



Item No. 7 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: MONA EBRAHIMI, CITY ATTORNEY

DATE: FEBRUARY 21, 2024

**SUBJECT: INTRODUCTION BY TITLE ONLY AND WAIVE FIRST READING
OF AN ORDINANCE AMENDING CHAPTER 8.28 OF THE
ATHERTON MUNICIPAL CODE TO MAKE IT CONSISTENT
WITH STATE LAW**

RECOMMENDATION

It is recommended that the Town Council introduce by title only and waive the first reading of an Ordinance ("Ordinance"), amending Chapter 8.28 of the Atherton Municipal Code ("AMC") to make it consistent with state law (Health and Safety Code Section 115920 et seq. and Health and Safety Code Section 116025 et seq.).

BACKGROUND

Atherton Municipal Code

Chapter 8.28 of the AMC ("Swimming Pool Fences") requires every pool with a depth in excess of twenty-four inches to have an enclosure around it that is at least six feet high. This requirement is meant to prevent children from drowning or near drowning. The ordinance codifying Chapter 8.28 of the AMC was passed in 1985. It has not been amended since.

The Swimming Pool Safety Act (Regulating Pools Located at Single-Family Homes)

Eleven years after Atherton passed its ordinance requiring enclosures around swimming pools, the State Legislature followed suit and passed the Swimming Pool Safety Act (Health and Safety Code § 115920 et seq.), which originally required an enclosure around swimming pools at private single-family homes. The Swimming Pool Safety Act has been amended multiple times since it was first enacted. The Swimming Pool Safety Act now requires pools at single-family homes to have at least two specified safety measures. The Swimming Pool Safety Act applies only to pools located at single-family homes, another set of law, discussed below, applies to public pools and pools located at residences other than single-family homes. Chapter 8.28 of the AMC is currently inconsistent with the Swimming Pool Safety Act. The proposed Ordinance would amend Chapter

8.28 to require compliance with state law.

The Swimming Pool Sanitation and Safety Act (Regulating Public Pools)

The Swimming Pool Sanitation and Safety Act (Health and Safety Code Section 116025 et seq.) requires the state Department of Public Health to have supervision over the sanitation, healthfulness, and safety of public swimming pools. Public swimming pools include pools that are open to the public, pools open to members and their guests, pools at residences other than single-family homes, pools located at hotels or other accommodation facilities, and pools located at athletic clubs and schools. Various sanitation and safety requirements for public pools are specified in these code sections. Chapter 8.28 of the AMC is currently inconsistent with the Swimming Pool Sanitation and Safety Act. The proposed Ordinance would amend Chapter 8.28 to also require compliance with state law.

Proposed Amendments to the AMC

As it is currently written, Chapter 8.28 of the AMC requires every pool constructed after 1985 be completely surrounded by a fence or wall six feet in height and that all gates opening through the enclosure have a self-latching device for keeping the gate closed when not in use. The Swimming Pool Safety Act requires new pools or newly renovated pools located at private single-family homes to be equipped with antientrapment grates and at least two drowning prevention safety features specified by statute. The drowning prevention safety measures property owners can choose from are: a five feet high enclosure around the pool, removable mesh fencing, a safety pool cover, exit alarms on the home's doors that provide direct access to the pool, a self-latching device on the home's doors that provide direct access to the pool, an alarm that sounds upon accidental entrance into the water, or other suitable means of protection. Therefore, under state law, a property owner could elect not to have an enclosure around the pool as long as two other specified safety measures are in place. However, that is not permitted by Chapter 8.28 of the AMC. The proposed Ordinance states any swimming pool at a private single-family home must comply with the Swimming Pool Safety Act.

As it is currently written, Chapter 8.28 of the AMC does not reference public pools or pools not located at single-family homes. The proposed Ordinance defines "public pools" as swimming pools, hot tubs, spas, or nonportable wading pools that are open to the public with or without a charge, pools open to members and their guests, pools at residences other than single-family homes, pools located at hotels or other accommodation facilities, and pools located at athletic clubs and schools. The proposed Ordinance would amend Chapter 8.28 of the AMC to require all public swimming pools be maintained as the Swimming Pool Sanitation and Safety Act requires.

ENVIRONMENTAL CONSIDERATIONS

The proposed Ordinance is exempt from environmental review under the California Environmental Quality Act, Public Resource's Code section 21000 et seq. ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that the project has no potential for causing a significant effect on the environment.

FISCAL IMPACT

The proposed Ordinance does not involve or authorize any direct expenditure by the Town.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal Area A – Maintain Fiscal Responsibility
- Goal Area F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders –to include, but be not limited to, media outlets, school districts, Menlo Park Fire Protection District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item has not been before a Town Committee or Commission

ATTACHMENTS

1. Pool Fencing Ordinance