



## Item No. 11 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

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

**FROM: JOSEPH WADE, ACTING CHIEF OF POLICE**

**DATE: JANUARY 18, 2017**

**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 years.

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 as the records are no longer required to be maintained.

The Police Department has 5 files (4 internal affairs investigations and 1 citizen complaint investigation) that have exceeded the 5-year retention period and are no longer required to be maintained. The Acting Chief of Police and City Attorney have reviewed the status of the files noted above to ensure there is no legal or other reason to maintain such files.

In addition, the Police Department is asking for the approval to destroy the 2014 citations per the destruction guidelines and twelve (12) partial backgrounds where the applicants were disqualified and not hired.

## **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 The information is of no useful value to the Town, is out of date and should be destroyed in compliance with Town and State records retention policies.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 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.

## **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.

## **ATTACHMENTS**

None.

**RESOLUTION NO. 176-**

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

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**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; and

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**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 as the same are no longer required; and

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**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

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

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ITEM NUMBER	RECORD TITLE	RETENTION
2010-004	Internal Affairs	5 years
2011-001	Citizens Complaint	5 years
2011-001	Internal Affairs	5 years
2011-002	Internal Affairs	5 years
2011-003	Internal Affairs	5 years

BACKGROUND INVESTIGATION	POSITION	REASON	DATE	RETENTION
Partial Background	Reserve Police Officer	Disqualified	September 2014	2 Years
Partial Background	Dispatcher	Disqualified	October 2014	2 Years
Partial Background	Police Officer	Disqualified	May 2014	2 Years
Partial Background	Dispatcher	Disqualified	August 2014	2 Years
Partial Background	Police Officer	Disqualified	July 2014	2 Years
Partial Background	Police Officer	Disqualified	July 2014	2 Years
Partial Background	Police Officer	Disqualified	October 2014	2 Years
Partial Background	Reserve Police Officer	Disqualified	Jan. 2014	2 Years
Partial Background	Police Officer	Disqualified	May 2014	2 Years
Partial Background	Police Officer	Disqualified	May 2014	2 Years
Partial Background	Police Officer	Disqualified	Feb. 2014	2 Years
Partial Background	Police Officer	Disqualified	June 2014	2 Years

**NOW, THEREFORE, BE IT RESOLVED.** The Acting Chief of Police and City Attorney have reviewed the status of the 4 Internal Affairs Investigations, 1 Citizens Complaint, 12 partial backgrounds and the 2014 citations;

**BE IT FUTHER 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.

*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 18th day of January, 2017, by the following vote:*

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Michael Lempres  
Mayor

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ATTEST:

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Theresa N. DellaSanta  
City Clerk

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William Conners  
City Attorney

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