

## **ORDINANCE No. 66X**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADDING SECTION 12.06.030-D AND CHAPTER 12.10 TO THE ATHERTON MUNICIPAL CODE, CLARIFYING MAINTENANCE RESPONSIBILITIES ON OWNERS OF PROPERTY ADJACENT TO PUBLIC RIGHTS OF WAY AND IMPOSING LIABILITY ON OWNERS OF PROPERTY ADJACENT TO PUBLIC SIDEWALKS FOR INJURIES SUFFERED**

**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 AND 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. FINDINGS.**

The recitals set forth above are hereby incorporated by reference herein.

## **Section 3. ADDITION OF SECTION 12.06.030-D OF THE ATHERTON MUNICIPAL CODE**

Section 12.06.030-D is hereby added to read:

D. "Sidewalk" shall have the same meaning as in Section 5600 of the California Streets and Highways Code. This term is interpreted to include the lot frontage strip that forms the areas between the property line and the street line that are publicly accessible or used for ingress and egress to the abutting property, regardless of whether such areas are improved in any manner.

## **Section 4. ADDITION OF CHAPTER 12.10 OF THE ATHERTON MUNICIPAL CODE**

Chapter 12.10 is hereby added to read:

### **12.10 Maintenance and Repair of Sidewalks and Rights-of-Way**

#### **12.10.010 Maintenance and Repair of Sidewalks**

A. Anything in this chapter to the contrary notwithstanding, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of said maintenance and repair may be done and the proceedings therefor may be had and taken in accordance with this part and the procedure therefor provided in Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state as the same is now in effect or may hereafter be amended. In the event of any conflict between the provisions of said Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state and this Chapter, the provisions of this Chapter shall control.

B. For the purposes of this chapter, the definition of sidewalk shall be the same as in Section 12.06.030-D.

**BC.** The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including but not limited to parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefor, including a charge for the Town of Atherton's costs of inspection and administration whenever the Town awards a contract for such maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair under subsection A. of this section or handling of any lien placed on the property due to failure of the property owner to promptly pay such assessments.

**CD.** For the purposes of this part, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of parking strips, removal of weeds and/or debris, supervision and maintenance of signs allowed pursuant to Chapter 15.36, tree and landscape maintenance, tree root pruning and installing root barriers, trimming of trees and shrubs and/or ground cover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including parking strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of said sidewalk area.

**DE.** Notwithstanding the provisions of Section 5614 of the Streets and Highways Code, the Director of Public Works (director) may in his or her discretion, and for sufficient cause, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed ninety days from the time the notice referred to in said Section 5614 is given.

**EF.** Liability. The owners of lots or portions of lots (property owners) required by this Chapter to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a non-dangerous condition as required by Chapter 12.10, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury.

#### **12.10.020 Maintenance and Repair of Adjacent Trees and Landscaping and Duty to Warn**

A. The property owner of a lot or portion of a lot adjacent to or fronting on any portion of a street shall maintain and replace, if necessary, any street trees, shrubs, hedges or other landscaping adjacent to or fronting on the subject property in such condition that the street trees, shrubs, hedges or other landscaping comply with this Chapter. Each property owner shall plant and/or replace any removed or otherwise missing street trees in accordance with the requirements of subsection(c), below.

B. A property owner required by this section to plant, maintain, and replace, if necessary, trees, shrubs, hedges and other landscaping shall owe a duty to members of the public using streets to maintain such trees, shrubs, hedges or other landscaping in a safe and nonhazardous condition for users of the streets. For purposes of this section, maintenance of trees, shrubs, hedges and other landscaping includes, but is not limited to: watering, pruning, fertilizing, pest control, removal of branches, leaves, and other debris, weed abatement, and protection of the critical root zone.

C. A property owner required by this section to maintain any street trees, shrubs, hedges, or landscaping shall comply with the following:

1. Immediately notify the Director of Public Works of any dangerous or hazardous conditions of the adjacent public right of way;

2. Provide the necessary maintenance so that the street tree, shrub, hedge or landscaping is not in a hazardous condition or in a condition that will likely become a hazardous condition;

3. Provide a minimum eight-foot vertical pedestrian clearance from the top of the sidewalk and a minimum fourteen-foot vertical vehicular clearance from the top of the street, to any part of a tree;

4. Provide adequate clearance for unobstructed pedestrian and vehicular view of all authorized traffic signals, traffic cameras, street lights, regulatory signs, street name signs, and other similar type of equipment or signs;

5. All maintenance shall be completed in accordance with the Atherton Municipal Code, Heritage Tree Protection Guidelines and other applicable permit requirements and standards;

#### **12.10.030 Hazardous conditions; sight obstructions on private property.**

A. No owner or person in possession or control of any premises shall maintain any tree, shrub, hedge or other landscaping located on such premises in a manner that causes or may cause a hazardous condition on a street or sidewalk.

B. No owner or person in possession or control of any premises on any corner or interior lot abutting upon a street shall permit the existence of any tree, shrub, hedge, landscaping, mound of earth, or boulders that obscure and impair the view of intersecting or entering traffic from a street of passing motorists or pedestrians or which impairs the view of the street signs, traffic signs, or any other control devices or signs placed upon the streets for the safety and convenience of the public.

#### **12.10.040 Notice of violation.**

If the director determines that the condition of any sidewalk, tree, shrub, hedge, or landscaping constitutes a violation of any provision of this chapter, the director shall, by notice in writing, notify the owner of the property in violation to prune or remove the tree, shrub, hedge, or landscaping or take any other necessary corrective action to cure the violation.

#### **12.10.050 Notice of violation - Delivery.**

The notice of violation specified in Section 12.10.040 may be given by delivering a written notice personally to the property owner, or by mailing the notice, postage prepaid, to the property owner thereof at his or her last known address as the same appears on the last equalized assessment rolls of the county.

#### **12.10.060 Notice of violation - Contents.**

A. Any notice of violation issued by the director pursuant to Section 12.10.050 shall contain the following information:

1. The date of the inspection.
2. The address or a description of the property where the violation is located.
3. A description of the violation.
4. A description of the corrective action required to address the violation.

5. A definitive time period to complete the corrective action.

#### **12.10.070 Notice of violation - Hearing.**

The notice of violation shall further specify that the property owner receiving such notice may file with the Town his or her written objection to such notice and such written objection must be received by the Town within seven (7) calendar days of the notice. The written objection shall clearly outline the objection to the notice and the basis for such objection. The Town shall duly review all timely written objections that comply with this section and provide the property owner with an opportunity to be heard, and will thereafter render a written decision within a reasonable amount of time to sustain, overrule, or amend the notice of violation. The written decision shall be provided to the owner in the manner specified in Section 12.10.060, and such decision will be final.

#### **12.10.080 Work performed by the Town.**

A. If the corrective action required by notice is not completed within the time specified in the notice of violation, the Town shall have the authority to perform this work or cause this work to be performed and the owner of the abutting property shall be billed for the costs incurred. The property owner shall be responsible for all costs associated with the corrective action including but not limited to the costs of planting, removal or pruning of the tree, shrub, hedge, pavement work, or landscaping, administration time and expense, late charges, and the handling of any lien placed on the property owner's property due to failure of the property owner to pay within the required period.

B. After the Town completes the corrective action as set forth in this section, the Town shall mail an invoice to the property owner. The property owner shall remit full payment to the Town on or before the date specified in the invoice.

C. Any invoice not fully paid by the date specified on the invoice shall be deemed delinquent and the director shall initiate the assessment procedures set forth herein.

#### **12.10.090 Emergency services performed by Town.**

A. In cases of imminently hazardous conditions, the director shall have the authority to perform or cause to be performed the corrective work to abate the imminently hazardous condition without observance of any notice requirements. The property containing or adjacent to a tree, shrub, hedge, sidewalk, or landscaping that poses an imminently hazardous condition or the property adjacent to or fronting on the subject street tree, shrub, hedge, sidewalk, or landscaping that poses an imminently hazardous condition may be assessed for the costs incurred in accordance with this part. The Town shall send an invoice to the property owner setting forth the costs and expenses as described herein and the date specified for full payment to the Town.

B. If the property owner has failed to pay the invoice, the director shall issue a notice of cost informing the property owner of the failure to pay the invoice and that failure to pay the amount will result in the initiation of proceedings to place a lien against the property owner's property.

#### **12.10.100 Notice of hearing before city council.**

After completion of the work and failure of a property owner to pay the amounts set forth in the invoice, the director shall cause notice of the public hearing on the cost to be given to the property

owner in the manner specified in this part, which shall specify the day, hour and place when the city council will hear and pass upon a report by the director of the cost of the work, the amount proposed to be assessed against the property, together with written objections, if any, which may be raised by any person liable to be assessed for the cost of such work.

#### **12.10.110 Report to city council.**

If the property owner does not pay the invoice by the required date, the director shall prepare and file with the city council a report specifying the work which has been done, the cost thereof, a description of the real property upon which the tree, shrub, hedge, or landscaping was located or of the real property adjacent to or fronting upon the street on which such street tree, shrub, hedge, or landscaping was located and the assessment against the parcel of land proposed to be levied to pay the cost thereof.

#### **12.10.120 Hearing on assessment costs.**

A. Upon the day and hour fixed for the hearing, the city council shall hear and pass upon the report of the director, together with any written or oral objections which may be raised by any property owner liable to be assessed for the corrective work. The city council may make such modifications in the report as it may deem just, after which, the report as submitted or as modified shall be confirmed. The decision of the city council on all objections shall be final and conclusive.

B. This hearing serves to provide the full opportunity of a person subject to an invoice to be heard and object to the determination that a violation occurred and was not corrected. The failure of any person to appear at the hearing shall constitute a failure to exhaust administrative remedies.

#### **12.10.130 Assessment deemed a lien.**

The cost of any corrective action may be assessed by the city council against the parcel of property upon which the tree, shrub, hedge, or landscaping is located, or the parcel of property which fronts upon or is adjacent to the street on which such street tree, shrub, hedge, or landscaping is located, and such cost so assessed, if not paid within five days after its confirmation by the city council, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof, which lien shall continue until the assessment and all interest thereon is paid, or until discharged.

#### **12.10.140 Lien - Recordation and collection.**

The city council, after confirmation of the report of the director, may order a notice of lien to be delivered to the county recorder, who shall enter the amount thereof on the county assessment book opposite the description of the particular property, and the amount shall be collected, together with all taxes against the property. Thereafter, the amount of the lien shall be collected at the same time and in the same manner as taxes against the property are collected, and shall be subject to the same penalties and interest, and to the same procedure under foreclosure and sale in case of delinquency.

#### **12.10.150 Liability.**

A. If any property owner fails to maintain any sidewalk, trees, shrubs, hedges, landscaping or other improvements in a nonhazardous condition as required by this Chapter, and any person

suffers damage or injury to person or property, the property owner shall be solely liable for all damages or injuries caused by such failure.

B. Nothing contained in this chapter shall be deemed to impose any liability upon the Town, its officers or employees, nor to relieve the owner of any private property from the duty to keep sidewalks, trees, shrubs, hedges, or landscaping upon said private property, or under his or her control or upon streets in front of or contiguous to such private property, in a safe condition.

#### **12.10.160 Remedies.**

The provisions of this chapter are nonexclusive and supplementary to any existing rights and remedies, and the provisions of this chapter may be enforced by any remedies provided for in this municipal code or otherwise available at law. Violations of this chapter may be prosecuted criminally, civilly, or administratively, either undertaken separately or in conjunction with other remedies, at the sole discretion of the Town. Nothing in this chapter shall be deemed to prevent the Town from commencing any administrative or legal proceeding to enforce this chapter, Municipal Code, or any law.

#### **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 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. The City Clerk is hereby directed to publish a summary of this Ordinance in an adjudicated newspaper of general circulation serving the residents of the Town of Atherton within fifteen (15) days after its passage.

Introduced on the \_\_\_\_ day of \_\_\_\_\_, 2023.

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 \_\_\_\_\_, 2023 by the following vote:

Ayes:

Noes:

Abstentions:

\_\_\_\_\_

Mayor Bill Widmer

ATTEST:

---

Anthony Suber, City Clerk/ACM