



## Item No. 11 Town of Atherton

### **CITY COUNCIL STAFF REPORT – PUBLIC HEARING**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: LISA COSTA SANDERS, TOWN PLANNER**

**DATE: APRIL 20, 2016**

**SUBJECT: CONSIDER AN ORDINANCE AMENDING ATHERTON MUNICIPAL CODE CHAPTER 6.04; ANIMAL AND FOWL**

#### **RECOMMENDATION**

The Planning Commission and staff recommend that the City Council adopt an Ordinance amending Atherton Municipal Code Chapter 6.04 regulating the keeping of fowl in Atherton.

#### **INTRODUCTION**

At the request of an Atherton resident, the Planning Commission reviewed the current regulations relating to the keeping of chickens on private property. Notification of the Planning Commission discussion was provided via a Town wide mailing as well as posting the topic on the Town's website for input. The Commission found that the current ordinance prevents many residents from legally keeping chickens on their property.

The Planning Commission formed an Ad Hoc Committee to work with staff on proposed regulations. The Planning Commission, at its December 2, 2015 meeting, recommended the City Council adopt the attached Ordinance. The City Council, at its February 17, 2016 meeting reviewed the ordinance as recommended by the Planning Commission and provided comments to staff for revisions to the proposed regulations.

The City Council reviewed the draft Ordinance at its February 17, 2016 and introduced the Ordinance at its March 16, 2016 meeting with minor changes.

#### **ANALYSIS**

The City Council, at its March 16, 2016 meeting, introduced the Ordinance with the following changes;

- Revised the wording for section 6.04.250(A) and (B) to consistent with existing code language.
- Reduced the lot size requirement for the keeping of 3 chickens from lots between 0.5 acre to 1.0 acre to “between 20,000 square feet and 40,000 square feet”.

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- Reduced the lot size requirement for the keeping of up to 10 chickens from lots between 1 acre and 2 acres or less in area to “between 40,000 square feet and 80,000 square feet or less in area”.
- Reduced the lot size requirement for keeping of up to 20 chickens from lots greater than 2.0 acres to “lots greater than 80,000 square feet”.
- Modified the setback requirement for chicken enclosures within the main building area with no more than fifty percent encroachment to require “or 20’ from side and rear property line, whichever is greater”.
- Under section 6 – Permit Requirements, replaced Town Planner may revoke a Chicken Permit ..., to “The City Manager may revoke a Chicken Permit if the keeping of the chicken(s) constitutes a nuisance”.
- Removed reference to the Town’s Noise Ordinance

The above listed changes have been incorporated into the attached Ordinance for City Council adoption. If adopted, the regulations will be in effect 30-days from the of the City Council action.

### **POLICY FOCUS**

Amendment of the ordinance is a significant policy issue for the City Council. While the Town seeks to maintain a rural character and the Town’s General Plan is the foundation for preservation of that character, developed properties often tell a different story. While residential in character, many properties are large, expansive, and in many cases, decidedly non-rural. In discussing whether to amend the ordinance to allow the keeping of fowl on smaller lots, the Council will have to balance the General Plan philosophy of “...scenic, rural, thickly wooded residential...” with the desire for a more suburban residential community.

### **FISCAL IMPACT**

The cost associated with the preparation of the draft ordinance amendment is included within the annual Planning Department budget. The cost to implement the ordinance will be paid for by the applicants for construction of chicken coops.

### **ENVIRONMENTAL IMPACT**

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15305, minor alterations in land use limitations.

### **FORMAL MOTION**

I move that the City Council adopt the ordinance entitled “An Ordinance of the City Council of the Town of Atherton Amending Chapter 6.04 of the Atherton Municipal Code”.

### **PUBLIC NOTICE**

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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 providers (water, power, and sewer), and regional elected officials. In addition, the project's information is updated frequently on the Town's Website.

**ATTACHMENT**

1. Ordinance Amending Chapter 6.04 of the Atherton Municipal Code

## ORDINANCE \_\_

### AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CHAPTER 6.04 OF THE ATHERTON MUNICIPAL CODE

The City Council of the Town of Atherton does hereby ordain as follows: **SECTION 1:**  
Section 06.04.250 is hereby amended to read as follows

#### **6.04.250 Zoning provisions—Animals and fowl.**

A. No building or structure for the housing or maintenance of animals other than domestic household pets *and chickens*, shall be constructed, reconstructed, altered or enlarged:

1. On any lot or parcel of land containing less than eighty thousand square feet;
2. On any lot or parcel of land which is less than one hundred ninety feet in width;
3. In front of the rear line projection of the dwelling or buildings or structure so housing or maintaining animals is set back at least one hundred fifty feet from the front property line, or in the event the lot is a corner lot, it must be set back at least one hundred fifty feet from each property line facing the street, and in all respects such structure must conform to the provisions of the zoning title;
4. Less than one hundred fifteen feet from the building area of any adjoining lot or parcel of land;
5. Less than seventy-five feet from the property line of the lot on which such building or structure is situated.

***6. The keeping, housing, and maintenance of chickens is subject to subsection J of this section.***

B. No horse, colt, cow, calf, goat, pig, sheep or other animal or animals, may be kept or maintained on any lot or parcel of land except as expressly permitted herein *for household pets and chickens*; on a lot or parcel of land containing more than eighty thousand square feet and which is not less than one hundred ninety feet in width two horses and their colts may be kept and maintained and each acre of such lot or parcel of land in excess of eighty thousand square feet an additional horse and its colts may be kept and maintained.

C. Any person desiring to keep or maintain on his property a larger number of horses or colts than is permissible under subsection B of this section, or any fowl or rabbits or animals similar in

type or nature to rabbits, for which a license is required pursuant to the provisions of this section, may file written application with the planning commission for a conditional use permit to do so.

The planning commission shall set a date for hearing such application and cause a notice of such hearing to be mailed to all owners of record of real property any portion of which lies within five hundred feet of boundary line of the property on which such animal or animals are sought to be kept, not less than ten days prior to such hearing.

At the hearing, the planning commission shall hear the applicant as well as all protests against granting of such permit, and may either recommend against the issuance of such permit or may recommend in favor of the issuance of the same if, in its opinion, the real property is of sufficient size and nature to maintain such animals, and the public health, safety and welfare will not be endangered thereby, all upon such terms and conditions as the city council may determine and specify in such permit.

#### D. Licenses.

1. Animals. Each person keeping or maintaining an animal with the exception of domestic household pets, and rabbits, *chickens*, or similar type of animals, for an aggregate of thirty days or more must obtain a license for each animal so kept or maintained. The license fee for animals shall be in an amount as shall be fixed from time to time by ordinance and such license must be renewed on the first day of each year, with a thirty-day grace period.

2. Fowl or Rabbits. Each person keeping or maintaining fowl (*with the exception of chickens*) or rabbits, or animals similar in type or nature to rabbits, for an aggregate of thirty days or more must obtain a license to so keep or maintain such fowl or rabbits, or such similar animals. No license fee shall be required for forty fowl or less or forty rabbits or such similar animals or less. The license fee shall be in an amount as shall be fixed from time to time by ordinance for over forty fowl or for over forty rabbits or such similar animals, and such licenses must be renewed on the first day of each year, with a thirty-day grace period.

3. The city council may by resolution prescribe such rules and regulations with respect to the maintenance of animals and fowl in the town, as will be consistent with the purpose and spirit of this chapter, and such rules and regulations shall be printed on every license or permit issued or granted under this chapter.

4. The police department is charged with responsibility under subsection D of this section to issue licenses, collect license fees and in all other respects to enforce the same, and may decline to issue licenses for more than forty fowl or forty rabbits or animals, *if*, the type, *quantity or* and nature of *the* rabbits *and/or animal (s) is*, in the discretion of the chief of police, the effects of such license would endanger the public health, safety or welfare.

E. All piled manure shall be kept in a closed bin or compost pile, which bin or compost pile can only be located within the area permitted for barns or cowsheds.

F. Pigeons must be confined in an entirely enclosed area. All fowl and rabbits, and other such similar animals as rabbits, must be maintained and kept in an enclosure within the area within an accessory structure which may be erected, as provided in this chapter.

G. No horse shall be permitted to graze unattended off private property.

H. No animal or fowl shall be maintained even in accordance with the regulations and requirements set out in subsections A through G of this section, if the maintenance of such animal or fowl shall constitute a nuisance by reason of noise, smell, annoyance or endangering of public health caused by such maintenance. In the event it appears that the maintenance of any animal or fowl constitutes a nuisance by reason of the noise, smell, annoyance or endangering public health caused by such maintenance, any license theretofore issued for the maintenance of such animal or fowl may be revoked by the city council. Such revocation will be effective thirty days following the mailing of a notice of revocation to the holder of such license.

I. It is unlawful for the owner or person having control or custody of any wild animal to keep, maintain or permit the animal to be kept or maintained within the town. For the purpose of this chapter, "animal" includes mammals, birds, amphibians and reptiles; "wild animal" means any exotic, venomous, nondomestic, or untrained animal which because of its size, nature, disposition, or other characteristic constitutes a hazard or menace to persons or animals, or is likely to damage property.

#### ***J. Chicken Regulations.***

***1. Lot Size Requirements. No legal lot less than 20,000 square feet in area shall be permitted to maintain chickens.***

#### ***2. Number of Chickens***

- i. Up to 3 chickens are permitted on lots between 20,000 square feet and 40,000 square feet in area.***
- ii. Up to 10 chickens are permitted on lots greater than 40,000 square feet and 80,000 square feet or less in area.***
- iii. Up to 20 chickens are permitted on lots greater than 80,000 square feet in area.***
- iv. No more than 40 chickens may be permitted on school properties that are 2.0 acres or greater in area for educational purposes.***

***3. Roosters are prohibited on any property in Town.***

#### ***4. Chicken Enclosure Requirements***

- i. *A chicken enclosure is defined as an outdoor area inside a fence where chickens are kept and allowed to walk around. A chicken enclosure shall also contain within its allowable buildable area, a chicken coop. A chicken coop is defined as an enclosed building where female chickens are kept which also provides protection from the elements and predators.*
- ii. *All chickens must be maintained and kept at all times within the chicken enclosure to ensure against trespass onto neighboring or public property.*
- iii. *Not more than one chicken enclosure is allowed per property.*
- iv. *The chicken enclosure shall comply with the following development standards:*
  - a. *Setbacks and Location. The chicken enclosure shall be located in the main building area. In addition, the chicken enclosure may encroach into the side and rear yard setbacks by not more than fifty percent of the required main building side and rear yard setbacks, or 20' from side and rear property lines, whichever is greater. The chicken enclosure shall be located a minimum of 8 feet from the main building on the property.*
  - b. *Height. The chicken enclosure shall not exceed six feet in height.*
  - c. *Square Footage. The maximum allowable square footage for chicken enclosures, which shall contain a chicken coop as defined by this section, is 120 square feet.*

## **5. Sanitary and Health Requirements**

- i. *All chicken enclosures shall at all times be kept and maintained in a clean, sanitary and sightly condition; any enclosure found to be in an unclean, unsanitary or unsightly condition is hereby declared to be a public nuisance and subject to summary abatement as authorized by law.*
- ii. *Any water runoff from the cleaning and maintenance of the chicken enclosure shall be retained on the same property and shall not run onto adjacent properties or the public right of way.*
- iii. *All chicken enclosures shall be maintained to be well-ventilated, free from odor, prevent a breeding place for flies, pests or vermin, and secure from predators.*
- iv. *Chicken feed shall be stored in a rodent and predator proof container.*
- v. *All permits shall be subject to conditions of current biosecurity practices as listed by the California Department of Food and Agriculture (CDFA) to reduce the risk of introducing disease.*

## **6. Permit Requirements**

- i. *Any person wishing to keep chicken(s) on any property within the town shall first obtain a Chicken Permit from the Town Planner or Town Planner's designee. The Chicken Permit application shall include the property owners of record, legal lot size of the parcel, the number of chickens to be maintained on the property, a site plan with details of the chicken enclosure, including*

*setbacks and height calculations as outlined by this section. The City Manager may revoke a Chicken Permit if the keeping of the chicken(s) constitutes a nuisance. The Chicken Permit is not transferable to successor owners of the property upon which the Chicken Permit is issued.*

*7. It shall be the duty of the City manager, the Chief of Police and the City Attorney to enforce this chapter. No oversight or dereliction on the part of any official or employee of the town vested with the duty or authority to issue permits or licenses shall legalize, authorize, waive or excuse the violation of any provisions of this chapter.*

**SECTION 2:** That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provision in the Ordinance severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**SECTION 3:** 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.

Introduced on the 16th day of March, 2016.

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 \_\_\_\_\_, 2016 by the following vote:

AYES COUNCILMEMBERS:

NOES COUNCILMEMBERS:

ABSENT COUNCILMEMBERS:

ABSTAIN COUNCILMEMBERS:

ATTEST: CTY CLERK

MAYOR