



**Item No. 8
Town of Atherton**

CITY COUNCIL STAFF REPORT – PUBLIC HEARINGS

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

**FROM: BRITTANY BENDIX, TOWN PLANNER
SALLY BENTZ, TOWN ARBORTIST
ROBERT OVADIA, PUBLIC WORKS DIRECTOR**

DATE: NOVEMBER 15, 2023

**SUBJECT: INTRODUCE AND CONSIDER AMENDMENTS TO ATHERTON
MUNICIPAL CODE CHAPTER 8.08 “DEAD OR DANGEROUS TREES”
AND CHAPTER 8.10 “REMOVAL OF AND DAMAGE TO HERITAGE
TREES,” AND AMENDMENTS TO THE “HERITAGE TREE
PRESERVATION STANDARDS AND SPECIFICATIONS”**

RECOMMENDATION

Staff recommends that the City Council

1. Introduce and consider updates to Chapter 8.08 and Chapter 8.10 of the Atherton Municipal Code and updates to the Heritage Tree Preservation Standards and Specifications, related to tree removals associated with hazards in the public right-of-way.
2. Approve an update to the “Heritage Tree Preservation Standards and Specifications” document changing the arborist reporting requirements for construction sites from monthly to quarterly. regarding construction-site monthly arborist reporting to quarterly reporting.
3. Provide direction to the Town Arborist on the process for making future changes to the “Heritage Tree Preservation Standards and Specifications.”

BACKGROUND

Throughout this year there have been various discussions at the Planning Commission and City Council that have related to process improvements around the Town’s arborist services and tree protection policies. This includes processes and policies identified in the Atherton Municipal Code and the Town’s “Heritage Tree Preservation Standards and Specifications,” also referred to as “Guidelines.”

Sidewalk Repair Program

On October 18, 2023, the City Council conducted a public hearing to review the sidewalk repair program and authorized a budget amendment of \$182,000 to facilitate program implementation. The sidewalk repair program requires Public Works staff to regularly inspect and mark uneven surfaces needed for repair in the public right of way. Staff will initiate a solicitation of bids for concrete replacement work, including bid items for removal and replacement of sidewalks, driveways, tree root cutting and curb and gutter replacement. However, many issues within the sidewalk area are related to trees and tree roots. Where sidewalks, curbs, gutters and streets are impacted by tree roots of heritage trees, it may be necessary to prune and/or remove large roots which may impact the health and integrity of the tree.

Per the “Guidelines,” a Street Heritage Tree “means any Heritage tree growing within the street right-of-way, outside of private property and adjacent to the applicant’s property. However, it is important to note that most trees in the right-of-way are the adjacent property owner’s maintenance responsibility per Atherton Municipal Code (AMC) Chapter 12.06. AMC Section 12.060.020 also states:

It is the intent of the encroachment regulations to preserve the rural nature of the town and to leave the lot frontage strip portion of the public right-of-way safe, clear of obstacles and impervious surfaces, for drainage, parking, access and other similar uses. It is the intent of this chapter to clarify that it is the responsibility of adjoining property owners to maintain such areas. (Ord. 503 § 1 (part), 1999)

A portion of this report introduces revisions to the AMC and “Guidelines” that address tree issues associated with hazards in the public right of way; therefore, reconciling the AMC and the “Guidelines” with the Sidewalk Repair Program.

Arborist Tree Reporting Requirements

In June 2023, Planning staff received a written letter from resident and developer Carol Flaherty requesting that the Planning Commission revisit the monthly tree reporting policy required in the Town’s Heritage Tree Preservation Standards and Specifications document dated December 2019 (Revised January 2021). In the July 2023 meeting, the Planning commission provided feedback and verbal guidelines to the Town Arborist to craft amendments to the Specification document for hearing and adoption.

The request for this amendment is to allow for a reduced frequency of submittal of monthly arborist tree reports to a quarterly reporting schedule for all full site development sites. The quarterly reporting dates would be the 15th day of February, May, August, and November.

At the September 2023 Planning Commission meeting the Commissioners approved the amendments to the Town’s Heritage Tree Preservation Standards and Specifications dated December 2019 (revised January 2021), related to monthly tree reporting schedule. The Planning Commission also added a requirement that new construction starting after the quarterly reporting date would be required to submit a report within one month of the beginning of construction. For all projects that start construction after the 45th day of the quarter, the first report is to be provided on the next quarterly reporting date.

Future Amendments to the “Guidelines”

The goal of this public hearing is to receive direction from the City Council regarding revisions to the AMC and “Guidelines.” However, the process by which the Town updates the “Guidelines” document is unclear. There is no requirement in the AMC or within the “Guidelines” themselves that require any changes to the “Guidelines” to receive approval from the Planning Commission or City Council. It is therefore understood by staff that the “Guidelines” can be amended at the administrative level and published publicly without formal action. Staff is seeking confirmation of this approach by Council.

ANALYSIS

Sidewalk Repair Program

The analysis section of this report outlines sections of the AMC and “Guidelines” that staff has identified related to trees in the public right-of-way and thereby subject to the Sidewalk Maintenance and Repair Program. Amendments to the existing ordinance language is illustrated through strikeout and new red text below and in Attachment 1. A clean copy of the AMC language is provided at Attachment 2.

Municipal Code Section 8.08

- **Section 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 ~~or~~, 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)

- **Section 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 ~~and~~ *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)

Municipal Code Section 8.10

- **Section 8.10.020 Definitions**

“Dead or dangerous” tree means dead or dying trees, dead parts of live trees, ~~or~~ 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.

Amendments to the existing “Guidelines” that relate to the Sidewalk Maintenance and Repair Program are illustrated through strikeout and new red text below and in Attachment 3. A clean copy of the “Guidelines” language is provided at Attachment 4.

Heritage Tree Preservation Standards and Specifications

- **Dead or Dangerous Tree** - means dead or dying trees, dead parts of live trees, or 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.

Arborist Tree Reporting Requirements

The Town’s existing “Guidelines,” which is implemented through AMC Section 8.10.010(D), provides policies and direction on how to implement the programs identified in AMC Chapter 8.10 – Removal and Damage to Heritage Trees. The Town has received concerns that the monthly tree reporting schedule required for full site developments is very expensive for the applicant. This is attributed to the monthly tree protection requirement that a certified arborist must visit the site to ensure adequate protection measures are retained during the entire length of the development process. This process results in a very high cost to the developer and is more time-consuming for the Atherton Town Arborist. The amendment requested to the “Guidelines” is to reduce the frequency of tree reports submitted to the Town Arborist from monthly to quarterly. This change maintains the ability of the Town Arborist to ensure compliance with the Tree Protection zones while lowering costs incurred on the development.

The Town Arborist has limited capacity to be at each full-site development to ensure the right tree protection measures are in place during the development timeline. On average there are 100 sites of full site development in the town. It is upon the private arborist who is more familiar with the project to report for the site status to the Town. It is recommended that the private arborist still visit the site on a regular basis, however a report would only be required quarterly.

See Attachment 3 for new language that has been added to the “Guidelines.” A clean copy of the “Guidelines” is provided in Attachment 4.

Future Amendments to the “Guidelines”

As described above, the “Guidelines” is a supplemental document to the AMC that provides more information on heritage tree standards and regulations. Most of the text in the “Guidelines” is distinct from AMC Chapter 8, with the exception of the definition section in 8.10, which is generally the same despite some minor variations in text.

Staff recommends that the Council acknowledge that the “Guidelines” are a supplemental document to AMC Chapter 8 and that staff should be able to adopt edits to the “Guidelines” ministerially. However, this is not how the “Guidelines” have been amended up until this point, returning to the Council for each change, although that direction is not identified in either the AMC or the “Guidelines.” Because this is a procedural change from past practices, staff is calling this desired shift to the Council’s attention for discussion and confirmation.

ENVIRONMENTAL CONSIDERATIONS

The proposed Ordinance is exempt from environmental review under the California Environmental Quality Act, Public Resource's Code section 21000 et seq. ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that the project has no potential for causing a significant effect on the environment.

POLICY FOCUS

The Municipal Code and Heritage Tree Preservation Standards and Specifications amendments considered the balance between protecting heritage trees in Town, protecting the rights of private property owners, and were found to not be overly restrictive. The amendments were found to be consistent with related General Plan goals and policies.

FISCAL IMPACT

The cost associated with the preparation of the Municipal Code and Heritage Tree Preservation Standards and Specification amendments are included within the annual Planning Department budget. The cost to implement the Standard will be paid for by the applicants for development projects. Additional support services for the Town Arborist in the enforcement and implementation of the Standard amendments will result; the cost of which would be evaluated by staff and would be paid for the applicants for each applicable development project.

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 a Forward-Thinking, Well-Managed, Well-Planned City

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 1,200 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. The Town maintains an active and up to date Project Website at <http://ca-atherton.civicplus.com/index.aspx?NID=290>.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

The recommended amendments to Code Chapter 8.08, Code Chapter 8.10, and the Guidelines, related to trees in the right of way have not been before a Town Committee or Commission.

The recommended amendments to the Guidelines related to the Monthly Arborist Tree Report has been before the Planning Commission.

ATTACHMENTS

1. Draft Ordinance with AMC changes – in red
2. Draft Ordinance with AMC changes – clean text
3. “Guidelines” with changes – in red
4. “Guidelines” with changes – clean text