

9. **INTRODUCE AN ORDINANCE TO REPEAL AND REPLACE A THERTON MUNICIPAL CODE CHAPTER 17.52 “ACCESSORY DWELLING UNITS,” AND TO AMEND CHAPTER 17.36 “PUBLIC FACILITIES AND SCHOOLS DISTRICT (PFS)” AND CHAPTER 17.60 “DEFINITIONS.”**

**Report: Recommendation:** Staff recommends that the City Council conduct a public hearing to introduce an ordinance that repeals and replaces Chapter 17.52 “Accessory Dwelling Units” and amends Chapter 17.36 “Public Facilities and Schools District (PFS)” and Chapter 17.60 “Definitions.”

*Description:*



**Item No. 9**  
**Town of Atherton**

**CITY COUNCIL STAFF REPORT – PUBLIC HEARINGS**

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

**FROM: BRITTANY BENDIX, TOWN PLANNER**

**DATE: NOVEMBER 15, 2023**

**SUBJECT: INTRODUCE AN ORDINANCE TO REPEAL AND REPLACE  
ATHERTON MUNICIPAL CODE CHAPTER 17.52 “ACCESSORY  
DWELLING UNITS,” AND TO AMEND CHAPTER 17.36 “PUBLIC  
FACILITIES AND SCHOOLS DISTRICT (PFS)” AND CHAPTER 17.60  
“DEFINITIONS.”**

**RECOMMENDATION:**

Staff recommends that the City Council conduct a public hearing to introduce an ordinance that repeals and replaces Chapter 17.52 “Accessory Dwelling Units” and amends Chapter 17.36 “Public Facilities and Schools District (PFS)” and Chapter 17.60 “Definitions.”

**BACKGROUND**

In January of this year the Town initiated an effort to update its Accessory Dwelling Unit (ADU) Ordinance to align with recent changes in State law, as well as the Town’s adopted Housing Element for 2023-2031. Given the breadth of changes required to align with state law and a desire to apply local standards, the Town held a joint study session with the Planning Commission and City Council on May 10, 2023. The staff report and supplemental list of questions and answers that facilitated the study session are provided at Attachments 1 and 2. A link to the recording of the session is provided at Attachment 3.

The study session provided valuable direction on many items and on October 25, 2023, the Planning Commission held a public hearing to consider updates to the Accessory Dwelling Ordinance. The staff report for the October 25, 2023, Planning Commission meeting (Attachment 4) summarizes the discussion at the study session and highlighted the following five topic areas where staff sought special attention from the Commissioners:

1. Definitions\*
2. Accessory Dwelling Use\*

3. Maximum Number of Units\*
4. Exemptions from Maximum Floor Area Requirements\*
5. Height\*
6. Heritage Trees\*
7. Privacy, Screening and Landscaping\*
8. Owner Occupancy\*

After discussion of these topics, the Planning Commission voted unanimously to approve the staff recommendation with amendments as follows:

- Review the appropriateness of the 15 years' timeline requirement for the deed restriction in Section B(3) of the Ordinance,
- Add language relative to clerestory windows or no windows on walls facing adjacent properties for ADUs that are located above a detached garage; and
- Direction to staff to continue to work with the Town Arborist to modify the tree protection zone exception process in a manner that incentivizes applicants to comply with the Town's setback standards. (Attachment 5)

The remainder of this report supplements the October 25, 2023, staff report by addressing the Planning Commission recommendations in the context of the Town's goal to incentivize the production of ADUs that (1) provide a lower income housing typology and (2) that comply with the Town's existing setback standards.

## **ANALYSIS**

The following analysis considers the total number of ADUs or Junior ADUs (JADUs) allowed on a single-family property and how that may influence the Town's pursuit of a Bonus ADU program, standards for ADUs located above detached garages, an administrative review process for large ADUs in tree protection zones, and a discussion on fencing requirements.

### **Number of Units Allowed, Bonus Units and Deed Restriction Program**

As discussed in the October 25, 2023, staff report, the total number of ADUs allowed by State law on a single-family zoned property is three units: one JADU, one ADU (internal to the main house or through conversion of a structure) and one detached ADU. This is a shift from what many jurisdictions previously perceived as two units and has become a common error flagged in ADU Ordinances flagged by the State's Housing and Community Development Department (HCD).

Staff is highlighting this change because it is distinct from what the Planning Commission and City Council has previously understood and may influence the Town's decision to facilitate a "bonus" ADU through Housing Element Program 3.812(F) which seeks to allow two ADUs to be constructed on properties that are two acres, or greater, in area. This topic was discussed by the Planning Commission, which recommended retaining the bonus program given that it would apply to lots that are two acres or greater.

Past discussions of the bonus ADU program have also included a potential deed restriction component that would require the bonus unit to be affordable to low-income households for a period of 15 years or more. This program is included in the Draft Ordinance (Attachments 6 and 7) as 17.52.040(B)(3):

*On lots that allow single-family dwellings and are a minimum of two (2) acres, the property owner may have up to two (2) detached ADUs provided that one of the two units is deed restricted as low-income for a period of 15 years or more.*

The Planning Commission considered the deed restriction program and although they ultimately voted to recommend approval of the draft ordinance, the Commission added a recommendation that the Council review the appropriateness of the 15-year timeline requirement for the deed restriction. To facilitate this discussion, staff has provided additional information on related deed-restricted programs below.

Deed-restrictions are requirements on a property that are communicated through that property's deed. For land use planning purposes, jurisdictions may require a property to record a restriction on the deed that relates to conditions of approval that run with the property and not the owner. This is an effective tool to ensure that all future property owners are aware of conditions of approval, restrictions or requirements associated with land use entitlements, prior to purchasing the property. The timeframe for a deed restriction varies based on the nature of the restriction. Many jurisdictions that require affordable housing units constructed in conjunction with an inclusionary housing program are maintained at certain affordability levels (very low, low, moderate, etc) for periods ranging from 30 to 55 years. However, this timeframe is characteristic of affordable housing built as part of multifamily developments including five or more primary residences, not ADUs.

Requiring deed-restricted affordable housing through ADUs is a new approach to capturing and documenting the lower income housing options that ADUs provide. This documentation is important because it helps demonstrate to the state that the Town's strategy to provide lower income housing through ADUs is effective. However, because this approach is new, there is no standard for a timeframe. Staff is aware of one California jurisdiction that has fully enacted a deed-restricted ADU program. The City of San Diego enacted a program in 2020 that requires a 15-year commitment for moderate-income ADUs and a 10-year commitment for very low- or low-income ADUs.

#### ADUs Above Detached Garages

At the May 10, 2023, study session the Councilmembers and Planning Commissioners provided feedback to incentivize compliance with the Town's setback standards by facilitating ADUs larger than 800 square feet and enabling ADUs above detached garages. Inclusion of ADUs above detached garages is also consistent with the adopted Housing Element. However, the Housing Element indicates that the maximum height for such structures is 18 feet. Based on discussion at the May 10, 2023 study session, staff drafted the ADU Ordinance to reference a height limit to no more than 25 feet based on the following:

- The Town desires an ADU program that incentivizes alignment with existing setback standards for main buildings and accessory structures. Existing garages comply with these standards with the exception of unique cases for garages that are legally noncomplying.
- Existing garages that are compliant with the Town's zoning ordinance have a maximum height requirement of 15 feet or one story.
- A general standard for the height of one story is ten feet.
- The allowance of an ADU above a garage, with an 18-foot height limit may deter applicants by resulting in less favorable floor to ceiling heights, preventing a preferred roofline articulation, or resulting in the loss of attic/storage space within the existing garage.

Additionally, in response to concerns raised at the May 10, 2023 study session regarding the scale of a potential 1,200 square foot above a larger multi-car garage characteristic to the Town, staff also recommended the following set of objective development standards for such a proposal:

- The total height is inclusive of the garage,
- The garage complies with the accessory structure setback requirements of the Zoning Code
- The ADU is accessed through a ground level entry vestibule and an interior stair.
- The roofline shall be consistent with the style of the main residence. For example, a gabled roof form on the main residence shall require a gabled roof form on the ADU above garage.
- If the second story floor area accommodating the ADU is less than the ground floor area, the residual roofing above the ground floor shall not accommodate a roof deck or balcony.

The Planning Commission discussed the 25-foot height limit, noting that an ADU attached to the primary residence and above a garage would also have a height limit of 25-feet, as required by state law. The Planning Commission also modified staff's recommendation to add two design techniques intended to preserve privacy: the use of clerestory windows and the absence of any windows on facades facing adjacent properties. This language has been added to 17.52.040(J)(1):

*New ADUs constructed above the ground floor shall also be designed to reasonably preserve the privacy of adjacent property owners. Appropriate design techniques to preserve privacy include obscured glazing, the use of clerestory windows that are above eye level, screening treatments, locating windows toward the existing on-site residence or providing no windows on facades facing adjacent properties.*

The Planning Commission also discussed the implications of the fencing requirements in the draft ADU Ordinance, which requires the following per section 17.52.040(J)(3):

*A solid 8-foot-high fence shall be provided along the entire front, side, or rear property line adjacent to where the ADU is located. Fences shall be at the property line.*

Although the Planning Commission did not make changes to this language, staff is calling attention to the requirement for the Council's consideration as the direction on this point was not solidified at the May 10, 2023 study session and it reflects a general change to fence height requirements in the Town where 6-feet, with some exceptions, is the requirement on side and rear property lines and where there is no requirement at the front property line. Further, one concern repeated at both the study session and the Planning Commission meeting is the actual benefit achieved for privacy or screening when State law facilitates a 16-foot tall detached ADU four feet from the side and rear property lines and zero feet from the front property line.

#### Heritage Trees

In response to the Town's desire to incentivize ADUs that comply with the Town's setback standards. Planning staff and the Town Arborist recommended language to Planning Commission that enabled detached ADUs greater than 800 square feet to seek an administrative exception to the Tree Protection Zone (TPZ) requirements for a distance up to 8x in the R1-A zoning district. The Town Arborist would review such requests for ADUs concurrently with review by Planning staff. The Planning Commission supported this effort; however, they directed staff to modify the tree protection zone exception process in a manner that further incentivizes applicants to comply with the Town's setback standards.

In response to the Planning Commission, staff has modified Section 17.52.040(I)(2) to facilitate administrative review of TPZ requests for a distance up to 6x. However, the Town Arborist would

request specific information as part of an application submittal process to facilitate that review. The required information and terms of this process in the application would note the following:

1. An application and fee are required to be completed prior to a Town Arborist TPZ exception review. Submitting and paying for the application does not guarantee approval to reduce the TPZ. If the Town Arborist denies an application submitted for a Town Arborist exception to the TPZ, the application can be appealed to the Planning Commission in accordance with the Atherton Municipal Code. The application for a Town Arborist TPZ exception shall be submitted to the Town of Atherton with a narrative stating why the exception is requested, what the impact to any Heritage trees would be, why alternate locations do not work and any identified mitigation. The following information shall accompany the application and application fee:
  - a. A plan showing location of the structure and the Heritage trees with size and species stated. Show TPZ zones from 5x to 10x on the plan.
  - b. Project Arborist report – stating what the damage and mitigation would be.
  - c. Any Trenching less than 10x the dbh is required to be hand dug including exploratory Trenching if approved to trench closer than 10x.
  - d. The percentage of Heritage tree roots to be cut.
  - e. Site plan showing alternative locations.
  - f. Any utility easements.
  - g. Any supporting letters from Menlo Fire, PG&E and/or other utility providers.
  - h. The Town Arborist can require a meeting at site or with all parties to discuss further.
  - i. The Town Arborist can request any further information as needed to review.
2. Any application to be submitted shall be reviewed by the Town Arborist for demonstrated compliance with any the following criteria, to the satisfaction of the Town Arborist:
  - a. If the species is tolerant of construction based on species, health, size and age from Matheny and Clark tolerance chart.
  - b. Health of the tree.
  - c. Are their alternative locations for an ADU on site.
  - d. There are no roots over 2” diameter that need to be cut.
  - e. Percentage of the roots disturbed and foundation type.
  - f. Other criteria as may be required by the Town Arborist.
3. Appeal to the Planning Commission. Decisions of the Town Arborist may be appealed to the Planning Commission by filing the following:
  - a. A completed appeal form along with payment of the appeal fee deposit.
  - b. A copy of the original application submitted to the Town Arborist.
  - c. A copy of the decision made by the Town Arborist.
  - d. Any new information not considered by the Town Arborist.
  - e. The Planning Commission shall consider the criteria set forth above in Section 2.2 B in ruling on the outcome of any appeal of a decision of the Town Arborist.

## **FINDINGS:**

The proposed zoning text amendments are consistent with the General Plan goals, policies, and implementation programs. 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 (ADUs) and Junior Accessory Dwelling Units (JADUs). Amendments proposed address the following General Plan Goal, Objectives, and Policy:

**Housing Element Goal 3.720**      Use Accessory Dwelling Units to meet a substantial portion of the Town's moderate to very low-income housing need.

**Housing Element Objective 3.721**      A. Realize the construction of 280 new accessory dwelling units planned for occupancy by moderate to extremely low-income households in Atherton from 2023-2031.

**Housing Element Policy 3.722**      A. Actively promote the Accessory Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Accessory Dwelling Units in existing or new homes.

B. Comprehensively update the Town's Accessory Dwelling Unit (ADU) Ordinance to amend any identified zoning development standards which may unduly constrain development of ADUs.

**Housing Element Policy 3.762**      B. The Town shall continue to encourage the production and availability of more affordable housing through the development of new accessory dwelling units, and private and public-school faculty and student housing.

### **CONCLUSION:**

To respond to the current state housing crisis, the state 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 for the adopted 6<sup>th</sup> Cycle Housing Element.

### **ENVIRONMENTAL CONSIDERATIONS**

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.

### **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.

### **PUBLIC NOTICE**

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

### **ATTACHMENTS**

1. [Joint City Council & Planning Commission Study Session - May 10, 2023 Staff Report](#) (Link)
2. Study Session Questions to Staff & Answers
3. [Recording of May 10, 2023 Study Session](#) (Link)
4. [Planning Commission Meeting – October 23, 2023 Staff Report](#) (Link)
5. Planning Commission Resolution No. 2023-01
6. Draft ADU Ordinance (Changes shown in red)
7. Draft ADU Ordinance (Tracked changes)



## Attachment 2

### **1. What is the maximum size of an ADU that we should allow? Should we require 2 bedrooms if the ADU is over a certain size? Should we allow exemption for the full sq footage of an ADU, not just 800 sq ft?**

*65852.2. (a)(1)(D)(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.*

The Town cannot have bedroom requirements for an ADU 800 sq. ft. or less. The Town can have limited bedroom *requirements*; however, the Town cannot mandate the number of bedrooms.

*65852.2. (c)(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:*

- (A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*
- (B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*
  - (i) 850 square feet.*
  - (ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*

### **2. If we allow 2 ADUs on a 2+ acre parcel, should we require a deed restriction on the second, in addition to requiring compliance w Atherton setbacks.**

The Town can allow for an additional ADU. Any deed restriction should be more than 8 years (recommend 16 years) otherwise the Town will have to deal with at-risk units during the next housing element cycle. The Town would have to replace every housing unit that falls off a deed restriction. Typically, affordable housing projects are deed restricted for 55 years.

Deed restrictions may be difficult to enforce because of the staff time required to monitor compliance and the changes in parties involved over the decades can lead to protracted disputes over compliance.

### **3. Should we require 8 ft fencing if the setback for any building is less than 10ft?**

The Town can require a fence for ADUs; however, it would have to be completely ministerial and be based on objective criteria. Imposing a different fence height requirement for ADUs than we generally require would also need to be based on some articulated reason to avoid claims that the extra obligation arbitrarily singles out ADUs (e.g., ADUs with a 4 ft. setback must have a 7 ft. fence to provide privacy screening because this amount of setback does not provide space for landscape screening)

### **4. Should we enable removal of non-oak heritage trees for any ADU, not just 800 sq ft? Can we do anything to protect oaks from removal for 800 sq ft ADU?**

Allowing the removal of non-oak heritage trees for any ADU is a policy call. There is no mechanism available that would allow the Town to protect oaks from removal for 800 sf or less ADUs.

*65852.2(a)(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this Subdivision.*

**5. Should we eliminate the site heritage tree inventory for an ADU permit? Are there other tree related items that we can change to make the ADU process less expensive and less cumbersome?**

The Council/Commission may wish to consider this. Because tree protection remains an important issue, the Town may wish to consider a radius approach for ADUs as opposed to a full-site inventory requirement.

**6. Should we remove any arborist fee, as well as the planning fees, for ADU permits? Are there other fees that we can remove or reduce? Can we cap the total building fee for an ADU build (without a SFR) or conversion?**

Staff suggests waiving Planning Fees only. The Council can approve a capped or reduced building permit. However, in staff's experience, Town fees are not the hurdle to the construction of ADUs.

**7. Can we remove reference to ovens in the kitchen definition? How can we simplify the definitions and give more discretion to property owners?**

Staff proposes to maintain efficiency kitchen definition based on State law. All others - State definition plus "for example".

*65852.22(a)(6) for JADUs and 65852.2(j) for ADUs.*

**8. Where should the ADU entrance be? How does that change if above a car facility?**

The Council/Commission may wish to consider requiring entrances to be located away from neighboring property owners, where feasible. The Council/Commission may wish to consider requiring entrances to be on the ground floor for ADUs above garage or carport to prevent second floor balconies overlooking adjacent properties.

**9. Should we give planning discretion re: ADU sizing above a garage or carport?**

Staff recommends that ADUs be ministerial and based on objective code criteria.

**10. Should we reduce the side setback from 35 ft (?) to 25 ft if a JADU takes up the space?**

JADUs must remain in the main building footprint. AMC allows for a 20% incursion into the side setback for attached ADUs. An attached 800 sq. ft. ADU can be 4 ft. from the site property line. An ADU above 800 sq. ft. can encroach 20% into the side yard, per AMC.

*65852.22(a)(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.*

**11. What TPZ changes make sense to encourage ADU development. Modify ordinance to eliminate different TPZ for R-1A vs R-1B.**

### TOWN Heritage Tree Preservation Standards and Specifications

*The TPZ shall be determined the following way: the TPZ radius shall be 10 times the DBH (4.5') of the trunk. For example: a 15" DBH = a 12.5-foot radius from the perimeter of the Heritage tree, or a 25-foot TPZ. Any deviation in determining the TPZ shall be in accordance with ANSI standards subject to approval by the Town Arborist.*

1. *R1-A Zoning District for lots of more than 10,000 square feet:*
  - a. *The TPZ is 10x away from all buildings and structures.*
  - b. *The TPZ is 8x away from any new driveway.*
2. *R1-B Zoning District and lots in the R1-A Zoning District that are 10,000 square feet or less:*
  - a. *The TPZ is 6x away from all buildings, structures, and new driveways.*
3. *For all lots:*
  - a. *The TPZ is 6x away from all CMU walls and 5x away from all wood or metal fences that require a permit.*
  - b. *The TPZ is 3x from all landscaping, Landscape Screening trees and bushes.*
  - c. *For replacement of existing driveways and/or new, proposed compacted surfaces, allow for replacement in the existing location, but in no cases less than 3 times (3x)*

The Council can modify the preceding as deemed appropriate.

### **12. Eliminate requirement that plans be submitted in physical form as well as online.**

Planning does not need physical plans except for Subdivisions. Most building permit submittals allow for online submittal, but some require physical plans. Building currently utilizes paper stamped copies at building permit issuance but is working to go completely digital.

### **13. Make the application process user friendly. Eliminate the monthly arborist report. It should be quarterly, and no filing required if there is no change.**

This will have a field impact, reduced arborist review of properties. This is a policy call.

### **14. Can we create a list of specific criteria for over garage ADUs (external staircase rules, windows overlooking neighboring properties, etc**

For ADUs under 800 sq. ft. our ability to provide regulations are limited. Staff is looking into ADUs over 800 sq. ft. Whatever criteria created, it will need to be objective and ministerial. See also, comment to Question 8 regarding ground floor entrances.

### **15. How big an over garage ADU will we allow? I think only 3 car garage. What about the 6-car garage? Allow any ADU over the existing garage grandfathered?**

The Council/Commission may want to limit of the size of the ADU (over the garage/carport) to be limited to the size of the garage/carport plus a ground floor entry, up to 1,200 sq. ft. The Council/Commission may want to discuss whether a 1,200 sq. ft. ADU above a garage/carport is too large (approximately 35 ft by 34 ft.)

If there is an ADU over a garage/carport, it must be allowed to continue.

65852.2. (d)(2) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction 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.

**16. Can we discuss fence height requirements in the 4' ADU scenario. What is the highest? 8 Feet 10 feet? 12 feet? What is the highest that doesn't look bad?**

Any fence requirement should be ministerial. The Council/Commission may want to consider how tall a fence is appropriate. Per building code, any fence over 7 ft. requires engineering.

**17. What screening plant requirements will we have for 4' and 10'? Are they different? In 4 feet can you actually plant things? Is it too close to the foundation for tall trees?**

The 4-foot setback presents a challenge with egress for fire safety when landscaping is added. There is more flexibility with egress and landscaping with a 10-foot setback. Future fire codes may discourage landscaping near structures.

**18. Do we need a pool house exception for an ADU. Wouldn't it be the same as any other?**

Same.

**19. New foundation technology allows us to plant trees closer. Can we ask an arborist about this? Is there some definitive criteria we can put so we don't have to have an arborist weigh in on every project?**

Staff does not recommend outlining specific technology. This may become a discretionary process. Staff recommends that there be an exception review permit process created to allow for review of proposed foundations.

**20. A few people asked about tax costs and a blanket tax agreement. Is this possible or feasible?**

The Town cannot do this.

**21. Do we still have a dishwasher requirement or did that get taken out?**

Staff proposes to use State definitions, which do not outline a requirement for a dishwasher.

65852.22(a)(6) for JADUs. Government Code Section 65852.2(j) for ADUs.

**22. What is the front setback for a greater than 800-foot ADU?**

120 ft, or 30 ft behind from line of main structure (detached accessory structures)

**23. Do we have rules for ADU hard scape? Are they allowed a porch, walkway? Is it calculated based on the existing hardscape? If maxed out on hardscape, can we allow just a minimum walkway?**

We do not have specific hardscape rules for ADUs. We only have lot coverage limitations in POS and PFS. All parts of the ADU would need to meet setbacks.

**24. Where did we end up on the rules around the entry to ADU? It originally said it has to face interior of the lot, we discussed allowing it to face the street and allowing it to be any side. Is it the same rules if it is 4' or 10" between neighbor property?**

The Council/Commission may want to discuss this.

**25. Do we call out any rules on prefab or is it the same?**

Prefab units would not have different regulations.

**26. I was not clear where we ended up on subdividing the utilities.**

Per Code and State law.

**27. Where did we end up on the owner occupancy after 2025?**

Per State law.

**28. Is there anything we can do about ADU on the front of the property if under 800? This looks so bad.**

No.

**29. Can the Town charge premium fees for ADU's with four foot setbacks?**

No.

**30. Where are we on gas for ADU's now?**

Electric ready only. Gas is ok.

**31. There are areas of town zoned R1A that should be zoned R1B. I don't know all the differences yet, but does that play into the ADU discussion?**

No. Land use and zoning designations are not solely lot-size based, they are part of the Town's General Plan and dictate a long-term plan for Town development. This is a discussion better suited to a General Plan Review process.

**32. Can we eliminate TPZ issues entirely when an ADU (or other structures too) is built on a slab?**

Possibly. See above question.

**33. What can we do to encourage architectural style and finish that match the rest of the property?**

Nothing on 800 sf or less; but the Town does have discretion to address objective and ministerial criteria on larger ADUs.

**34. Does the ADU require direct driveway access? Ie, can access and parking be located elsewhere on the property?**

Direct driveway access is not required. Parking can be on the property.

**35. Parking requirements ...can we require more available on-site parking for over 800 sq. ft. ADU's? Property-front parking standards (is it allowed/required for JDU/ADU combo's?)**

*65852.2. x)(I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.*

**36. Drainage requirements ... preventing on-site and off-site rainwater drainage issues caused by additional roofs/hardscape.**

Not a zoning issue per se.

**37. Addressing Neighbor Privacy concerns... plant screening/ window placement standards (no windows on neighbor side of 4' setbacks units or garage-top/carport-top units?)**

The Town has limited ability to regulate 800 sq. ft. ADUs up to 16 ft. high. The Town may be able have more regulations for ADUs over garages/carports (over 16 ft. high)

*65852.2(c)(2)(D) ...shall not establish by ordinance any of the following...any height limitation that does not allow at least the following...a height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit [or] a height of 18 feet 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 [or] a height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. ...*

**38. Determine fee standards... would a 2-year ADU/JDU fee waiver/fee reduction jump-start unit production to help meet housing plan targets?**

The Council/Commission may want to discuss this. State compliance is not solely a matter of production.

**39. Clarify access options (can a unit be faced on another street and address on that street?)**

The Fire District would like ADU the address to be on the same street as the main residence.

**40. Clarify kitchen standards for greater than 800 sq. ft. ADU's (if any).**

Staff proposes to limit the kitchen definition to the State Requirements.

*65852.22(a)(6) for JADUs. Government Code Section 65852.2(j) for ADUs.*

**41. Why no basement ADU's JDU's? seems as if that could reduce neighbor impact issues and access safety could be addressed.**

Basements are already exempt from floor area.

**42. Why wouldn't we be encouraging lot splits even more than ADU's... it seems as if that results in a more 'normal' 'neighborhood' design.**

The Council/Commission may want to discuss this. The Town already encourages/supports SB9 Urban Lot Splits.

**43. If we HAD to have multi-unit...where would we want it?**

This will be discussed as part of the Housing Element.

**PLANNING COMMISSION RESOLUTION 2023-001**

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

**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 17.36 Public Facilities and Schools District (PFS) and Chapter 17.60 definitions of the Atherton Municipal Code at the regular October 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, 17.36, and 17.60 are in conformance with the General Plan, particularly the following Goal, Objectives, and Policy:

- |  |   |
|--|---|
| <b>Housing Element Goal 3.720</b>      | Use Accessory Dwelling Units to meet a substantial portion of the Town's moderate to very low-income housing need.  |
| <b>Housing Element Objective 3.721</b> | A. Realize the construction of 280 new accessory dwelling units planned for occupancy by moderate to extremely low-income households in Atherton from 2023-2031.  |
| <b>Housing Element Policy 3.722</b>    | A. Actively promote the Accessory Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Accessory Dwelling Units in existing or new homes.<br>B. Comprehensively update the Town's Accessory Dwelling Unit (ADU) Ordinance to amend any identified zoning development standards which may unduly constrain development of ADUs. |



**Housing Element Policy 3.762**

B. The Town shall continue to encourage the production and availability of more affordable housing through the development of new accessory dwelling units, and private and public-school faculty and student housing.

**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, 17.36, and 17.60 to conform to state regulations and with the following direction to staff:
  - a. review the appropriateness of the 15 years' timeline requirement for the deed restriction in Section B(3) of the Ordinance;
  - b. add language relative to clerestory windows or no windows on walls facing adjacent properties for ADUs that are located above a detached garage; and,
  - c. continue to work with the Town Arborist to modify the tree protection zone exception process in a manner that incentivizes applicants to comply with the Town's setback standards.

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

AYES, PLANNING COMMISSIONERS: Bryan, Lane Lerner, Polito, and Tonelli

NOES, PLANNING COMMISSIONERS: None

ABSENT, PLANNING COMMISSIONERS: None

*Eric Lane*  
CHAIR of the Planning Commission

ATTEST:

*Brittany Bendix*  
TOWN PLANNER of the Town of Atherton

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

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

Junior accessory dwelling units shall be allowed in all areas zoned to allow single-family residential and 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.

**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.

B. "Attached accessory dwelling unit" means a newly constructed unit that is connected to the primary single-family home by at least one wall.

C. "Detached accessory dwelling unit" means an accessory dwelling unit that is not structurally attached to the main residence.

D. "Efficiency unit" means a living unit which includes all 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.
  - 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.

E. "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. 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.

F. "Living area" for the purpose of this chapter, means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

G. "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. Pursuant to Section 21155 of the Public Resources Code

#### **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. Accessory Dwelling Use. All ADUs and JADUs shall be located on the same lot with an existing or proposed dwelling and considered an accessory residential use to the primary residence. ADUs and JADUs do not count towards the allowable density for the lot upon which it is located.

B. Maximum Number of ADUs and JADUs per lot.

1. One ADU and one JADU per lot with a proposed or existing single-family dwelling if all of the following apply:
  - a. The ADU or JADU 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.
  - b. The space has exterior access separate from the proposed or existing single-family dwelling.
  - c. The side and rear setbacks are sufficient for fire and safety.
  - d. The JADU complies with the requirements of Section 65852.22.
2. One detached, new construction, ADU that does not exceed 800 square-feet, complies with the height restrictions in this section, and provides a minimum of four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a JADU.
3. On lots that allow single-family dwellings and are a minimum of two (2) acres, the property owner may have up to two (2) detached ADUs provided that one of the two units is deed restricted as low-income for a period of 15 years or more.
4. Lots that allow multifamily dwellings.
  - a. 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.
  - b. At least one ADU is allowed within an existing multifamily dwelling. The total number of ADUs allowed is up to 25 percent of the existing multifamily dwelling units.
  - c. Not more than two ADUs that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to applicable height limits and a four-foot rear and side setbacks.
    - i. If an existing multifamily dwelling has a rear or side setback of less than four feet, no modification of the existing multifamily dwelling is required as a condition of approving an ADU.

C. Floor Area Requirements.

1. 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, which is 150 square feet. The maximum size of an efficiency unit is 500 square feet.
2. The maximum size for a JADU is 500 square feet.
3. The maximum size for an ADU is 1,200 square feet.
4. The 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 800 square foot ADU.
5. Garage and accessory structures ancillary to an ADU are not considered part of the ADU living area and are not included in the ADU floor area calculations.

D. Exemptions from Maximum Floor Area Limitations.

1. The first 800 square feet of floor area of each ADU, attached and detached, and up to five hundred square feet for each JADU shall be excluded from maximum floor area calculations.
2. Additional floor area for each ADU may be excluded from maximum floor area calculations where staff determines the following conditions are met:
  - a. If a detached ADU meets and/or exceeds the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures, then the ADU will be allowed an additional floor area exemption beyond the first 800 square feet of floor area, up to a total of 1,200 square feet.
  - b. If an attached ADU is located in the main buildable area and encroaches into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback, then the ADU shall be allowed an additional floor area exemption beyond the first 800 square feet of floor area, up to a total of twelve 1,200 square feet.
3. No floor area limitation shall be required for any conversion of an existing legal non-conforming building to an ADU.
4. Interior stairs are exempt from floor area calculations if the stairs accommodate access to a new ADU located above an existing or proposed detached garage that complies with accessory structure setback requirements.

E. Basements.

1. Habitable basements are allowed under detached ADUs; however, these basements shall count toward the floor area of the ADU. An internal connection from the ADU to the habitable basement is required. No special structures permit is required for these basements.

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2. Habitable basements are allowed under attached ADUs; however, these basements shall count toward the floor area of the ADU if located outside the main building area setback. An internal connection from the ADU to the habitable basement is required.
  3. Habitable basements are allowed under a JADU; however, these basements will be considered as the basement for the main residence and will not count toward the square footage of the JADU. No internal connection from the JADU will be allowed into the basement. Basements accommodating JADUs must be within the main building area.
  4. Non-habitable basements under ADUs are only allowed outside the accessory structure setback and are subject to the Heritage Tree Ordinance. Exterior access to the non-habitable basement shall be located outside the accessory structure setback.
  5. The floor area of an attached ADU or JADU does not count toward the basement allowance under 17.44.030.A.
- F. Setback Requirements. 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.
1. JADUs shall have the same setbacks as required for the main residence.
  2. A newly constructed detached or attached ADU that is 800 square feet or less must be located at least 4 feet from a side or rear property line. This type of ADU does not have a front yard setback.
    - a. No decks or mechanical equipment are allowed in the four-foot side and rear setback.
  3. A newly constructed attached ADU that has a floor area greater than 800 square feet and no more than 1,200 square feet shall be located in the main building area. These ADUs may encroach into side and rear yard setbacks by not more than twenty percent (20%) of the required setback.
  4. A newly constructed detached ADU that has a floor area greater than 800 square feet and no more than 1,200 square feet shall be located maintain the setbacks for accessory buildings.
  5. A newly constructed detached ADU shall maintain the required separation distances between the proposed or existing main residence, accessory buildings and accessory structures as required in the accessory structures section of the zoning code, unless necessary to accommodate an ADU of 800 square feet ADU or less.
  6. Existing Structure. No setback shall be required for an existing 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 ADU or to a portion of an ADU. A setback of at least four feet from the side and rear lot lines

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.

7. For double frontage and corner lots, the front yard is the yard that is adjacent to the designated front property. The rear yard shall be the yard adjacent to the property line on the opposite side of the property from the designated front property line. The address for the ADU shall be on the street adjacent to the front yard.

G. 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.

H. Height.

1. A maximum height of 16 feet is allowed for a detached ADU on a lot with an existing or proposed single-family or multifamily dwelling.
2. 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. 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.
3. A maximum height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.
4. A maximum height of 25 feet or the allowed height of the zoning district, whichever is lower, is allowed for an accessory dwelling unit that is attached to a primary dwelling.
5. Accessory dwelling units are limited to 2 stories.
6. A maximum height of 25 feet is allowed for a detached ADU located above a garage, provided that:
  - a. The total height is inclusive of the garage,
  - b. The garage complies with the accessory structure setback requirements of the Zoning Code, and,
  - c. The ADU is accessed through a ground level entry vestibule and an interior stair.
  - d. The roofline shall be consistent with the style of the main residence. For example, a gabled roof form on the main residence shall require a gabled roof form on the ADU above garage.



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- e. If the second story floor area accommodating the ADU is less than the ground floor area, the residual roofing above the ground floor shall not accommodate a roof deck or balcony.

### I. Heritage Tree Ordinance.

1. The Heritage Tree Ordinance does not apply to ADUs up to 800 square feet and JADUs up to 500 square feet. In all other cases, the Heritage Tree Ordinance applies. The main residence and all other accessory buildings/structures are subject to the Heritage Tree Ordinance.
2. Detached ADUs that are greater than 800 square feet may seek administrative exceptions to the Tree Protection Zone for a distance up to 6x in the R1-A zoning district. The Town Arborist will review such requests for ADUs, concurrently with review by Planning staff.
3. Any tree removal permitted by the Town in relation to the construction of an ADU must occur after the issuance of a related building permit. Such building permit must then adhere to time limits set forth in Atherton Municipal Code (AMC) Section 15.40.180. Penalties and remedies pursuant to AMC 8.10.070(B) may result in cases where trees are removed in relation to the approval of an ADU and the ADU is not constructed.

### J. Privacy, Screening and Landscaping.

1. New ADUs constructed above the ground floor shall also be designed to reasonably preserve the privacy of adjacent property owners. Appropriate design techniques to preserve privacy include obscured glazing, the use of clerestory windows that are above eye level, screening treatments, locating windows toward the existing on-site residence, or providing no windows on facades facing adjacent properties.
2. Landscape screening for the ADU shall be installed to the greatest extent feasible.
3. A solid 8 foot high fence shall be provided along the entire front, side, or rear property line adjacent to where the ADU is located. Fences shall be at the property line.
4. No sidewall height limitations apply to ADUs.

### K. 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.

### L. Parking Requirements.

1. No parking is required for a JADU.

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2. 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.
3. No additional parking shall be required if one of the following conditions applies to the ADU:
  - a. The ADU is located within one-half mile walking distance of public transit.
  - b. The ADU is located within an architecturally and historically significant district.
  - c. The ADU is part of a proposed or existing primary residence or an existing accessory structure.
  - d. On-street parking permits are required but not offered to the occupant of the ADU.
  - e. A car share vehicle is located within one block of the ADU.
  - f. When a permit application for an ADU is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the ADU or the parcel satisfies any other criteria listed in this paragraph.
4. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, off-street parking spaces do not need to be replaced.
5. A demolition permit for a detached garage that is to be replaced with an ADU shall be reviewed with the application for the ADU and issued at the same time.
- M. 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.
- N. Owner Occupancy. The owner occupancy requirements detailed in this section shall apply to all lawfully permitted ADUs and JADUs within the Town on a single-family lot:
  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. For ADUs and JADUs permitted on or after January 1, 2020, no owner-occupancy requirements shall apply.
- O. Passageways and Internal Connections.
  1. No passageway, as defined in California Government Code Section 65852.2, that is unobstructed clear to the sky and extends from a street to one entrance

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of the ADU, shall be required in conjunction with the construction of an ADU or JADU.

2. Internal connections are allowed for attached ADUs and JADUs.
  3. Internal connections are not allowed for detached ADUs to other accessory buildings, unless the connection facilitates an interior stairwell that provides access to a detached ADU located above a garage.
- P. Compliance with Applicable Requirements. ADUs and JADUs shall meet all applicable zoning and fire regulations and shall comply with local building codes. Fire sprinklers shall not be required for the ADU 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.
- Q. Nonconforming conditions. Nonconforming zoning conditions do not need to be corrected as part of an ADU or JADU approval. An ADU 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.
- R. Impact Fees. No impact fees will be charged on an ADU 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.
- S. Utility Connections. A new ADU 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.
- T. A certificate of occupancy for an accessory dwelling unit will only be issued after a certificate of occupancy is issued for the primary dwelling.
- U. 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.

#### **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 17.36**

Chapter 17.36 is hereby amended to include Accessory Dwelling Units as a land use permitted by right as follows:

#### **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

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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	P
Emergency shelters	P <sup>4</sup>
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
Residential associated with primary	CUP

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Land Use	Zoning District
	PFS
nonresidential use of property on same site <sup>1</sup>	
Multiple-family residential uses that could accommodate housing for very low- and low-income households associated with primary nonresidential use of property on same site	L/ER <sup>5</sup>
Private schools	CUP <sup>2, 3</sup>
Public utilities and facilities, uses, and structures	CUP
Transportation terminal facilities	CUP

## Notes:

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

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

- Maps and diagrams showing the proposal in relation to the master plan layout;
- History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;

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- 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. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 17.60**

Chapter 17.60 is hereby amended to the definition of "Kitchen" and add the definition of "Efficiency Kitchen," 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 6. 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 7: 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: \_\_\_\_\_

ANDREAS BOOHER, CITY ATTORNEY

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



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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_

ANTHONY SUBER

City Clerk

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

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

Junior accessory dwelling units shall be allowed in all areas zoned to allow single-family residential and 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.

**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.

B. "Attached accessory dwelling unit" means a newly constructed unit that is connected to the primary single-family home by at least one wall.

C. "Detached accessory dwelling unit" means an accessory dwelling unit that is not structurally attached to the main residence.

D. "Efficiency unit" means a living unit which includes all 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.
  - 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.

E. "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. 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.

F. "Living area" for the purpose of this chapter, means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

G. "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. Pursuant to Section 21155 of the Public Resources Code

#### **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. Accessory Dwelling Use. All ADUs and JADUs shall be located on the same lot with an existing or proposed dwelling and considered an accessory residential use to the primary residence. ADUs and JADUs do not count towards the allowable density for the lot upon which it is located.

B. Maximum Number of ADUs and JADUs per lot.

1. One ADU and one JADU per lot with a proposed or existing single-family dwelling if all of the following apply:
  - a. The ADU or JADU 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.
  - b. The space has exterior access separate from the proposed or existing single-family dwelling.
  - c. The side and rear setbacks are sufficient for fire and safety.
  - d. The JADU complies with the requirements of Section 65852.22.
2. One detached, new construction, ADU that does not exceed 800 square-feet, complies with the height restrictions in this section, and provides a minimum of four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a JADU.
3. On lots that allow single-family dwellings and are a minimum of two (2) acres, the property owner may have up to two (2) detached ADUs provided that one of the two units is deed restricted as low-income for a period of 15 years or more.
4. Lots that allow multifamily dwellings.
  - a. 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.
  - b. At least one ADU is allowed within an existing multifamily dwelling. The total number of ADUs allowed is up to 25 percent of the existing multifamily dwelling units.
  - c. Not more than two ADUs that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to applicable height limits and a four-foot rear and side setbacks.
    - i. If an existing multifamily dwelling has a rear or side setback of less than four feet, no modification of the existing multifamily dwelling is required as a condition of approving an ADU.

C. Floor Area Requirements.

1. 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, which is 150 square feet. The maximum size of an efficiency unit is 500 square feet.
2. The maximum size for a JADU is 500 square feet.
3. The maximum size for an ADU is 1,200 square feet.
4. The 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 800 square foot ADU.
5. Garage and accessory structures ancillary to an ADU are not considered part of the ADU living area and are not included in the ADU floor area calculations.

D. Exemptions from Maximum Floor Area Limitations.

1. The first 800 square feet of floor area of each ADU, attached and detached, and up to five hundred square feet for each JADU shall be excluded from maximum floor area calculations.
2. Additional floor area for each ADU may be excluded from maximum floor area calculations where staff determines the following conditions are met:
  - a. If a detached ADU meets and/or exceeds the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures, then the ADU will be allowed an additional floor area exemption beyond the first 800 square feet of floor area, up to a total of 1,200 square feet.
  - b. If an attached ADU is located in the main buildable area and encroaches into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback, then the ADU shall be allowed an additional floor area exemption beyond the first 800 square feet of floor area, up to a total of twelve 1,200 square feet.
3. No floor area limitation shall be required for any conversion of an existing legal non-conforming building to an ADU.
4. Interior stairs are exempt from floor area calculations if the stairs accommodate access to a new ADU located above an existing or proposed detached garage that complies with accessory structure setback requirements.

E. Basements.

1. Habitable basements are allowed under detached ADUs; however, these basements shall count toward the floor area of the ADU. An internal connection from the ADU to the habitable basement is required. No special structures permit is required for these basements.

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2. Habitable basements are allowed under attached ADUs; however, these basements shall count toward the floor area of the ADU if located outside the main building area setback. An internal connection from the ADU to the habitable basement is required.
  3. Habitable basements are allowed under a JADU; however, these basements will be considered as the basement for the main residence and will not count toward the square footage of the JADU. No internal connection from the JADU will be allowed into the basement. Basements accommodating JADUs must be within the main building area.
  4. Non-habitable basements under ADUs are only allowed outside the accessory structure setback and are subject to the Heritage Tree Ordinance. Exterior access to the non-habitable basement shall be located outside the accessory structure setback.
  5. The floor area of an attached ADU or JADU does not count toward the basement allowance under 17.44.030.A.
- F. Setback Requirements. 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.
1. JADUs shall have the same setbacks as required for the main residence.
  2. A newly constructed detached or attached ADU that is 800 square feet or less must be located at least 4 feet from a side or rear property line. This type of ADU does not have a front yard setback.
    - a. No decks or mechanical equipment are allowed in the four-foot side and rear setback.
  3. A newly constructed attached ADU that has a floor area greater than 800 square feet and no more than 1,200 square feet shall be located in the main building area. These ADUs may encroach into side and rear yard setbacks by not more than twenty percent (20%) of the required setback.
  4. A newly constructed detached ADU that has a floor area greater than 800 square feet and no more than 1,200 square feet shall be located maintain the setbacks for accessory buildings.
  5. A newly constructed detached ADU shall maintain the required separation distances between the proposed or existing main residence, accessory buildings and accessory structures as required in the accessory structures section of the zoning code, unless necessary to accommodate an ADU of 800 square feet ADU or less.
  6. Existing Structure. No setback shall be required for an existing 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 ADU or to a portion of an ADU. A setback of at least four feet from the side and rear lot lines

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.

7. For double frontage and corner lots, the front yard is the yard that is adjacent to the designated front property. The rear yard shall be the yard adjacent to the property line on the opposite side of the property from the designated front property line. The address for the ADU shall be on the street adjacent to the front yard.

G. 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.

H. Height.

1. A maximum height of 16 feet is allowed for a detached ADU on a lot with an existing or proposed single-family or multifamily dwelling.
2. 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. 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.
3. A maximum height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.
4. A maximum height of 25 feet or the allowed height of the zoning district, whichever is lower, is allowed for an accessory dwelling unit that is attached to a primary dwelling.
5. Accessory dwelling units are limited to 2 stories.
6. A maximum height of 25 feet is allowed for a detached ADU located above a garage, provided that:
  - a. The total height is inclusive of the garage,
  - b. The garage complies with the accessory structure setback requirements of the Zoning Code, and,
  - c. The ADU is accessed through a ground level entry vestibule and an interior stair.
  - d. The roofline shall be consistent with the style of the main residence. For example, a gabled roof form on the main residence shall require a gabled roof form on the ADU above garage.



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- e. If the second story floor area accommodating the ADU is less than the ground floor area, the residual roofing above the ground floor shall not accommodate a roof deck or balcony.

### I. Heritage Tree Ordinance.

1. The Heritage Tree Ordinance does not apply to ADUs up to 800 square feet and JADUs up to 500 square feet. In all other cases, the Heritage Tree Ordinance applies. The main residence and all other accessory buildings/structures are subject to the Heritage Tree Ordinance.
2. Detached ADUs that are greater than 800 square feet may seek administrative exceptions to the Tree Protection Zone for a distance up to 6x in the R1-A zoning district. The Town Arborist will review such requests for ADUs, concurrently with review by Planning staff.
3. Any tree removal permitted by the Town in relation to the construction of an ADU must occur after the issuance of a related building permit. Such building permit must then adhere to time limits set forth in Atherton Municipal Code (AMC) Section 15.40.180. Penalties and remedies pursuant to AMC 8.10.070(B) may result in cases where trees are removed in relation to the approval of an ADU and the ADU is not constructed.

### J. Privacy, Screening and Landscaping.

1. New ADUs constructed above the ground floor shall also be designed to reasonably preserve the privacy of adjacent property owners. Appropriate design techniques to preserve privacy include obscured glazing, the use of clerestory windows that are above eye level, screening treatments, locating windows toward the existing on-site residence, or providing no windows on facades facing adjacent properties.
2. Landscape screening for the ADU shall be installed to the greatest extent feasible.
3. A solid 8 foot high fence shall be provided along the entire front, side, or rear property line adjacent to where the ADU is located. Fences shall be at the property line.
4. No sidewall height limitations apply to ADUs.

### K. 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.

### L. Parking Requirements.

1. No parking is required for a JADU.

2. 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.
3. No additional parking shall be required if one of the following conditions applies to the ADU:
  - a. The ADU is located within one-half mile walking distance of public transit.
  - b. The ADU is located within an architecturally and historically significant district.
  - c. The ADU is part of a proposed or existing primary residence or an existing accessory structure.
  - d. On-street parking permits are required but not offered to the occupant of the ADU.
  - e. A car share vehicle is located within one block of the ADU.
  - f. When a permit application for an ADU is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the ADU or the parcel satisfies any other criteria listed in this paragraph.
4. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, off-street parking spaces do not need to be replaced.
5. A demolition permit for a detached garage that is to be replaced with an ADU shall be reviewed with the application for the ADU and issued at the same time.
- M. 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.
- N. Owner Occupancy. The owner occupancy requirements detailed in this section shall apply to all lawfully permitted ADUs and JADUs within the Town on a single-family lot:
  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. For ADUs and JADUs permitted on or after January 1, 2020, no owner-occupancy requirements shall apply.
- O. Passageways and Internal Connections.
  1. No passageway, as defined in California Government Code Section 65852.2, that is unobstructed clear to the sky and extends from a street to one entrance

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of the ADU, shall be required in conjunction with the construction of an ADU or JADU.

2. Internal connections are allowed for attached ADUs and JADUs.
  3. Internal connections are not allowed for detached ADUs to other accessory buildings, unless the connection facilitates an interior stairwell that provides access to a detached ADU located above a garage.
- P. Compliance with Applicable Requirements. ADUs and JADUs shall meet all applicable zoning and fire regulations and shall comply with local building codes. Fire sprinklers shall not be required for the ADU 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.
- Q. Nonconforming conditions. Nonconforming zoning conditions do not need to be corrected as part of an ADU or JADU approval. An ADU 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.
- R. Impact Fees. No impact fees will be charged on an ADU 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.
- S. Utility Connections. A new ADU 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.
- T. A certificate of occupancy for an accessory dwelling unit will only be issued after a certificate of occupancy is issued for the primary dwelling.
- U. 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.

#### **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 17.36**

Chapter 17.36 is hereby amended to include Accessory Dwelling Units as a land use permitted by right as follows:

#### **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

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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	P
Emergency shelters	P <sup>4</sup>
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
Residential associated with primary	CUP

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Land Use	Zoning District
	PFS
nonresidential use of property on same site <sup>1</sup>	
Multiple-family residential uses that could accommodate housing for very low- and low-income households associated with primary nonresidential use of property on same site	L/ER <sup>5</sup>
Private schools	CUP <sup>2, 3</sup>
Public utilities and facilities, uses, and structures	CUP
Transportation terminal facilities	CUP

## Notes:

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

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

- Maps and diagrams showing the proposal in relation to the master plan layout;
- History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;

## Attachment 7

- 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. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 17.60**

Chapter 17.60 is hereby amended to the definition of "Kitchen" and add the definition of "Efficiency Kitchen," 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 6. 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 7: 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: \_\_\_\_\_

ANDREAS BOOHER, CITY ATTORNEY

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



Attachment 7

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_

ANTHONY SUBER

City Clerk



# Town of Atherton

## ADU Ordinance Update

City Council

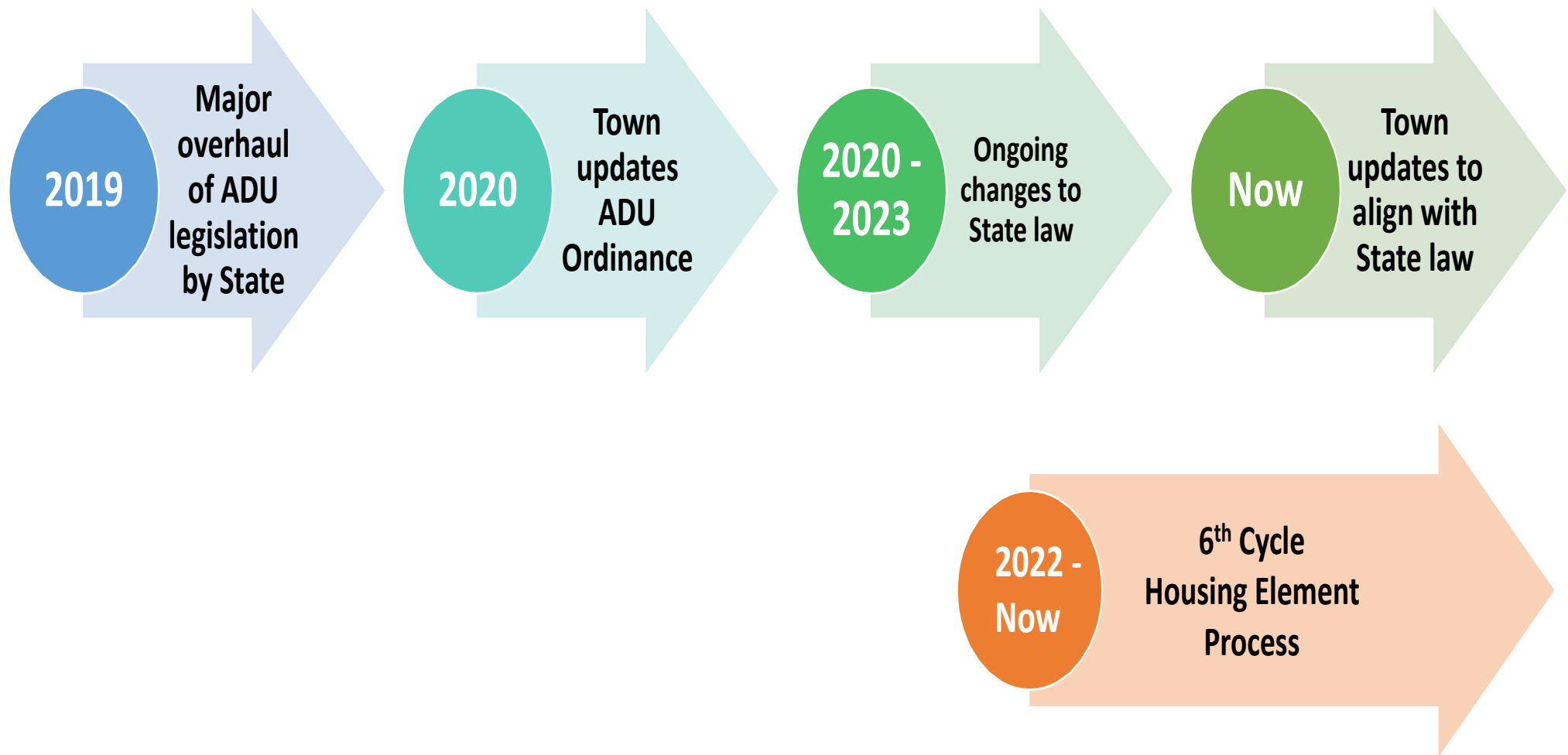
November 15, 2023

# Recommendation

Staff recommends that City Council conduct a public hearing to introduce an ordinance to:

- repeal and replace Chapter 17.52 "Accessory Dwelling Units," and
- amend Chapter 17.36 "Public Facilities and Schools District (PFS)" and Chapter 17.60 "Definitions."

# Background



# Areas of Change

- Definitions
- Accessory Dwelling Use
- Maximum Number of Units
- Floor Area Requirements
- Exemptions from Maximum Floor Area Requirements
- Basements
- Setback Requirements
- Height
- Heritage Trees
- Privacy, Screening and Landscaping
- Parking Requirements
- Owner Occupancy
- Passageways and Internal Connections
- Compliance with Applicable Requirements
- Impact Fees
- Utilities
- Certificate of Occupancies
- Code Enforcement
- Public Facilities and School Districts (PFS) Zoning Controls
- “Kitchen” and “Efficiency Kitchen” Definitions

# Areas of Change – Per State Law

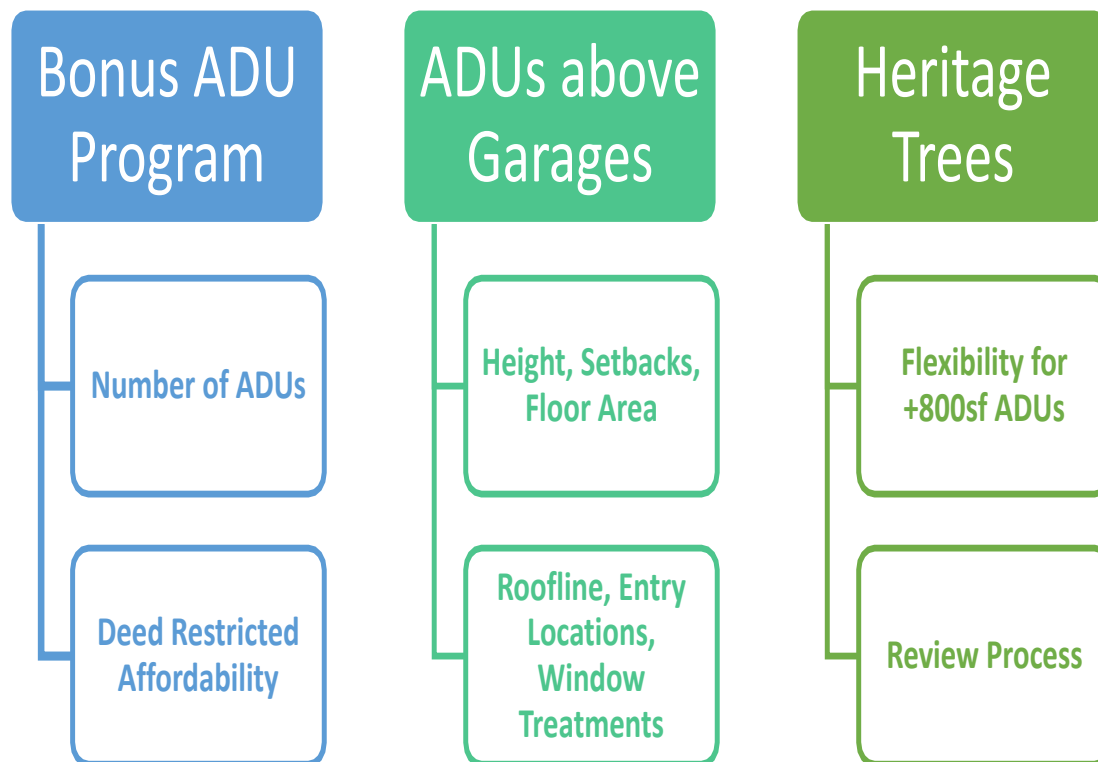
- Definitions
- Accessory Dwelling Use
- Maximum Number of Units
- Floor Area Requirements
- Exemptions from Maximum Floor Area Requirements
- Basements
- Setback Requirements
- Height
- Heritage Trees
- Privacy, Screening and Landscaping
- Parking Requirements
- Owner Occupancy
- Passageways and Internal Connections
- Compliance with Applicable Requirements
- Impact Fees
- Utilities
- Certificate of Occupancies
- Code Enforcement
- Public Facilities and School Districts (PFS) Zoning Controls
- “Kitchen” and “Efficiency Kitchen” Definitions

(Changes required by State law)

# Inserting Town Influence

## Town Objectives:

- 1) Incentivize compliance with Town's standards
- 2) Incentivize ADU development to meet the Town's RHNA objectives



# Maximum Number of Units

## State Law (how it used to be):

*(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:*

*(A) One accessory dwelling unit or one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply...*

*(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A)...*

+ 1 ADU or 1 JADU (subject to conditions)  
+ 1 detached, new construction, ADU

**= 2 units**



# Maximum Number of Units

## State Law (now):

*(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:*

*(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply...*

*(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A)...*

$$\begin{array}{r} 1 \text{ ADU (subject to conditions)} \\ + 1 \text{ JADU (subject to conditions)} \\ + 1 \text{ detached, new construction, ADU} \\ \hline = 3 \text{ units} \end{array}$$

# Bonus ADU Program

## Housing Element Program 3.812(F):

*Allow the zoning code to allow **two** ADUs to be constructed on properties two acres or greater than area.*

$$\begin{array}{rcl} & \text{1 ADU (subject to conditions)} & \\ + & \text{1 JADU (subject to conditions)} & \\ & \text{1 detached, new construction, ADU} & \\ \hline = & 3 \text{ units} & + \text{1 BONUS ADU} \\ & & \text{(+2 ACRE LOTS ONLY)} \end{array}$$

## Deed Restriction Component:

- Timeframe: 15 years
- Affordability level: “Low-Income”

# ADUs Above Garages

## Objective:

Incentivize compliance with Town's setbacks by allowing ADUs above existing or proposed detached garages

### Height

- Maximum height of structure (including garage and ADU)
- Roof form

### Floor Area Exemptions

- Ground level entry
- Enclosed stairs

### Privacy

- No balconies/decks
- Window standards
- 8 foot fencing
- Landscaping

# Heritage Trees

## Objective:

Incentivize compliance with Town's setbacks by providing greater flexibility with Heritage Tree Ordinance for larger, setback compliant ADUs

### TPZ Exceptions

- Administrative up to 6x in the R1-A

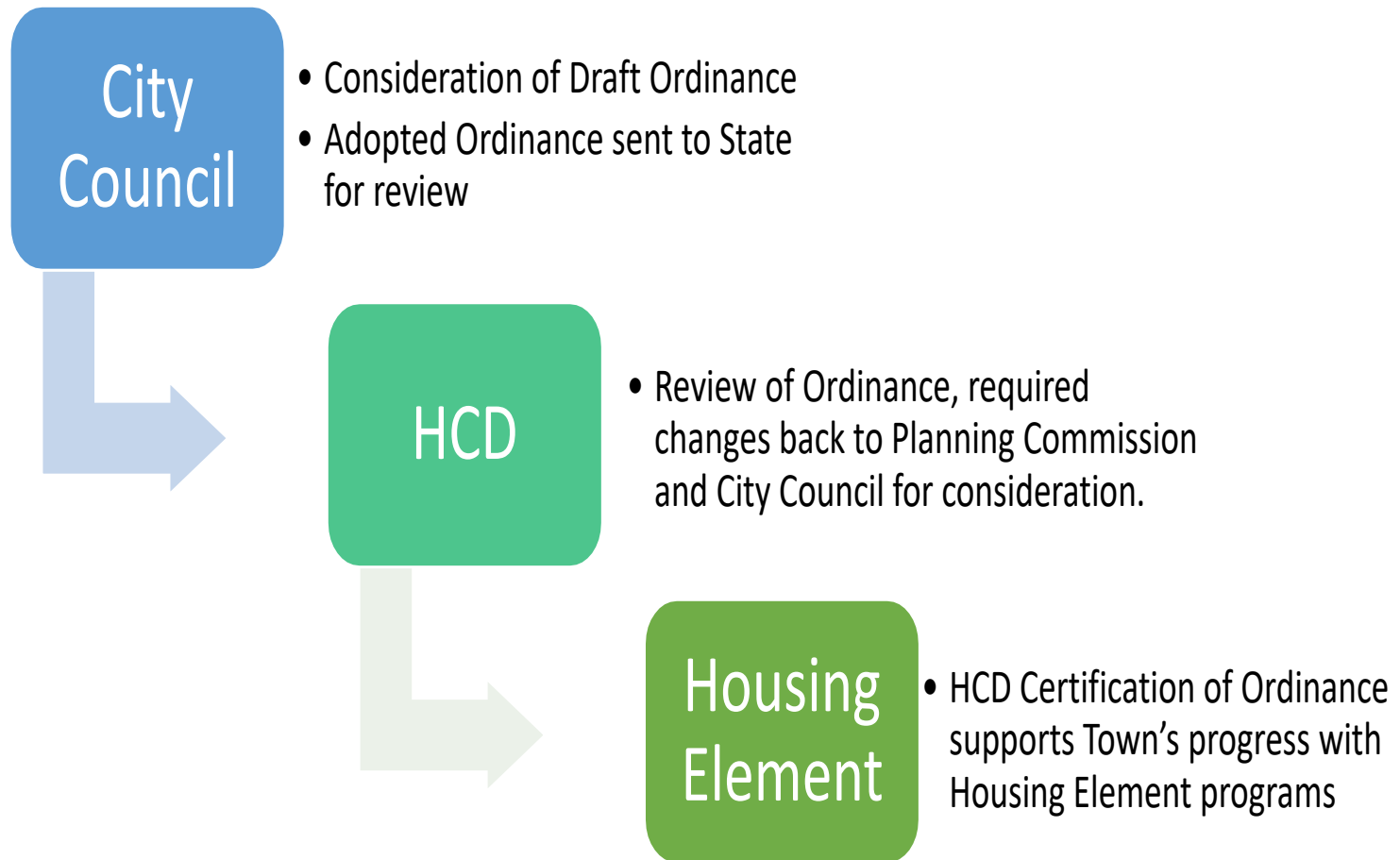
### Review Process

- Reviewed during Planning consideration
- 6x would require information at submittal of application

### Good Faith Removal

- Asserts timeline requirements for ADU construction
- Asserts potential penalties

# Next Steps



# Recommendation

Staff recommends that City Council conduct a public hearing to introduce an ordinance to:

- repeal and replace Chapter 17.52 "Accessory Dwelling Units," and
- amend Chapter 17.36 "Public Facilities and Schools District (PFS)" and Chapter 17.60 "Definitions."

# Thank you

