



Item No. 13 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: STEPHANIE B. DAVIS, AICP, PRINCIPAL PLANNER

DATE: MARCH 16, 2022

SUBJECT: INTRODUCTION OF AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 8.14 “HISTORICAL ARTIFACTS” OF THE ATHERTON MUNICIPAL CODE (AMC) AND RETITLE TO “HISTORIC PRESERVATION”

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and introduce Ordinance amendments to repeal and replace Atherton Municipal Code (AMC) Chapter 8.14 “Historical Artifacts” and retitle to “Historic Preservation” based on the following finding and for the reasons outlined in this report:

- 1. The proposed municipal code text amendments are consistent with the general plan goals, policies, and implementation programs.*

Basis for finding: The proposed Municipal Code amendments allow the Town to create a comprehensive Historical Preservation Ordinance proposed to address the Open Space and Conservation (OSC) Policy 4.1 of the General Plan to “*Encourage the preservation of both private and public historical resources and artifacts for the benefit of future generations*” as well as supporting implementation of Goal OSC-4 of the General Plan to, “*Protect both publicly and privately held cultural resources from deterioration and/or destruction.*”

BACKGROUND

On March 3 and December 1, 2021, the City Council conducted two study sessions for purposes of discussing possible Municipal Code amendments in order to allow for future consideration of Mills Act (or Historical Property) Contracts in Town. At the December 1, 2021 City Council meeting, the Council directed staff to bring forward amendments to the Planning Commission and to remove any discussion and/or inclusion of heritage trees. An updated draft Ordinance was presented to the Planning Commission at two public meetings on January 26 and February 23, 2022.

The Planning Commission conducted two public hearings on January 26 and February 23, 2022 to consider such amendments. At the February 23, 2022, all Commissioners stated their support of historic preservation in Town, and subsequently voted 4-1 to recommend that the City Council adopt amendments to repeal and replace Chapter 8.14 “Historical Artifacts” and retitle to “Historic Preservation”. The Planning Commission did not recommend any changes to the language of the draft Ordinance as considered at the February meeting (see Attachment 1) but had the following comments to the Council:

- Expressed concern that individuals may request Historical Property Contracts for the “wrong reasons” – i.e. just for property tax savings over actual desire for historical preservation.
- That adopting such an Ordinance could create dissension and an increased workload for Commission, Council and staff.
- That should the Ordinance get adopted, a request to evaluate the process, implementation and staff workload after 1-year.

ANALYSIS

The draft Historic Preservation Ordinance as recommended for approval by the Planning Commission has been included as Attachment 1.

The draft Ordinance proposes regulations covering Historic Artifacts and Historic Buildings. While the draft Ordinance language is tailored specifically to artifacts and buildings, both do share many definitions and processes related to their designation, preservation, and enforcement. By combining existing AMC regulations pertaining to historical artifacts, with proposed amendments relative to historical buildings, it allows for a comprehensive Town “historical preservation” approach which may be easier for the community to understand and the Town to implement.

All the essential provisions that existed in the original Historic Artifact Ordinance have been incorporated into the new Ordinance. Some key provisions of the draft language prepared in Attachment 1 relative to historical buildings and/or artifacts and any subsequent requests for consideration of a Historical Property Contract, are:

- *Atherton Historical Register.* The Ordinance proposes to establish the Atherton Historical Register as a unified document maintained by the Town that lists historic artifacts and historic buildings. Currently such document does not exist.
- *Criteria and Findings for Designating a building Historic.* In accordance with Mills Act Law, a property/building must have federal, state, or local historical designation to be considered for a Historical Property Contract.
- *Procedures for Obtaining and Removing Historic designation.* Language has been drafted which specifies only the property owner of record can initiate a request for designation, and that such application would need to be heard first by the Planning Commission for a recommendation, then to the City Council for action. For removal, either a property owner can initiate such request, or the Town, if said property is in violation of the AMC and/or the

building is destroyed. Such a process is recommended to be considered by the City Council as it will clarify how removal of designation is to be achieved.

- *Activities and Process Relative to a Historical Alteration Permit for buildings and/or artifacts.* Language has been drafted, including definitions, on the type of work to either a historical artifact and/or building that would trigger a historical alteration permit. Minor alterations and/or activities that could be considered ordinary maintenance or repair would be exempt. It is drafted that the Planning Commission would be the decision-making body on historical alteration permits and includes specific findings the Commission would need to make. Under the existing Historical Artifacts Ordinance, the Planning Commission is the decision-making body for a historical alteration permit.
- *Historical Property (i.e., “Mills Act”) Contracts.* A separate article within the Ordinance has been drafted pertaining to application processes, procedures, submittal materials, and regulatory guidelines for any future Historical Property contracts, which would be implemented after a property/building has obtained qualified historical designation as discussed above. Given feedback received by the Council at the March and December 2021 study sessions, the following draft provisions have been included.
 - Mills Act Law allows property tax relief in exchange for the restoration and maintenance of their historic properties. The draft Ordinance includes language noting such and further specifies a required review by the San Mateo County (SMCO) Assessor’s Office prior to any final action taken. This would allow the Planning Commission and City Council to have a specific estimate as to the property owner’s property tax benefit / Town loss as each property will be different dependent on the age, condition and local market value. The formula to provide such estimate is set by State Board of Equalization and required to be administered by the local agency’s County Tax Collector office. Staff has contacted the SMCO Assessor’s office and confirmed their staff will be able to do so, should an Ordinance become enacted. It also includes detail as to the content of the contracts.
 - *Procedures.* Specification is included as to what any future application materials needs to contain, including a 10-year Restoration/Rehabilitation and Maintenance Plan that includes details describing the nature, cost and schedule of the rehabilitation, restoration or preservation work to be conducted on the property. It is drafted that any proposed Historical Property Contract be first considered by the Planning Commission at public hearing for a recommendation to the City Council; City Council would then hold a public hearing and act on the request. The draft Ordinance includes specific findings for the decision makers.
 - *Limitation on the number of Contracts.* In order to try and prevent any significant property tax loss to the Town, language has been drafted limiting no more than 5 contracts be active at any one time or no more than a \$25,000 maximum, aggregate property tax loss across all Historic Contracts in effect at any one time.
- *Clarifying Procedures Regarding Designation of Historic Artifacts.* The existing AMC Historical Artifacts Ordinance currently does not provide for removing the historical

designation of Historic Artifacts. The draft Ordinance proposes these procedures and conforms the initial designation procedures with those applicable to Historic Buildings

Staff has discussed this topic with a member of the Atherton Heritage Association (AHA). She noted that around 1980, the AHA compiled a list of approximately 70-80 homes that were built prior to 1923, as a draft list of homes that could be potentially historic based on their construction date. It is acknowledged that of this list, some homes have since been demolished and rebuilt. There are likely other homes that may also be eligible for historical designation based on its importance to history, architecture, culture, or other qualifying circumstances.

ENVIRONMENTAL IMPACT

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) as the City Council has determined that the removal of five or fewer heritage trees on a lot between one and two acres in size is exempt from further environmental review.

POLICY FOCUS

Consideration of adopting a comprehensive Historical Preservation Ordinance could be found to support the following adopted General Plan goals:

- Goal OSC-4: Protect both publicly and privately held cultural resources from deterioration and/or destruction.
- Policy OSC-4.1: Encourage the preservation of both private and public historical resources and artifacts for the benefit of future generations.

FISCAL IMPACT

Staff cost to prepare the Ordinance will be funded by the Town General Fund, Planning Division budget. Historic designation of a building, property, and/or artifact within Town has no fiscal impact. However, approval of any future Historical Property Contract would reduce the annual property tax collected by the Town as noted above. The cost to implement the Ordinance and process any future historical designation and/or Historical Property Contract would be incurred by the applicant through application fees.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal B – Preserve Small Town Character and Quality of Life
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Notice of this application was mailed to all property owners within 500 feet of the subject property. 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 1,200 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 provides (water, power, and sewer), and regional elected officials. In addition, a public notice was published in The Almanac on March 4, 2022 per the requirements of section 17.06.080 B of the Atherton Municipal Code.

ATTACHMENTS

1. Draft Ordinance, Chapter 8.14 “Historic Preservation”

ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON REPEALING AND
REPLACING CHAPTER 8.14
OF THE ATHERTON MUNICIPAL CODE**

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

SECTION 1: Chapter 8.14 of the Atherton Municipal Code is hereby repealed in its entirety and replaced with the following:

Chapter 8.14

HISTORIC PRESERVATION

ARTICLE I GENERAL PROVISIONS

8.14.100 Purpose

The purpose of this chapter is to implement the Atherton General Plan goal to “Protect both publicly and privately held cultural resources from deterioration and/or destruction” and policy to “Encourage the preservation of both private and public historical resources and artifacts for the benefit of future generations.” A further purpose of this chapter is to promote the general welfare of the Town by providing for the identification, protection, rehabilitation, enhancement, and use of buildings, structures and properties that reflect special aspects of the town’s historical, architectural, cultural or aesthetic heritage for the following reasons:

- A. To encourage public knowledge, understanding, appreciation and use of the Town of Atherton’s past;
- B. To foster civic pride in the beauty and character of the Town and the accomplishments of its past;
- C. To preserve the visual character of the Town by preserving buildings that reflect its history;
- D. To protect property values within the Town; and
- E. To balance the concerns of property owners with the community’s interests in preserving buildings of the town’s past.

8.14.110 Approval Authority

This chapter is enacted pursuant to California Government Code Section 37361(b) and 50280-50290.

8.14.120 Atherton Historical Register

The Atherton Historical Register is the official list of historic artifacts and historic buildings within the Town. The inclusion of historic artifacts and historic buildings listed in the Atherton Historical Register is governed by this chapter. The Atherton Historical Register is maintained by Town staff.

8.14.130 Definitions

- A. “Accidental damage” means unintentional damage. Accidental damage does not include damage that occurs during the course of construction where adequate protection measures were not employed.

- B. "Alteration" means any work changing the exterior appearance and visual quality of character-defining features of a historical resource.
- C. "Alteration permit" means a permit approving an alteration to a historic artifact or historic building, structure, or a property determined eligible for historic resource designation pursuant to the provisions of this chapter.
- D. "Atherton Historical Register" is the official list of historic artifacts and historic buildings within the Town.
- E. "Character-defining features" means the elements embodying style, design, general arrangement and components of all of the exterior surfaces of any building including, but not limited to, the type of building materials and type and style of elements related to such building.
- F. "Demolition" means the act or process that destroys, completely or partially, any building.
- G. "Historic artifact" means a structure or object that meets the criteria for listing on the national, state, or local level, and that has been added to the Atherton Historical Register.
- H. "Historic building" means a building that meets the criteria for listing on the national, state, or local level, and that has been added to the Atherton Historical Register.
- I. "Historic integrity" means the authenticity of a resource's physical identity, evidenced by the survival of characteristics that existed during the resource's period of significance. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling and association. It must also be judged with regard to the particular criteria under which a resource is proposed for eligibility.
- J. "Historical Property Contract" means an agreement between the Town and a property owner of an historic building pursuant to the Mills Act (California Government Code, Article 12, Sections 50280 – 50290) which may provide economic incentives to owners of qualified properties in the form of tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period.
- K. "Major alteration" means permanent changes to the visual character of a historical building or its setting, including, but not limited to, changes in size, surface treatment or location of a historic resource.
- L. "Minor alteration" means small changes to the details of a historical artifact or historical building, such as the replacement of missing or damaged elements. The relocation of a moveable object on the property is a minor alteration, and temporary removal of a structure from the property during restoration or for its protection during construction shall be treated as a minor alteration under this chapter.
- M. "National Register of Historic Places" means the official inventory of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60 and 63).
- N. "Owner" means the individual or entity whose name appears as the owner of a property on the last tax assessment roll of San Mateo County.
- O. "Preservation" means the maintenance and repair of existing historically significant materials and features.

- P. "Preventative maintenance" means work performed to aid in the preservation of historic artifacts and historic building. Examples of preventative maintenance include, but are not limited to, painting, grouting or repainting, foundation work or landscaping. Preventative maintenance does not include any work that changes materials, design, or appearance.
- Q. "Reconstruction" means recreating damaged, degraded, or missing portions a property.
- R. "Rehabilitation" means repairing damaged or degraded portions of a property.
- S. "Repair" means fix or mend in a manner that returns to a former condition; for functional objects, repair includes returning the object to a functional condition.
- T. "Restoration" means bringing back, rehabilitating, reconstructing, or replacing in a historically accurate manner.
- U. "Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings" means the illustrated version of the Standards and Guidelines for Rehabilitation developed by the Technical Preservation Services Branch, Preservation Assistance Division of the National Park Service, as it may be amended.
- V. "Secretary of the Interior's Standards for the Treatment of Historic Properties" means principles developed by the National Park Service (36 C.F.R. Section 68.3, as it may be amended from time to time) to help protect historic properties by promoting consistent preservation practices and providing guidance to historic building owners and building managers, preservation consultants, architects, contractors, and project reviewers on how to approach the treatment of historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties may also be referred to in this chapter as "Secretary of the Interior's standards."
- W. "State Historical Building Code" means California Code of Regulations, Part 8 of Title 24 (California Building Standards Code), as it may be amended.

ARTICLE II OBTAINING HISTORICAL DESIGNATION

8.14.200 Criteria for Designating Historic Artifact

- A. ***Preconditions to Listing.*** An artifact will only be considered for inclusion on the Atherton Historical Register, if one or more of the following is met:
 - 1. The artifact is listed on the National Register of Historic Places.
 - 2. The artifact is listed on the California State Historical Landmarks, Points of Interest, and the California Register of Historical Resources.
 - 3. The artifact is determined to be of local significance by the City Council.
- B. ***Determining Local Significance.*** The City Council may determine an artifact is of local significance if it can make any of the following findings with respect to the artifact:
 - 1. The artifact is associated with events that have made a significant contribution to the broad patterns of the Town’s history,
 - 2. The artifact is associated with a person that played a significant role in the Town’s history,
 - 3. The artifact embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction, that have yielded or may be likely to yield information important in history or prehistory of the Town, or
 - 4. The artifact is listed as a historically significant in the Historical Artifact Inventory maintained by the Atherton Heritage Association.

8.14.210 Criteria for Designating a Historic Building

- A. ***Preconditions to Listing.*** A building will only be considered for inclusion on the Atherton Historical Register, if one or more of the following is met:
 - 1. The building is listed on the National Register of Historic Places.
 - 2. The building is listed on the California State Historical Landmarks, Points of Interest, and the California Register of Historical Resources.
 - 3. The building is determined to be of local significance by the City Council.
- B. ***Determining Local Significance.*** The City Council may determine a building is of local significance if it can make any of the following findings with respect to the building:
 - 1. The building is associated with events that have made a significant contribution to the broad patterns of the Town’s history,
 - 2. The building is associated with a person that played a significant role in the Town’s history,
 - 3. The building embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction, that have yielded or may be likely to yield information important in history or prehistory of the Town, or
 - 4. The building is listed as a historically significant building in the Open Space and Conservation Element of the General Plan.

8.14.220 Procedures for Obtaining Historic Designation

- A. **Application for Designation.** Historic designation may only be sought by the owner of the property on which the proposed historic building or proposed historic artifact is located. Applications must be accompanied by such documentation as may be required by the Town Planner to evaluate the criteria described in Section 8.15.070. Applications must also be accompanied by a fee as set by City Council resolution.
- B. **Planning Commission Hearing.** The Planning Commission will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. At the conclusion of the public hearing, the Planning Commission will make a recommendation to the City Council whether to add the proposed artifact or building to the Atherton Historical Register.
- C. **City Council Hearing.** Upon receipt of the Planning Commission recommendation, the City Council will hold a public hearing on the application in accordance with Section 17.06.080 of the Atherton Municipal Code. If the City Council approves an application, such approval shall be made by resolution and be communicated to the Atherton Heritage Association.

8.14.240 Procedures for Removing Historical Designation

- A. **Methods of Removing Historical Designation**
 - 1. **Application for Removal.** Removal of historic designation may be sought by the owner of the property on which the historic building or historic artifact is located. Applications must be accompanied by such documentation as may be required by the Town Planner. Applications must also be accompanied by a fee as set by City Council resolution.
 - 2. **Removal for Violation.** Town staff may seek removal of historic designation where a violation of this Chapter has resulted in damage to a historic artifact or historic building.
 - 3. **Removal Following Destruction.** Town staff may seek removal of historic designation where a historic artifact or historic building is destroyed, whether by accident or deliberate act.
- B. **City Council Hearing.** Upon receipt of an application, the City Council will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. If the City Council approves an application, such approval shall be made by resolution and be communicated to the Atherton Heritage Association.

ARTICLE III OWNER OBLIGATIONS

8.14.300 Duty to keep in good repair

- A. The owner of a historic building or historic artifact shall ensure the preservation of the historic building or historic artifact by undertaking preventative maintenance.
- B. Preventive maintenance should be carried out in a fashion consistent with good preservation practice and consistent with the Secretary of Interior standards. Preventive maintenance activities include, but are not limited to cleaning, repainting of stone and masonry, and repainting of previously painted surfaces in the same or similar color that does not involve a change in design, material or the external appearance thereof.
- C. This section does not prevent the construction, reconstruction, alteration, restoration, demolition or removal of any historic building which has been certified by the Town Building Official, or Menlo Park Fire District Fire Chief, or other code enforcement officer as being in unsafe or dangerous condition which cannot be rectified through the use of the California State Historic Building Code.
- D. It shall be the duty of the Chief Building Official to enforce this section.

8.14.310 Activities requiring alteration permit

- A. *Historic Artifacts.* An alteration permit is required prior to work commencing on a historic artifact prior to any major alteration, demolition, removal, repair, or relocation of a historic artifact.
- B. *Historic Buildings Not Subject to a Historical Property Contract.* An alteration permit is required prior to work commencing on a historic building where the work will result in any of the following changes to the historic building:
 - 1. major alteration
 - 2. demolition
 - 3. removal
 - 4. relocation
 - 5. change to any exterior architectural feature
 - 6. removal or relocation of site improvements, structures, or natural features
- C. *Historic Buildings Subject to a Historical Property Contract.* In addition to the circumstances described in Subsection B, above, an alteration permit is required prior to work commencing on a historic building subject to a Historical Property Contract where

the work will result in any changes to? any feature specifically designated through the Historical Property Contract as requiring an alteration permit.

- D. *Exemption for Minor Alterations.* An alteration permit is not required prior to work commencing on a historic artifact or historic building where the work will be limited to minor alterations.

8.14.320 Alteration Permit Application Process

- A. *Application Process.* Applications for alteration permits shall be submitted to the Planning Department. Applications shall be submitted on the form provided by the Planning Department and must, at a minimum, include the following information:

1. A clear statement of the proposed work;
2. A site plan showing all existing buildings, structures, trees over six inches in diameter, property lines, easements and the proposed work;
3. Detailed plans showing both the existing and proposed exterior elevations, including a street elevation, photographs of windows and/or special features, materials and grading;
4. Specifications describing all materials to be used and all processes that would affect the appearance or nature of the materials;
5. Detailed narrative explaining how proposed improvements comply with the Secretary of the Interior's Standards for Historic Rehabilitation; and
6. Such other information or documents as may be requested by the Town Planner or the Planning Commission.

- B. *Town Planner Review.* After reviewing an application for an alteration permit, the Town Planner may require additional documentary materials, including an evaluation of the proposed alterations by a qualified historical preservation professional, prior to referring the application to the Planning Commission for consideration where the Town Planner determines additional information is necessary to assist the Planning Commission in making a determination on the application.

8.14.320 Planning Commission Consideration of Alteration Permit Applications

- A. *Planning Commission Hearing.* Following preliminary review by the Town Planner, alteration permits shall be considered by the Planning Commission. Consideration of applications shall be noticed as set forth in Section 17.06.080, hearings shall be held as set forth in Section 17.06.090, and appeals shall be processed as set forth in section 17.06.100 of Title 17 of this code.

- B. **Required Findings.** To approve an alteration permit, the Planning Commission must find that:
1. The project complies with all provisions of this chapter,
 2. The project does not adversely affect the physical integrity or the historic significance of the historic artifact or Historical Property, and
 3. The project complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The Planning Commission may conditionally approve an alteration permit, subject to such conditions that it deems necessary to maintain the historic significance of the historic artifact or historic building.

- C. **Commencing Work Following Approval.** After the Planning Commission approves or conditionally approves an alteration permit and the applicable appeal period has run, the Town Planner shall issue a written certificate of the alteration permit in accordance with the recommendation. No work shall commence until the certificate of the alteration permit has been issued.

ARTICLE IV HISTORICAL PROPERTY CONTRACTS

8.14.400 General Provisions

- A. **Purpose.** The purpose of this Article is to implement the Mills Act (Government Code Sections 50280-50290), allowing the approval of Historical Property Contracts by establishing a uniform procedure for the owners of qualified historic properties within the Town to enter into contracts with the Town.
- B. **Property Tax Relief Incentives.** In order to carry out more effectively and equitably the purposes of this chapter, the City Council may approve Historical Property Contracts pursuant to California Government Code, Article 12, Sections 50280 – 50290 which may provide economic incentives to owners of qualified properties in the form of tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period.
- C. **Applicability of the California Historical Building Code.** It is the purpose of the California Historical Building Code to provide regulations and standards for the rehabilitation, preservation, restoration (including related reconstruction) or relocation as applicable to all historical buildings, structures and properties deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. Such standards and regulations are intended to facilitate the restoration or change of occupancy so as to preserve their original or restored elements and features, to encourage energy conservation and a cost-effective approach to preservation, and to provide for reasonable safety from fire, seismic forces or other hazards for occupants and users of such "buildings, structures and properties" and to provide reasonable availability and usability by the physically disabled. Atherton has adopted the California Historical Building Code and any property subject to a Historical Property Contract is subject to that Code's requirements.
- D. **Limitation on the Number of Historical Property Contracts.** No more than 5 Historical Property Contracts or no more than a \$25,000 maximum cap on the annual amount of aggregate property tax loss to the Town across all Historical Property Contracts shall be in effect at any one time in the Town of Atherton.

8.14.410 Procedures for Entering Into Historical Property Contract

- A. **Application for Historical Property Contract Consideration.** A request for a Historical Property Contract may be initiated by application of the property owner of a historical building listed on the Atherton Historical Register. In all cases an applicant for a Historical Property Contract shall utilize the form of application required by the Town. Applicants may apply for a Historical Property Contract by submitting the following information:
 - 1. Payment of the application fee. The Planning Department shall determine the amount of a fee necessary to compensate the Town for processing and

administering an application for a Historical Property Contract. The fee shall pay for the time and materials required to process the application, based upon the estimated actual costs to perform the work. This fee shall be separate from the fee imposed following approval of the Historical Property Contract to pay for the actual costs of inspecting the qualified historical property, enforcing the Historical Property Contract and any required historical alteration permit.

2. A copy of current grant deed.
 3. A copy of the most current property tax bill.
 4. A complete, detailed site plan of the qualified historical property.
 5. Evidence that the property is a qualified historical property at a recognized federal or state level, including, but not limited to, a historical evaluation prepared by a licensed, qualified historian.
 6. A 10-year Restoration/Rehabilitation and Maintenance Plan that includes a detailed written narrative describing the nature, cost and schedule of the rehabilitation, restoration or preservation work to be conducted on the property (exterior and/or interior) that will preserve the character and integrity of the historic building (i.e. repair of original wood windows). Such work shall not include projects that do not contribute to the preservation of the Historical Property (i.e. installation of new kitchen appliances).
 7. Color photographs of all building exterior elevations, character-defining features of the structure(s), any interior photos of relevant areas where work may be proposed, both overall and detail views, and any additional related items (e.g., associated structures, house, garage, shed, and neighboring properties).
 8. A description of the public benefits that are intended if the Historical Property Contract is approved. Examples of such benefits are:
 - i. Allowing periodic public tours of the property.
 - ii. Commitment of a specified percentage of the property tax savings to rehabilitation and upgrading of the historical building.
 9. Any such additional information the Planning Department determines is necessary to make a recommendation on the Historical Property Contract.
- B. **Review by the Assessor's Office.** The Planning Department will refer any application for a Historical Property Contract to the San Mateo County Assessor's Office for review and recommendation. The Assessor will provide to the Planning Commission and City Council an estimate of the property tax calculations and the difference in property tax assessments under the different valuation methods permitted by the Mills Act so that the

Town can evaluate the difference between property tax which would normally be collected by the Town and the property tax which would be collected pursuant to the Historical Property Contract. Any cost for the San Mateo County Assessor's Office in providing such estimate, shall be incurred by the project applicant.

- C. **Staff Review.** Upon receiving the tax calculations from the San Mateo County Assessor's Office, Town staff will work with the Owner to prepare a Historical Property Agreement for the Planning Commission's consideration. The terms and conditions of that agreement will vary from property to property but in all cases be subject to the requirements detailed in Section 8.14.420, below.
- D. **Planning Commission Hearing.** The Planning Commission will hold a public hearing on the application in accordance with Section 17.06.090 of the Atherton Municipal Code. At the conclusion of the public hearing, the Planning Commission will make a recommendation to the City Council whether to approve a Historical Property Contract.
- E. **City Council Hearing.** Upon receipt of the Planning Commission recommendation, the City Council will hold a public hearing to consider approving a Historical Property Contract in accordance with Section 17.06.080 of the Atherton Municipal Code.
- F. **Required Findings.** To approve a Historical Property Contract, the City Council must find that:
 - 1. The property is listed on the Atherton Historical Register,
 - 2. The property is significant due to its historic value, location, or other attribute,
 - 3. The applicant can preserve and, when necessary, restore and rehabilitate the property,
 - 4. The preservation and, when necessary, restoration and rehabilitation of the property will enhance the Town's inventory of historic and cultural resources, and
 - 5. Approval of the Historical Property Contract is consistent with the General Plan.

8.14.420 Content of Historical Property Contracts

All Historical Property Contracts shall set forth the agreement between the Town and the owner, and shall, at a minimum, contain the following provisions:

- A. **Mills Act Compliance.** The owner's commitment to comply with the requirements of the Mills Act (California Government Code, Sections 50280-50290).
- B. **Tax Benefit.** As long as the property owner properly rehabilitates, restores, preserves and maintains the qualified historical property as set forth in the Historical Property Contract, the Town shall comply with California Revenue and Taxation Code Article 1.9

(commencing with Section 439) of Chapter 3 of Part 2 of Division 1, provided that the Assessor determines that the specific provisions of the Revenue and Taxation Code are applicable to the property in question.

- C. **Term.** All Historical Property Contracts shall be for a term of 10 years. Extensions may be considered on a case-by-case basis.
- D. **Property Maintenance.** The owner's commitment and obligation to preserve, rehabilitate, restore and maintain the property in accordance with the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation and the United States Secretary of the Interior's standards for the Treatment of Historic Properties.
- E. **Tax Assessment Impact.** An assessment of valuation in accordance with the San Mateo County Assessor's office and California State Board of Equalization.
- F. **Inspections.** Authorization for the Town to conduct periodic inspections of the interior and exterior of the property to determine the owner's compliance with the Historical Property Contract with inspections being conducted no less frequently than every five (5) years.
- G. **Assignment.** That the Historical Property Contract is binding upon, and shall inure to the benefit of, all successors in interest of the owner, including that the contract transfers with the property should the property be sold or otherwise transferred to another party during the term of the Historical Property Contract.
- H. **Indemnification.** The owner's indemnification of the Town for, and agreement to hold the Town harmless from, any claims arising from any use of the property.
- I. **Termination and Enforcement.** Agreement that the Town may cancel the Historical Property Contract, or seek enforcement of the contract, when the Town determines that the owner has breached the terms of the contract. The Town shall comply with the requirements of the Mills Act for enforcement or cancellation of the historical property contract.

8.14.430 Recordation and Notice After Effective Date of Historical Property Contract

- A. **Recordation.** Within thirty (30) days from the effective date of the Historical Property Contract, the owner shall record the Historical Property Agreement with the Recorder of the County of San Mateo.
- B. **Notice to State Parks.** Within six (6) months from the effective date of the Historical Property Contract, the owner shall provide a copy of the recorded Historical Property Contract to the Office of Historic Preservation to the Department of Parks and Recreation of the State of California within six (6) months following the Effective Date.

ARTICLE V FEES, ENFORCEMENT, AND FINES

8.14.500 Application Fees

All fees described in this Chapter shall be set by resolution of the City Council.

8.14.510 Accidental Damage

- A. Failure to adequately protect a historic artifact or historic building from accidental damage does not relieve the owner from the duties described in this Chapter.
- B. In the event of accidental damage to a historic artifact or historic building, no fines or penalties will be imposed. Repairs shall be subject to review as described in Article III of this Chapter.
- C. In the event the damage to the historic artifact or historic building creates an unsafe situation, the property owner may mitigate the hazard and bring the historic artifact or historic building to a safe condition without the issuance of any permit. Such work must be reported to the town within seventy-two (72) hours.
- D. In the event the historic artifact or historic building is damaged by an act of nature, the property owner shall not be required to fully restore the historic artifact or historic building beyond bringing the artifact to a safe condition.

8.14.520 Enforcement and Fines Relating to Historic Artifacts and Historic Buildings

- A. It shall be a violation of this chapter to damage any historic artifacts or historic buildings through deliberate acts or negligence. Damage shall include undertaking any activity that would require an alteration permit, as described in Section 8.14.310.
- B. The provisions of this Chapter shall be enforced pursuant to Chapter 1.21 of the Atherton Municipal Code.

SECTION 2: California Environmental Quality Act (CEQA) Finding.

This Ordinance is exempt from the environmental review requirements of CEQA pursuant to CEQA Guidelines Section 15331 which consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitation, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

SECTION 3: Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 8.15, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 4: Effective Date and Publication.

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

Introduced this ___ day of _____, 2022.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the ___ day of ____, 2022 by the following vote:

MAYOR: _____

Elizabeth Lewis

ATTEST: _____

ANTHONY SUBER, CITY CLERK

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney