

DRAFT ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO
AMEND CHAPTERS 8.08 AND 8.10 OF THE ATHERTON MUNICIPAL CODE
CLARIFYING MAINTENANCE RESPONSIBILITIES ON OWNERS OF PROPERTY
ADJACENT TO PUBLIC RIGHTS OF WAY RELATED TO TREES**

WHEREAS, the Town of Atherton ("Town") wishes to protect the public peace, safety, welfare, and tranquility of its residents, and;

WHEREAS, the Town wishes to encourage the maintenance of well-kept properties. The Town recognizes that property values and the general welfare of the community are founded in large part on the appearance, maintenance and safety of properties, and;

WHEREAS, owners of property adjacent to public sidewalks and rights-of-way are usually in the best position to quickly identify and address potentially dangerous conditions that might occur on them, and;

WHEREAS, pursuant to Section 5610 of the Streets and Highways Code, the owners of property adjacent to public sidewalks owe a duty to the Town to maintain such sidewalks in such condition that the sidewalk will not endanger persons or property or interfere with the public convenience in its use, and;

WHEREAS, the Town is empowered through its police powers to impose maintenance obligations on property owners for their property, as well as abutting rights-of-way. Those property owners are best positioned to address and to also notify the Town of dangerous conditions of property that they abut, and;

WHEREAS, imposing liability on owners of property adjacent to public sidewalks and rights of way incentivizes those property owners to regularly inspect and maintain their adjacent public sidewalks and landscaping and;

WHEREAS, this Ordinance clarifies the maintenance responsibilities of adjacent property owners, and makes them liable for personal injuries or property damage that result from the property owner's failure to maintain the adjacent sidewalk, or adjacent landscaping, and;

WHEREAS, the City Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

NOW, THEREFORE, the City Council of the Town of Atherton incorporates the findings in the recitals above and adopts them as though fully set forth herein and does hereby ordain as follows:

Section 1. PURPOSE & AUTHORITY

The purpose of this ordinance is to clarify the sidewalk maintenance responsibilities of adjacent property owners and hold them liable to members of the public for injuries or property damage that result from the property owner's failure to maintain the adjacent sidewalk as required in this Chapter. The authority is derived from the State Constitution and Streets and Highways Code Chapter 22 of Division 7, Part 3.

Section 2. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 8.08

Chapter 8.08 is hereby amended to read:

8.08.010 Responsibility of property owner.

It shall be the responsibility of owners, tenants and occupants of property to discover the existence of dead or dangerous trees located on such property. Any owner, tenant or occupant of property in the town on which property there is a tree which appears to be dead, is liable to fall, is dangerous, is an obstruction to public travel, or otherwise or constitutes a hazard or obstruction to public access or infrastructure, shall report in writing the existence of such hazard to the superintendent of streets and shall, within ten days after observation thereof, at his own expense, cut down and remove such tree. (Ord. 329 § 7 (part), 1974; Ord. 297 § 1, 1970)

8.08.020 Notice—Failure to remove.

On receipt of such report or in the event such a tree is otherwise reported and its existence confirmed, the superintendent of streets shall issue a notice in writing to such owner, tenant or occupant directing him to prune, remove roots, cut down or remove such tree. In the event such owner, tenant or occupant shall fail for twenty-one days after receipt of such notice to comply therewith, he shall be guilty of a misdemeanor for each day he shall thereafter fail to prune, remove roots, cut down or remove such tree, provided that in the event of filing by such owner of objection as provided for by Section 22062 of the Streets and Highways Code of the state, a hearing shall be held by the city council at its next meeting, and such owner, tenant or occupant shall be guilty of an infraction for each day he shall fail thereafter to cut down or remove such tree following the twenty-first day after receipt of notice of approval by the city council of the removal of such tree. Any person convicted of such misdemeanor shall be punished by a fine of not to exceed two hundred fifty dollars for each day of commission thereof. (Ord. 387 § 8 (part), 1981; Ord. 329 § 7 (part), 1974; Ord. 297 § 2, 1970)

8.08.030 Enforcement.

The superintendent of streets shall have such powers as are necessary for the proper enforcement of this chapter, including such powers as are granted by Sections 22000 through 22062 of the California Streets and Highways Code. (Ord. 329 § 7 (part), 1974; Ord. 297 § 3, 1970)

Section 3. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 8.10

Chapter 8.10 is hereby amended to the definition of "Dead or dangerous tree" to read as follows:

"Dead or dangerous" tree means dead or dying trees, dead parts of live trees, unstable live trees (due to structural defects or other factors) that are within striking distance of people or property, or constitutes a hazard or obstruction to public access or infrastructure, as determined by the town arborist.

Section 4. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the Town of Atherton hereby declares that it would have adopted the remainder of this chapter and ordinance, including each section, subsection, sentence, clause, phrase or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase or portion. 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 5: 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

Attachment 1

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 ____th day of _____, and had its second reading and was adopted and passed during the public meeting of the City Council on the ____st day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____

ANTHONY SUBER

City Clerk