



Item No. 8 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

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

FROM: STEVEN D. MCCULLEY, CHIEF OF POLICE

DATE: MARCH 16, 2022

**SUBJECT: RESOLUTION AUTHORIZING THE DESTRUCTION OF RECORDS
PURSUANT TO GOVERNMENT CODE SECTION 34090**

RECOMMENDATION

Adopt the attached Resolution authorizing the destruction of certain records pursuant to Government Code Section 34090.

BACKGROUND

Penal Code Section 832.5 requires that citizen complaints or internal affairs investigations against police department personnel and any related reports or findings be maintained for a period of at least five (5) years where there is no sustained finding of misconduct and at least 15 years if there is such a sustained finding.

Government Code Section 34090 authorizes the Chief of Police, upon resolution of the City Council and written consent of the City Attorney, to destroy records, documents, instruments, and other papers under his charge pursuant to an adopted records retention policy if the records are no longer required to be maintained by law or the retention policy. The City Council has adopted a Records Retention Policy (2015).

The Police Department has one (1) file (Citizen Complaint) that has exceeded the 5-year record retention period and is no longer required to be maintained because it does not relate to a sustained finding of misconduct. The Chief of Police and City Attorney have reviewed the status of the file noted above to ensure there is no legal or other reason to maintain such file.

In addition, the Police Department is seeking approval to destroy the internal affairs logs from 1996 – 2015, citizen complaint logs from 1994-2015, and 2019 citations in accordance with law and the Town's retention policy.

ANALYSIS

The California Government Code authorizes the destruction of records and requires agencies to adopt compliant records retention schedules. These schedules ensure that certain records are maintained in perpetuity and other records are maintained for sufficient time periods, dependent on the type of records, to allow standards and structure for local government records management efforts.

Maintaining old files can lead to the use of stale information in personnel and litigation matters that can be detrimental to staff, the department, and the Town. The information is of no useful value to the Town, is out of date and should be destroyed in compliance with Town and State records retention policies.

It is recommended that the City Council authorize this timely and appropriate destruction of old files in accordance with the law.

POLICY FOCUS

Once records have been retained for the applicable period set forth in law and the Records Retention Schedule, they should be prepared for destruction in the manner prescribed by the Town's Original Resolution # 15-09 adopted March 18, 2015.

FISCAL IMPACT

There is no fiscal impact in approving this resolution for the destruction of records.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:
Goal E – Strengthen Community Engagement and Transparency.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,600 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but not limited to media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer) and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

Records Destruction

March 16, 2022

Page 3 of 3

- _____ Audit/Finance Committee (meets every other month)
- _____ Bicycle/Pedestrian Committee (meets as needed)
- _____ Civic Center Advisory Committee (meets as needed)
- _____ Environmental Programs Committee (meets every other month)
- _____ Park and Recreation Committee (meets each month)
- _____ Planning Commission (meets each month)
- _____ Rail Committee (meets every other month)
- _____ Transportation Committee (meets every other month)
- _____ Tree Committee (meets each month)

ATTACHMENTS

ATTACHMENT 1 - Resolution

RESOLUTION NO. 22-

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ATHERTON AUTHORIZING THE DESTRUCTION OF RECORDS PER
GOVERNMENT CODE SECTION 34090**

WHEREAS, Penal Code Section 832.5 requires that citizen complaints or internal affairs investigations against police department personnel and any related reports or findings be maintained for a period of at least five years if there is no sustained finding of misconduct and at least 15 years if there is such a sustained finding; and

WHEREAS, Government Code Section 34090 expressly authorizes the Chief of Police for the Town of Atherton, upon resolution of the City Council and written consent of the City Attorney, to destroy City records, documents, instruments and other papers under his charge that are no longer required to be retained by the City; and

WHEREAS, the Chief of Police has agreed to review the status of any such citizen complaint or internal affairs investigation in excess of five years for pending related civil or criminal litigation prior to its destruction and only if the employee no longer works for the Town of Atherton shall said records be destroyed; and

WHEREAS, the City Attorney hereby gives her written consent for the destruction of the following records:

ITEM NUMBER	RECORD TITLE	RETENTION
2016-001	Citizens Complaint with No Sustained Finding of Misconduct	5 years
1996-2015	Internal Affairs Logs	5 years
1994 - 2015	Citizens Complaint Logs	5 years
2019	Citations	2 years

NOW, THEREFORE, BE IT RESOLVED, The Chief of Police and City Attorney have reviewed the status of the 1 Citizen Complaint Investigation, logs from IA from 1996 – 2015, CC logs from 1994 – 2015, and 2019 citations.

BE IT FURTHER RESOLVED that nothing in this resolution is intended to supersede or otherwise conflict with any other law or any lawful judicial process which might affect retention or destruction of such records.

ATTACHMENT 1

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this ? day of March, 2022, by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSTAIN: Council Members:
ABSENT: Council Members:

Mayor DeGolia

Mayor ATTEST:

Anthony Suber
City Clerk

Mona Ebrahimi
City Attorney

TOWN OF ATHERTON
NOTICE OF RECORDS DESTRUCTION

DEPARTMENT: POLICE DEPARTMENT

ITEM NUMBER	RECORD TITLE	RETENTION
2016-001	Citizens Complaint with No Sustained Finding of Misconduct	Closure + 5 years

TITLE	RETENTION
Internal Affairs Logs 1996-2015	5 Years
Citizen Complaint Logs 1994-2015	5 Years

TITLE	RETENTION
2019 Citations	2 Years

CONSENT TO DESTRUCTION OF RECORDS

DEPARTMENT HEAD: _____ DATE: _____

CITY MANAGER: _____ DATE: _____

CITY ATTORNEY: _____ DATE: _____

CITY CLERK: _____ DATE: _____

DESTROYED BY: _____ DATE: _____