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Who Regulates Use of Public School Facilities in Atherton?

Issue

Should the Town of Atherton's Special Events Ordinance impose restrictions on non-school groups using facilities at Menlo-Atherton High School?

Background

In July 2005, the Town Council of the Town of Atherton (Atherton) adopted Ordinance No. 559, Section 17.38 of the Atherton Municipal Code, known as the Special Events Ordinance (Ordinance). The purpose of the Ordinance is to "insure the comfort, safety and general welfare of the Town citizens by controlling the number of special events and impacts of such events on the community".

The Ordinance was developed in response to citizen complaints about traffic congestion, noise, and parking during events held in the community. Concern was raised regarding the lack of advance notification to residents when an event was scheduled. The ordinance development process included work by Atherton's General Plan Committee, Planning Commission, public meetings, and final review and adoption by the Town Council. The Town Council also adopted Special Event Guidelines (Guidelines), which outline rules for special events held at private and public schools within Atherton as companion administrative guidelines to the Ordinance.

The Ordinance defines a special event as "an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the Town of Atherton to which the general public is invited." The Ordinance mandates that a special event permit is required if: 1) an event is held in the public right-of-way; 2) an event is held on private property occurring two or more consecutive days and to which the general public is invited; or 3) a non-school-related event on school facilities is planned to occur outside the Guidelines. Special event permits are not required for on-site school-related events and non-school-related events complying with the Guidelines.

The Ordinance authorizes the Atherton Town Manager (Town Manager) or designee to issue a permit when, in the opinion of the Town Manager or designee, the event meets all the requirements of the Atherton General Plan and the Guidelines. In granting a permit, the Town Manager or designee can impose added conditions to insure the event has minimal impact on the community.

The Guidelines for special events held at private or public schools, as adopted by the Town Council, limits school field use and outdoor functions to the hours of 8:00 am to 7:00 pm during the week, and from 9:00 am to 6:00 pm on weekends. The Guidelines further limit indoor activities to

9:00 pm and restrict amplified noise equipment and lighting associated with field or outdoor functions. Any event planned to occur outside of the Guidelines requires a permit from Atherton.

The Sequoia Union High School District (District), like all other school districts throughout the State of California, must comply with the California Education Code Sections 38130-38139, commonly referred to as the Civic Center Act, when allowing the use of school facilities by non-school related community groups. Section 38131(b) of the Civic Center Act states: “The governing board of any school district may grant the use of school facilities or grounds as a civic center upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article...” Section 38131 (b.6) indicates that one of the authorized purposes of the Civic Center Act is: “Supervised recreational activities including, but not limited to, sports league activities for youths that are arranged for and supervised by entities. . .”¹

Outdoor activities

Outdoor athletic facilities at Menlo-Atherton High School (M-A) are heavily used by non-school-related youth serving groups, including the AYSO (soccer), CYSA (soccer), Pop Warner (football), SOLO (swimming), SPIN (softball), Little League (baseball), and a variety of one-time events. M-A has granted facility use permits to all these organizations without any added use restrictions. However, there has been contention regarding use of the football field between neighbors living close to M-A and the Menlo-Atherton Vikings Pop Warner Football League (Pop Warner).

Pop Warner, a nonprofit youth serving organization, has been using the M-A football field for practices and league games since 1998. Pop Warner use begins in August with practice sessions Monday through Thursday from 5:30 pm to approximately 8:30 pm. Four to five league games were originally held on Sundays beginning at 7:00 am through 6:00 pm. League games are now played on Saturdays and Sundays between 10:00 am and 6:00 pm. All league activity is completed by the end of November.

Atherton defines Pop Warner’s day-to-day football practices and league games as a special event. Because Pop Warner’s approved school use at M-A was outside the Guidelines, Pop Warner applied for a special event permit from Atherton in 2006. The permit request was denied by the Town Manager, and the denial was upheld by the Town Council. Attempting to mitigate citizen concerns regarding the M-A school use by Pop Warner, the District suggested adding conditions to the use permit, such as using low-shrill whistles during games, eliminating the use of an amplified public address system, and reducing early-morning Sunday games by playing over the two day weekend period. Pop Warner agreed to these conditions of the use permit. Since 2006, Pop Warner has continued to maintain its practice schedule as described above. It has chosen not to apply for an Atherton special event permit since 2006 because it believes that doing so would reflect its acceptance of the Ordinance.

The Lindenwood neighborhood of Atherton (Lindenwood) abuts M-A on two sides and is comprised of approximately 400 homes. In 2006, a few Lindenwood residents called the Atherton police approximately 50 times to report violations of the Guidelines by Pop Warner. A Lindenwood resident, who serves on the Planning Commission, made several of the calls to the police and came to the field during a Pop Warner practice and confronted coaches in an agitated manner. This Planning Commission member is now one of the two sub-committee members assigned to propose changes to the Ordinance.

¹ California Education Code, Sections 38130-38139, Article 2. Use of School Property

The District is composed of four comprehensive high schools: M-A, Woodside, Sequoia, and Carmont. M-A is the only campus in the District that does not have a lighted football field, although the development of the field has been in the master plan for the school and was included in the recent bond issue project list approved by District voters. A group of M-A parents have also offered to cover costs of the field lighting. After some Lindenwood residents objected, the District elected to not move forward with the installation of the field lights, even though District officials believe that case law, specifically *City of Santa Cruz v. Santa Cruz City School Board of Education*, 210 Cal. App .3d 1 1989, gives the District the prerogative to construct field lights if it so chooses.

Indoor activities

The District is currently constructing a Performing Arts Center (PAC) on the M-A site with bond funds recently authorized by the voters of the school district. The City of Menlo Park is participating in the development of the PAC to replace the deteriorating Burgess Center located in and operated by the City of Menlo Park. Their contribution to the project is \$2.6 million, approximately 10% of total project cost, with the agreement that the facility will be available for its use 40 days per year. Atherton is not participating in the PAC development but believes that its Ordinance applies to non-school-related uses at the PAC.

There are differences of opinion among attorneys regarding the legality of Atherton's Ordinance. Correspondence from the District to Atherton, dated August 30, 2006, states that activities authorized under the Civic Center Act "are to be conducted 'upon the terms and conditions the [District] board deems proper'" and further that "the management, direction and control of school facilities under [the Civic Center Act] are vested in the governing board of the school district.... Significantly nowhere in the Civic Center Act is there any reference to regulation of civic center activities by a city or county."²

Atherton's opposing position is that its Ordinance has jurisdiction over all non-school related uses at M-A, including field use, outdoor functions, and indoor activities. Atherton cites Education Code Section 17533, which provides that a county or city may impose its zoning regulations on a school district when a "school district seeks to lease a portion of a school building for uses other than public or education-related uses."³ Further, Atherton asserts that Government Code Section 53091 "requires the District to comply with all applicable zoning regulation of the town," including the Ordinance which is part of the Atherton's zoning ordinance. Atherton included the Ordinance in its Zoning Code with the belief that by doing so it could avoid coverage under the Civic Center Act.

The District believes that collecting a charge for intermittent use of its fields, as allowed by the Civic Center Act, is not the same as renting or leasing space in a school building. The District is aware that other school districts have addressed zoning disputes by turning to a State law which allows a school district to, by adopted resolution, exempt itself from compliance with county or city zoning ordinances.

The dispute between the District and Atherton has consumed significant time and resources for all parties involved. For instance, an Atherton official reports that Atherton spent \$50,000 on outside legal counsel and \$50,000 on staff counsel specifically related to the interpretation of the Ordinance.

² Correspondence from Sequoia Union High School District to Town of Atherton dated August 30, 2006.

³ Ibid.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury interviewed representatives from the Town of Atherton, the Sequoia Union High School District, the San Mateo County Counsel's Office, and the Menlo-Atherton Vikings Pop Warner Football League. The Grand Jury reviewed minutes from the Town General Plan Committee, Planning Commission, and Town Council; staff reports; and municipal code documents as well as the California State Education Code and applicable court decisions.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. The Sequoia Union High School District (District) furthers the goals of the Civic Center Act by authorizing the use of school facilities for non-school-related activities.
2. There is a consensus among all parties that there is a need for sports facilities in the area which community groups, such as Pop Warner, can use and that such use benefits the community as a whole. However, there has been disagreement over the hours during the day that the facilities should be available for non-school-related uses.
3. Concern by the Town of Atherton (Atherton) residents about noise and congestion associated with local public events spurred the Atherton Town Council to enact the Special Events Ordinance (Ordinance) and associated Special Events Guidelines (Guidelines).
4. There is a current dispute between two publicly elected entities, Atherton and the District, regarding which entity ultimately is authorized to regulate non-school use of the public school facilities.
5. Pop Warner continues to operate within the conditions specified by the District's use permit but outside of Atherton's Ordinance by conducting practices during the week beyond the 7:00 pm cutoff time specified in the Guidelines.
6. There are eight cities in the District. No other city within the boundaries of the District imposes specific requirements for Civic Center Act, non-school-related uses of fields or outdoor and indoor facilities.
7. The District is concerned that Atherton may attempt to restrict use of the Performing Arts Center for non-school-related uses under the Ordinance.
8. The District has taken into account the concerns of local residents by altering the terms of the Pop Warner use permit for the Menlo-Atherton High School football field to reduce noise and by electing not to install field lights at the school.
9. Atherton's Planning Commission (Planning Commission), recognizing that changes were needed in the Ordinance, formed a sub-committee of two members to formulate potential changes to the Ordinance. Atherton officials and the District have voiced concern as to whether the sub-committee's work will be balanced, given that one of the two members has been an outspoken critic of Pop Warner's use of M-A's football field outside of the Guidelines.
10. According to an Atherton official, four of the five members of the Planning Commission, who will be reviewing proposed changes to the Ordinance, are Lindenwood residents.
11. Both Atherton and District officials report that the working relationship between the District and Atherton staff has improved significantly over the last 18 months.

Conclusions

The 2008 – 2009 San Mateo County Civil Grand Jury concludes that the Town of Atherton should not impose restrictions on non-school groups using facilities at Menlo-Atherton High School.

The Grand Jury also concludes that:

1. The Sequoia Union High School District contributes to the welfare of the community by authorizing the use of school facilities, including athletic facilities and the future Performing Arts Center, for non-school-related uses.
2. It is not unreasonable or unusual for residents of a city or town to be concerned about noise and congestion associated with public events conducted in or around their neighborhoods. It is also reasonable for cities and towns to enact ordinances regulating such public events on private property and public property controlled by the city or town.
3. The Town of Atherton has sought to limit use of Sequoia Union High School District facilities for non-school uses via its Special Events Ordinance.
4. It is reasonable and routine for school districts to grant use of school property for community events and activities. The purpose of the Civic Center Act is to promote community access to public school facilities and give school districts authority to regulate such use.
5. The Sequoia Union High School District and Menlo-Atherton Vikings Pop Warner Football League have both demonstrated good faith in dealing with Lindenwood neighbors. Difficulties and differences should be settled directly between the impacted parties whenever possible.
6. It is encouraging to note the renewed efforts by the Town of Atherton Staff to work collaboratively with the Sequoia Union High School District, Menlo-Atherton High School, and affected residents to resolve issues.
7. The Atherton Planning Commission does not appear to be broadly representative of the Town of Atherton. Moreover, the Planning Commission demonstrated questionable judgment in assigning two members to formulate potential changes to the Special Events Ordinance, given that one of the assigned members had been a strong proponent of restricting use of the Menlo-Atherton High School football field. This sub-committee assignment creates the potential for bias which could impede progress toward a balanced decision on the Special Events Ordinance.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the Board of Trustees of the Sequoia Union High School District:

1. Continue its practice of working with the community to find appropriate resolutions for the concerns expressed by the community regarding use of its facilities.
2. Review with legal counsel the options available to exempt itself from the Town of Atherton Zoning Ordinance, in the event the Town of Atherton chooses to continue including public school facilities in the Special Event Ordinance and the Special Event Guidelines.

The 2008-2009 San Mateo County Civil Grand Jury recommends that the Town Council for the Town of Atherton:

1. Should recognize that the Sequoia Union High School District is also a public body that is accountable to its constituents and is responsible for regulating use of its facilities for both school and non-school use.

2. Expressly exempt all present and future public school facilities from the Special Events Ordinance and Special Event Guidelines.
3. Allow issues related to after-hours use of private school facilities to be left to the schools and their immediate neighbors whenever possible.
4. Encourage qualified citizens from all parts of the Town of Atherton to seek appointment to boards and commissions in order to ensure broader citizen representation that is more reflective of the entire Atherton community.

Appendix:

Town of Atherton, Municipal Code, Chapter 17.38, Ordinance No. 559, "Special Event Ordinance", Adopted September, 21, 2005.

Town of Atherton, School Event Guidelines

California Education Code, Article 2. Use of School Property, Sections 38130-38139

Sequoia Union High School District, correspondence to City Manager, Town of Atherton. Dated, August 30, 2006.

ORDINANCE NO. 559

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING CHAPTER 8.52 AND ADDING CHAPTER 17.38 OF THE ATHERTON MUNICIPAL CODE REGULATING SPECIAL EVENTS WITHIN THE TOWN OF ATHERTON

The City Council of the Town of Atherton does ordain as follows:

SECTION 1: Chapter 8.52 is hereby entirely repealed.

SECTION 2: Chapter 17.38 is hereby added as follows:

17.38 SPECIAL EVENTS

17.38.010 Title.

This chapter shall be known as the “Special Event Ordinance” and may be so cited.

17.38.020 Purpose and intent.

- A. The purpose of this chapter is to insure the comfort, safety and general welfare of the Town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.
- B. The intent of this chapter is to protect the residents from excessive noise, traffic and other intrusions upon their privacy.

17.38.030 Definitions.

A "special event" is an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the Town of Atherton to which the general public is invited.

17.38.040 Permit required.

- A. All special events held in the public right-of-way shall obtain a special event permit. Activities include, but are not limited to; processions such as: walks, road races, bicycle rides, skate-a-thons and similar activities.
- B. A special event permit is required for any special event held on private property, occurring on two or more consecutive days where members of the general public are invited. Activities requiring a permit include, but are not limited to the following;
 - 1. Motion picture filming;
 - 2. House and garden tours;
 - 3. Fundraisers

4. Auctions;
 5. Antique shows;
 6. Concerts;
 7. Other similar activities.
- C. The following provisions shall apply to special events held at private and public schools and country clubs:
1. A permit is not required for on-site school-related events. Responsible parties shall notify the Town of school events that may result in additional traffic or parking.
 2. A permit is not required for non-school-related events held at schools and country clubs that meet the School Event Guidelines as prepared by the City Manager and accepted by the City Council. Responsible parties shall notify the Town of events that may result in additional traffic or parking.
 3. A special event permit is required for non-school-related events that are planned to occur outside of the School Event guidelines.
- D. Open house tours for the purpose of selling property under the regular course of a real estate transaction shall be exempt.

17.38.050 Application submittal requirements.

The following items and information shall be submitted to the City Manager or designee:

- A. Completed application (application form supplied by the town) submitted to the Town at least two months prior to the event;
- B. Detailed description of the event;
- C. Contact person available prior to and during the event;
- D. Application fee, (as set by resolution of the city council);
- E. The anticipated number of attendees and number of vehicle trips per day;
- F. An on- and off-site parking plan including the placement of barricades, etc;
- G. A deposit as determined by the Police Chief for the funding of any additional security measures not provided by the applicant;
- H. A hold harmless agreement, naming the Town, its employees and agents; and certificate of insurance, naming the Town as additional insured. A form of hold harmless agreement, and insurance in the amount of \$2,000,000 and insurance provider shall be reviewed and approved by the City Attorney.

17.38.060 Permit issuance.

- A. The City Manager or designee may issue a special event permit when in the opinion of the City Manager or designee the event meets all of the requirements of this code and the Atherton General Plan. The City Manager or designee may refer items to the Planning Commission when, in his or her opinion, the public interest would be better served by the Planning Commission conducting a public hearing. The City Manager or designee shall issue, deny or refer a special event permit within thirty (30) days of receipt of a completed application. If the event will not be in conformance with either this code or the Atherton General Plan the application shall be denied.

- B. If a special event permit is issued by the City Manager or designee, such official may impose any reasonable conditions to insure the event will have a minimal impact on the community. Such conditions may include, but are not limited to, any of the following:
1. Adequate arrangements to prevent:
 - a. Violation of Chapter 8.16 Noise Control,
 - b. Violation of Chapter 8.20 Nuisance Abatement,
 - c. Amplified sound,
 - d. Violation of any traffic laws,
 - e. Violation of any other section of this code;
 2. Posting of docents at key/dangerous locations;
 3. Events, including setup and tear down, will be done during daylight hours if feasible;
 4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one hour prior to or after the end of the event;
 5. Other materials or mitigation measures deemed necessary by the City Manager or designee;
 6. Parking barricades shall be set back a minimum distance as required by the City Manager or his or her designee to insure site distance clearance from special event site driveways and neighboring driveways.

17.38.070 Permit requirements.

- A. All special events held on private property shall be limited to no more than two consecutive weeks, including no more than two consecutive weekends. Any event for a longer period of time requires a Conditional Use Permit from the Planning Commission.
- B. All special events shall be publicly noticed at least ten days prior to the issuance of a permit, pursuant to the process outlined in State Planning and Zoning Law section 65091, with a five hundred foot radius notification. However, if the event is not conducted on a single site, or is to be conducted within the public right-of-way, the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten days prior to issuance of a permit.
- C. The applicant shall execute an agreement acknowledging obligations to comply with all required conditions of the special event permit.
- D. No more than two special event permits shall be issued in a twelve-month period for special events on any private residential property.

17.38.080 Permit revocation.

A special event permit may be revoked by the City Manager or his or her designee in the event of any violation of the special events permit or this code.

17.38.090 Violation as a public nuisance.

Each violation of this chapter is a misdemeanor and shall constitute a public nuisance and be subject to abatement as such.

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not effect the validity of the remaining parts of this Ordinance.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall take affect and be in force from and after 30 days after its passage and adoption.

* * * * *

Introduced this 20th day of July, 2005.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the 21st day of September, 2005, by the following vote

AYES:	5	COUNCILMEMBERS:	Janz, Marsala, Carlson, Conwell, McKeithen
NOES:	0	COUNCILMEMBERS	None
ABSTAIN:	0	COUNCILMEMBERS	None
ABSENT:	0	COUNCILMEMBERS	None

/s/ William R. Conwell

William R. Conwell, Mayor
Town of Atherton

ATTEST

/s/ Linda Kelly

Linda Kelly, Acting City Clerk

APPROVED AS TO FORM:

/s/ Marc G. Hynes

Marc G. Hynes, City Attorney

SCHOOL EVENT GUIDELINES

GUIDELINES FOR SPECIAL EVENTS HELD AT PRIVATE AND PUBLIC SCHOOLS WITHIN THE TOWN OF ATHERTON

The Town of Atherton requests public and private schools enforce the following special events guidelines with regards to non-school-related special events held on school property within the Town of Atherton;

1. Field use and outdoor functions shall be limited to the hours of 8:00 a.m. until 7:00 p.m. unless further limited by the school. Field use shall include setup, breakdown, warm-up, and practice sessions. Field use and outdoor functions shall be limited to the hours of 9:00 a.m. until 6:00 p.m. on Saturdays and 10:00 a.m. until 5:00 p.m. on Sundays, excluding non-coach/player interactions.
2. Indoor activities shall cease at 9:00 p.m.
3. No amplified noise equipment shall be used in conjunction with any outdoor activity.
4. Any lighting associated with field or outdoor functions use shall be shielded or downlit so the source of light shall not shine onto adjacent properties.

A responsible school contact person shall be made available to immediately enforce any violation of the above-listed guidelines.

Any non-school-related event that is planned to occur outside of the above-listed guidelines (i.e.; earlier/later than the specified hours, use of amplified noise, spill overlighting) would be required to obtain a special events permit pursuant to section 17.38 of the Atherton Municipal Code.

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EDUCATION CODE

SECTION 38130-38139

38130. This article shall be known and may be cited as the Civic Center Act.

38131. (a) There is a civic center at each and every public school facility and grounds within the state where the citizens, parent-teachers' associations, Camp Fire girls, Boy Scout troops, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment pertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside.

(b) The governing board of any school district may grant the use of school facilities or grounds as a civic center upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article, for any of the following purposes:

(1) Public, literary, scientific, recreational, educational, or public agency meetings.

(2) The discussion of matters of general or public interest.

(3) The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization that has no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (d) of Section 38134.

(4) Child care or day care programs to provide supervision and activities for children of preschool and elementary schoolage.

(5) The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies.

(6) Supervised recreational activities including, but not limited to, sports league activities for youths that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination.

(7) A community youth center.

(8) Other purposes deemed appropriate by the governing board.

38133. The management, direction, and control of school facilities under this article are vested in the governing board of the school district which shall promulgate all rules and regulations necessary to provide, at a minimum, for the following:

(a) Aid, assistance, and encouragement to any of the activities authorized in Sections 38131 and 38132.

(b) Preservation of order in school facilities and on school grounds, and protection of school facilities and school grounds, including, if the governing board deems necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.

(c) That the use of school facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork.

38134. (a) The governing board of any school district shall authorize the use of any school facilities or grounds under its control, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities, including, but not limited to:

(1) Girl Scouts, Boy Scouts, Camp Fire, Inc.

(2) Parent-teachers' associations.

(3) School-community advisory councils.

This subdivision shall not apply to any group that uses school facilities or grounds for fundraising activities that are not beneficial to youth or public school activities of the district, as determined by the governing board.

(b) Except as otherwise provided by law, the governing board may charge an amount not to exceed its direct costs for use of its school facilities. Each governing board that decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs.

(c) The governing board of any school district may charge an amount not to exceed its direct costs for use of its school facilities by any entity, including a religious organization or church, that arranges for and supervises sports league activities for youths as described in paragraph (6) of subdivision (b) of Section 38131.

(d) The governing board of any school district that authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 38131 shall charge the church or religious denomination an amount at least equal to the district's direct costs.

(e) In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts are not expended for the welfare of the pupils of the district or for charitable purposes, a charge shall be levied for the use of school facilities or grounds which charge shall be equal to fair rental value.

(f) If any group activity results in the destruction of school property, the group may be charged for an amount necessary to repay the damages, and further use of facilities may be denied.

(g) As used in this section, "direct costs" to the district for the use of school facilities or grounds means those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees

necessitated by the organization's use of the school facilities and grounds of the district.

(h) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the school facilities or grounds used for the duration of the activity authorized.

(i) Any school district authorizing the use of school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of the district in the ownership and maintenance of those facilities or grounds. Any group using school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds. The district and the group shall each bear the cost of insuring against its respective risks and shall each bear the costs of defending itself against claims arising from those risks. Notwithstanding any other provision of law, this subdivision shall not be waived. Nothing in this subdivision shall be construed to limit or affect the immunity or liability of a school district under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, for injuries caused by a dangerous condition of public property.

38135. Any use, by any individual, society, group, or organization for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means shall not be permitted or suffered.

Any individual, society, group, or organization which commits any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government by force, violence, or other unlawful means while using school property pursuant to the provisions of this chapter is guilty of a misdemeanor.

38136. No governing board of a school district shall grant the use

of any school property to any person or organization for any use in violation of Section 38135.

For the purpose of determining whether or not any individual, society, group, or organization applying for the use of the school property intends to violate Section 38135, the governing board shall require the making and delivery to the governing board, by the applicant of a written statement of information in the following form:

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That _____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

(Signature)

The school board may require the furnishing of additional information as it deems necessary to make the determination that the use of school property for which application is made would not violate Section 38135.

Any person applying for the use of school property on behalf of

any society, group, or organization shall be a member of the applicant group and, unless he or she is an officer of the group, must present written authorization from the applicant group to make the application.

The governing board of any school district may, in its discretion, consider any statement of information or written authorization made pursuant to the requirements of this section as being continuing in effect for the purposes of this section for the period of one year from the date of the statement of information or written authorization.

38137. Written statements of information as required by Section 38136 need not be under oath, but shall contain a written declaration that they are made under the penalty of perjury, and any person so signing the statements who willfully states therein as true any material matter which he or she knows to be false, is subject to the penalties prescribed for perjury in the Penal Code.

38138. Notwithstanding the provisions of this article or any other provisions of law, when a nonpartisan charitable organization organized under the laws of this state has constructed or will construct, subject to the provisions of Article 3 (commencing with Section 39140) of Chapter 2 of this part, a school athletic and youth center facility at no cost to a school district, upon a school-district-owned site to be owned by and for the benefit of the school occupying the site, the governing board of the school district, in accepting the donation and prescribing the conditions and restrictions with respect thereto, may permit the general use of the facility under the provisions of this article for specified supervised recreational activities which are sponsored by or conducted by the donor organization, and may also permit the donor organization to use the facility for this purpose at times when the facility is not being used by the school district for the educational program and related school activities of the designated beneficiary school, unless the use and occupancy of the facility by

the donor organization would otherwise interfere with the regular conduct of the school. Any use granted to the donor organization shall, however, immediately and forever terminate if the donor organization denies the use of the facility to any person because of their race, religion, creed, national origin, ancestry, or sex.

This section shall apply only to elementary school districts in San Diego County which had an average daily attendance of 425 or less during the 1970-71 school year, and which, during the 1970-71 school year, had a modified assessed valuation per pupil in average daily attendance of between forty-five thousand dollars (\$45,000) and fifty thousand dollars (\$50,000).

38139. (a) Public primary schools shall post at an appropriate area restricted to adults information regarding missing children provided by the Department of Justice pursuant to Section 14208 of the Penal Code.

(b) Public secondary schools shall post at an appropriate area information regarding missing children provided by the Department of Justice pursuant to Section 14208 of the Penal Code.

Sequoia Union High School District

480 JAMES AVENUE, REDWOOD CITY, CALIFORNIA 94062-1098

Administrative Offices (650) 369-1411

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PATRICK R. GEMMA
Superintendent

August 30, 2006

Refer to: PRG 1284

James Robinson
City Manager
Town of Atherton
92 Ashfield Road
Atherton, CA 94027

Dear Jim:

Re: Pop Warner Football's Use of Menlo-Atherton High School Facilities

I am writing to thank you for the opportunity to speak at the August 16, 2006, Town Council meeting and to express the District's disappointment in a letter I received, dated August 18, 2006, from the Town Attorney Marc Hynes demanding that the District modify the activities of the Pop Warner football program to strictly comply with Town guidelines applicable to special events. I had hoped that, by explaining the measures that had been taken to mitigate the impact of this worthwhile recreation program, as perceived by some neighbors of the high school, we could all move forward. Regrettably, this appears not to be the case.

Pop Warner has used the athletic fields for many years without attempted restriction from the Town of Atherton. Many of the youth and adults who participate in this program are residents of the Town of Atherton. Therefore, this program certainly adds value to the community.

I need to make clear at the outset that we have, at every step, carefully considered the legal issues raised by Mr. Hynes, including those stated in his letter to District Counsel Michael Murphy, dated August 4, 2006. My decision to refrain from addressing these points directly through District's counsel to date has not been driven by concern that the District's position is legally untenable, but instead by my belief that the best way to resolve disputes such as this is through dialogue. As the Town now appears to believe such dialogue will not achieve the Town's goals, I am presenting the District's legal position on this issue, developed through consultation with the District's counsel.

The State Legislature has forcefully declared that school districts play an indispensable role as "civic centers," serving the needs of the community for a place to engage in "recreational, educational, political, economic, artistic, and moral" activities. (Education Code Section 38130 et seq.) Specifically included in those activities authorized under the Civic Center Act are "[s]upervised recreational activities including, but not limited to, sports league activities for youths that are arranged for and supervised by entities..." (Id., section 38131(b)(6).)¹ These activities are to be conducted "upon the terms and conditions the [District] board deems proper..." (Id., section 38131(b).)² Further, "[t]he management, direction, and control of school facilities under [the Civic Center Act] are vested in the governing board of the school district which shall promulgate all rules and regulations" related to the use of District property under the Act. (Id., section 38133.) Significantly, nowhere in the Civic Center Act is there any reference to regulation of civic center activities by a city or county. In our view the Civic Center Act vests the sole authority to regulate and control civic center activities in the District, preempting any zoning authority that the Town may assert with respect to the conduct of such activities.

Mr. Hynes refers to Education Code Section 17533, which provides that a county or city may impose its zoning regulations when a "school district seek[s] to lease a portion of a school building for uses other than public or education-related uses." This section, which appears in an Education Code article prescribing rules related to the renting or leasing of space in "operating school buildings" for joint use, has no applicability here. The District is not renting or leasing space in an operating school building to Pop Warner, but instead is collecting a charge, as authorized by the Civic Center


Act, for intermittent use of District fields. (See Education Code Section 38134(c).) The provisions of the Civic Center Act, when compared to the provisions of the article prescribing the rules for the leasing or renting of space for joint use, make it clear that these two statutory grants of authority are independent, not inter-related. Further, the fact that the Legislature saw fit to explicitly authorize a county or city to impose its zoning regulations in the article addressing joint use while choosing not to do so in the Civic Center Act supports the District's view that civic center uses are not subject to the Town's zoning power.

While the District has taken those steps it believes are reasonable in ensuring Pop Warner's conformance to the Town's special events guidelines, it has never conceded that these guidelines apply to activities such as Pop Warner, even by the express terms of the special events ordinance. The Town's ordinance defines a "special event" as "an activity sponsored by one or more organizations, individuals, or other entities, held at one or more locations within the Town of Atherton to which the general public is invited." (Town of Atherton Ord. Code, section 17.38.030, (emphasis added).) While Pop Warner practices and games may attract family and friends, we believe it would stretch the meaning of the ordinance beyond reason to conclude that Pop Warner, or other similar youth recreational activities, are events to which "the general public is invited."

Mr. Hynes also asserts that Government Code Section 53091 requires the District to comply with all applicable zoning regulations of the Town. As we have noted above, we believe that the general authority of the Town to impose its zoning regulations is preempted by the specific authority (or, more accurately, the legislative mandate) of the District to provide for civic center uses. The Town has provided for the operation of public schools within the zoning district in which Menlo-Atherton High School is located. Civic center uses are an integral part of the District's operation of a public school at that site. To recognize the authority of the Town to regulate such civic center uses would necessarily be to recognize the authority of the Town to prohibit them, which would run directly counter to the legislative mandate to accommodate such uses "upon the terms and conditions the [District] board deems proper."

In closing, I wish to re-emphasize that the District wishes to continue to work with the Town to resolve issues that affect Town residents living adjacent to Menlo-Atherton High School and will endeavor to resolve these issues in a way that will accommodate both the concerns of our neighbors and the needs of those worthwhile community activities that seek the District's assistance under the Civic Center Act.

Very truly yours,



Patrick R. Gemma, Ed.D.
District Superintendent

dmr

cc: Board of Trustees, SUHSD
Marc Hynes, Town Attorney
Michael Murphy, Assistant County Counsel

¹The particular importance of the role school districts play in providing for recreational activities has been emphasized by one court, which noted that, while educational operations are a school district's primary responsibility, "school districts also serve an important secondary function as providers of recreational facilities for the community. [Citations omitted.]" (Howard Jarvis Taxpayers Assoc. v. Whittier Union High School Dist. (1993) 15 Cal.App.4th 730, 736.)

²Mr. Hynes refers to Education Code section 38134(a), which *requires* school districts to make school property available for certain activities where "an alternative location is not available". While this mandatory provision emphasizes the indispensable role that school districts play in providing for civic center uses, it in no way impairs the broader, discretionary authority that school districts have under Section 38131, which contains no "alternative location" requirement

SEQUOIA UNION HIGH SCHOOL DISTRICT

480 JAMES AVENUE, REDWOOD CITY, CALIFORNIA 94062-1098

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May 8, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, Second Floor
Redwood City, CA 94063-1655

Re: Grand Jury April 6, 2009, report, use of public school facilities in Atherton

Dear Judge Miram:

I am responding on behalf of the President of the Sequoia Union High School District Board of Trustees. The District governance team has read all the findings in the Grand Jury Report regarding the use of public school facilities in Atherton.

We agree with all the findings.

Additionally, we have read the two recommendations addressed to the SUHSD Board of Trustees and comment as follows:

1. The Sequoia Union High School District will continue its practice of dialogue with the Atherton community to find appropriate resolutions for concerns expressed regarding use of the facilities at Menlo-Atherton High School.
2. By June 30, 2009, the Superintendent will review with legal counsel the options available to exempt the Sequoia district from the Town of Atherton's zoning ordinance. We may implement some or all of these options if the Town chooses to continue including public school facilities in its Special Event Ordinance and Guidelines.

The Grand Jury Report and this response were accepted by the Sequoia Union High School District Board of Trustees at its meeting of May 6, 2009.

Sincerely,



Patrick R. Gemma, Ed.D.
Superintendent

c: James Lianides
Board of Trustees



Office of the City Manager
Town of Atherton

91 Ashfield Road
Atherton, California 94027
Phone: (650) 752-0500
Fax: (650) 614-1212

June 1, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Re: Grand Jury Report: *Who Regulates Use of Public School Facilities in Atherton?*

Dear Judge Miram:

The Town of Atherton (the "Town") has received the above referenced report of the San Mateo County Civil Grand Jury dated April 6, 2009. The City Council reviewed the report and approved this response at its regular City Council meeting on May 20, 2009. Pursuant to California Penal Code sections 933 et seq., the town responds to the findings and recommendations as follows:

The Town agrees with the 11 findings set out in the report with the following additional comments or exceptions:

Finding 5: The Town has not independently verified that Pop Warner continues to operate within the conditions specified by the District's use permit.

Finding 6. The Town has not independently verified whether the other cities in the Sequoia Unified High School District ("District") regulate non-school-related uses of fields or outdoor and indoor facilities.

Finding 7. The Town does not accept in whole the finding that the District is concerned that Atherton may attempt to restrict use of the Performing Arts Center for non-school-related uses under the Ordinance. The Town and the District entered into a Settlement Agreement concerning the construction and operation of the performing arts center at Menlo-Atherton High School in 2008. The Settlement Agreement recognizes the value of the Performing Arts Center and includes a procedure for resolving further disputes on its use.

Finding 8. The Town has not independently verified that the District has taken into account the concerns of local residents by altering the terms of the Pop Warner use permit for the Menlo-Atherton High School football field to reduce noise.

Finding 9. The City Council asked that the Planning Commission further study the special events regulations in the Town's Zoning Ordinance. The Planning Commission has established a sub-committee to work on this task. The City Council is unaware that any Atherton officials have voiced a concern as to whether the sub-committee's work will be balanced. The City Council agrees that that some individuals have "voiced a concern as to whether the sub-committee's work will be balanced, given that one of the two members has been an outspoken critic of Pop Warner's use of M-A's football field outside of the Guidelines." The Town does not dispute the finding that such concerns have been voiced. However, the Town's concurrence in the finding should not be understood as concurrence in the opinion. The Town often appoints individuals with both a strong interest in civic affairs and strong points of view to its committees and commissions. This involvement can be a positive force in arriving at good outcomes.

Finding 10. The City Council is unaware of any public official advising the Grand Jury that four of the five Planning Commission members are Lindenwood residents. Four out of five Planning Commissioners were Lindenwood residents at the time the report was prepared. The Planning Commission currently includes three citizens who reside in Lindenwood and two who do not.

The Town's response to the Grand Jury's recommendations are as follows:

Grand Jury Recommendation 1. *The Town should recognize that the Sequoia Union High School District is also a public body that is accountable to its constituents and is responsible for regulating use of its facilities for both school and non-school use.*

The Town recognizes and respects the fact that the Sequoia Union High School District ("District") is a public body that is accountable to its constituents and responsible for regulating the use of its facilities. In addition, under Government Code Sections 53090 et. seq. the Town's zoning and building ordinances apply to school districts within its boundaries unless their governing boards vote to exempt their districts from those laws.

Grand Jury Recommendation 2. *Expressly exempt all present and future public school facilities from the Special Events Ordinance and Special Event Guidelines.*

The Town's Special Events Ordinance applies to certain non-school activities taking place on school grounds. The regulations in question are part of the Town's lawfully adopted zoning ordinance. The Grand Jury has not found the regulations to be illegal. The Town has asked its Planning Commission to study this matter further and it is doing so. When it receives the Planning Commission's report, the City Council will consider its recommendations carefully, as well as those of the Civil Grand Jury. However, it will not commit itself to any course of action except in compliance with the Government Code procedures for amending zoning codes.

Grand Jury Recommendation 3. *Allow issues related to after-hours use of private school facilities to be left to the schools and their immediate neighbors whenever possible.*

Recommendation 3 has been implemented. The Town's Special Events Ordinance provides a process through which the interests of the event organizers, attendees, and host schools are balanced with those of the neighboring residents. The Town makes every effort to ensure that the special events permitting process is consultative and believes the process has worked well.

Grand Jury Recommendation 4. Encourage qualified citizens from all parts of the Town of Atherton to seek appointment to boards and commissions in order to ensure broader citizen representation that is more reflective of the entire Atherton community.


Recommendation 4 has been implemented. The Town solicits applications for service on its boards and commissions from all its citizens and will continue to do so.

If you have any questions please feel to contact the Town of Atherton.

Thank you.

Sincerely,

TOWN OF ATHERTON



Jerry Carlson

Mayor