

**DRAFT ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO  
AMEND CHAPTERS 17.52, 17.60 AND 17.3660 OF THE ATHERTON MUNICIPAL  
CODE REGULATING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY  
DWELLING UNITS**

**WHEREAS**, the Town of Atherton has historically regulated the construction of accessory structures within zones designated for residential use in a manner that is consistent with the character of the Town and that values the privacy of the Town's residents, and

**WHEREAS**, California has a shortage of housing and particularly affordable housing and the State Legislature has in recent years undertaken a number of measures to incentivize the construction of additional housing stock to address this shortage, and

**WHEREAS**, the City Council supports the construction of additional housing stock throughout the state but strongly opposes the State Legislature's approach to incentivizing such construction where that approach usurps local land use control, and

**WHEREAS**, the City Council opposes the changes in state law that take away local land use control over the development of accessory dwelling units and junior accessory dwelling units, and makes conforming changes to the Atherton Municipal Code under protest.

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

**Section 1. TITLE**

This Ordinance shall be known as the Town of Atherton ("Town") Accessory Dwelling Unit Ordinance. This Ordinance shall be applicable in the incorporated territory of the Town.

**Section 2. PURPOSE & AUTHORITY**

The purpose of this Ordinance is to adopt regulations governing the development of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs") in accordance with the changes made to State ADU laws found at Government Code section 65852 et seq. by various Senate and Assembly Bills, including SB 13, AB 68, and AB 881.

**Section 3. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER  
17.52**

Chapter 17.52 is hereby deleted and re-enacted to read as follows:

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## Chapter 17.52 ACCESSORY DWELLING UNITS

Sections:

**17.52.010 Purpose.****17.52.020 Zones Allowed.****17.52.030 Definitions.****17.52.040 Development Standards and General Requirements.****17.52.050 Application Review.****17.52.010 Purpose.**

The purpose of this chapter is to regulate accessory dwelling units in residential zoning districts and on residential property consistent with state law (California Government Code Section 65852 et seq.). Implementation of this chapter is intended to provide for additional housing opportunities by increasing the number of units available within existing neighborhoods while maintaining the character of the area. The City Council of the Town of Atherton adopts this chapter to comply with SB 13, AB 68, ~~and AB 881, AB 2221, and AB 2097~~ under protest, as it is the Council's position that in enacting these laws, the legislature has improperly usurped local land use authority.

**17.52.020 Zones Allowed.**

Accessory dwelling units and junior accessory dwelling units shall be allowed in all areas zoned to allow single family residential and multifamily residential uses in compliance with the development standards set forth in section 17.52.040 (Development Standards and General Requirements) of this Chapter. Regardless of any development standards, a minimum ADU of 800 square feet shall be allowed.

**17.52.030 Definitions.**

A. "Accessory dwelling unit" or "ADU" means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building. ~~The ADU shall be on the same lot as the main residence, and containing separate kitchen, bath, sleeping, or living facilities. The term "attached accessory dwelling unit" means an accessory dwelling unit that is structurally attached to the main residence but which has independent, direct access from the exterior. An ADU can be an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing single family or multifamily development. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes the following:~~

- ~~1. An efficiency unit.~~
- ~~2. A manufactured home, as defined in Section 18007 of the Health and Safety Code.~~

~~"Efficiency unit" means a living unit which includes all of the following:~~

- ~~• Size of at least 150 square feet.~~

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- For units that are not accessible or adaptable, a partial kitchen with a sink (minimum 18 inches wide), a permanently installed two or more burner cooktop and oven, hood vent, and refrigerator (minimum 10 cubic feet), each having a clear working space of not less than 30 inches in front of the counter.
  - Food preparation counter or counters that total at least 20 square feet.
  - Storage cabinets that total at least 30 cubic feet of shelf space
  - A separate closet.
- Compliance with light and ventilation requirements of the Atherton Building Code.
- A separate bathroom containing a water closet (toilet), lavatory (bathroom sink) and bathtub and/or shower.

The term “detached accessory dwelling unit” means an accessory dwelling unit that is not structurally attached to the main residence.

“Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

B. “Junior Accessory dwelling unit” or “JADU” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence or multifamily development. A junior accessory dwelling unit shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

#### **17.52.040 Development Standards and General Requirements.**

Unless otherwise stated in Section 17.52.050 of this Ordinance, ADUs and JADUs are permitted, provided the following standards and requirements are incorporated and met.

##### **A. Maximum Number.**

1. Only one ADU and one JADU shall be allowed on each lot or parcel with a zoning designation of single-family residential **provided that:**
  - i. The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling, existing space of a single-family dwelling, or in an accessory structure. The ADU may include an expansion of not more than 150 square feet beyond the same physical dimensions as an existing accessory structure. An expansion beyond the physical dimensions of an existing accessory structure shall be limited to accommodating ingress and egress.
  - ii. The space has exterior access **separate** from the proposed or existing single-family dwelling.
  - iii. The side and rear setbacks are sufficient for fire and safety.
  - iv. The junior accessory dwelling unit complies with the requirements of Section 65852.22.

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2. Multifamily Zones

- i. Multiple accessory dwelling units are allowed within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. At least one accessory dwelling unit is allowed within an existing multifamily dwelling. The total number of ADUs allowed is up to 25 percent of the existing multifamily dwelling units.
- ii. No more than two accessory dwelling units are allowed on a parcel that has an existing multifamily dwelling.

B. Location. The ADU shall be attached to the existing main residence ~~or located within the habitable area of the existing main residence~~ or detached from the main residence and located on the same lot as the main residence.

C. ~~Heritage Tree~~, Setbacks, Height, Other Development Requirements.

- ~~1. Heritage Trees. In all instances, the location of any newly constructed ADU or JADU shall meet the minimum requirements in accordance with Chapter 8.10 Removal of and Damage to Heritage Trees for any existing heritage trees.~~

1. Height.

- i. The maximum height of an attached ADU shall meet the height requirements for the main residence of the zone in which the unit is to be located. The maximum height of a detached ADU shall be one-story and shall not exceed a maximum overall height of sixteen (16) feet ~~and maximum sidewall height of eleven (11) feet on a lot with an existing or proposed single family or multifamily dwelling unit.~~
- ii. A maximum height of 18 feet is allowed for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit is also allowed.
- iii. A maximum height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.
- iv. A maximum height of 25 feet or the height to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.
- v. Accessory dwelling units are limited to 2 stories.

~~2.~~

- 2. Setbacks and other Development Standards. Except as specified below, all ADUs and JADUs shall comply with the setback requirements of the zone in which a unit is to be located.

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i. Attached ADUs shall be located in the main building area and may encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback, and may apply additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter, however; such rear and side setbacks may be reduced to four (4) feet but will then not be eligible for additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter.

ii.

ii. Detached accessory dwelling units shall ~~have be subject to the setback have and other development standards as set forth in Chapter 17.40 Accessory Buildings and Structures of the Atherton Municipal Code. Detached ADU's which meet the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures may apply additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter, however; such rear and side setbacks may be reduced to~~ four (4) feet ~~without applying the additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter. A detached ADU can include a detached garage.~~

ii. JADUs shall have the same setbacks as the main residence.

iii. No setback requirement shall apply to any ADU or JADU constructed in an existing living area, a converted existing accessory structure or building, or for a new ADU or JADU constructed in the same location and built to the same dimensions as an existing structure.

iv. ~~No front yard setback is required for an ADU that is 800 square feet or less in size.~~

v. ~~If an existing multifamily dwelling has a rear or side setback of less than four feet, no modification is required of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit.~~

iii.

#### 4.3. Floor Area.

i. No ADU or JADU may be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1.

ii. ~~The maximum size for a JADU is 500 square feet. The maximum size of a detached or attached ADU shall not exceed twelve hundred (1,200) square feet.~~

i.

iii. ~~For any ADU, the maximum size for a studio or 1 bedroom shall be 850 square feet. A two-bedroom ADU shall be limited to 1,200 square feet. In order for an ADU to exceed 800 square feet, the ADU must meet the accessory structure setbacks. ADUs cannot exceed 2 bedrooms.~~

ii-iv. The increased floor area of an attached ADU shall not exceed fifty percent of the existing floor area of the main residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.

v. No floor area limitation shall be required for any conversion of an existing legal non-conforming building to an ADU.

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5.4. Exemption from Maximum Floor Area Limitations.

- i. The first eight hundred (800) square feet of floor area of each newly constructed ADUs, and five hundred (500) square feet ~~for~~ JADUs shall be excluded from maximum floor area calculations.
- ii. Additional floor area for newly constructed ADUs or JADUs may be excluded from maximum floor area calculations where staff determines the following conditions are met:
  - a. Newly constructed detached ADUs which meet and/or exceed the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures will be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.
  - b. Newly constructed attached ADUs which are located in the main buildable area and encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback shall be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.

5. Windows. Accessory buildings and structures may include windows and/or skylights, except that no window or skylight openings that face the side or rear property line shall be located over nine feet above the ground level. This does not apply ADUs.

D. ~~Existing Garage~~Existing Structure. No setback shall be required for an existing, legal living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. A setback of at least four feet from the side and rear lot lines shall is required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. ~~attached or detached garage and/or other existing structure that is converted to an ADU or JADU.~~  
When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, off-street parking spaces do not need to be replaced.

A demolition permit for a detached garage that is to be replaced with an accessory dwelling unit shall be reviewed with the application for the accessory dwelling unit and issued at the same time.

E. Passageway. No passageway, as defined in California Government Code Section 65852.2, shall be required in conjunction with the construction of an ADU or JADU. Internal connections are allowed for attached ADUs and JADUs. Internal connections are not allowed for detached ADUs to other accessory buildings.

F. Owner Occupancy. The owner occupancy requirements detailed in this section shall apply to all lawfully permitted ADUs and JADUs within the Town:



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1. ADUs and JADUs permitted before January 1, 2020. The owner-occupancy requirements applicable to the ADU or JADU at the time of its permitting shall apply.
2. ADUs and JADUs permitted between January 1, 2020 and January 1, 2025. No owner-occupancy requirements shall apply.
3. ADUs and JADUs permitted after January 1, 2025. Prior to finaling of the project for an ADU or JADU, the property owner shall record a deed restriction requiring that the owner of the property occupy either the primary dwelling unit, ADU, or JADU, or if the owner will not be residing in one of the units, lease the entire property including the primary dwelling unit, ADU, and JADU to a single tenant.

G. ADU Rental. An ADU or JADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence. Rentals of any ADU or JADU must be for longer than thirty days.

H. Parking Requirement.

1. Unless subject to one of the exceptions immediately below, each ADU shall have assigned to it one parking space per ADU. ~~Parking shall be accessible from a public street and screened from view of the public street.~~ These spaces may be provided as tandem parking on an existing driveway. No parking for an ADU is required when located within one-half mile walking distance of public transit.

2. No additional parking required. No additional parking shall be required if one of the following conditions applies to the ADU:

- ~~i.~~ i. ~~ADU is located within one-half mile of public transit.~~
- ~~ii.~~ ii. ADU is part of a proposed or existing primary residence or an existing accessory structure.
- ~~iii.~~ ii. On-street parking permits are required but not offered to the occupant of the ADU.
- ~~iv.~~ iii. A car share vehicle is located within one block of the ADU.

I. Separation Requirement. A separation of at least eight feet shall be maintained between any detached ADU and the proposed or existing primary residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.

J. Entrance Requirements. Any new attached ADU or JADU that is incorporated into a proposed or existing primary residence shall have a separate entrance facing the side or rear yard, where feasible. Any new detached ADU ~~or JADU~~ shall have a separate entrance facing towards the interior of the lot.

K. Compliance with Applicable Requirements. ADUs and JADUs unit shall meet all applicable zoning and fire regulations and shall comply with local building codes. Fire sprinklers shall not be required for the accessory dwelling unit if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

L. Lighting Restrictions. Any lighting associated with an ADU or JADU shall be shielded or downlit and shall not shine onto adjoining properties, while meeting the minimum Building Code.

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M. Landscape Screening. Landscape screening for the ADU shall be installed to the greatest extent feasible.

N. Density. Any ADU or JADU does not count towards the allowable density for the lot upon which it is located.

O. Nonconforming zoning conditions do not need to be corrected as part of an ADU or JADU approval. An accessory dwelling unit shall be approved regardless of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

Q. In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), the Town of Atherton upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

1. The accessory dwelling unit was built before January 1, 2020.
2. The accessory dwelling unit was built on or after January 1, 2020, in the Town of Atherton that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

P. A certificate of occupancy for an accessory dwelling unit will only be issued after a certificate of occupancy is issued for the primary dwelling.

R. A new ADU with where there is an existing main residence shall not be required to have separate utility connections. A new ADU combined with a new house shall have separate utility connections. The connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

No impact fees will be charged on an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

#### **17.52.050 Application Review.**

A completed application for an ADU or JADU that complies with the provisions of this chapter shall be considered ministerial, without discretionary review or a [public](#) hearing, within sixty days after receiving a complete application unless either:

- A. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or



- B. If a permit application for an ADU or JADU is submitted along with a permit application to create a new primary residence, the Town may delay acting on the permit application for the ADU or JADU until the Town acts on the permit application to create the new primary residence. At such time the permit application for such ADU or JADU is considered, it will still be considered ministerially without discretionary review or a [public](#) hearing, regardless of its having been submitted along with an application for a new primary residence.

#### **Section 4. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 17.60**

Chapter 17.60 is hereby amended to the definition of "~~Second Dwelling Unit~~[Kitchen](#)" and add the definition of "Junior Accessory Dwelling Unit, as follows:

"Kitchen" means any room or area intended or designed to be used or maintained for the cooking, storing, and preparation of food and includes facilities for cleaning, preparation, and storage of food and cooking and eating utensils. [A standard kitchen shall have the following:](#)

- [1. A cooktop, oven, hood vent](#)
- [2. A refrigerator that has the following minimum dimensions 28 inches wide and 61 inches tall](#)
- [3. Sink 24 inches wide with at least a 1.5 inch drain](#)
- [4. Dishwasher](#)
- [5. Food preparation counter or counters that total at least 20 square feet](#)
- [6. Storage cabinets that total at least 40 square feet of shelf space](#)
- [7. Kitchen area of at least 80 square feet](#)

["Efficiency Kitchen" means a kitchen that includes each of the following:](#)

- [1. A cook top, oven, and hood vent](#)
- [2. Sink that is at least 18 inches wide with at least a 1.5 inch drain](#)
- [3. Food preparation counter or counters that total at least 10 square feet in area.](#)
- [4. Storage cabinets that total at least 30 square feet of shelf space.](#)
- [5. Kitchen area of at least 50 sq. ft.](#)

#### **Section 5. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 17.36**

17.36.030 Allowed Uses and Permit Requirements.

Table 17.36.030-1 (Allowed Uses and Permit Requirements for PFS District) identifies the allowed uses in the PFS district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

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CUP = Land use permitted with approval of a conditional use permit

L/ER = Land use permitted with location and environmental review

Table 17.36.030-1. Allowed Uses and Permit Requirements for PFS District

Land Use	Zoning District
	PFS
Public library	P
Public school	P
Town corporation yard	P
Town hall and associated community uses	P
<u>Accessory Dwelling Unit in conjunction with multifamily residential uses (that accommodate housing for very low- and low-income households)</u>	<u>P</u>
Emergency shelters	P <sup>4</sup>
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
Residential associated with primary nonresidential use of property on same site <sup>1</sup>	CUP
Multiple-family residential uses that could accommodate housing for very low- and low-income households associated with primary nonresidential use of property on same site	L/ER <sup>5</sup>
Private schools	CUP <sup>2, 3</sup>
Public utilities and facilities, uses, and structures	CUP
Transportation terminal facilities	CUP

## Notes:

1 Examples include dorms or teacher housing associated with school site, convent when associated with religious institutions, etc.

2 Where a master plan for a private school has been prepared and filed with the town for public record, any application for a conditional use permit shall be compared to the master plan for consistency with that document. All building and/or faculty changes, improvements, or new construction shall require a conditional use permit. To that end, all conditional use permit applications shall include the following:

a. Maps and diagrams showing the proposal in relation to the master plan layout;

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- b. History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;
- c. A traffic and parking analysis of the proposal and comparison to the master plan projections;
- d. A circulation plan showing how the traffic and pedestrian circulation will function upon implementation of the proposals; and
- e. Other information that might be required for specific proposals, such as noise analyses, lighting plans, landscape screening plans, heritage tree locations, and other similar information.

3 In addition to other conditions of approval, the planning commission shall require the following items where relevant:

- a. Identification of the approved uses and hours of operation; and
- b. Clustering of high intensity or noise-intense structures and uses (such as gymnasiums, theaters, athletic facilities) away from neighboring residential uses, where possible.

4 Emergency shelters shall be permitted only when located within the Town Civic Center property; defined as Lots 1, 2, 24, 25 and 26, Watlinton Park RSM (Resubdivision Maps) 5/8.

5 Where a master plan for a private school has been prepared and filed with the town for public record that includes multifamily residential uses that could accommodate housing for very low- and low-income households, such multifamily residential uses shall be subject to planning commission public hearing and review of the location, size, proximity to heritage trees and environmental aspects of the project but shall not result in the denial of the use.

**Section 5. SEVERABILITY & REVIVAL OF PRIOR TOWN ADU ORDINANCE**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. To the extent that prior Town ordinances governed any portion of this Ordinance held invalid, such prior Town ordinances shall again become effective if any portion of this Ordinance is held invalid.

**Section 6: EFFECTIVE DATE**

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

Town of Atherton, a municipal corporation

MAYOR: \_\_\_\_\_  
BILL WIDMER

ATTEST: \_\_\_\_\_  
ANTHONY SUBER, CITY CLERK

APPROVED AS TO FORM: \_\_\_\_\_  
MONA G. EBRAHIMI, CITY ATTORNEY

STATE OF CALIFORNIA }  
COUNTY OF SAN MATEO } SS:  
TOWN OF ATHERTON }

I, Anthony Suber, City Clerk of the Town of Atherton, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, and had its second reading and was adopted and passed during the public meeting of the City Council on the \_\_\_\_<sup>st</sup> day of \_\_\_\_\_, 2023, by the following vote:

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AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST: \_\_\_\_\_  
ANTHONY SUBER  
City Clerk