

- D **ADU Ordinance Amendments:** Consideration of a recommendation to the Town Council to approve amendments to Atherton Municipal Code Chapters 17.52 Accessory Dwelling Units, Chapter 17.60 Definitions, and Chapter 17.36 Public Facilities and Schools District (PFS).

CEQA; The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15305, Minor Alterations in Land Use Limitations.

Recommendation: Staff recommends that the Planning Commission conduct the public hearing and recommend that the City Council approve amendments to Atherton Municipal Code Chapters 17.52 “Accessory Dwelling Units”, Chapter 17.60 “Definitions” and Chapter 17.36 Public Facilities and Schools District (PFS) based on the following finding and for the reasons outlined in the staff report.



DATE: PLANNING COMMISSION MEETING OF JANUARY 25, 2023

TO: THE PLANNING COMMISSION

FROM: SUNG H. KWON, AICP, TOWN PLANNER

SUBJECT: CONSIDERATION OF A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTERS 17.52 ACCESSORY DWELLING UNITS, CHAPTER 17.60 DEFINITIONS, AND CHAPTER 17.36 PUBLIC FACILITIES AND SCHOOLS DISTRICT (PFS).

RECOMMENDATION:

Staff recommends that the Planning Commission conduct the public hearing and recommend that the City Council approve amendments to Atherton Municipal Code Chapters 17.52 “Accessory Dwelling Units”, Chapter 17.60 “Definitions” and Chapter 17.36 Public Facilities and Schools District (PFS) based on the following finding and for the reasons outlined in this report:

The proposed zoning text amendments are consistent with the general plan goals, policies, and implementation programs.

Basis for finding: The proposed Zoning Ordinance amendments allow the Town to be compliant with recent changes in state law related to the development of Accessory Dwelling Units and Junior Accessory Dwelling Units. Amendments proposed address the following General Plan Goal, Objectives, and Policy:

**Housing Element Goal 3.620
(5th Cycle Housing Element)**

Use second dwelling units to meet a substantial portion of the Town’s moderate to very low income housing need.

Land Use Objective 1.3

To retain the quality of life, character and existing in the Town’s residential neighborhoods.

**Housing Element Objective 3.661
(5th Cycle Housing Element)**

D. Continue to encourage the development of second units, which can provide an affordable option for Seniors.

Housing Element Policy 3.622 (5th Cycle Housing Element

A. Actively promote the Second Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Second Dwelling Units in existing or new homes.

BACKGROUND:

In September 2022, the Governor signed into law AB2221 and AB 2097 that amended Government Code sections 65585 and 65852.2 which impose new limits on a local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in order to further ease local restrictions. These State laws restrict what cities may require when new ADUs are considered with the intent of further reducing barriers and streamlining approvals to accommodate the development of ADUs.

These new ADU laws took effect January 1, 2023. Per this new legislation, if a jurisdiction’s ADU ordinance does not comply with the new ADU laws, that ordinance becomes null and void as a matter of law. Cities are more accountable now to the California Department of Housing Community Development (HCD) for confirming their local ordinances to the state ADU law, and HCD may refer a violation to the Attorney General. Once the revised ADU Ordinance is adopted, the Town will send the revised Ordinance to HCD within 60 days.

Key areas of change as mandated by the state legislation relative to the Town’s existing ADU Ordinance are as follows:

1. No front yard setback for ADUs
2. Increase height allowances for ADUs
3. ADUs allowed in Public Facilities and School District (PFS) Zoning District as multifamily residences are allowed with environmental review.
4. Garage Conversion Allowance for ADUs.
5. Utility and Impact fee limitations for ADUs.
6. Elimination of Heritage Tree Protection for ADUs.

ANALYSIS:

State Requirements

This update to the ADU Ordinance is intended to comply with State Regulations. Table 1 highlights major changes in the development standards and notes the requirement source.

Staff Proposed Amendments

In addition to the amendments as required by state legislation to Chapter 17.52 “Accessory Dwelling Units”, staff is recommending the following, additional amendments for consistency with General Plan land use policies, clarity, and internal Zoning Ordinance consistency.

- *Internal Connection from Attached ADU to Main Residence.* Although, the Municipal Code does not allow internal connections from attached ADUs to the main residence, it has been the

practice of the Town to allow these internal connections. The ADU ordinance is being update to ratify this allowance. Allowance of an internal connection between a detached ADU to other accessory structures is not proposed.

- *Kitchen Definition.* Definitions for kitchens within an ADU and a JADU are outlined for internal consistency within Chapter 17.60 "Definitions". Under the definitions there are proposed requirements for a typical kitchen required for ADUs and an efficiency kitchen which is only allowed for JADUs.

Table 1: Summary of ADU Amendments

Development Standard	Existing Regulation	Proposed Amendment	Requirement
State Requirements			
Efficiency Units and Manufactured Homes	None	Allow efficiency units and manufactured homes.	AB2221
ADU Allowances	17.52.040.A	Clarify ADU limitations for single family residential and add allowance for multifamily residential.	AB2221
Impact Fees	None	No Impact fees will be charges on ADU that are 750 square feet or less.	AB2221
Heritage Trees	17.52.040.C	Damage or removal of heritage trees can not be the basis for denying an ADU/JADU. This limitation is proposed for removal. Multiple ADUs may be allowed in multifamily residential.	AB2221
ADU Height	17.52.040.C 16 feet for detached ADUs	18 feet height limit when ½ mile from major transit stop. 18 feet height limit for multifamily development 25 feet height limit for attached ADU 2 story limit for ADUs	AB2221
Setbacks – Front	Attached = Same as Main Residence Detached = 120' from the front property line, or 30' behind the	No Limitation in front yard setback	AB2221

	front line of the main residence, whichever is less.		
Existing Garage and Accessory Structures	17.52.040.D	Expanded ADU conversion allowance language. Noted that no replacement parking is required. Existing zoning code does not require parking for single family residence.	AB2221
Parking	17.52.040.H	Revised parking requirements	AB2097
Fire Sprinklers	17.52.040.K	Clarified that construction of an ADU would not trigger a need to provide fire sprinklers for the main residence.	AB2221
Non-conformity Zoning & Building	None	Nonconforming zoning conditions do not need to be corrected for ADUs. Can delay enforcement of building standard.	AB2221
Utility Connections	None	No new utility connections required for ADU if there is an existing house.	AB2221
ADU Sidewall Height	Detached = 16' max with 11' sidewall	No sidewall limitation for ADUs.	HCD Letter
ADUs in PFS (Multifamily Zone)	Allowed use as shown in Table 17.36.030-1.	Allow ADUs in PFS for multifamily residential use in PFS	HCD Letter
Location	17.52.040.B	Remove the habitable area language for location of ADU.	HCD Letter
Zoning Code Clarifications			
Passageway	None	Allow passageway from attached ADU to main residence. No passageway will be allowed from detached ADU to other accessory structures.	
Kitchen Definition	Not detailed	Specific standards for standard kitchens and efficiency kitchens are proposed by staff.	

CONCLUSION:

To respond to the current state housing crisis, the State Legislature passed a series of bills designed to encourage the production of both ADUs and JADUs. Cities are expected to update their local ordinances to comply with the state legislation. If the Town fails to conform its local ordinance, applicants would be permitted to develop under the state legislation. Since the Town currently has

several ADU applications pending, adopting the local updates will allow the Town to process applications with more clarity and compliance. The attached ordinance is drafted to comply with the minimum, more permissive state regulations. Additionally, adoption of amendments to the ADU Ordinance to incorporate the more permissive state requirements, may further promote the development of ADUs in Town, which may in turn assist the Town fulfilling its Regional Housing Needs Allocations (RHNA) requirements which will be assigned by the state during the next upcoming, required Housing Element cycle.

ALTERNATIVES:

The Commission could recommend additional or revised amendments on the draft Ordinance or not recommend approval of any amendments to the City Council.

FISCAL IMPACT:

The cost associated with the preparation of the draft Ordinance amendments are included within the annual Planning Department budget. The cost to implement the Ordinance will be paid for the applicants of related development projects.

ENVIRONMENTAL IMPACT:

The project is Categorically Exemption per Section 15305 of the CEQA Guidelines. Section 15305 relates to Minor Alterations in Land Use Limitations, as the ordinance amendments would not result in any changes to land use or density.

FORMAL MOTION:

I move that the Planning Commission recommend City Council determination of CEQA exemption and recommend adoption of amendments to Atherton Municipal Code Chapter 17.52 Accessory Dwelling Units, Chapter 17.60 Definitions, and Chapter 17.36 Public Facilities and School Districts (PFS) based on the findings and for the reasons as outlined in the Staff Report.

Sung H. Kwon, AICP, Town Planner

Attachments:

1. Draft Ordinance Amendments tracked changes
2. Draft Ordinance Amendments clean
3. HCD Comment Letter
4. Town Response to HCD Comment Letter
5. Draft Planning C Resolution recommending adoption of revisions to the ADU regulations to the City Council

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:

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.

3.

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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 ⁴
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
Residential associated with primary nonresidential use of property on same site ¹	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 ⁵
Private schools	CUP ^{2, 3}
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;

Attachment 1

- 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 ____th day of _____, and had its second reading and was adopted and passed during the public meeting of the City Council on the ____st day of _____, 2023, by the following vote:

Attachment 1

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: _____
ANTHONY SUBER
City Clerk

Attachment 2

DRAFT ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO
AMEND CHAPTERS 17.52, 17.60 AND 17.36 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, 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. 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.
- 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.

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- 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.
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

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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 detached from the main residence and located on the same lot as the main residence.

C. Setbacks, Height, Other Development Requirements.

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 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. 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.

- 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. Detached accessory dwelling units shall have rear and side setbacks of four (4) feet. A detached ADU can include a detached garage. 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.

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- 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.
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.
 - 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.
 - 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.
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.

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D. 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 be 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.

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:

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. 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. ADU is part of a proposed or existing primary residence or an existing accessory structure.

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- ii. On-street parking permits are required but not offered to the occupant of the ADU.
- 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 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.

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.

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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 "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

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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
- 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
Accessory Dwelling Unit in conjunction with multifamily residential uses (that accommodate housing for very low- and low-income households)	P
Emergency shelters	P ⁴
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP

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Land Use	Zoning District
	PFS
Residential associated with primary nonresidential use of property on same site ¹	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 ⁵
Private schools	CUP ^{2, 3}
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;
- 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, Watlington 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.

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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 ____th day of _____, and had its second reading and was adopted and passed during the public meeting of the City Council on the ____st day of _____, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: _____
ANTHONY SUBER
City Clerk

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



December 14, 2021

Lisa Costa Sanders, Town Planner
Planning Department
Town of Atherton
150 Watkins Avenue
Atherton, CA 94027

Dear Lisa Costa Sanders:

RE: Review of the Town of Atherton Accessory Dwelling Unit (ADU) Ordinance

Thank you for submitting the Town of Atherton's (Town) ADU Ordinance Number 646, adopted October 21, 2020. The ordinance was received by the California Department of Housing and Community Development (HCD) on May 28, 2021. HCD is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the ordinance does not comply with section 65852.2 in several respects, noted below. HCD requests that the Town provide a written response to these findings no later than January 13, 2022. HCD will review and consider any written response received from the Town before that date in advance of taking further action authorized by Government Code section 65852.2, subdivision (h).

Although the ADU ordinance meets some statutory requirements, it must be revised to comply with State ADU Law as follows:

- *Allowed areas for the creation of ADUs:* Municipal Code section 17.52.020, *Zones Allowed*, notes that ADUs may be allowed in all areas zoned to allow single-family residential uses but is silent as to multifamily uses. As such, the code appears to constrain the development of ADUs on sites with a proposed or existing multifamily dwelling structure. State ADU Law allows ADUs to be created on sites that are zoned to allow single-family *or* multifamily dwelling residential use where a proposed or existing dwelling exists, regardless of whether it is a single-family or multifamily dwelling. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) Thus, the local ordinance is impermissibly narrow as to the location of ADUs and should be revised to expand the areas allowing the creation of ADUs.
- *Municipal Code section 17.52.040, Development Standards and General Requirement:* Section 17.52.040.C.3.b refers to Chapter 17.40 *Accessory Buildings and Structures* and provides that ADUs are subject to the setback and development

standards in that chapter. Although HCD has not comprehensively evaluated the Town's zoning code, it observes that Chapter 17.40 contains multiple constraints that cannot be imposed on ADUs under State ADU Law.

A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to Government Code section 65852.2, subdivision (e). Further, required setbacks may be no more than four feet from the side and rear lot lines for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) The Town's setbacks set out in section 17.40.040 exceed these provisions.

Other problematic restrictions relate to height, location, floor area ratio calculation, habitation, and window and skylight height limitations. These requirements appear to exceed the standards of State ADU Law and may be excessive and burdensome to the reasonable creation of ADUs. The Town should review and revise its code for compliance with State ADU Law to assure that local standards do not exceed state standards. As such, reference to Chapter 17.40 should be removed from the ADU ordinance. (Gov. Code, § 65852.150, subd. (b).) Standards applicable to ADUs should be clearly stated in Chapter 17.52 to avoid confusion.

- Municipal Code section 17.52.040.A, Maximum Number:* Although the ordinance limits ADUs to sites zoned for single-family residential use, ADUs are permitted to be created on sites zoned to allow both single-family and multifamily residential use. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) In addition, multiple ADUs may be created on a site, with an existing multiple family dwelling structure (Gov. Code, § 65852.2, subds. (e)(1)(C) and (e)(1)(D).) Junior Accessory Dwelling Units (JADUs) are limited to one per single-family lot on sites zoned to allow single-family dwelling use and may be created with an ADU on the same site. (Gov. Code, §§ 65852.2, subds. (e)(1)(A), (e)(1)(B), and 65852.22, subd. (a).) The ordinance should be revised to permit ADUs on all sites that permit single-family or multifamily use and shall allow multiple ADUs on sites with an existing multifamily dwelling structure, which does include a duplex.
- Municipal Code section 17.52.040.B, Location:* This section places impermissible limits on the location of ADUs. It provides: "The ADU shall be [1] attached to the existing main residence or [2] located within the habitable area of the existing main residence or [3] detached from the main residence and located on the same lot as the main residence." (Bracketed material added.) Statute allows ADUs to be created with an existing or proposed primary dwelling, which may be either a single-family or multifamily dwelling structure. In addition, an ADU may be created from any area within an existing structure and is not limited to being created from habitable space. (Gov. Code, § 65852.2, subds. (a)(1)(D)(ii), (a)(1)(D)(iii), and

(e)(1)(A).) The ordinance should be revised to reflect locations allowed by State ADU Law.

- *Municipal Code section 17.52.040.C.2, Height:* Under State ADU Law, a local agency may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).) Although the Town's ordinance does not limit the height of an ADU below 16 feet, it does limit the height of a sidewall to be not greater than 11 feet. The Town's sidewall height requirement is more restrictive than the standards contained in State ADU Law and must be revised to not constrain design options that are 16 feet or less in height. (Gov. Code, § 65852.2, subd. (a)(6).)
- *Municipal Code section 17.52.040.C.3.ii,¹ Setbacks:* The ordinance establishes the same standards for detached ADU setbacks as those for Accessory Buildings and Structures in Chapter 17.40. These standards may exceed standards for ADU setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), and (e)(1).) The ordinance should be revised to remove the standards of this Chapter.
- *Municipal Code section 17.52.040.5.ii,² Exemption from Maximum Floor Area Limitations:* The section refers to Chapter 17.40 for side and rear lot line setbacks. As noted elsewhere, the setbacks noted in this Chapter greatly exceed the allowed setbacks of State ADU Law. In addition, local agencies shall not limit the maximum size of an ADU to be less than 850 square feet for a studio or one-bedroom and not less than 1,000 square feet for an ADU exceeding one bedroom. The creation of an ADU, constrained by lot size, lot coverage, floor area ratio or open space requirements, shall be allowed to be at least 800 square feet. As previously noted, Chapter 17.40 contains standards well in excess of that permitted by state law and cannot be applied to ADUs. The ordinance should be revised to remove the reference. (Gov. Code, § 65852.2, subd. (a) and (c)(2)(C).)
- *Compliance with Applicable Requirements:* Municipal Code section 17.52.040.K. notes that ADUs and JADUs shall meet all applicable zoning and fire regulations and shall comply with local building codes. The inclusion of this language is confusing and overbroad. Although ADU statute requires ADUs and JADUs to comply with local building codes, local development standards shall not exceed state standards. (Gov. Code, § 65852.2, subd. (a)(6).) The ordinance (Chapter 17.52) must be revised to identify the specific, applicable codes and standards that apply to ADUs, consistent with state law.

In these respects, revisions are necessary to comply with statute.

¹ This section is codified as Municipal Code section 17.52.040.C.3.b.

² This section is codified as Municipal Code section 17.52.040.C.5.b.

Lisa Costa Sanders, Town Planner
Page 4

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

HCD appreciates the Town's efforts in the preparation and adoption of an ADU ordinance and welcomes the opportunity to assist the Town in fully complying with State ADU Law. Please feel free to contact Greg Nickless, of our staff, at 916-274-6244 or at greg.nickless@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability



Town of Atherton
Planning Department
80 Fair Oaks Lane
Atherton, California 94027
Phone: (650) 752-0544
Fax: (650) 614-1224

January 11, 2022

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

Dear Mr. Zisser,

RE: Review of the Town of Atherton Accessory Dwelling Unit (ADU) Ordinance

Thank you for your review of the Town of Atherton's ("Town") Accessory Dwelling Unit ("ADU") Ordinance, Chapter 17.52 of the Atherton Municipal Code ("AMC"). As requested in your letter dated December 14, 2021, the Town has prepared the following written responses to the comments provided by the Department of Housing and Community Development, Division of Housing Policy Development ("HCD").

HCD Comment 1:

Allowed areas for the creation of ADUs: Municipal Code Section 17.52.020, Zones Allowed, notes that ADUs may be allowed in all areas zoned to allow single-family residential uses but is silent as to multifamily uses. As such, the code appears to constrain the development of ADUs on sites with a proposed or existing multifamily dwelling structure. State ADU Law allows ADUs to be created on sites that are zoned to allow single-family or multifamily dwelling residential use where a proposed or existing dwelling exists, regardless of whether it is a single-family or multifamily dwelling. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).) Thus, the local ordinance is impermissibly narrow as to the location of ADUs and should be revised to expand the areas allowing the creation of ADUs.

Town Response: The Town of Atherton is currently divided into four zoning designations: Residential district R-1A (Chapter 17.32 of the AMC), Residential district R-1B (Chapter 17.32 of the AMC), Parks and open space district (POS District, Chapter 17.34 of the AMC), and the Public facilities and school district (PFS District, Chapter 17.37 of the AMC). Both residential districts, R-1A and R-1B, allow single-family residential uses, including accessory dwelling units, but prohibit multifamily uses. No type of residential use is permitted in the POS zoning district.

Parcels zoned PFS may be used by right for public libraries, public schools, Town corporation yards, Town hall (and associated uses), and emergency shelters. Additionally, parcels zoned PFS may, with a conditional use permit, be used for additional uses including but not limited

to churches, country clubs, and private schools. Finally, parcels zoned PFS may also be used for residential uses associated with the primary non-residential use of the property on the same site (such as dorms or teacher housing associated with a school site, or convent associated with a religious institution), and 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 (such as 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 subject to issuance of a Conditional Use Permit).

Beyond the allowed use for multiple-family housing upon issuance of Conditional Use Permit for a primary nonresidential use in the PFS zoning district, no other zoning districts within the Town allow multifamily residential uses. Given these circumstances, the Town believes its ADU ordinance complies with Gov. Code, § 65852.2(a)(1)(D)(ii). Nevertheless, the Town proposes an amendment to its ADU ordinance to specify that ADUs may be constructed in association with multifamily residential uses that accommodate housing for very low- and low-income households associated with primary nonresidential uses in the PFS zoning district.

HCD Comment 2, paragraph 1:

Municipal Code section 17.52.040, Development Standards and General Requirement: Section 17.52.040.C.3.b refers to Chapter 17.40 Accessory Buildings and Structures and provides that ADUs are subject to the setback and development standards in that chapter. Although HCD has not comprehensively evaluated the Town's zoning code, it observes that Chapter 17.40 contains multiple constraints that cannot be imposed on ADUs under State ADU Law.

Town Response: It is unclear which provisions of Chapter 17.40 HCD is referencing in this comment. The Town respectfully requests clarification on this comment from HCD with citations to those portions of Chapter 17.40 of the AMC that violate state law and which state laws are allegedly violated.

HCD Comment 2, paragraph 2:

A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to Government Code section 65852.2, subdivision (e). Further, required setbacks may be no more than four feet from the side and rear lot lines for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) The Town's setbacks set out in section 17.40.040 exceed these provisions.

Town Response: The Town's setback provisions for the creation of ADUs is specified in Section 17.52.040 C (3) of the AMC. As noted within this subsection, specifically Section 17.52.040 C 3 a-c, newly-constructed attached and detached ADUs are allowed to have four-foot rear and side yard setbacks. These sections further specify that should such attached or detached ADU have greater than four-foot rear and side setbacks (i.e. meet the main building area setbacks for attached ADUs or the side and rear setbacks of Chapter 17.40, an additional

exemption from floor area limits may apply. Effectively, this language is intended to allow a development to voluntarily situate such attached or detached ADU more than four-feet from a side or rear setback in exchange for additional floor area exemption in addition to and beyond the first 800 square feet as mandated by State law. Nothing in this language explicitly requires either an attached or detached ADU to have more than a four-foot side and/or rear yard setback.

Thus, the Town believes the setback requirements contained in Section 17.52.040 for the creation of ADU's complies with Gov. Code sections 65852.2(e) and 65852.2(a)(1)(D)(vii.) and does not unduly constrain the creation of ADUs for the reasons as noted and cited. It is further noted that Section 17.52.040 C 5 b of the AMC is simply incentive language available for an applicant to voluntarily chose to develop an ADU with greater than four-foot side or rear setbacks. This proposed incentive approach, which does not constrain, nor prohibit, development of an ADU with four-foot side or rear setbacks was specifically explained and discussed with HCD staff on May 14, 2020.

HCD Comment 2, paragraph 3:

Other problematic restrictions relate to height, location, floor area ratio calculation, habitation, and window and skylight height limitations. These requirements appear to exceed the standards of State ADU Law and may be excessive and burdensome to the reasonable creation of ADUs. The Town should review and revise its code for compliance with State ADU Law to assure that local standards do not exceed state standards. As such, reference to Chapter 17.40 should be removed from the ADU ordinance. (Gov. Code, § 65852.150, subd. (b).) Standards applicable to ADUs should be clearly stated in Chapter 17.52 to avoid confusion.

Town Response:

- Height. Development requirements related to ADU height are specified in Section 17.52.040 C 2 of the AMC. The Town proposes to amend this subsection to remove reference to a maximum sidewall height of eleven feet. See subsection excerpt below, with language proposed to be removed struck through.

Height. 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 feet and maximum sidewall height of eleven feet.

- Location. Development requirements related to location are specified in Section 17.52.040 B of the AMC. The Town proposes to amend this subsection to remove reference to requiring an ADU to be located within the habitable area of the existing main residence. See subsection excerpt below, with language proposed to be removed struck through.

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.

- **Floor Area Calculation.** Development requirements related to floor area calculations are specified in Section 17.52.040 C 4 a-d of the AMC. The Town finds all floor area requirements to meet the standards of State ADU Law and not to be excessive and burdensome to the reasonable creation of ADUs. The Town respectfully requests HCD clarify the concerns with this subsection.
- **Habitation.** As it relates to habitation, see Town response to proposed amendments in response to the “Location” bullet point above.
- **Windows and Skylights.** Development regulations related to windows and skylights on detached ADUs are specified in Section 17.40.040 H of the AMC. There are no such regulations related to windows on attached ADUs. The 9-foot height limit on windows and skylights, and associated requirement that any opening of either skylight or window shall not face a side or rear property line is intended to maintain a reasonable degree of privacy between properties, does not limit the overall maximum allowable height of 16 feet for the construction of a detached ADU. The Town proposes to integrate the language of Section 17.40.040 H, directly into a revised ADU Ordinance.
- **Reference to Chapter 17.40.** The Town proposes to remove any reference to Chapter 17.40 within the ADU Ordinance, and any associated development standards noted above that the Town believes does not exceed the standard of State law, nor excessive and burdensome to the reasonable creation of ADUs, shall be clearly specified and stated within a revised ADU Ordinance.

HCD Comment 3:

Municipal Code section 17.52.040.A, Maximum Number: Although the ordinance limits ADUs to sites zoned for single-family residential use, ADUs are permitted to be created on sites zoned to allow both single-family and multifamily residential use. (Gov. Code, § 65852.2, subd. (a)(1)(D)(ii).), In addition, multiple ADUs may be created on a site, with an existing multiple family dwelling structure (Gov. Code, § 65852.2, subds. (e)(1)(C) and (e)(1)(D).) Junior Accessory Dwelling Units (JADUs) are limited to one per single-family lot on sites zoned to allow single-family dwelling use and may be created with an ADU on the same site. (Gov. Code, §§ 65852.2, subds. (e)(1)(A), (e)(1)(B), and 65852.22, subd. (a).) The ordinance should be revised to permit ADUs on all sites that permit single-family or multifamily use and shall allow multiple ADUs on sites with an existing multifamily dwelling structure, which does include a duplex.

Town Response: Please see Town response to Comment 1 above.

HCD Comment 4:

Municipal Code section 17.52.040.B, Location: This section places impermissible limits on the location of ADUs. It provides: “The ADU shall be [1] attached to the existing main residence or [2] located within the habitable area of the existing main residence or [3] detached from the main residence and located on the same lot as the main residence.” (Bracketed material added.) Statute allows ADUs to be created with an existing or proposed primary dwelling, which may be either a singlefamily or multifamily dwelling structure. In addition, an ADU may be created from any area within an existing structure and is not

limited to being created from habitable space. (Gov. Code, § 65852.2, subds. (a)(1)(D)(ii), (a)(1)(D) (iii), and (e)(1)(A).) The ordinance should be revised to reflect locations allowed by State ADU Law.

Town Response: See Town Response to Comment 3, bullet point “Location” above.

HCD Comment 5:

Municipal Code section 17.52.040.C.2, Height: Under State ADU Law, a local agency may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).) Although the Town’s ordinance does not limit the height of an ADU below 16 feet, it does limit the height of a sidewall to be not greater than 11 feet. The Town’s sidewall height requirement is more restrictive that the standards contained in State ADU Law and must be revised to not constrain design options that are 16 feet or less in height. (Gov. Code, § 65852.2, subd. (a)(6).)

Town Response: See Town Response to Comment 2, bullet point regarding “Height” above.

HCD Comment 6:

Municipal Code section 17.52.040.C.3.ii, 1 Setbacks: The ordinance establishes the same standards for detached ADU setbacks as those for Accessory Buildings and Structures in Chapter 17.40. These standards may exceed standards for ADU setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), and (e)(1).) The ordinance should be revised to remove the standards of this Chapter.

Town Response: See Town response to Comment 2 above related to setbacks, as the Town believes setback requirements for ADUs complies with section 65852.2, subdivision (e) and Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) and does not unduly constrain the creation of ADUs for the reasons as noted and cited in this response. See also Town response to Comment 2 above related to proposal to remove reference to Chapter 17.40.

HCD Comment 7:

Municipal Code section 17.52.040.5.ii, 2 Exemption from Maximum Floor Area Limitations: The section refers to Chapter 17.40 for side and rear lot line setbacks. As noted elsewhere, the setbacks noted in this Chapter greatly exceed the allowed setbacks of State ADU Law. In addition, local agencies shall not limit the maximum size of an ADU to be less than 850 square feet for a studio or one-bedroom and not less than 1,000 square feet for an ADU exceeding one bedroom. The creation of an ADU, constrained by lot size, lot coverage, floor area ratio or open space requirements, shall be allowed to be at least 800 square feet. As previously noted, Chapter 17.40 contains standards well in excess of that permitted by state law and cannot be applied to ADUs. The ordinance should be revised to remove the reference. (Gov. Code, § 65852.2, subd. (a) and (c)(2)(C).)

Town Response: See Town response to Comment 2 above related to setbacks. Again, the Town believes associated setback requirements for the creation of ADU’s to comply with section 65852.2, subdivision (e) and Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) and does not unduly constrain the creation of ADUs for the reasons as noted and cited in this response. The

maximum size allowed for an ADU in the Town of Atherton is 1,200 square feet per Section 17.52.040 C 4 b, which exceeds the minimum required for both one and two-bedroom ADUs by state law. The Town's ADU Ordinance allows for the creation of ADUs at least 800 square feet in size irrespective of floor area maximums (Section 17.52.040 C 4 c). The Town proposes to amend Section 17.52.040 C 4, to include clarifying language specifying that the maximum size of an ADU shall not limited to be less than 850 square feet for a studio or one-bedroom, and not less than 1,000 square feet for an ADU exceeding one-bedroom. See Town response to Comment 2 above related to proposal to remove reference to Chapter 17.40.

HCD Comment 8:

Compliance with Applicable Requirements: Municipal Code section 17.52.040.K. notes that ADUs and JADUs shall meet all applicable zoning and fire regulations and shall comply with local building codes. The inclusion of this language is confusing and overbroad. Although ADU statute requires ADUs and JADUs to comply with local building codes, local development standards shall not exceed state standards. (Gov. Code, § 65852.2, subd. (a)(6).) The ordinance (Chapter 17.52) must be revised to identify the specific, applicable codes and standards that apply to ADUs, consistent with state law.

Town Response: As applicable fire and building code regulations often change, this language was left intentionally open ended to remain current with the State of California's latest fire safety and building code requirements. The Town does not enforce any codes that exceed the standards required by the State of California, so there is no condition where local development standards would exceed state standards. There is no circumstance where any building may be constructed without conforming to necessary State of California fire safety and building code regulations. As such, the Town believes Section 17.52.040 K to comply with state standards. (Gov. Code, § 65852.2, subd. (a)(6).)

In addition to the specific responses to HCD's comments on the Town's ADU regulations, the Town notes that prior to presenting the City Council with the proposed amendments to the ADU Ordinance for final adoption on October 6, 2020, staff met with HCD staff both on May 14 and October 6, 2020 to review drafts of the ADU Ordinance and get HCD's feedback. Both drafts shared with HCD included the regulations regarding height, setbacks, and floor area exemptions noted in HCD's letter dated December 14, 2021. At both those times, HCD did provide guidance on necessary revisions to the draft ADU Ordinance which were subsequently incorporated, however, none of the issues noted in the letter dated December 14, 2021 were flagged as potentially problematic by HCD.

Please contact me at sbertollo-davis@ci.atherton.ca.us, or 650-773-7249 with further questions, comments, or concerns.

Sincerely,



Stephanie B. Davis, AICP

Principal Planner

Cc: Lisa Costa Sanders, Town Planner; Deputy Town Attorney

DRAFT PLANNING COMMISSION RESOLUTION 2023-_____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF
ATHERTON TO RECOMMEND CHANGES TO THE ATHERTON MUNICIPAL
CODE CHAPTERS 17.52, 17.60 AND 17.36.**

WHEREAS, the State of California passed AB 2221 and AB 2097 that necessitates updates to the Accessory Dwelling Unit regulations; and

WHEREAS, the Town of Atherton seeks to remain in compliance with State Regulations; and

WHEREAS, the Town of Atherton encourages the development of accessory dwelling units to produce housing; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law to consider revisions to Chapter 17.52 accessory dwelling units, Chapter 17.60 definitions, and Chapter 17.36 Public Facilities and Schools District (PFS) of the Atherton Municipal Code at the regular January 25, 2023 meeting to conform to state requirements; and

WHEREAS, the Planning Commission, received public comment, and discussed elements of the Accessory Dwelling Unit Regulations; and

WHEREAS, the Planning Commission finds that revisions to Chapters 17.52, 17.60, and 17.36 are in conformance with the General Plan, particularly the following Goal, Objectives, and Policy:

**Housing Element Goal 3.620
(5th Cycle Housing Element)**

Use second dwelling units to meet a substantial portion of the Town's moderate to very low income housing need.

Land Use Objective 1.3

To retain the quality of life, character and existing in the Town's residential neighborhoods.

**Housing Element Objective 3.661
(5th Cycle Housing Element)**

D. Continue to encourage the development of second units, which can provide an affordable option for Seniors.

**Housing Element Policy 3.622
(5th Cycle Housing Element)**

A. Actively promote the Second Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Second Dwelling Units in existing or new homes.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission of the City of Atherton in its independent judgment and based on substantial evidence in the record, hereby recommends to the City Council:

1. That the revisions to the ADU regulations are exempt from CEQA under Section 15305
2. To adopt revisions to the Chapters 17.52, 17.60, and 17.36 to conform to state regulations.

Passed and adopted as a Resolution of the Planning Commission of the Town of Atherton at a regular meeting thereof held on the January 25, 2023 by the following vote:

AYES, PLANNING COMMISSIONERS _____

NOES, PLANNING COMMISSIONERS _____

ABSENT, PLANNING COMMISSIONERS _____

CHAIR of the Planning Commission

ATTEST:

TOWN PLANNER of the Town of Atherton

Sung Kwon

From: Sung Kwon
Sent: Wednesday, January 25, 2023 8:26 AM
To: Radha Hayagreev
Cc: Andreas Booher
Subject: ADU Ordinance
Attachments: Stanski 40 Ashfield Rd. Atherton submission Planning Commission 24 Jan 2023.pdf

Good Morning Chair Lane and Commissioners,

A resident/applicant has outlined a request that may require changes to the ADU Ordinance. The resident/applicant asked me to forward this letter to the Planning Commission for your consideration. Please see attached. The resident/applicant has noted that he would attend the meeting tonight.

Sincerely,

Sung H. Kwon, MCRP MBA AICP
Principal Planner, M-Group

Contract Town Planner
Town of Atherton
80 Fair Oaks Lane (New Town Center)
Atherton, CA 94027
(408) 796-4844

5 November 5, 2022

PLANING DIVISION

ATTN: ADU Survey

80 Fair Oaks Lane

Atherton, CA. 94027

RE: ADU potential on 40 Ashfield Road, Atherton inquiry

Dear Sir/Madam:

Enclosed is my survey respond to your October 4 mailing.

I would ask that you please comment on the following proposal for an ADU on my Atherton property, as my contribution to the demands by the State of California for more "housing units"

My proposal that I ask for your consideration/comment relative to the current Atherton zoning laws would be the following:

1. I cannot utilize backyard space in my current 40 Ashfield Road lot to add a separate 800 to 1000 sq. ft. ADU without ruining the current back yard function and visual effects.
2. What I would be willing to do is take my current two car garage, (see appended lot blueprint) and undertake the following:
 - a) Take the current 2 car garage which has 10 ft. setbacks to the lot lines and expand it to a 3 car garage using the reduced setbacks that ADU's can have, aka 4 Ft.
 - b. Construct on the **TOP of the garage** an ADU that would be a "second floor" to the garage but have all of the functional and qualifying features of an ADU.
 - c) I understand that current Atherton zoning does not allow what I propose, BUT the city of Atherton must adjust the historical past thinking to the new reality.
 - d) if I can get a 3-car garage and an ADU as a second story to the garage, I will invest and make my contribution to the city of Atherton's needed 300+ housing units.

Please consider my proposal above and if there is any realistic zoning potential for the above, I will have my architect be in touch with you to start the discussion process.

My thanks for your consideration and deliberation, we want to get through this and preserve our beautiful city construct.


Donald R. Stanski, MD

Call: 415-2020-344-9868

Email: drstanski1950@gmail.com

LEGENDS

- PROPERTY LINE
- ATTACK LINE
- FIRST FLOOR
- SECOND FLOOR

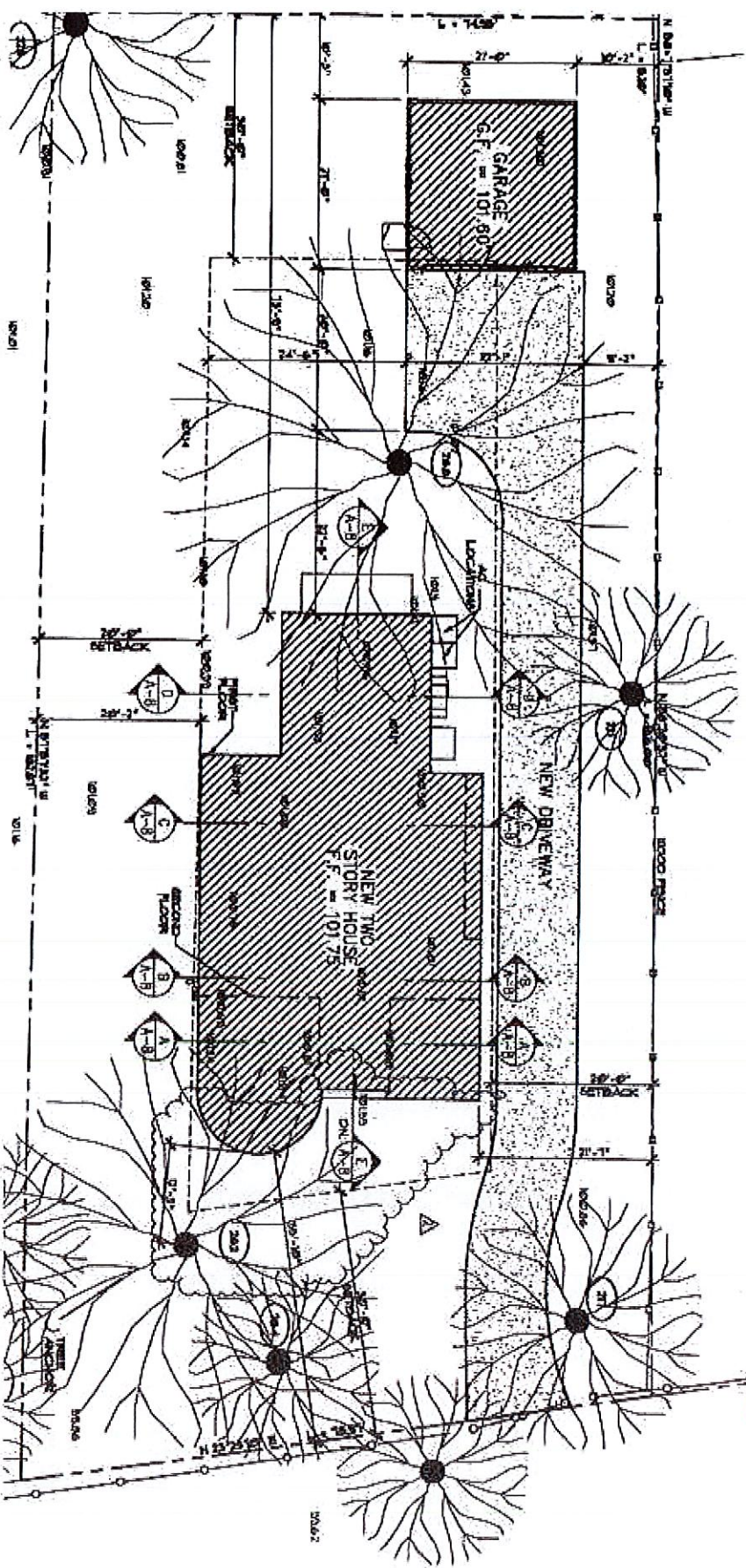
GRAPHIC SCALE



NOTES

- 1- PLUMBING ROOF DRAIN SHALL BE ENCLOSED INTO ANY YARD NOT TO EXCEED A MAXIMUM OF ONE FOOT FOR ACCESSORY STRUCTURES AND FOUR FEET FOR MAIN STRUCTURE FROM TOWN OF ATTENTION ZONING ORDINANCE SECTION 17.06.04.02.
- 2- ALL ELECTRICAL, TELEPHONE, ELECTRIC LINES AND OTHER SUCH SERVICE FACILITIES TO THE BUILDING SHALL BE PLACED UNDERGROUND FROM THE POINT OF THE UTILITY COMPANY'S FEE, TOWN OF ATTENTION TYPICAL CODE SECTION 17.06.05.02.
- 3- ALL STRUCTURE SHALL BE DESIGNED BY A LICENSED SURVEYOR OR CIVIL ENGINEER TO VERIFY THE LOCATION OF THE BUILDING AND OCCUPATION SHALL BE SUBMITTED TO THE TOWN OF ATTENTION BUILDING DEPARTMENT PRIOR TO FOUNDATION REJECTION.
- 4- LICENSED SURVEYOR SHALL VERIFY BUILDING LAYOUT FROM AVAILABLE EXISTING NATURAL GRADE. OCCUPATION OF VENTILATION SHALL BE SUBMITTED TO TOWN OF ATTENTION BUILDING DEPARTMENT PRIOR TO FURNACE REJECTION.
- 5- THE OWNER SHALL EMPLOY THE ENGINEER OR ARCHITECT RESPONSIBLE FOR THE STRUCTURAL DESIGN TO PREPARE A STRUCTURAL SEPARATION FOR GENERAL CONFORMANCE TO THE PLANS AND SPECIFICATIONS AT THE COMPLETION OF THE STRUCTURAL STUDY. THE ENGINEER/ARCHITECT SHALL REPORT TO THE BUILDING OFFICIAL A WRITTEN STATEMENT OF COMPLIANCE PRIOR TO THE FOUNDATION REJECTION.

34



FIELD ROAD
(50' WIDE)



*Atherton Accessory Dwelling Unit (ADU) Survey
(Print Version)*

The State of California requires every city and town to plan for increased housing development between 2023 and 2031. The State requires the Town of Atherton to provide an updated Housing Element plan to build at least 348 new housing units during that period. The Town must provide a viable plan to accomplish the goal to the State for certification. Please visit the [Town's Housing Element Update webpage](#) to learn more.



The Town historically relied on the construction of Accessory Dwelling Units (ADUs), sometimes referred to as "in-law units" or "second-units" to meet prior State housing requirements. Because of a significant increase (375%) in State mandated housing targets during this period, the Town seeks to promote the construction and rental of ADUs to an even greater degree over the coming eight years. The purpose of this survey is to measure your interest in constructing and renting an ADU (or Junior ADUs – interior units) on your property or modifying an accessory building to qualify as an ADU, as well as understanding what you believe potential barriers are to their construction.

All responses are extremely valuable as the Town continues to work on its draft housing element. If you have questions about the survey, please email lcostasanders@ci.atherton.ca.us.

An Accessory Dwelling Unit or ADU is a separate dwelling unit located on a single-family property. ADUs may be detached or attached and must contain a bathroom, cooking facilities and sleeping area. JADUs are interior units no more than 500 square feet. They are designed for use and occupancy by people living independently of the occupants of the main residence building.

Please provide your email address: ~~drstanski1950@gmail.com~~

Please provide your Name and Address

Name: Dr. Donald R. STANSKI

Address: 40 Ashfield Rd
Atherton, CA 94027

1. Are you aware that you can build an attached or detached ADU on your property and up to 1,200 square feet of the floor area of the ADU is exempt from the maximum floor area requirements for the site?

☒ Yes

☐ No

2. Do you currently have an ADU on your property?

☐ Yes

☒ No

3. Do you currently have a guest house, pool house, or other detached building on your property not being used as an ADU?

☒ Yes

☐ No

4. If you answered Yes to #3, would you consider making modifications (if needed) and converting it to an ADU?

☒ Yes

☐ No

5. If you currently have an ADU, or were considering converting existing space to an ADU would you intend to rent it? Use of the space by family (parents, grandparents, etc.), estate employees, local teachers, school faculty, or students all count as "renting" the ADU. The Town can also assist in finding a matching tenant through HIP Housing or other non-profit matching programs.

☒ Yes

☐ No

☐ Other: _____

6. If you are not interested in building a new ADU and/or converting an existing building and/or existing space on your property to an ADU, what could the Town do to encourage you to build an ADU on your property?

- ☐ Reduce permit fees
- ☐ Expedite Permitting
- ☐ Adopt pre-approved ADU plans
- ☐ Allow larger ADUs (current maximum allowed is 1,200 square feet)
- ☐ All of the above
- ☐ Other

7. If you are interested in constructing an ADU but are facing constraints, which of the following best describes the most impactful constraint you are facing?

- ☐ Size of property
- ☐ Viable locations on lot (limited available square footage, tree concerns, etc.)
- ☐ Already have an ADU on my lot.
- ☐ Permit Costs
- ☐ Design and construction costs
- ☐ Concern about Increase to my property tax

☒ Other

see Belle

8. Any overall comments or feedback you would like to share about ADUs in Town?

Open Response:

see attached

document that I would ask
for a reply thanks D. Gargi

9. If you answered yes to constructing a new ADU and/or converting space to an ADU, it would greatly help with our Housing Element effort if you would indicate (Yes or No) your non-

***binding intent** to build an ADU or convert existing space to an ADU so that we can add the potential ADU to our list.*

☒ Yes

☐ No

PLEASE RETURN COMPLETED SURVEY TO THE TOWN'S PLANNING DIVISION

BY MAIL TO:

Planning Division
ATTN: ADU Survey
80 Fair Oaks Lane
Atherton, CA 94027

BY EMAIL TO:

lcostasanders@ci.atherton.ca.us

OR ELECTRONICALLY COMPLETE THE SURVEY

Use the QR Code on page 1 of this survey to access the online version of the survey

You can also find the survey on the Town's Housing Element webpage.

Sung Kwon

From: Sung Kwon
Sent: Thursday, January 19, 2023 2:19 PM
To: Radha Hayagreev
Subject: Agenda 1/25/23 PC Hearing
Attachments: Agenda_2023011921213366.pdf

Good Afternoon Commissioners,

Here is the agenda for the regular Planning Commission Meeting for January 25, 2023. Please feel free to contact us if you would like to discuss any of the items.

Sincerely,

Sung H. Kwon, MCRP MBA AICP
Principal Planner, M-Group

Contract Town Planner
Town of Atherton
80 Fair Oaks Lane (New Town Center)
Atherton, CA 94027
(408) 796-4844

RE: ADU Ordinance

Jon Daseking <jdaseking@pacificpeninsula.com>

Wed 1/25/2023 12:24 PM

To: Sung Kwon <skwon@ci.atherton.ca.us>

Cc: Pei-Ching Chou <PChou@pacificpeninsula.com>; Radha Hayagreev <rhayagreev@ci.atherton.ca.us>

[The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.]

Hi Sung,

I am planning to attend the PC meeting tonight in regard to ADUs. I have read through the proposed changes to Ordinance Chapter 17.52 and came across a few typo/coordination items that I thought you may want to be aware of before the meeting. You may have already caught these but here you go:

1. 17.52.030 Definitions (A) under Efficiency unit, bullet point 2.2, "Storage cabinets that total at least 30 **cubic feet** of shelf space", and 17.60, "Kitchen" (6) *Storage cabinets that total at least 40 **square feet** of shelf space*: One refers to cubic feet and the other refers to square feet. One should change to coordinate with the other? Same is true for 17.60, "Efficiency Kitchen" (4) *Storage cabinets that total at least 30 **square feet** of shelf space*.
2. 17.52.040 Development Standards and General Requirements (A)(1)(iv): Last part should be revised to read "*...requirements of **California Government Code** Section 65852.22?*"
3. 17.52.040 Development Standards and General Requirements (C)(1)(v): First part should read "***Attached** Accessory dwelling units are...*" since detached ADUs are limited to one story per 17.52.040 (C)(1)(i) above.
4. 17.52.040 Development Standards and General Requirements (C)(5): Add "to" to last line, "*This does not apply **to** ADUs.*"
5. 17.52.040 Development Standards and General Requirements (E): For clarity, you may want to consider revising the second line to read as follows: "*Internal connections are allowed **between the main residence building and** ~~for~~ attached ADUs and JADUs.*"

I will see you tonight.

Regards,

Jon

Jon W. Daseking

Director of Design | Architect | CGBP

PACIFIC PENINSULA ARCHITECTURE

Architecture | Custom Homes | Real Estate Development

Tel: 650 323 7900 ext 126

www.pacificpeninsula.com

From: Jon Daseking

Sent: Thursday, January 12, 2023 2:53 PM

To: 'Sung Kwon' <skwon@ci.atherton.ca.us>

Cc: Pei-Ching Chou <PChou@pacificpeninsula.com>; Radha Hayagreev <rhayagreev@ci.atherton.ca.us>

Subject: RE: ADU Ordinance

Hi Sung,

Yes, that would be great. Thank you for the heads up – much appreciated.

Warm regards,

Jon

Jon W. Daseking

Director of Design | Architect | CGBP

PACIFIC PENINSULA ARCHITECTURE

Architecture | Custom Homes | Real Estate Development

Tel: 650 323 7900 ext 126

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From: Sung Kwon <skwon@ci.atherton.ca.us>

Sent: Thursday, January 12, 2023 2:48 PM

To: Jon Daseking <jdaseking@pacificpeninsula.com>

Cc: Pei-Ching Chou <PChou@pacificpeninsula.com>; Radha Hayagreev <rhayagreev@ci.atherton.ca.us>

Subject: ADU Ordinance

Hi Jon,

We will be taking revisions to the ADU Ordinance to the Planning Commission on January 25, 2023. Would you like us to send you the link to the agenda packet once it is posted?

Sincerely,

Sung H. Kwon, MCRP MBA AICP

Principal Planner, M-Group

Contract Town Planner

Town of Atherton

80 Fair Oaks Lane (New Town Center)

Atherton, CA 94027

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