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## **Authority Of Elected Atherton Officials Regarding Personnel Issues**

### **Issue**

Should the Town of Atherton's Municipal Code be amended to clarify the respective duties of the Council and City Manager in personnel matters?

### **Background**

On April 10, 2008 the San Mateo County Civil Grand Jury (Grand Jury) issued an Interim Report on Government Effectiveness in the Town of Atherton (Town). As set forth in that report the Grand Jury found that although the Town of Atherton has a Council-Manager form of municipal government, there appears to be a considerable amount of involvement from the Atherton Town Council (Council) in the administration of the affairs of the Town that are the responsibility of the City Manager. This report is intended to supplement the Interim Report, and together with the Interim Report, constitutes the final report of the Grand Jury with respect to this matter.

### **Investigation**

The Grand Jury conducted 17 separate interviews with Atherton elected and appointed officials, management, employees and concerned citizens.

The Grand Jury requested and received from the Town numerous policy documents and copies of informal notes taken by various staff members. Those notes described various meetings, incidents and staff interviews. In addition to material provided by the Town, other documents and website resources relating to good management practices were analyzed. Local news reports and the reports from last year's 2006-2007 Grand Jury were also taken into account.

## Findings

By ordinance, the Town of Atherton in 1967 created “a city manager form of government and created the office of the city manager.” (Atherton Municipal Code §2.12.010) Among other responsibilities, the city manager is the Town’s personnel officer. (§2.12.020).

### 1. Powers of the City Manager

Atherton’s Municipal Code provides broad powers to the City Manager.

#### **“2.12.070 Powers and duties.**

The city manager shall be the administrative head of the government of the town under the direction and control of the city council, except as otherwise provided in this chapter. He shall be responsible for the efficient administration of all the affairs of the town which are under his control.”

Section 2.12.070 further provides as follows (emphasis added in bold):

“In addition to his general powers as administrative head, and not as a limitation thereon, it shall be his duty and he shall have the powers set forth in the following subsections (*not all are listed*):

“B. To control, order and give directions to all heads of departments, except the city attorney, and to subordinate officers and employees of the town through their department head, and consolidate or combine offices, positions, departments or units under his direction;”

**“C. To appoint, remove and demote any and all officers and employees of the town except the mayor, councilmen, chairman and members of the planning commission and the city attorney;”**

**“K. To make investigations into the affairs of the town or any department or division thereof and any contract for the proper performance thereof;”**

“L. To investigate all complaints in relation to matters concerning the administration of the town government and in regard to the service maintained by public utilities in such town;”

### 2. Role of Individual City Council Members in Personnel Matters

In contrast to the broad role given the City Manager, the role of council members in administrative matters is much more constrained. In regards to the role of individual Town Council Members in personnel matters, the Atherton Code provides as follows (emphasis added):

**“2.12.080 Cooperation of subordinate officers.**

**“A. The city council and its members shall deal with the administrative services of the town through the city manager, except for the purpose of inquiry; and neither the city council nor any member thereof shall give orders to the subordinates of the city manager, except in the event of an emergency endangering life or property.”**

“B. It shall be the duty of all subordinate officers, including the city attorney, to cooperate with and assist the city manager in administering the affairs of the town most efficiently, economically and harmoniously, so far as may be consistent with their duties as prescribed by the law and ordinances of the town.”

“C. Upon appointment of the city manager, the terms of subordinate officers over whom he has power of appointment or removal shall cease unless they are reappointed by him. **All powers heretofore vested in the city council or in any other officer or employee of the town ordinance, resolution or other action of the council which are by this chapter vested in the city manager, shall be deemed to be transferred to the city manager as though all such ordinances, resolutions or other actions had been specifically amended.**”

## **Conclusions**

The Grand Jury concludes that:

The Atherton Municipal Code clearly vests in the City Manager the authority and responsibility to conduct the administrative operations of the Town. In fact, Atherton Municipal Code section 2.12.080 (A) allows individual city council members to directly “deal with the administrative services of the town” only for the “purpose of inquiry.” It is the Grand Jury’s view, given the overall structure of the “city manager form of government” adopted by the Town of Atherton, that this “purpose of inquiry” exception should be narrowly construed, to allow inquiry where appropriate to ensure that the City Manager is carrying out his or her duties, but not to undertake investigative activities of subordinate Town officials other than through the City Manager. While the Town did ultimately hire an outside investigator to investigate the activities of the Town’s finance director, it is evident that at least one Council member undertook independent investigative activities.

The Grand Jury questions the wisdom of giving council members independent investigative power. Allowing a member of the Council to initiate an investigation and to publicize those actions undermines the public’s perception of the integrity or, perhaps, competence, of the office of the Town Manager and is contrary to the intent of the Atherton Municipal Code. The Council as a whole should discourage members from acting as independent investigators, and encourage all members to work through the City Manager.

## **Recommendations**

The San Mateo County Grand Jury recommends that the Town Council of Atherton:

1. Seek guidance from the Town Attorney regarding appropriate separation of respective duties and powers of the Town Council and City Manager, and direct the Town Attorney to provide similar guidance to the City Manager, and
2. Clarify the powers and authority of the City Manager in personnel matters by amending the Town Municipal Code, as appropriate; to better delineate the authority of the City Manager, and the limitations on the authority of the Town Council in such matters.

**ATKINSON • FARASYN, LLP**

ATTORNEYS AT LAW

REPLY TO:  
MARC G. HYNES

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

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

September 24, 2008

Hon. Joseph C. Scott  
Judge of the Superior Court  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Re: Letter dated July 14, 2008  
Authority of Atherton Elected Officials Regarding Personnel Issues Report

Dear Judge Scott:

This letter responds to the July 14, 2008, letter from John C. Fitton, Court Executive Officer, regarding a Grand Jury Report entitled: "Authority of Elected Atherton Officials Regarding Personnel Issues."

The City Council has reviewed the report and has directed me to write the following response:

Findings

1. The report finds that the Town of Atherton created a city manager form of government and created the office of city manager in 1967. The findings recite the provisions of the Town's municipal code as it relates to broad powers given to the city manager citing section 2.12.070 of the Atherton Municipal Code and pertinent portions thereof. The respondent agrees with the finding.

2. The report cites to the role of city council members in administrative matters and particularly personnel matters citing Atherton Municipal Code section 2.12.080 and emphasizing paragraphs A and C. The respondent agrees with this finding.

Recommendations

1. The report recommends that the Town (sic) Council of Atherton seek guidance from the Town (sic) Attorney and City Manager and direct the Town (sic) Attorney to provide similar guidance to the City Manager.

The City Council has previously conducted a workshop on this matter and the City Council and the City Manager have received guidance on the matter from the City Attorney.

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2. The report recommends that the powers and authority of the city manager in personnel matters be clarified by amending the Town Municipal Code, as appropriate; to better delineate the authority of the city manager, and the limitations on the authority of the Town (sic) Council in such matters.

This recommendation will not be implemented because it is not warranted. The findings of the Grand Jury and the recitation of existing sections of the Atherton Municipal Code in Chapter 2.12 show that there is no further need for amending the municipal code. It is submitted that the reasonable and appropriate action is to proceed as described in paragraph 1 above.

Very truly yours,

MARC G. HYNES  
City Attorney  
Town of Atherton

MGH:cwb