be preceded by a public hearing primarily for the purpose of soliciting testimony from the general public. The Municipal Code and state law require public hearings for the consideration of certain issues, such as zoning amendments, conditional use permits, and fee increases. Official notice of public hearings will be published in the "Almanac" at least ten days before the hearing. Members of the public who wish to submit written statements may do so. Members of the public may also speak during the hearing. However, if there are numerous people who would like to speak representing the same viewpoint, the Mayor may ask that a spokesperson be designated for the group and/or require that each speaker's comments be limited to a set amount of time. If a time limit is to be imposed the Mayor should announce it before any members of the public have begun speaking.

### **6.15 Consent Calendar**

Items listed under the Consent Calendar are those items staff believes may not require Council discussion and are considered to be routine in nature. Ordinances introduced at a previous meeting which are brought back for adoption may also be included on the Consent Calendar. Before taking a vote, the Mayor will allow time for the Councilmembers, staff, and the public to read the list to determine if it includes any matters on which they may have a question, or which they would like to discuss or oppose. Any Councilmember, staff, or

member of the public has the right to remove any item from the Consent Calendar, in which case it is transferred to the regular agenda so that it may be considered, discussed, and voted on separately. All of the remaining items are then unanimously approved with one roll call vote.

## **7. CONCLUSION**

This handbook is designed to provide a basic overview of the Town of Atherton and the duties associated with the office of City Councilmember. It is intended to familiarize you with the workings of your government and to help you prepare to serve. It is not an exhaustive work, nor the final authority on matters of procedure or conduct. If you have further questions regarding the specific details of your office or other aspects of the Town government, please feel free to contact the City Manager, City Clerk, or City Attorney.

## **8. APPENDICES**

- A - City Council Rules of Procedures
- B - Code of Conduct
- C- Resolution Governing Committees and Commissions
- D- Rosenberg's Rules of Order
- E- City Council Approved Policies

# Appendix A



# **TOWN OF ATHERTON**

## **CITY COUNCIL**

### **RULES OF PROCEDURE**

## **RULES OF PROCEDURE**

### **1. Authority**

As provided by California Government Code Section 36813, the City Council establishes these Rules of Procedure for the conduct of meetings. The following Rules shall be in effect upon their adoption by the City Council and until such time as they are amended or new rules adopted in the manner provided by these Rules. It is the intent of these Rules to prevent inappropriate disruption, disturbance, or other disorderly conduct of Council meetings and to provide guidelines for conduct of members and procedures to be followed at such meetings.

### **2. General Rules**

2.1 Rules of Order Except in cases of conflict with these Rules, Rosenberg's Rules of Order shall be used as a guide to govern the proceedings of this Council.

2.1 Quorum Three members of the Council shall constitute a quorum necessary to transact business. In the event a quorum is not in attendance, those attending will be named in the minutes, and they shall adjourn the meeting to a later set time. If no one is present, the Clerk shall adjourn the meeting to a later date and post notice of that fact pursuant to Government Code Section 36811.

2.2 Compelling Attendance Members must notify the Presiding Officer for the issuance of an "excused absence" when they are unable to attend, which shall be granted. The member may notify the City Manager or City Clerk if the Presiding Officer is not available and the City Manager or City Clerk will notify the Presiding Officer of the request; or it will be noted in the minutes as an unexcused absence. In the event of perpetual absence by members, the Council may adjourn from day to day to compel attendance under the penalties prescribed by law. The seat of a member with two or more consecutive unexcused absences from regular council meetings shall be vacated pursuant to Government Code Section 36513(b).

2.8 City Staff The City Manager, City Attorney, and City Clerk shall attend all meetings of the Council unless excused, and in the event of an absence, a designee shall substitute.

The City Manager may make recommendations and shall have the right to take part in all discussions of the Council, but shall have no vote.

The City Attorney, upon request of the City Council or authorized representatives, shall give opinions, either written or oral, on questions of law and shall act as the Council's parliamentarian.

The City Clerk shall record, prepare and maintain the official record of the Council and perform other related duties as prescribed by the Council and/or City Manager.

Department Heads/Employees, as required by the City Manager or requested by the Council, shall attend Council meetings.

### **3. Mayor - Duties**

3.1 Mayor The Mayor is elected by members of the Council for a one-year period. No member shall serve as Mayor for consecutive terms. The City Council shall meet at least annually to choose one of its members as Mayor.

3.2 Vice Mayor The Vice Mayor shall be selected annually by a Council majority vote. No member shall serve as Vice-Mayor for consecutive terms.

3.3 Presiding Officer The Mayor, if present, shall preside. In the Mayor's absence, the Vice Mayor shall preside. In the absence of both, the Councilmembers present shall elect a temporary Presiding Officer.

3.4 Call to Order The Presiding Officer shall call the meeting to order at the hour appointed.

3.5 Preservation of Order The Presiding Officer shall preserve strict order and decorum, shall prevent verbal attacks on Councilmembers, staff, and/or citizens, and confine debate to the item under discussion.

3.6 Point of Order The Presiding Officer shall determine all points of order, subject to the right of any member to appeal to the entire Council. If an appeal is taken, the question shall be, "Shall the decision of the Presiding Officer be sustained?"

3.7 Motion to be Stated The Presiding Officer shall state all motions submitted for a vote and announce the result. A roll call vote shall be taken upon ordinances, and at the request of any member on any vote.

3.8 Mayor Proclamations Mayor Proclamations will be issued at the discretion of the Mayor for various purposes including:

- Recognizing individuals and organizations whose contributions and achievements have community-wide significance;
- Calling public attention to a significant community event, service or program;
- Highlighting a special period of observance, celebration, or recognition for community, regional, state, or national occasions.

Mayor Proclamations do not need formal Council action or approval and individual Councilmembers can request through the Mayor that proclamations be issued. All public requests for proclamations should be directed to the City Manager or Mayor for review. It will be at the discretion of the Mayor to determine whether it is appropriate to present the proclamation at a Council meeting.

Proclamations will be issued to recognize legitimate and significant community achievements, contributions, and occasions. These forms of recognition are not intended for partisan, commercial or narrow individual purposes which are inconsistent with the overall policies of the City Council.

#### **4. Order/Preparation of Agenda**

##### Order of Business

##### Call to Order

1. Pledge of Allegiance
2. Roll Call
3. Presentations
4. Public Comments
5. Closed Session Report
6. City Managers Report

##### Consent Items

##### Public Hearing Items

##### Regular Agenda Items

##### Council Reports/Comments

##### Future Agenda Items

##### Public Comments

##### Adjournment

4.1 Agenda Preparation The agenda shall be prepared in accordance with the preparation procedure below. Insofar as possible, the agenda shall be delivered to the Mayor, Councilmembers, and Library by 5:00 p.m. on the Friday preceding the Wednesday meeting. Council materials as much as possible shall be available for public review at the Library, and at the City Administrative Office beginning on the Friday afternoon, before the regular Wednesday Council meeting.

The agenda shall be prepared in accordance with the preparation procedures as directed by the City Manager with the following guidelines. One of the following methods may be applied for placing an item on a Council agenda:

- **City Manager:** The City Manager may add an item for Council consideration at a future meeting or may receive requests for agenda items from the public, staff, a committee member or a Council Member. The City Manager shall determine whether to add the request to an upcoming Council agenda. As a matter of practice, the City Manager may review the request with the Mayor prior to placing it on the agenda.

- **Staff and Committees:** There may be a need for agenda items which arise when a Town Committee or Commission passes a motion for Council consideration. These items may be added to the Council agenda by the City Manager no later than the second meeting following the request.
- **Colleagues' Memorandum:** If at least two councilmembers prepare a colleagues' memo, the City Clerk shall place the item on the Council agenda under the Future Agenda Items Section. A colleague's memo is a written request, no more than two pages in length, presenting an item to be added to the following Agenda. The item shall be added to the next Agenda or a specific designated Agenda by a majority vote of the Council.

4.2 Public Comments During Public Comments at a regular meeting, any person may address the Council, provided that the item (1) is of interest to the public and is within the subject matter jurisdiction of the Council and (2) is not otherwise on the agenda. Public Comments at special meetings shall be confined to the items for consideration on the agenda.

4.3 Consent Agenda Items listed under the Consent Agenda are those items staff believes will not require Council discussion and are routine in content. Also listed under the Consent Agenda are resolutions confirming action from a previous meeting which are brought back for approval of form rather than approval of action. Items may be removed by any Councilmember for separate discussion for clarification and/or upon request by any member of the public who wishes to speak on that item.

4.4 Actions Limited to Posted Agenda The City Council shall not take action on any item not appearing on the posted agenda except as permitted by Government Code Section 54954.2 of the Brown Act.

## 5. Citizens' Rights

### 5.1 Addressing the Council

(1) Any person may address the Council on the following portions of the agenda:

- Public Comments, as provided in Section 4.2.
- Public hearings, as provided in Sections 7 and following.
- When invited by the Mayor, prior to or during the hearing of all other portions of the agenda prior to the vote, if any, being taken.

(2) The following shall apply:

Each person addressing the Council shall step to the podium and may give their name and address for the record. The Council may require use of Speaker Cards.

It shall not be required that any person gives their name and address, but if they do not, they will not receive any follow-up response from staff or the City Council.

- A time limit may be imposed by the Council on each speaker depending on the subject matter.
- All remarks or questions shall be directed to the Mayor and Council as a body and not to any particular member.
- No person, other than members of the Council and the person having the floor shall be permitted to enter into the discussion.

5.2 Personal and Slanderous Remarks The Mayor shall discourage demonstrations before the Council, such as applauding or "booing". Upon instructions by the Mayor, a Sergeant-at-Arms may be appointed for the purpose of removing any person who, in the Mayor's judgment, has violated the rules of conduct and has disrupted, disturbed, or impeded the orderly conduct of the meeting.

## **6. Ordinances, Resolutions and Contracts**

6.1 Document Approval All ordinances, resolutions, and contracts shall, before being placed on the agenda, be approved as to form and legality by the City Attorney. Additionally, all these documents shall be reviewed by the City Manager.

6.2 Ordinance Introduction/Adoption Except as to urgency ordinances, unless a member requests a full reading, a proposed ordinance will be introduced by the reading of the title only. Ordinances introduced by first reading shall not be adopted within five days of the introduction or at other than regular Council meetings unless the ordinance carries an urgency clause, in which case introduction and adoption may occur at the same meeting.

6.3 Majority Vote Required An affirmative vote of at least a majority of the total membership of the Council shall be necessary to adopt an ordinance, resolution, or any order to pay money. Urgency (emergency) ordinances must be adopted by the affirmative vote of at least four members of the Council. Motions and any other matters may be adopted by a majority of those present, assuming there is a quorum.

6.4 Ordinance Preservation Following adoption of an ordinance, the City Clerk will assign a number to the ordinance, and post according to law. The ordinance shall be filed and preserved in the City Clerk's office.

## **7. Procedures Regarding Public Hearings**

Introduction Mayor announces subject of the public hearing.

### **7.1 Staff and Written Material Presentation**

- Written material not in the agenda packet, if any, (e.g. protests, etc.) are noted for the record and received and filed.
- Staff report, if any, is presented by staff member.
- Staff responds to Councilmember questions.
- Mayor declares the public hearing open/ opens public comment.

## 7.2 Public Comment

- Mayor instructs members of the audience: (a) speak from the podium; (b) they may give their name and address (optional) before speaking; (c) a time limit for each speaker may be designated; and (d) that repetition should be avoided.
- The applicant/representative will normally speak first.
- Questions by speakers will be noted prior to Council deliberation.
- Mayor declares the public hearing closed.

## 7.3 Council Deliberations

- After the Mayor has determined that no other member of the audience wishes to speak, the matter is returned to the City Council for deliberation.
- The Council may ask questions of speakers for clarification.
- The Council makes a motion and debates.

## 7.4 Council Action

- Council at this time may re-open and continue the public hearing.
  - (a) This should be done if any additional information is requested (e.g. a staff report).
  - (b) Continuing a public hearing to a specific date does not require additional notice.
- Council may:
  - (a) Vote on the item;
  - (b) Offer amendments or substitute motions and re-open the hearing allowing additional public comment if needed;
  - (c) Continue the matter to a later date for a decision. (Note: no additional reports or testimony may be received after the hearing has been closed).

## **8. City Council Committees**

8.1 Establishment (Appointment of Council Members Thereto). At the regular meeting in January, the Mayor shall appoint Council members to serve on various committees for a one year term. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by the Resolution Governing Committees and Commissions as amended.

8.2 Appointment of Council Members to City Council Committees Appointment of non-voting members to City Council Committees shall proceed as provided by the terms and provisions of separate resolution and as amended. Committees shall be created and members appointed thereto in accordance with rules and regulations set out by the City Council by the Resolution Governing Committees and Commissions as amended. Councilmembers shall serve as liaisons to such committees but shall have no vote.

8.3. Ad Hoc Committees The Mayor may appoint ad hoc committees of less than a quorum of the City Council as deemed appropriate and necessary. Such committees shall have a defined task and be of limited duration. Such committees are exempt from provisions of the Brown Act.

## **9. Suspension and Amendment of These Rules**

9.1 Suspension Any provision of these rules not already governed by the Atherton Municipal Code may be temporarily suspended by a majority vote by the Council.

9.2 Amendment These rules may be amended by additions or deletions or new rules adopted by a majority vote of the Council.

## **10. Miscellaneous Rules**

10.1 Roll Call Votes Upon demand by any Councilmember, made before the vote is called for, a roll call vote shall be taken on the motion before the Council. The Mayor's name shall be called last with other members' names called at random by the City Clerk. Members shall not give explanations for their vote during roll call.

10.2 Silence During a voice vote, silence by any member denotes an affirmative vote.

### **10.3 Continuance of an Item**

Continuance by a Councilmember: Any Councilmember may, with the consent of the Council, continue an item not subject to a deadline to an agreed upon meeting. If the Councilmember will not be in attendance at the meeting, the Councilmember's request to continue an item should be personally conveyed to the Mayor or City Manager prior to the meeting.

Continuances Requested by Someone Not a Councilmember: Anyone may request a continuance of an item by the Council. A request for a continuance may be granted by vote of the Council only if it finds that (1) the need for the continuance was beyond the control of the person requesting it, (2) the need for the continuance arose after (a) the date of the notice of public hearing was

published if the item is subject to a public hearing, or (b) the time the Council agenda was posted for items not subject to a public hearing, and (3) continuing the matter will not unduly impact any person interested in the decision.

10.4 Personal Privilege The right of a Councilmember to address the Council on a question of personal privilege shall be limited to cases in which the integrity, character, or motives of the Councilmember is in question, or where the welfare of the Council is concerned. The Councilmember may not interrupt the speaker, however, until recognized by the Mayor

10.5 Dissenting Opinion Any member shall have the right to enter into public record reasons for dissent or disagreement against any action carried by the majority.

10.6 Motion to Reconsider A motion to reconsider any action taken by the Council may be made in accordance with the following:

1. The motion must be made by a member who voted in the majority, although it may be seconded by any Councilmember.
2. The motion must be made prior to the adjournment of the meeting at which the original action was taken or at the next meeting.
3. The motion is debatable and has precedence over a pending motion.

10.7 Representations of Town and/or City Council policy. Councilmembers shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council policy may be reiterated or recalled without additional City Council approval.

## 11. Rules of Debate

11.1 Mayor as Presiding Officer The Mayor may move, second, and debate from the Chair, and shall not be deprived of any rights and privileges of a Councilmember.

11.2 Appeals Any ruling of the Mayor may be appealed to the entire City Council at the request of a Councilmember. The Mayor shall call for a roll call vote to determine if the ruling is upheld.

11.3 Rules of Parliamentary Procedure *Rosenberg's Rules of Order* shall govern parliamentary procedure. The City Attorney shall serve as parliamentarian.

APPROVED AS TO FORM:  
/s/ William B. Conners, City Attorney



# TOWN OF ATHERTON

## Council Code of Conduct

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### 1. PREAMBLE

The citizens of Atherton are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. The citizens of Atherton expect public officials, both elected and appointed, and city employees to comply with both the letter and spirit of the laws of the State of California, the United States of America, the Atherton Municipal Code, and the established policies of the Town of Atherton affecting the operations of local government.

Further, public officials, both elected and appointed, and city employees are expected to be independent, impartial and fair in their judgment and actions; and public office shall be used for the public good, not for personal gain; and public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Atherton City Council has adopted a Code of Conduct and Procedures for members of the City Council, committees and commissions and City staff to assure public confidence in the integrity of local government and its effective and fair operation. All persons covered by this code will aspire to meet the highest ethical standards in the conduct of their responsibility as a public official, elected or appointed, and city employees.

The Code of Conduct and Procedures shall be discussed at least annually, in either a regular meeting or a study session by the Council, Commissions, Committees and staff as an on-going means of developing a thorough understanding of the Code of Conduct and Procedures and the Brown Act.

### **RELATIONSHIP BETWEEN CITY COUNCIL, COMMITTEE AND COMMISSION MEMBERS AND TOWN STAFF**

The Town of Atherton municipal government operates under a council-manager form of government as established by Atherton Municipal Code. Under this form of government, the Council provides legislative direction, sets policy and monitors its execution by Town staff. The City Manager serves as the Town's chief executive and administrative officer and is responsible for directing the day-to-day operations of the Town.

Except for the purpose of inquiry, the Council and its members shall deal with the administrative service of the Town solely through the City Manager and neither the Council nor any member

thereof shall give orders to any subordinate of the City Manager, either publicly or privately. A more formal procedure should be followed if Council needs staff support that requires more than thirty (30) minutes of a staff member's time. If a majority of the Council approves such a request, the City Manager will proceed with said request and report his/her findings back to the Council upon completion. The same procedure applies to Council requests of the City Attorney, except in instances involving personnel or sensitive issues.

The work of the Town is a team effort. Councilmembers, Commissions, Committees and staff shall work together in a collaborative process, assisting each other in conducting the affairs of the Town.

## **POLICY STATEMENT**

The Atherton City Council has adopted this Code of Ethics to encourage public confidence in the integrity of local government and its fair and effective operation.

### **1. Act in the Public Interest**

Recognizing that stewardship of the public interest must be their primary concern, Councilmembers shall work for the common good of the people of Atherton and not for any private or personal interest, and they will endeavor to treat all persons, claims and transactions in a fair and equitable manner.

### **2. Comply with the Law**

Councilmembers shall comply with the laws of the nation, the State of California and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Atherton Municipal Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities and open processes of government; and Town policies.

### **3. Conduct of Members**

Councilmembers shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the City Council, commissions, committees, ad-hoc committees, staff or the public. Differing viewpoints are healthy in the decision-making process. Individuals have the right to disagree with ideas and opinions, but without being disagreeable. Once the City Council, Commissions and Committees take action, members of the Council, Committee, Commission, and staff shall commit to supporting said action of the majority and not create barriers to the implementation of said action. Members of the City Council, Commissions, Committees and Staff shall not represent themselves as speaking on behalf of the Town and/or the City Council without prior approval of the City Council. The statements of previously approved City Council action may be made without additional City Council approval.

### **4. Respect for Process**

Councilmember duties shall be performed in accordance with the processes and rules of procedures established by the City Council.

### **5. Conduct of Public Meetings**

Councilmembers shall inform themselves of public issues, listen attentively to public discussions before the body and focus on the business at hand. The City Council, Commissions and Committees will distinguish between free speech and malicious innuendo or personal, insulting, slanderous attacks and will not tolerate verbal abuse of any Council members, Commissions or Committee members, or staff, either from the floor or from each other. It is the responsibility of the Chair, and, if necessary, all the members of the Council, Commissions and Committees, to enforce and maintain decorum at meetings.

#### **6. Decisions Based on Merit**

Council decisions shall be based upon the merits and substance of the matter at hand.

#### **7. Communication**

It is the responsibility of Councilmembers to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Councilmembers.

#### **8. Coordination with City Staff**

Appropriate City staff should be involved when Councilmembers meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed. Councilmembers may coordinate the use of staff support through the City Manager.

#### **9. Disclosure of Corruption**

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State and the Federal government.

#### **10. Conflict of Interest**

In order to assure their independence and impartiality on behalf of the public good, Councilmembers shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interest and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

#### **11. Gifts and Favors**

Councilmembers shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

#### **12. Confidential Information**

Councilmembers shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the Town. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial or private interests.

### **13. Use of Public Resources**

Public resources not available to the general public (e.g., City staff time, equipment, supplies or facilities) shall not be used by members of Council, Committees, and Commissions for private gain or personal purposes. Staff can be used by the City Council, Commissions and Committees as a valuable resource to provide routine information on ongoing projects and programs. Council members, Commissions and Committee members shall request information needed to supplement, upgrade or enhance their knowledge about Town projects and programs directly through the City Manager.

### **14. Representation of Private Interests**

In keeping with their role as stewards of the public trust, Councilmembers shall not appear on behalf of the private interests of a third-party before the City Council or any commission or committee or proceeding of the City.

### **15. Advocacy**

To the best of their ability, Councilmembers shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the Council or the City.

### **16. Improper Influence**

Councilmembers shall refrain from using their position to improperly influence the deliberations or decisions of Town staff, commissions or committees.

### **17. Policy Role of Members**

Councilmembers shall respect and adhere to the Council-Manager structure of the Atherton City government as provided in State law and the Atherton Municipal Code.

### **18. Positive Work Environment**

Councilmembers shall support the maintenance of a positive and constructive environment for residents and Town employees.

### **19. Implementation**

Ethics standards shall be included in the regular orientations for City Council candidates. Councilmembers entering office shall sign a statement affirming they read and understood the Town of Atherton's City Council Code of Ethics.

### **20. Compliance and Enforcement**

Councilmembers themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of City government.

**RESOLUTION 13-08**  
**RESCINDS RESOLUTION 12-16**  
**A Resolution of the City Council of the Town of Atherton Establishing and**  
**Governing Town Committees and Commissions**

*Revised:*

*August 15, 2012*

*February 12, 2013*

*April 17, 2013*

*July 3, 2013*

*September 18, 2013*

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

**Section 1. Establishment of Committees**

The following committees and commissions are established for the Town of Atherton:

1. Audit/Finance Committee
2. Community Center Advisory Committee
3. Environmental Programs Committee
4. Park and Recreation Commission
5. Rail Committee
6. Transportation Committee

**Section 2. Committee and Commission Principles and Rules of Procedure**

Principles: All committees and commissions shall follow the City Council Rules of Procedure, the Atherton Municipal Code and the provisions of the California Open Public Meeting Law (Brown Act).

The responsibility and accountability for all work necessary to efficiently and cost effectively carry out the advisory functions of each committee/commission shall rest exclusively with the Chairman or Council Member assigned to the committee.

A Town Department is assigned to each Committee. Each Department Manager is responsible for providing the necessary staff (in the most cost effective manner) to prepare for, and attend committee/commission meetings. This includes but is not limited to creating an agenda and agenda packet, taking minutes and conducting follow up from meetings.

Committee/Commission Procedures for *placing items on Council agenda:*

1. Committee/Commission Action: Any formal recommendation to Council taken by a Committee/Commission shall be placed on a City Council agenda within the next two regular meetings.

The City Clerk has overall responsibility for posting committee/commission agendas.

Advocate: Collectively, members of committees and commissions are encouraged to advocate positions to the City Council on matters under the purview of their committee or commission. Otherwise, no committee or commission or any of its members shall represent itself or themselves as speaking on behalf of the Town, City Council, and/or committee or commission without prior approval of the City Council. Statements of previously approved City Council policy may be made without additional City Council approval. When there is a question a committee/commission member shall consult the City Attorney for advice. Members of committees or commissions may attend meetings of other committees or commissions and the City Council; however, members shall not present opinions of their own committee or commission at such meeting unless the position is previously approved by their committee. A quorum of a committee or commission may attend such a meeting, but they may not discuss among themselves Town business, including making comments that would amount to a discussion of the matter under consideration by a quorum of their own committee or commission.

Educational Materials: Committees and commissions may provide approved educational materials to the public regarding the functions and actions of the committee or commission, but shall not engage in advocating to the public any particular position which is contrary to City Council policy. Any educational materials sent to the public shall be approved by the City Manager, and shall follow the Towns procurement process. It shall be the City Manager's discretion on whether or not the educational materials need Council approval beforehand.

Meetings: Changes in the dates or time of meetings from the established schedule may be made by majority vote of the committee or commission

Minutes: All committees and commissions shall prepare action minutes. *Action* minutes shall be presented to the City Clerk within 7 days following the meeting or as soon as feasible if there is a reason not to produce them within that timeframe. Finalized minutes should be sent electronically to the City Clerk for posting, *after* the Committee has approved them. The City Clerk will share appropriate information received from the minutes with the City Manager and City Council.

Reports: An annual report shall be created and approved by the Committee and provided to the City Manager, City Clerk and City Council of committee and commission activities for the preceding year.

Special Meetings: The Chair or a majority of the Committee may call a special meeting at any time in accordance with the Brown Act.

Website: Any website created for a Committee by the Town should be incorporated in the Town's website. Websites need to be developed in accordance with the "advocate" section of this resolution.

### **Section 3: Appointment of Voting Members to Committees and Commissions**

Appointment: Members other than City Council Members shall be appointed following recruitment process set forth by the City Clerk and approved by the City Council. All appointed members shall be registered voters in the Town. Members shall serve at the pleasure of the City Council, or until the expiration of their terms set out below. Vacancies in any committee or commission arising from any reason, including expiration of term, shall be filled by temporary appointment of the City Council, or by annual recruitment. The Committee Chairperson or staff assigned shall notify the City Clerk of resignations and vacancies. Each Committee which cannot fill at least 50% of its seats shall be postponed until the Town can recruit at least a quorum (50%+1). During that time, Council shall continually recruit qualified individuals and town staff shall continue to advertise periodically.

Term expiration dates shall end on June 30<sup>th</sup>. Appointed committee/commission members shall serve no more than two full consecutive terms on the committee or commission to which they are appointed. A member may be reappointed to the committee or commission following a minimum two (2) year hiatus. However, if a seat is vacant and no one applies, City Council may grant an exemption.

City Council representatives and any alternates on committees are selected by the Mayor and approved by the City Council to serve a one (1) year term. Appointed City Council Members and City Council Member Alternates shall serve as liaisons to Committees and Commissions; but shall not serve as voting members to Committees and Commissions. Alternates participate on committees in the absence of the appointed Council Members. For each Committee or Commission, unless otherwise directed by the City Council, one City Council member shall be appointed as a primary liaison and one as an alternate. Members shall coordinate attendance to ensure appropriate representation.

Members who intend to be absent from a meeting shall alert the chairperson and/or staff person assigned. The Chairperson shall state during the meeting, under roll call whether the member is excused (notification was given) or absent (no notification was given). Unexcused absences of members, other than City Council Members, from two or more consecutively scheduled meetings shall result in the automatic vacation of the member's office. The staff person assigned to the Committee shall work with the Chairperson to alert the City Clerk of consecutive absences. The City Clerk shall alert the City Manager who shall decide how to inform City Council. City Council has the authority to override this rule based on the information received.

Chairperson and Staff: Each committee or commission shall have a Chairperson. The Committee shall select its Chair on an annual basis in July. Council Members shall not serve as Chair or Vice Chair of Committees. The Department assigned to the committee shall have the authority to appoint staff member(s) to serve Town committees and commissions. Any requests by a

committee or commission for staff work, information, or assistance from Town staff shall be made to the City Manager.

#### **Section 4: Funding for Committees and Commissions**

In the event funding for committees or commissions is desired, a budget shall be prepared and presented to the City Council for review and approval as part of the Town's regular budget process. The committee/commission shall follow the guidelines set forth by the purchasing policy approved by City Council through Ordinance 595 and any expenditure policies developed and approved by the City Council. No Committee member shall use his or her own personal credit card. For items under \$150 a committee member may request a cash advance and then come back to the Town with itemized receipts. For items over \$150, a committee member shall complete a check request from the Town or have the Town purchase the goods/services.

#### **Section 5: Committees and Commissions Composition, Powers and Duties**

##### **1. Audit/Finance Committee**

The Audit/Finance Committee shall have the following powers and duties.

Act in an advisory capacity to:

- a. Make recommendations to the City Council upon request in all matters pertaining to Town finances;
- b. Consult with the City Manager on matters pertaining to the budget, capital spending plan and the long range financial plan for the Town;
- c. Act in an advisory capacity and make recommendations to the City Council upon request in all matters pertaining to the Town's annual audit;
- d. Provide oversight of the annual audit and present and explain the audit to the City Council with recommendations as to acceptance;
- e. Advise City Council regarding appointment of outside auditors for annual audit;
- f. Review proposed audit scope with outside auditors prior to commencement of annual audit.

The Audit/Finance Committee shall have the following composition and terms:

Consists of two (2) Council Members and five (5) appointed, qualified resident members. Two terms shall be for one year and three terms shall be for two (2) years. Thereafter terms shall be for two (2) years ending on June 30th. The committee meets on an as needed basis typically in the Council Chambers or the Town Administrative Conference room. Pursuant to Council action on June 20, 2012 the Committee shall establish a regular schedule of meetings.

The Finance Department is assigned overall responsibility of the Audit/Finance Committee.

## **2. Civic Center Advisory Committee (CCAC)**

The Civic Center Advisory Committee (CCAC) shall have the following powers and duties.

Act in an advisory capacity to:

- a. Assist staff in the development of a master planning process to determine the key issues that need to be addressed by the community as well as a process for keeping the community at large informed and involved.
- b. Work with staff to solicit feedback through tools such as surveys, community gatherings, and workshops to disseminate information regarding the key issues and questions involved in the development of a Master Plan for the proposed new Civic Center.
- c. Engage in public outreach to solicit substantive feedback and opinions on the Master Plan and the Civic Center project and provide Council with a summary of findings for consideration. Support staff with updates for the Town website and periodic updates for residents.
- d. The CCAC may form Ad Hoc Subcommittees and/or host community workshops to involve a broader base of residents for the purposes of information gathering on specific issues, thus creating more community involvement and more in-depth visioning.
- e. Once the Council adopts a Master Plan, the CCAC will continue to work with staff to coordinate public outreach and collect resident input during the design phase of the Community Center project.
- f. Assist in discussion about the short-term improvements needed for the Library and Town Center facilities.

The Civic Center Advisory Committee consists of up to seven (7) members including two Council members. The Committee is setup for specific purposes listed above and when the purposes are accomplished the Committee will disband. The Civic Center Project consists of the Town's Administrative Offices, Police Department, Public Works, Building and Planning Departments, Council Chambers, Library, community meeting rooms and associated outdoor facilities. The Committee meets on the second Monday of each month at 4:30 p.m. in the Council Chambers or the Town Administrative Conference Room.

## **3. Environmental Programs Committee.**

The Environmental Programs Committee shall have the following powers and duties.

Act in an advisory capacity to:

- a. Make recommendations (programmatic and legislative) to the City Council upon request on all matters pertaining to the Town's natural and built environment and the

Town's regional role and responsibilities as one of the communities on the San Francisco Bay Peninsula.

- b. Create pro-active community engagement programs for residents, commercial and public enterprises active within the Town's jurisdiction for presentation to and consideration and approval by, the City Council.

The Environmental Programs Committee consists of ~~up to twelve (12)~~ a minimum of six (6) members including ~~two one (12)~~ Council Member liaisons and ~~ten (10)~~ five (5) residents of the Town. The term of office shall be as follows: Appointed members shall be appointed to four-year terms. Thereafter, each term of office shall be four (4) years. The committee meets quarterly on the first Wednesday of the month at 10:00 a.m. in the Conference Room of the Town Administrative Offices unless a special meeting in compliance with the provisions of the Brown Act is called by the committee chair.

The Planning Department is assigned overall responsibility of the Environmental Programs Committee.

#### **4. Park and Recreation Commission.**

The Park and Recreation Commission shall have the following powers and duties.

Act in an advisory capacity to:

- a. Make recommendations to the City Council upon request in all matters pertaining to parks and public recreation and to cooperate with other governmental agencies and public and private groups in the advancement of park and recreation planning and programming;
- b. Develop and maintain a master plan for parks within the Town and, annually, in the month of April, present a report to the City Council;
- c. Review the annual budget for parks and recreation during the process of its preparation and make recommendations with respect thereto to the City Council. This includes recommendations regarding the setting of fees. The budget should contain estimates and recommendations for such long-term capital outlay projects as may be necessary to provide for orderly development of park and recreation areas, buildings and facilities;
- d. Study and make recommendations on the acquisition and development of recreation areas, activities and facilities such as playgrounds, buildings, parks, open space and other centers of recreation;
- e. Assist Town staff in the planning of recreation programs for the community.

The Park and Recreation Commission consists of seven (7) appointed members. One member shall be a representative of the Holbrook-Palmer Park Foundation. One member shall be a representative of the Atherton Dames. Each of the foregoing representatives shall serve a term of two (2) years. Terms shall be staggered so that the term of office for two (2) members shall be four (4) years, and the term of office for the remaining members shall be four (4) years. Thereafter, each term of office shall be four (4) years. The Park and Recreation Commission meets on the first Wednesday of each

month at 6:30 p.m. in Holbrook-Palmer Park unless a special meeting in compliance with the provisions of the Brown Act is called by the committee chair.

The Public Works Department is assigned overall responsibility of the Park & Recreation Commission.

## 5. **Rail Committee.**

The Atherton Rail Committee shall have the following powers and duties.

Act in an advisory capacity to:

- a. Advise the City Council on all matters pertaining to High Speed Rail (HSR), the Rail Corridor and Caltrain.
- b. With the assistance of appropriate Town staff, research and address specific impacts HSR and other rail infrastructure and services may have on the Rail Corridor and the Town.
- c. Perform active outreach and cooperative efforts with groups and organizations opposing HSR.
- d. Rail Committee members are authorized to act as spokespersons to articulate and advocate the Town's Rail Related Policy Positions as they pertain to Rail Committee matters to legislatures, HSR and Caltrain board of directors, regional organizations, press and other interested parties.

The Atherton Rail Committee shall have the following composition and terms:

Consists of twelve (1~~2~~) members including ~~two-one~~ (21) Council Member liaisons and up to ten (10) appointed members. There are no term expirations for Rail Committee members. The committee meets on the first Tuesday of every other month at 6:00 p.m. in the Council Chambers. There are no term expirations.

Additionally, by action of approval of this Resolution the City Council approves Exhibit A titled, "Rail Related Policy Positions."

The Public Works Department is assigned overall authority of the Rail Committee.

## 6. **Transportation Committee.**

The Transportation Committee shall have the following powers and duties.

Act in an advisory capacity to:

- a. Make recommendations to the City Council upon request in all matters pertaining to transportation within the Town.

The Transportation Committee consists of ~~seven-six~~ (67) members including ~~two-one~~ (12) Council Members liaison and five (5) appointed members. The term of office shall be four (4) years.

The committee meets on the second Tuesday of every other month at 6:00 p.m. in the Council Chambers unless a special meeting in compliance with the provisions of the Brown Act is called by the committee chair.

The Police Department shall have overall responsibility of the Transportation Committee. The Chief of Police will coordinate with the Public Works Department when public works staff is needed.

**Section 6: Advice.**

Appointed members of committees and commissions are encouraged to seek advice from Town staff when they are uncertain of the foregoing rules.

This Resolution shall be effective immediately upon adoption. All previous resolutions governing Town committees and commissions including Resolution No. 10-13 and 12-16 are hereby superseded and rescinded on July 17, 2013.

*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 ~~17th~~ 18th day of ~~July~~ September, 2013, by the following vote.*

YES: 4 Council Members: Lewis, Wiest, Dobbie, Widmer  
~~Lewis, Wiest, Dobbie, Widmer~~  
NOES: 0 Council Members:  
ABSENT: Council Members:  
ABSTAIN: Council Members:

\_\_\_\_\_  
Elizabeth Lewis, Mayor  
Town of Atherton

ATTEST:

\_\_\_\_\_  
Theresa DellaSanta, City Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_

William B. Conners, City Attorney

## Appendix D

### Rosenberg's Rules of Order

#### Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules – “Robert’s Rules of Order” – which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time, and for another purpose. If one is chairing or running a Parliament, then “Robert’s Rules of Order” is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of, say, a 5-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of “Rosenberg’s Rules of Order.”

What follows is my version of the rules of parliamentary procedure, based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, Rosenberg’s Rules has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted Rosenberg’s Rules in lieu of Robert’s Rules because they have found them practical, logical, simple, easy to learn, and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars: (1) Rules should establish order. The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings. (2) Rules should be clear. Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate. (3) Rules should be user friendly. That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process. (4) Rules should enforce the will of the majority while protecting the rights of the minority. The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, and fully participate in the process.

#### Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. So, for example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the

body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais), and when that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body which establishes a quorum. So, for example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

### **The Role of the Chair**

While all members of the body should know and understand the rules of parliamentary procedure, it is the Chair of the body who is charged with applying the rules in the conduct of the meeting. The Chair should be well versed in those rules. The Chair, for all intents and purposes, makes the final ruling on the rules every time the Chair states an action. In fact, all decisions by the Chair are final unless overruled by the body itself.

Since the Chair runs the conduct of the meeting, it is usual courtesy for the Chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the Chair should not participate in the debate or discussion. To the contrary, the Chair as a member of the body has the full right to participate in the debate, discussion and decision-making of the body. What the Chair should do, however, is strive to be the last to speak at the discussion and debate stage, and the Chair should not make or second a motion unless the Chair is convinced that no other member of the body will do so at that point in time.

### **The Basic Format for an Agenda Item Discussion**

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. And each agenda item can be handled by the Chair in the following basic format:

First, the Chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The Chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the Chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the Chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the Chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the Chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the Chair may limit the time of public speakers. At the conclusion of the public comments, the Chair should announce that public input has concluded (or the public hearing as the case may be is closed).

Fifth, the Chair should invite a motion. The Chair should announce the name of the member of the body who makes the motion.

Sixth, the Chair should determine if any member of the body wishes to second the motion. The Chair should announce the name of the member of the body who seconds the motion. (It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the Chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the Chair.)

Seventh, if the motion is made and seconded, the Chair should make sure everyone understands the motion. This is done in one of three ways: (1) The Chair can ask the maker of the motion to repeat it. (2) The Chair can repeat the motion. (3) The Chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the Chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the Chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the Chair takes a vote. Simply asking for the “ayes”, and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain”. Unless the rules of the body provide otherwise (or unless a super-majority is required as delineated later in these rules) then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the Chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the Chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days notice for all future meetings of this body.”

### **Motions in General**

Motions are the vehicles for decision-making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the Chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words: "I move . . . ." So, a typical motion might be: "I move that we give 10-day's notice in the future for all our meetings."

The Chair usually initiates the motion by either (1) Inviting the members of the body to make a motion. "A motion at this time would be in order." (2) Suggesting a motion to the members of the body. "A motion would be in order that we give 10-day's notice in the future for all our meetings." (3) Making the motion. As noted, the Chair has every right as a member of the body to make a motion, but should normally do so only if the Chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

### **The Three Basic Motions**

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a 5-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion which is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused. But they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So that if a member makes what that member calls a "motion to amend", but the Chair determines that it is really a "substitute motion", then the Chair's designation governs.

### **Multiple Motions Before the Body**

There can be up to three motions on the floor at the same time. The Chair can reject a fourth motion until the Chair has dealt with the three that are on the floor and has resolved them. As a practical matter, more than three motions on the floor at one time tends to be too confusing and unwieldy for most everyone – so keep the maximum at three at three for the sake of clarity.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed first on the last motion that is made. So, for example, assume the first motion is a basic "motion to have a 5-member committee

to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a 5-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

First, the Chair would deal with the third (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion passed, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion failed, the Chair would now deal with the second (now, the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be 5 members or 10 members). If the motion to amend passed the Chair would now move to consider the main motion (the first motion) as amended. If the motion to amend failed the Chair would now move to consider the main motion (the first motion) in its original format, not amended.

Third, the Chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (5-member committee), or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

### **To Debate or Not to Debate**

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the Chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the Chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the Chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

A motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold”. The motion can contain a specific time in which the item can come back to the body: “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: “I move the previous question” or “I move the question” or “I call the question” or simply “question.” (As a practical matter, when a member calls for the “question” the chair can expedite things by simply asking the body if anyone wishes to continue discussing the underlying matter. If no one wishes to discuss it further, the chair can proceed to a vote on the underlying matter – without having to vote on the “question”. On the other hand, if even one member of the body wishes further discussion and debate on the underlying matter, then the chair has to treat the call for the “question” as a motion and proceed accordingly.) When a member of the body makes such a motion for the “question”, the member is really saying: “I’ve had enough debate. Let’s get on with the vote”. When such a motion is made, the Chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a 2/3 vote of the body. Note: that a motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a 2/3 vote of the body. A similar motion is a motion to object to consideration of an item. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a 2/3 vote.

### **Majority and Super-Majority Votes**

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a 7-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which, effectively, cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a 2/3 majority (a super-majority) to pass:

Motion to limit debate. Whether a member says “I move the previous question” or “I move the question” or “I call the question” or “I move to limit debate”, it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a 2/3 vote to pass.

Motion to close nominations. When choosing officers of the body (like the Chair) nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a 2/3 vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled, or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a 2/3 vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a 2/3 vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

### **Counting Votes**

The matter of counting votes starts simple, but can become complicated.

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50% of the body is required. So, for example, in a five-member body, if the vote is 3 in favor and 2 opposed, the motion passes. If it is 2 in favor and 3 opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the "no" votes and double that count to determine how many "yes" votes are needed to pass a particular motion. So, for example, in a seven-member body, if 2 members vote "no" then the "yes" vote of at least 4 members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie vote, the motion always fails since an affirmative vote is required to pass any motion. So, for example, in a five member body, if the vote 2 in favor and 2 opposed, with 1 member absent, the motion is defeated.

Vote counting starts to become complicated when members vote "abstain" or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. California Government Code Section 25005. Typically, this means 3 of the 5 members of the board must vote affirmatively in favor of the action. A vote of 2 to 1 would not be sufficient. A vote of 3 to 0 with two abstentions would, be sufficient. In general law cities in California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city

council. California Government Code Section 36936. Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting”. Accordingly, under the “present and voting” system you would NOT count abstain votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you DO count abstain votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice? Let’s look at a few examples.

Let’s assume that we have a five-member city council voting on a motion that requires a simple majority vote to pass, and let’s assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting”. If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with 1 abstention, the motion fails.

Let’s assume we have a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and let’s further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of 3 “yes”, 1 “no” and 1 “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed – so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, let’s change the scenario slightly. Let’s assume the same five-members city council voting on a motion that requires a two-thirds majority vote to pass, but let’s now assume that the body DOES have a specific rule requiring a two-thirds vote of members “present”. Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the vote were 3 “yes”, 1 “no” and 1 “abstain”, then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

And, how, exactly, does a member cast an “abstention” vote? Any time a member votes “abstain” or says “I abstain”, that is an abstention. However, if a member votes

“present” that is also treated as an abstention (the member is, essentially, saying, “count me for purposes of a quorum, but my vote on the issue is abstain”). In fact, any manifestation of intention to vote neither “yes” nor “no” on the pending motion may be treated by the chair as an abstention. And if written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent”? Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent”. That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

### **The Motion to Reconsider**

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body – including a member who voted in the minority on the original motion - may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

### **Courtesy and Decorum**

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the Chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the Chair before proceeding to speak.

The Chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The Chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the Chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: “point of privilege.” The Chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be: “point of order.” Again, the Chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the Chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the Chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the Chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “Let’s return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the Chair discovers that the agenda has not been followed, the Chair simply reminds the body to return to the agenda item properly before them. If the Chair fails to do so, the Chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the Chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

### **Special Notes About Public Input**

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the Chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did



# Appendix E

## TOWN OF ATHERTON CITY COUNCIL USE OF COMPUTER HARDWARE AND SOFTWARE POLICY Policy Approved by 5-0 vote of City Council on February 20, 2013

### I. BACKGROUND

Council approved a budget to purchase iPads for use to distribute agenda materials to the City Council. This action was put into effect to reduce the amount of paper used and number of copies made in preparing agenda materials for City Council meetings.

The policy covers the following areas:

- How computer hardware and software will be issued to members of the City Council
- Use of iPads and associated software
- Legal requirements, including Brown Act, Public Records Act, and prohibition on use for campaign purposes
- Personal use of iPad
- Disposal of iPad at end of term on the Council

### II. POLICY

This policy is intended to guide the use of computer hardware and software by the City Council. However, it does not cover every situation that may arise. All existing Council policies and parliamentary laws continue to apply to Council Member conduct while using iPads.

### III. PURPOSE

The use of iPads will assist members of the City Council in the efficient performance of their duties and will also help enhance environmental sustainability by reducing the amount of paper needed for the operations of the Council.

### IV. PROCEDURE

All Council Members are requested to use an iPad to access agendas, agenda packets, and other agenda materials. Paper copies will only be available on request.

All Council Members using iPads for Town business will sign the attached agreement acknowledging understanding of and compliance with this policy.

All referenced to “iPad” include iPad2 and other iPad-series devices. The two options for obtaining an iPad are listed below:

**Option A: Town-issued device(s)**

The Town will provide Council Members with a Town owned iPad, protective case, and necessary applications and accessories. Council Members are responsible for the general care of any Town-issued equipment. Any iPad or accessory that is broken, damaged, or fails to work properly must be taken to the City Clerk who will have IT evaluate it.

**Option B: Council Member-owned device(s)**

Council Members may choose to purchase or utilize their own iPads. These devices must support the applications required by the Town. The Town will not provide any hardware support for Council Member purchased and/or owned devices.

**A. Software and Use:**

**1. The following apply to both Town-issued and Council Member-owned devices**

Council Members will be provided with the applications needed to conduct Town business. The Council Member is responsible for updating the applications and operating system(s) as updates are released. Training on the basic use of the device as well as the applications and software required by the Town for conducting Town businesses will be provided by the Town. All Town-provided data, applications, and services (such as email and calendars) will remain the property of the Town and may be accessed, altered, or removed by the Town at any time. Information on any iPad used for Town business may (with limited exceptions) be subject to the provisions of the Public Records Act.

If a Council Member believes the security of his or her device has been compromised, he or she shall immediately notify the City Manager or City Clerk. The device should be password protected and used only by the authorized Council Member. Internet use, email and other activities carried out on the iPad may be traceable to the Town of Atherton, and may impact the reputation of the Town.

Council Members shall not use the iPad in any way as to violate the public meeting requirements of the Brown Act. Council Members may not use the computer hardware and software in violation of Government Code § 54964, which prohibits the expenditure or authorization to expend public resources to “...support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.”

Cellular data use (not Wi-Fi) outside of the continental USA is extremely expensive. Town-issued iPads may only be used outside of the continental USA in Wi-Fi mode. The Town will not pay data fees for Council Member purchased devices incurred when used outside of this area.

**2. The following applies to Town-issued computer hardware and software**

Town-issued iPads and accessories are tools for Council Members to conduct Town business. Only personal use which is lawful, and which does not result in a gain or advantage to the user or a loss to the Town is permitted.

Town-issued iPads may be backed up, remotely wiped, restored from a backup, or restored to factory settings as necessary to maintain the technical viability of the device and/or the Town's network. The Town does not accept responsibility for loss of files or software lost due to a wipe and backup. The Town may add, upgrade or remove software/information on the device(s) as necessary to maintain the technical viability and/or the Town's network. In addition, the Town will retain access to and ownership of backups of the computer hardware and software's content. Any user ID's and cloud backup accounts used to manage the device will be maintained by the Town.

### **3. The following applies to Council Member-owned computer hardware and software**

Council Member-owned devices can be used without restriction, but Council Members are responsible for backing up their own devices. The Town takes no responsibility for maintaining backups of Council Member-owned devices. Town Staff will not provide any support for hardware, except for software that is required and provided for conducting Town business.

### **4. Data**

The Town may purchase a data plan for all Town-issued devices. Use of the data plan is subject to the same restrictions as use of the device itself.

Data plans for Council Member owned devices shall be provided by the Council Member at their sole expense.

### **5. Return of Device**

Town issued iPads shall be returned to the City Clerk when the individual Council Member's term and service on the City Council has ended. Upon return of the iPad to the Town and following the preparation of any appropriate backup files, the device will be wiped clean of any and all information at the end of a Council Members term and service.

**Town of Atherton**

**Computer Hardware and Software Policy Agreement for City Council Members**

I, the undersigned City Council Member of the Town of Atherton, have been provided a copy of City Council Computer Hardware and Software Policy and understand its contents fully. I accept and understand the terms of the policy and agree to abide by all terms contained in it.

Signature:

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Title:

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Print Name:

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Date:

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## Permitted Apps for iPads

### Must Have Free Apps



**Dropbox** – Online cloud storage. Needed to access agendas and packet material



**Adobe Acrobat Reader** – Open agenda and access items by bookmarks



**Dragon Dictator** – Converts spoken words to text

**Google Docs** – Cloud storage. Word processor, spreadsheets, presentation software; Records audio

### Permitted Apps (not Free)



**GoodReader** – For reading and annotating PDF documents



**QuickOffice** or



**Apples Pages** – Comparable to Microsoft Office Suite



**Notability** – Records audio, creates timestamps and matches those to your typed notes; Useful for meetings

## **Chapter 3.16 PURCHASING POLICY**

### Sections:

- 3.16.010 Adoption of purchasing system.
- 3.16.015 Scope of purchasing policies and procedures.
- 3.16.020 Definitions.
- 3.16.030 Purchasing Officer.
- 3.16.040 Centralized purchasing.
- 3.16.050 Inspection and testing.
- 3.16.060 Appropriation of purchasing funds.
- 3.16.070 Purchase orders.
- 3.16.080 Purchase/procurement cards.
- 3.16.100 Procurement of goods and supplies, equipment, materials, and nonprofessional – Open market.
- 3.16.110 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Informal procedures.
- 3.16.120 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Formal procedures.
- 3.16.130 Best qualified vendor.
- 3.16.140 Exceptions to purchasing requirements.
- 3.16.150 Staging prohibited.
- 3.16.160 Amendments and change orders.
- 3.16.170 Leases.
- 3.16.180 Trade-ins.
- 3.16.200 Professional services contracts.
- 3.16.210 Amendments to professional services contracts.
- 3.16.220 Donated goods and supplies, equipment, materials, professional and nonprofessional services.
- 3.16.230 Public works projects; Uniform Construction Cost Accounting.
- 3.16.240 Requirements for contracting public works projects.
- 3.16.250 Informal bidding procedures for public works projects.
- 3.16.260 Approval of public works contracts pursuant to informal bidding procedures.
- 3.16.270 Approval of change orders on public works contracts.
- 3.16.280 Public works project bids in excess of maximum authority.
- 3.16.300 Surplus supplies and equipment.
- 3.16.310 Surplus supplies and equipment; trade-ins.
- 3.16.320 Surplus supplies and equipment; sale.
- 3.16.330 Surplus supplies and equipment; donation.
- 3.16.340 Surplus supplies and equipment; scrap.

### 3.16.350 Exemptions to provisions of this chapter.

#### **3.16.010 Adoption of purchasing system.**

This purchasing system is adopted in order to establish efficient regulations, policies, and procedures for the purchase of goods and supplies, equipment, materials, and services, to secure on behalf of the Town at the lowest possible cost commensurate with quality needed and in a manner that ensures a fair and competitive process, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, to assure the quality, suitability, and fitness of purchases, and to ensure that the Town obtains the highest quality of supplies and equipment and level of service at a fair and reasonable cost.

#### **3.16.015 Scope of purchasing policies and procedures.**

Except as otherwise provided herein, the procurement regulations, policies, and procedures set forth in this chapter shall apply only to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services, and shall apply to public works projects, as defined in Section 22002 of the California Public Contracts Code. This purchasing system implements the California Government Code: Sections 54201 to 54205.

#### **3.16.020 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated, which are applicable to both the singular and plural thereof:

“Approved bidders’ list” means the list of approved qualified contractors or service providers for a specific good or service. The list may contain both locally qualified providers as well as suppliers of state and local agencies that have previously bid and established contracts for goods or services pursuant to Public Contract Code §§ 12100-12113. The list also provides the approved offerings of specific products provided by these contractors.

"Best value" means a value determined by objectives relative to price, features, functions, and life-cycle costs.

“Cost” means the amount charged, inclusive of sales tax, use tax, delivery charges, shipping and/or handling.

“Emergency” means a sudden, unexpected occurrence that poses a clear and eminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

“Estimated value” means the estimated total value as determined by the Purchasing Officer at the beginning of the procurement process for the proposed acquisition of

goods and supplies, equipment, materials, and nonprofessional services. When making this initial threshold determination, the Purchasing Officer shall make reasonable use of all available market data and pricing information to estimate the total cost to the Town, inclusive of taxes, licenses, freight charges, installation charges, fees, and other consideration, for the proposed procurement. The Purchasing Officer shall not use the value of any anticipated exchange or trade-in amount to reduce the estimated value of the proposed procurement.

“Force account” means construction or maintenance activities performed by a municipality’s own personnel and equipment, rather than by outside labor or contract.

“Goods and supplies, equipment, and materials” means fixed, movable, disposable, and/or reusable products, commodities, or items used by the Town, including but not limited to office supplies, program supplies, subscriptions, vehicles, fuel and vehicle supplies, tools, computers, computer hardware and software, computer-related equipment and copiers, office furniture, and fixtures.

“Maintenance” work means:

- A. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
- B. Minor repainting.
- C. Resurfacing of streets and highways at less than one inch.
- D. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
- E. Work performed to keep, operate, and maintain publicly owned water or waste disposal systems.

“Nonprofessional services” means construction services for public works projects or those services not constituting professional services.

“Professional services” means any service which is generally characterized as a "profession" rather than a "business," "industry," "occupation" or "trade" under California State law. Without limiting the foregoing, the following types of services shall be included within the definition of "professional services" under this chapter: accounting; architecture; auditing; business appraisal or valuation; construction project management; construction management and inspection; engineering; environmental; financial planning; insurance; land surveying; landscape architecture; landscape engineering; legal; medical; municipal planning; public housing; real estate appraisal; and real estate brokerage or sales. Moreover, the provision of consulting services with respect to, rather than the actual performance of, any of the foregoing services shall also be deemed "professional services" for purposes of this chapter.

“Purchase” means the renting, leasing, purchasing, licensing, or a trade of equipment or supplies. (Ord. 2012)

### **3.16.030 Purchasing Officer.**

There is hereby created the position of Purchasing Officer. The Purchasing Officer shall be responsible for, and have general supervision of, the following purchasing functions as implemented by various departments throughout the Town pursuant to this chapter and any implementing administrative orders established by the Purchasing Officer. The Purchasing Officer shall be the City Manager or his or her designee, unless a formal Purchasing Officer position is created, whereby the role cannot be further delegated, except back to the City Manager. Pursuant to the regulations, policies, and procedures established in this chapter, the Purchasing Officer shall have the authority to:

- A. Purchase or contract for goods and supplies, equipment, materials, and professional and nonprofessional services, including preparation and circulation of Requests for Proposals, Requests for Qualifications, and other similar requests for submission of bids or proposals;
- B. Negotiate, approve, and execute, as well as recommend approval and execution of, orders and contracts for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services;
- C. Act to procure on behalf of the Town the needed quality in goods and supplies, equipment, materials, and services at the least expense to the Town;
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- E. Prepare administrative rules, procedures, and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and services on behalf of the Town;
- F. Keep informed of current developments in the field of municipal purchasing, pricing, market conditions, new technologies, and new products and services;
- G. Develop, amend and monitor the Town’s standard purchasing terms and conditions;
- H. Prescribe and maintain such forms and other rules and regulations as reasonably necessary for the proper implementation of the policies and procedures established in this chapter;

- I. Coordinate or supervise the inspection of all goods and supplies, equipment, materials, and services purchased on behalf of the Town to ensure conformance with bid specifications;
- J. Exercise general supervision and control over all inventories of supplies belonging to the Town and use such inventories in making procurement decisions to avoid excessive inventories and inventory spoilage;
- K. Recommend the transfer of underutilized, surplus, or unused goods and supplies, equipment, and materials between departments as needed and the sale of such goods and supplies, equipment, and materials which cannot reasonably be used by any department or which become unsuitable or obsolete for Town use;
- L. Maintain and update periodically a vendor master file or list necessary for the efficient operation of purchasing functions, such as approved bidders list or standard contracts;
- M. Conduct (or ensure the conducting of) annual audits of the process to ensure compliance of purchasing, receiving and payment authorization procedures;
- N. Consider and encourage the purchase of recycled and recyclable materials and environmentally friendly products, whenever practicable; and
- O. Where other factors are equal, procure goods and supplies, equipment, materials, and services from local business enterprises.
- P. Confirm periodic physical inventories are conducted and monitor asset tagging procedures and audit trails.

#### **3.16.040 Centralized purchasing.**

The Purchasing Officer may implement centralized purchasing for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services if it is deemed applicable for cost savings and efficiency purposes.

#### **3.16.050 Inspection and testing.**

The Purchasing Officer or requesting department shall inspect goods and supplies, equipment, and materials delivered, as well as contract services performed, to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer or requesting department shall have the right to waive any defect, irregularity, or informality that does not result in a competitive advantage to any bidder or proposer. The Purchasing Officer or requesting department shall have the authority to require demonstrative testing of samples submitted with bids and samples

of deliverables which are necessary to determine their quality, fitness for a particular use, and conformance with specifications.

### **3.16.060 Appropriation of purchasing funds.**

The City Council is responsible for and shall appropriate such funds as are necessary to carry out the provisions of this chapter. Unless otherwise provided in this chapter, the Purchasing Officer shall not issue any order or contract for goods and supplies, equipment, materials, or services unless there exists an unencumbered appropriation in the adopted budget against which such purchase may be charged.

All outstanding encumbrances, with the exception of capital improvement project funds, shall lapse at fiscal year-end. There shall be no non-capital fund balance reserve for encumbrances.

### **3.16.070 Purchase orders.**

Procurement of goods and supplies, equipment, materials, and professional and nonprofessional services over one thousand dollars (\$1,000) not covered within a construction contract or public work specification shall be made only by purchase order issued by the City Manager (Purchasing Officer) and approved by the Finance Director. Contract purchase orders shall be issued for goods and supplies, equipment, materials, and professional and nonprofessional services when the vendor has submitted a price quotation to hold pricing for a specified length of time (thirty (30) days minimum required), the item being procured is on the approved bidders list, or a contract has been approved by the City Council through formal bid procedures.

To request a purchase order, a purchase requisition must be submitted to the Finance Department to confirm available funding, and approved by the Finance Director.

### **3.16.080 Purchase/procurement cards.**

Department heads are authorized to make purchases of goods and supplies, equipment, materials, and nonprofessional services up to one thousand dollars (\$1,000) (lower limits may be established) using Town authorized procurement cards. Each such purchase shall be immediately documented with a receiving report and procurement card authorization slip submitted to the Finance Director for approval and payment. Combined monthly procurement card purchases shall be limited to no more than three thousand dollars (\$3,000) for any department.

### **3.16.100 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Open market.**

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value as established by resolution of the City Council on a periodic basis, inclusive of taxes, licenses, freight charges, installation charges, fees,

and other considerations, may be made by the Purchasing Officer in the open market. These purchases may be placed using approved bidders lists or by obtaining at least three recorded informal quotes, when practicable.

**3.16.110 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Informal procedure.**

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value as established by resolution of the City Council on a periodic basis, inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the informal procedures set forth in this section.

- A. The requesting department shall solicit informal proposals by telephone or written request to prospective vendors.
- B. Except as otherwise provided in this chapter, purchases shall be based on at least three informal written proposals or bids; or purchase shall be placed using approved bidders list, if available.
- C. Informal proposals shall be submitted by prospective vendors to the requesting department. The City Clerk shall retain a record of all informal proposals for a period of two years following completion of the informal procedures established in this section, which shall be made available for public review and inspection upon request.
- D. The order or contract shall be awarded by the Purchasing Officer to the lowest proposer consistent with the best qualified vendor selection criteria set forth in Section 3.16.130.

**3.16.120 Procurement of goods and supplies, equipment, materials, and nonprofessional services — Formal procedure.**

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value as established by resolution of the City Council on a periodic basis, inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the formal procedures set forth in this section.

- A. Notice Inviting Bids. Notices inviting formal bids or proposals from prospective vendors shall be published and posted no later than ten (10) calendar days before the submission date for formal bids in accordance with *Government Code 20162-Bids Requiring Notice*. The notices shall describe the requested goods or supplies, equipment, materials, or nonprofessional services in general terms, how to obtain more detailed information concerning the procurement, and state the time, place, and deadline for submission of sealed bids or proposals. The notice inviting bids shall also

include specifications, and all contractual terms and conditions applicable to the procurement.

B. **Published Notice.** The notice inviting formal bids or proposals shall be published and posted in at least two public places in the Town that have been duly designated by the City Clerk as the official places for the posting of public notices and on the Town's official website. In addition, such notice may also include trade publications when practicable. The public notice shall state the place, date and time of the bid opening.

C. **Bidders' List.** The Town may require that a bidders list be developed listing and approving qualified vendors before the vendor is eligible to submit a bid or proposal. If a bidders' list is used it must be stated in the notice inviting bids.

D. **Bidders' Security.** When deemed necessary, the Town shall require bidders' security. Bidders' security shall be in accordance with the provisions of the California Public Contracts Code.

E. **Bid Opening Procedure.** Sealed bids or proposals shall be submitted to the office of the City Clerk and shall be identified as formal competitive bids or proposals on the outside of the sealed envelope. The City Clerk shall store all sealed bids in a secure location until opening. The City Clerk shall open all bids or proposals in public at the time and place stated in the notice inviting bids, with a witness present. A tabulation of all bids or proposals received shall be open for public review and inspection in the office of the City Clerk during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

F. **Rejection of Bids.** In its sole discretion, the City Council may reject any and all bids or proposals for any reason or for no reason, and may suspend, delay, or otherwise cancel the procurement, or may order the re-advertisement of the request for bids. If all formal bids or proposals are rejected and the City Council resolves by a recorded majority vote of Council that is present that the procurement can be performed more economically by force account, by informal procedures, or through open market purchases, then it may dispense with further formal competitive public bidding.

G. **Tie Bids.** If two or more formal bids or proposals received are the same and are the lowest, the City Council may accept the one it chooses, and the City Council may allow for a local vendor preference or accept the lowest bid made after negotiation with the tie bidders.

H. **Award of Contracts.** Contracts subject to formal procedures shall be awarded by the City Council to the lowest responsive and responsible bidder consistent with the best qualified vendor selection criteria set forth in Section 3.16.130, except as otherwise

provided herein. The decision of the City Council shall be final. Contracts shall be finalized and executed with reasonable promptness.

I. **Contract Execution.** Only the Mayor or City Manager is authorized to sign and enter into contracts on behalf of the Town. The City Manager may sign contracts and agreements when the total value of the contract is less than the amount set by resolution for formal procedures. No other employee is authorized to sign a contract binding the Town, and any contract inappropriately signed is voidable. Before a contract is signed by the City Manager or placed on a City Council agenda for approval, the contract must: include appropriate insurance and indemnification provisions reviewed by the Town's risk manager or City Attorney; be approved as to form by the City Attorney; be approved as to budget availability and purchasing procedural compliance by the Finance Director; and executed by the other party (except in the instance of a public entity)

J. **No Bids Received.** If no bids are received, the purchase may be let by the informal procedures set forth in Section 3.16.110,

K. **Performance Bonds.** The Town shall have authority to require that a performance bond be posted before entering into a contract in such amount as may be reasonably necessary to protect the best interests of the Town. If a performance bond is required, the form and amount of the bond shall be described, whenever possible, in the notice inviting bids, and shall be in a form approved by the City Attorney. Release of performance bonds shall be made only upon successful completion of the work and approval and acceptance by the Purchasing Officer or City Council.

L. **Defects, Irregularities, and Informalities.** The City Council may, in its sole discretion, waive any defect, irregularity, or informality in the formal bids or proposals or in the competitive procedures established in this section as long as no unfair advantage results, and no such defect, irregularity, or informality shall void any contract entered into by the Town once executed.

M. **Storage of Sealed Bids.** All opened bid materials, after award, are to remain in the possession of the City Clerk for the time prescribed by law.

### **3.16.130 Best qualified vendor.**

In determining the best qualified vendor, consideration is to be given to quality and performance of the goods and supplies, equipment, or materials to be purchased or nonprofessional services to be provided by the vendor. Criteria for determining the best qualified vendor shall include but not be limited to the following:

A. The cost or best value of the goods and supplies, equipment, materials, or nonprofessional services;

- B. The ability, capacity, and skill of the vendor to perform the contract and to provide the goods and supplies, equipment, materials, or nonprofessional services requested;
- C. The ability of the vendor to provide the goods and supplies, equipment, materials, or nonprofessional services requested promptly or within the time specified, without delay or interference;
- D. The ability of the vendor to demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the contract;
- E. The character, integrity, reputation, judgment, experience, and efficiency of the vendor;
- F. The quality of vendor's performance on previous purchases or contracts with the Town;
- G. The ability of the vendor to provide future maintenance, repair parts, and services for the use of the goods and supplies, equipment, or materials purchased;
- H. The ability of the vendor to demonstrate its prior, current, and continued compliance during the contract term with all applicable federal, state, and local laws, statutes, ordinances and all lawful orders, rules, and regulations promulgated thereunder;
- I. The ability of the vendor to timely produce a complete and accurate IRS Form W9; and
- J. A local business enterprise preference may be given when practicable and when called out in the plan bid specifications.

**3.16.140 Exceptions to purchasing requirements.**

The procurement policies and procedures set forth above need not be followed, may be dispensed with, and/or are not applicable to the following situations, purchases, or contracts:

- A. Sole Source. When in the opinion of the Purchasing Officer goods and supplies, equipment, materials, or proprietary services are unique, available only from one source, or is sought to match existing goods already in use, then a sole source procurement may be used;
- B. No Bids Received. When after a reasonable attempt has been made to obtain informal bids or proposals, and it has been determined by the Purchasing Officer that three bids or proposals cannot be obtained;

C. Emergency Purchases. When the Purchasing Officer finds that emergency conditions require the immediate purchase of goods and supplies, equipment, materials, or services; the Purchasing Officer shall file promptly with the City Council a certificate showing that emergency conditions existed and created the necessity for such action, together with an itemized account of all expenditures;

D. Obtaining Lowest Price. When in the opinion of the Purchasing Officer formal bidding is not likely to result in the lowest price and that no competitive advantage can be gained by soliciting bids. However, under such circumstances compliance with the informal procedures set forth in Section 3.16.110 shall be required;

E. Piggyback or Awarded Competitive Bid. When in the opinion of the Purchasing Officer the goods and supplies, equipment, materials, or nonprofessional services are available from a vendor who has been selected as the lowest bidder within the prior six months by another public agency using competitive bidding procedures substantially the same as or similar to those normally utilized by the Town for the acquisition of such supplies or services, and when the price offered to the Town is substantially equivalent to that offered to the other public agency;

F. Cooperative-type (State contract) Bids. When in the opinion of the Purchasing Officer the goods and supplies, equipment, materials, or nonprofessional services are available from a vendor who has been selected as the lowest bidder through a cooperative-type agreement with another government entity using competitive bidding procedures substantially the same as or similar to those normally utilized by the Town for the acquisition of such supplies or services, and when the price offered to the Town is substantially equivalent to that offered to the other public agency; or

### **3.16.150 Staging prohibited.**

Purchases shall not be knowingly staged, or bids be split or separated into smaller units or segments solely for the purpose of evading the competitive formal or informal procurement procedures of this chapter.

### **3.16.160 Amendments and change orders.**

Following the award of a procurement contract for goods and supplies, equipment, materials, or nonprofessional services pursuant to Sections 3.16.100, 3.16.110, and 3.16.120, the contract may be amended by the issuance of a change order or amendment, provided the change which is the subject of the change order or amendment is reasonably related to the scope of the original contract and based on post-award information that requires modification of the agreement based on unforeseen conditions or by mutual agreement of the parties. The requesting department will maintain control relative to the scoping, estimating, and negotiating of

the proposed change(s) and the Finance Director will confirm the availability of funds for the proposed change in the event that the change order increases the contract cost. Any change order or amendment which results in a total amended contract amount less than the Purchasing Officer's authority level may be approved by the Purchasing Officer. Any change order or amendment which results in a total amended contract amount of greater than the Purchasing Officer's authority level shall be approved by the City Council.

### **3.16.170 Leases.**

All leases or lease purchases of goods shall be subject to the requirements of this chapter. The requirements applicable to each lease shall be determined in accordance with the aggregate amount of contracted or projected lease payments, which shall be deemed equivalent to a purchase price.

### **3.16.180 Trade-ins.**

The Purchasing Officer is authorized to exchange for or trade in goods and supplies, equipment, and materials for the purpose of exchanging or trading in such supplies and equipment for like-kind replacement, for other commodities, products, equipment, or property, or for rebate, down payment, or credit toward the purchase of other similar goods and supplies, equipment, or materials. The Purchasing Officer shall not consider the trade-in value amount in calculating the procurement authority dollar thresholds established in Sections 3.16.100, 3.16.110, and 3.16.120. (Ord. 2012)

### **3.16.200 Professional services contracts.**

A. Professional services are defined as those provided by a person or firm engaged in a profession based on a generally recognized special knowledge or skill, including, but not limited to, the professions of accountant, attorney, artist, architect, engineer, environmental consultant, dentist, physician, training or educational consultant, or surveyor, and whose services are considered distinct and unique to such a degree that bidding of such services would not be feasible.

(a) Procurement of professional services contracts – Open Market Proposals

Contracts estimated to be less than the amount established by resolution of the City Council on a periodic basis may be let by the City Manager without formal or informal proposals subject however, to fair, just and equitable contract terms and conditions. (Ord. 2012)

(b) Procurement of professional services contracts — Informal Proposals

Contracts for professional services in excess of the amount allowed for Open Market Proposals but not exceeding an amount established by resolution of the City Council on a periodic basis may be made by the City Manager informally without observing the procedures prescribed in Section 3.16.200 A.(c). Such contracts shall, unless infeasible, be based on at least three (3) informal proposals and shall be awarded

based on firm qualifications, experience and responsiveness, in addition to other appropriate criteria. (Ord. 2012)

(c) Procurement of professional services contracts — Formal Proposals

Award of contracts for services of a professional nature valued at an amount established by resolution of the City Council on a periodic basis or more shall be subject to City Council approval pursuant to the procedure prescribed herein. (Ord. 2012)

Request for Proposal. When selecting providers of professional services with an estimated cost greater than an amount established by resolution of the City Council on a periodic basis, Requests for Proposal shall be used. Requests for Proposal shall specify the deadline and place for submission, the nature of the services required, and the selection criteria to be used for awarding the contract. City Council will approve all Requests for Proposal for formal professional services contracts prior to issuance unless waived or excepted.

Award of Contract. Except as otherwise provided herein, the City Council shall award a contract based on firm qualifications, experience and responsiveness, in addition to any other criteria set forth in the Request for Proposal. Before a contract is signed by the City Manager or placed on a City Council agenda for approval, the contract must: include appropriate insurance and indemnification provisions reviewed by the Town's risk manager or City Attorney; be approved as to form by the City Attorney; be approved as to budget availability and purchasing procedural compliance by the Finance Director; and executed by the other party (except in the instance of a public entity)

Rejection of Proposals. The City Council may reject any and all proposals submitted and may, in its discretion, re-advertise for other proposals.

B. The open market, informal and formal bidding procedures contained in this chapter (Section 3.16.100, 3.16.110 and 3.16.120 shall not apply to contracts for professional services.

C. The City Manager may award any contract for professional services when the total not to exceed contract amount of such services is less than the formal contract amount established by resolution of the City Council on a periodic basis. Any contract for professional services having a total contract amount of greater than the formal contract amount established by resolution of the City Council on a periodic basis shall be awarded by the City Council.

D. Notwithstanding any provision in this chapter to the contrary, selection by the Town for professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost. In accordance with state law, the Town shall consider price after the Town is satisfied that the would-be person, company, corporation,

contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required and is the best qualified or suited professional to perform the services required.

### **3.16.210 Amendments to professional services contracts.**

Contracts for professional services pursuant to Section 3-16.200 may be amended by the issuance of a written amendment provided the change which is the subject of the amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s), and the Finance Director will confirm the availability of funds for the proposed change in the event that the amendment increases the contract cost. Any amendment which results in a total contract amount that would qualify for an informal proposal may be approved by the City Manager and the Finance Director. Any amendment which results in a total contract amount that would qualify for a formal proposal shall be approved by the City Council, or resubmitted to Council for approval of the amendment.

### **3.16.220 Donated goods and supplies, equipment, materials, professional and nonprofessional services.**

All procurement of goods and supplies, equipment, materials, professional and nonprofessional services with funds donated will follow the procedures of this chapter.

### **3.16.230 Public works projects; Uniform Construction Cost Accounting.**

The City Council has adopted a resolution electing to make the Town subject to the Uniform Construction Cost Accounting Procedures of the Cal. Public Contract Code (commencing with § 22010) and has notified the State Controller of the election. Therefore, the City Council may utilize the alternative procedures for the award of public works project bids authorized by the Cal. Public Contract Code (commencing with § 22030). (Ord. 2012)

### **3.16.240 Requirements for contracting public works projects.**

A. A public works project means any of the following: (1) construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility; or (2) painting or repainting of any publicly owned, leased, or operated facility. A public works project does not include maintenance work, which includes the following: (1) routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes; or (2) minor repainting; or (3) resurfacing of streets and highways at less than one inch; or (4) landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; or (5) work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but

not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

(a) Procurement of public works projects — Force Account/Open Market Procedures  
Public works projects of up to an amount established by resolution of the City Council on a periodic basis, appropriations for which have been approved by the City Council, may be performed by the employees of the Town or its agencies by force account, or by negotiated contract or purchase order approved by the City Manager.(Ord. 2012)

(b) Procurement of public works projects — Informal Bidding Procedures  
Public works projects greater than the amount qualifying for a Force Account/Open Market procedure up to and including an amount established by resolution of the City Council on a periodic basis may be let to contract by the informal bidding procedures (alternative procedure) set forth in this chapter as prescribed in Section 3.16.250. (Ord. 2012)

(c) Procurement of public works projects — Formal Bidding Procedures

Public works projects greater than an amount established by resolution of the City Council on a periodic basis shall be let to contract by the formal bidding procedure set forth in of the Uniform Construction Cost Accounting Act. (Ord. 2012)

### **3.16.250 Informal bidding procedures for public works projects.**

Pursuant to Cal. Public Contract Code § 22034, when utilizing the alternative procedures authorized by Section 3.16.240, the following provisions shall apply to public works projects for which formal bidding procedures are not required:

- A. The Public Works Department shall maintain a list of qualified contractors, identified according to categories or work. The list shall be developed and maintained in accordance with criteria established for such lists by the California Uniform Construction Cost Accounting Commission and in accordance with the provisions of Cal. Public Contract Code § 22034;
- B. Each contractor on the list for the category of work being bid, and/or the current California construction trade journals for this area specified by the Commission to receive mailed notices of all informal construction contracts being bid for work in San Mateo County, as determined by the Department of Public Works, shall be mailed a notice inviting informal bids unless the product or services is proprietary;
- C. All mailings of notices to contractors and construction trade journals, as determined above, shall be completed not less than ten (10) calendar days before bids would be due pursuant to the notice;
- D. Each notice inviting informal bids shall describe the project in general terms, state how to obtain more detailed information about the project, and specify the time and place for submission of bids; and
- E. Each informal bid shall be reviewed and approved by the Director of Public Works.

### **3.16.260 Approval of public works contracts pursuant to informal bidding procedures.**

Unless otherwise determined by the City Council for any individual contract to be awarded, the award of a public works contract by informal bidding process may be approved by the City Manager, upon the recommendation of the Director of Public Works, and subject to approval as to the form of the contract by the City Attorney. The determination of the City Manager to award a contract by informal bidding procedure shall be final. In awarding the contracts, the City Manager shall exercise prudent judgment in determining the lowest responsible bidder, taking into account the public's interest in efficiency and economy in the award of the contracts and giving due consideration to fairness and equity to competing bidders.

### **3.16.270 Approval of change orders on public works contracts.**

- A. No change in agreement or contract shall be made without the issuance of a written change order or amendment and no payment for any change shall be made unless a written change order or amendment has first been approved and executed in accordance with this section designating in advance the work to be done and the amount of additional compensation to be paid.
- B. Provided the funding for a public project contract has been previously approved and the expenditure of funds authorized by the City Council, the City Manager shall have the authority to execute change orders or amendments for any contract in an amount not to exceed 15% of the original price, subject to approval as to the form of the amendment by the City Attorney.
- C. In the event of an emergency and provided the funding for a public project contract has been previously approved and the expenditure of funds authorized by the City Council, the Director of Public Works shall have the authority to execute a change order or amendment for any contract in an amount not to exceed \$5,000. For the purposes of this section, the term *EMERGENCY* shall mean either a condition that causes an immediate danger to life or property or a condition that if left unabated will cause unreasonable delay or costs to the project. The Director of Public Works shall notify the City Manager in writing of the basis for approving the change order or amendment, including all facts and circumstances leading to the determination that an emergency was present. The written notice shall be delivered to the City Manager within 24 hours of approving of the change order.
- D. All other change orders or amendments shall be approved by the City Council.

### **3.16.280 Public works project bids in excess of maximum authority.**

Pursuant to Cal Public Contract Code § 22034, if all bids received are in excess of \$100,000, the City Council may by adoption of a resolution by a four-fifths (4/5) vote, award the contract, at \$110,000 or less, to the lowest responsible bidder, if the City Council determines the cost estimate of the Town was reasonable.

### **3.16.300 Surplus supplies and equipment.**

All departments shall submit to the Finance Director, at such times and in such forms as prescribed, reports showing all supplies and equipment which are no longer used or which have become obsolete and worn out. Annually the Finance Director shall account for all additions and deletions to capital assets, and shall require a physical inventory of all capital assets every five years, at a minimum.

**3.16.310 Surplus supplies and equipment; trade-ins.**

The Finance Director shall have the authority to exchange for or trade in supplies and equipment which cannot be used by any department or which have become unsuitable for Town use.

**3.16.320 Surplus supplies and equipment; sale.**

The Finance Director shall have authority to dispose of surplus supplies or equipment by auction or by sale, including by sale to Town employees or residents, after receiving bids or proposals which, in his judgment, provide the maximum return to the Town. Sales to Town employees shall only be utilized when, in the opinion of the Finance Director, all other alternative means of disposal would provide less return to the Town.

**3.16.330 Surplus supplies and equipment; donation.**

- A. The Finance Director shall have authority to donate surplus supplies and equipment subject to the following:
- B. Surplus supplies and equipment may be donated to nonprofit organizations or school districts located or operating within the Town, or if these organizations express no interest, then to any other nonprofit organization or private organization that provides assistance to nonprofit organizations that has expressed interest in receiving donated surplus Town property.
- C. Donations made to eligible entities shall be on a first come, first-serve basis.
- D. Prior to transfer of the donated supplies or equipment, the recipient entity shall provide a statement executed by a person duly authorized to legally bind the recipient entity that the donated property will:
  - (a) Be accepted "as is," with no express or implied warranties; and
  - (b) That an immediate need exists for the property and that it will be put into immediate use; and
  - (c) That the property not ever be sold or otherwise transferred for profit; and
  - (d) That the recipient entity shall assume all costs and liability associated with the removal and transportation of the surplus property from the Town.
- E. Town shall provide notice of the surplus property to be donated to solicit interest from potential donors.
- F. If in the opinion of the Finance Director, the total amount of property to be donated pursuant to this section has a historical value of \$1,000.00 or more, the Finance Director shall prepare a report of the property to be donated, the estimated current value of the property to be

donated, and the recipient(s) of the property proposed to be donated, for approval by the City Council.

### **3.16.340 Surplus supplies and equipment; scrap.**

- A. The Finance Director shall have authority to scrap surplus property if, regardless of value, it is broken or inoperable, cannot be repaired economically, and cannot otherwise be traded in, sold, auctioned, donated, or salvaged.
- B. The Finance Director shall have authority to scrap surplus property in the following instances:
  - (a) If the surplus property, in the opinion of the Finance Director, has a historical value of less than \$500.00 per unit, and for multiple items, has a combined total historical value of less than \$1,000.00, is not broken and cannot otherwise be traded in, sold, auctioned, donated, or salvaged.
  - (b) If the surplus property, regardless of value, is obsolete or nonfunctional and cannot otherwise be traded in, sold, auctioned, donated, or salvaged.
- C. All other surplus property may be scrapped by the Finance Director subject to the additional approval of the City Council.

### **3.16.350 Exemptions to provisions of this chapter.**

The provisions of this chapter are not applicable to:

- A. Contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the Town is or may become a party, including contracts for special investigative services for law enforcement purposes;
- B. Agreements negotiated and/or prepared by the city attorney or special counsel in connection with the settlement of a dispute, claim, or matter of litigation or threatened litigation;
- C. Contracts to commission original works of art, and for fine art or entertainment;
- D. The award of financial participation agreements, owner participation agreements, disposition and development agreements, development agreements, real estate purchase or lease agreements, covenants, easements, encroachment agreements, memoranda of understanding, or other similar agreements or instruments. Such contracts shall be awarded in accordance with applicable legal requirements and/or administrative directives of the Town;
- E. The purchase of miscellaneous books, magazines, newspapers, subscriptions, online library reference services, film, videos, and assorted materials for which contracts by competitive bid solicitation are not practicable;
- F. Intergovernmental payments, purchases, and agreements;
- G. Specialized seminar, training, and educational classes;
- H. Contracts for election services;
- I. Contracts for legal services;
- J. Franchise agreements; and

K. Contracts for procuring and maintaining insurance policies for the benefit of the Town, which are approved by the City Council. (Ord. 2012)

# TOWN OF ATHERTON

## Fee Waiver Policy

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### 1. Purpose

The purpose of this policy is to establish guidelines to be used to evaluate requests for fee waivers and to implement a structure and process through which consistent information for fee waiver requests will be collected and evaluated.

This policy is only applicable to fees related to events at Holbrook Palmer Park and the display of banners in Town-authorized locations.

### 2. Background

Fee waivers are an expense to the Town's General Fund. Fees are established to pay for the cost of a service provided by a Town department. When a fee waiver is granted, the Town General Fund pays the department in an amount equal to the fee waived. Only the City Council may grant a fee waiver request.

### 3. Policy

The City Council, may, at their sole discretion, approve or disapprove fee waiver requests. Effective July 1, 2013, the following general guidelines will be used to assist in the determination of whether a requested fee waiver is eligible or ineligible.

Fee waiver requests will be reviewed in the context of the overall Park budget.

Direct Town costs associated with any service or event may not be waived.

The City Council may establish a cap on the amount of fee waivers that may be granted during any fiscal year.

#### Eligible for fee waivers

- Atherton Standing Committees, Council, and Community Designated Groups. These groups are providing a direct service that is similar to or complementary to a Town policy goal or direct service that the Town is typically responsible for providing.
- Governmental agencies that do not receive tax funding and can demonstrate an inability to pay a Town fee.

### **Ineligible for fee waivers**

- For-profit organizations.
- Vendors.
- Fund raising events -where attendees pay a fee for admission to the event or in the case of festivals where vendors pay to participate in the event.
- Other governmental agencies – unless they can demonstrate an inability to pay the Town fee.

### **5. Fee Waiver Request Form**

All fee waiver requests must include a Fee Waiver Request form. The form may be obtained via the Town website and/or the City Clerk's Office. Fee Waiver Request Forms must be complete, signed, and accompanied by supporting documentation to demonstrate eligibility for the requested fee waiver. Demonstrated eligibility does not assure approval of a fee waiver request.

Fee Waiver Requests will be presented to the City Council for consideration at a Council meeting.