

Uploaded: Tuesday, July 13, 2010, 11:55 PM

Select FILE --> PRINT to print this story.

# The Almanac

## Atherton will revisit road-impact fee refund

by **Renee Batti**  
Almanac Staff

The refund of about \$1.65 million worth of fees paid by builders to the town of Atherton to repair roads torn up by heavy construction vehicles was approved by a divided City Council in February, stirring up a chorus of criticism among some residents.

Now, with the town struggling to balance its budget and facing a long-term structural deficit, two councilmen who voted for the refunds have placed the matter on the July 21 council agenda for reconsideration.

Councilmen Jerry Carlson and Charles Marsala said they want the council to consider a compromise plan that would significantly lower the amount of money the town would refund.

As it was approved in February, the refund would go to anyone who paid the fee from July 2006 to mid-September 2009, when the fee was rescinded.

Under the compromise plan, proposed earlier by Mr. Marsala but not accepted by the council majority, the refund would be limited to the additional money paid by builders as a result of the fee hike imposed in August 2007 -- a 40 percent boost. That means builders who paid fees from July 2006 to Aug. 17, 2007, would get no refund, and those who paid the increased fee from mid-August 2007 on would get only 40 percent of the fee back.

"It's all about finding a compromise that's going to work," Mr. Marsala said.

Mr. Carlson said he's been talking with a number of residents about the plan, and getting positive feedback, but both he and Mr. Marsala acknowledge the compromise plan leaves the door open to possible litigation.

The refunds were approved in the face of uncertainty about whether the fees were legal. The town was receiving complaints and threats of lawsuits over the fee, and Wynne Furth, the town's attorney, cited a 2005 Southern California court case that touched indirectly on the issue and concluded that the California vehicle code pre-empts any local impact fees for damage to roads.

The council vote approving the refunds in February was 3-1, with Mayor Kathy McKeithen opposed and Councilman Jim Dobbie absent. Mr. Dobbie has publicly expressed opposition to the refund.

In a letter to their council colleagues, Councilmen Carlson and Marsala wrote of the compromise plan: "While we may run a higher risk of potential litigation by refunding less (of the fee than previously approved), there had been a tacit acceptance to pay the fee before it was increased by 40 percent."

They requested that, for the July 21 meeting, staff provide a calculation of the amount of money the compromise plan would entail in refunds.

Find this article at:

[http://www.AlmanacNews.com/news/show\\_story.php?story\\_id=7001](http://www.AlmanacNews.com/news/show_story.php?story_id=7001)