

5. **SECOND READING AND ADOPTION OF 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 approve for second reading of the 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. 5**  
**Town of Atherton**

**CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

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

**FROM: BRITTANY BENDIX, TOWN PLANNER**

**DATE: MARCH 20, 2024**

**SUBJECT: SECOND READING AND ADOPTION OF 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 approve for second reading of the 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**

The City Council introduced and discussed updates to the Town’s Accessory Dwelling Unit (ADU) ordinance at its meeting on February 21, 2024. This discussion occurred after multiple meetings with both the City Council and Planning Commission throughout 2023. Because many of the proposed updates are required by state law, the discussion among Councilmembers on February 21, 2024 focused on the following topic areas where local jurisdictions have the greatest ability to influence ADU development:

1. Bonus ADU Program
2. ADUs Above Detached Garages, Fencing and Screening

**ANALYSIS**

This report summarizes the local programming discussed at the City Council meeting on February 21, 2024 for ADUs included in the proposed ordinance. A draft ordinance, with red-lined text that shows all changes from the existing language in the Atherton Municipal Code (AMC) is included as Attachment 1; a clean copy of the draft ordinance is included as Attachment 2.

- 1. Bonus ADU Program.** The updated ordinance establishes a Bonus ADU program to incentivize the development and documentation of ADUs that are available to lower income households. This program would be voluntary, applicable only to lots that are 2 acres or greater and recorded through a deed-restriction. If a Bonus ADU is rented, the program requires rental of the Bonus ADU to either a low-income household for a period of 15 years, or a very low-income household for a period of 10 years. Bonus ADUs must also comply with the Town's setbacks for accessory structures. Additionally, the Council directed staff to add clarification that the Bonus ADU *cannot* be rented for a period *less than* nine (9) months. This update is reflected in the attached draft ordinance.
- 2. ADUs Above Detached Garages, Fencing and Screening.** The ordinance allows for the location of ADUs above detached garages; however, these units must meet requirement for fencing and screening. The ordinance also includes fencing and screening requirements for ADUs located within the Town's setbacks for accessory buildings and structures.

### **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 Almanac* 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. Draft ADU Ordinance (Changes shown in red)
2. Draft ADU Ordinance (Tracked changes)

**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.

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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. “High-quality transit corridor” pursuant to Section 21155 of the Public Resources Code means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor.

F. “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.

G. “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.

H. “Major Transit Stop” pursuant to Sections 21064.3 and 21155 of the Public Resources Code, means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute period, or major transit stops that are included in the applicable regional transportation plan. A project shall be considered to be within one-half mile of a major transit stop if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor.

I. “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 a detached “bonus” ADU provided the following conditions are met:
    - a. The bonus ADU is deed restricted as housing unit available to a low-income household for a period of 15 years or a very low-income household for a period of 10 years. Income levels shall be consistent with the income limits established by the U.S. Department of Housing

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and Urban Development (HUD) and based on the Area Median Income (AMI) for San Mateo County.

- b. The bonus ADU cannot be rented for a period of less than nine (9) months.
  - c. The bonus detached ADU must comply with the setbacks for accessory buildings and structures, in AMC Section 17.40.040(A).
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.

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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.**
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.

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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

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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.
  - 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. Pursuant to California Government Code Section 65852.2(a), ADUs up to 800 square feet and JADUs up to 500 square feet are exempt from the Heritage Tree Ordinance. However, if state law changes and enables the application of the Heritage Tree Ordinance to ADUs that are 800 square feet or less and JADUs that are 500 square feet or less, this exemption will cease immediately. 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.

4. Expansion to Existing ADUs. If an existing ADU was previously exempt from the Heritage Tree Ordinance due to its square footage and therefore, resulted in the removal of a heritage tree; then any expansion to the subject ADU must provide a replacement planting consistent with AMC Chapter 8.10.

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. New ADUs that are constructed within the setbacks for accessory buildings and structures, as identified in AMC Section 17.40.040(A) must provide an 8-foot-high fence for screening. The required fence shall be solid, opaque, and extend along the entire front, side or rear property line that is adjacent to the reduced setback area. If the property line is already adequately screened with landscaping that is at least 8-feet tall and opaque, then no new fencing is required.
4. New ADUs that are constructed above a detached accessory garage, must provide an 8-foot-high fence for screening. The required fence shall be solid, opaque and extend along the entire front, side or rear property line that is adjacent to the ADU. If the property line is already adequately screened with landscaping that is at least 8-feet tall and opaque, then no new fencing is required.
5. 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.

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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 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.

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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 nonresidential use of property on same site <sup>1</sup>	CUP

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

Notes:

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

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

- a. Maps and diagrams showing the proposal in relation to the master plan layout;
- b. History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;
- c. A traffic and parking analysis of the proposal and comparison to the master plan projections;
- d. A circulation plan showing how the traffic and pedestrian circulation will function upon implementation of the proposals; and

## Attachment 1 (Changes in Red)

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

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 \_\_\_\_\_, 2024, by the following vote:

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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.

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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. "High-quality transit corridor" pursuant to Section 21155 of the Public Resources Code means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor.

F. "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.

G. "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.

H. "Major Transit Stop" pursuant to Sections 21064.3 and 21155 of the Public Resources Code, means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute period, or major transit stops that are included in the applicable regional transportation plan. A project shall be considered to be within one-half mile of a major transit stop if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor.

I. "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 a detached "bonus" ADU provided the following conditions are met:
    - a. The bonus ADU is deed restricted as housing unit available to a low-income household for a period of 15 years or a very low-income household for a period of 10 years. Income levels shall be consistent with the income limits established by the U.S. Department of Housing

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and Urban Development (HUD) and based on the Area Median Income (AMI) for San Mateo County.

- b. The bonus ADU cannot be rented for a period of less than nine (9) months.
  - c. The bonus detached ADU must comply with the setbacks for accessory buildings and structures, in AMC Section 17.40.040(A).
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.

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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.
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.

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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

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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.
  - 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. Pursuant to California Government Code Section 65852.2(a), ADUs up to 800 square feet and JADUs up to 500 square feet are exempt from the Heritage Tree Ordinance. However, if state law changes and enables the application of the Heritage Tree Ordinance to ADUs that are 800 square feet or less and JADUs that are 500 square feet or less, this exemption will cease immediately. 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.

4. Expansion to Existing ADUs. If an existing ADU was previously exempt from the Heritage Tree Ordinance due to its square footage and therefore, resulted in the removal of a heritage tree; then any expansion to the subject ADU must provide a replacement planting consistent with AMC Chapter 8.10.

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. New ADUs that are constructed within the setbacks for accessory buildings and structures, as identified in AMC Section 17.40.040(A) must provide an 8-foot-high fence for screening. The required fence shall be solid, opaque, and extend along the entire front, side or rear property line that is adjacent to the reduced setback area. If the property line is already adequately screened with landscaping that is at least 8-feet tall and opaque, then no new fencing is required.
4. New ADUs that are constructed above a detached accessory garage, must provide an 8-foot-high fence for screening. The required fence shall be solid, opaque and extend along the entire front, side or rear property line that is adjacent to the ADU. If the property line is already adequately screened with landscaping that is at least 8-feet tall and opaque, then no new fencing is required.
5. 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.

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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 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

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review

Attachment 2 (Clean)

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 nonresidential use of property on same site <sup>1</sup>	CUP

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

Notes:

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

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

- a. Maps and diagrams showing the proposal in relation to the master plan layout;
- b. History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;
- c. A traffic and parking analysis of the proposal and comparison to the master plan projections;
- d. A circulation plan showing how the traffic and pedestrian circulation will function upon implementation of the proposals; and

e. Other information that might be required for specific proposals, such as noise analyses, lighting plans, landscape screening plans, heritage tree locations, and other similar information.

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

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

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

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

## **Section 5. 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

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 \_\_\_\_\_, 2024, by the following vote:

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AYES:

NOES:

ABSENT:

ABSTAIN:

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

ANTHONY SUBER

City Clerk