

From: George Rodericks grodericks@ci.atherton.ca.us 
Subject: Fwd: Memorandum Re: New Sidewalk Ordinance adding Section 12.06.030-D and Chapter 12.10
Date: September 14, 2023 at 1:17 PM
To:



From: George Rodericks <grodericks@ci.atherton.ca.us>
Subject: Re: Memorandum Re: New Sidewalk Ordinance adding Section 12.06.030-D and Chapter 12.10
Date: September 12, 2023 at 8:19:30 AM PDT
To: Frank Burke
Cc: Sharon Hume "John S. Maulbetsch" >, David Barca >, Elyse Barca <>, "James R. Janz" >, Kathy Janz >, Walter Robinson >, Bijal.Vakil, Mary Burke >, Jim Massey >, judy massey >, Robert Ovadia >, "Booher, Andreas"

Frank et al,

Thank you for the memorandum and comments. It was good to be able to chat with the neighbors through some of the issues involved. I will provide a copy of your memorandum to the City Council. I also wanted to take an opportunity to expand on a couple of points.

Section 5610 of State law is more than the paragraph noted. It is actually Section 5600-5630 of State law and many of the provisions in the Town's ordinance originate there. In addition, the Town's ordinance is modeled after the City of San Jose's Ordinance, which has withstood legal scrutiny in its application. You can view a copy of the [San Jose Ordinance here](#). Also for reference is some additional information shared with the Council, attached is a full PDF of Section 5600, a link to [Menlo Park's Ordinance/Program](#), a link to [Redwood City's Ordinance/Program](#), a link to a [Risk Pool Analysis of Sidewalk Maintenance Programs](#), and a link to a [white paper from the League of California Cities](#).

As you noted at the meeting on Wednesday night, it is clear that State law passes along a duty to the adjacent property owner to make them responsible for maintenance and repair of street frontages adjacent to their properties (sidewalk or no sidewalk). That's a function of State law, not local law. As you know, when there is a duty to maintain something and keep it free of hazard there is also likely a corresponding liability for negligence if the person or persons responsible fail to maintain it free of hazard (duty, breach, causation, and damages). If the property owner is negligent in that maintenance and repair obligation, they have "breached" their duty. And, if that breach is the underlying "cause" of injury and there are in fact injuries - "damages" - they can be held liable. That exists today irrespective of whether the Town adopts a local ordinance or not. For example - tree roots, tree maintenance, low branches, defective driveway, improper drainage, rocks/boulders/stumps, blocked visibility due to overgrown vegetation, etc. If, however, the property owner has notified the Town of a hazard (as the ordinance calls out) and the Town has underlying responsibility for maintenance (such as a fallen street sign, notify utilities, etc.) and the Town fails to take action to protect (pursuing remedy, marking, etc.), the Town could be held liable. Ultimately, issues will come down to who's responsible for maintenance, was there negligent maintenance, was there notice of the hazard, was action taken following that notice (actual or constructive notice), and by whom. State law already places the duty for maintenance on the adjacent property owner.

If a property owner fails to maintain an aspect of their property or frontage within their control (overgrown hedges, trees, rocks, stumps, debris, etc. - not acts of god) and that causes the creation of a hazardous condition; that property should be held liable for any damages that occur. With respect to the Town's local ordinance, there are two provisions with respect to liability. You pointed out at the meeting that Section 12.10.150(A) makes the property owner "solely" liable for all damages or injuries. This section incorporates the earlier provision (Section 12.10.010(E)) in specific relation to sidewalks but expands it to cover other items with the right-of-way area for which the property owner has a duty to maintain - trees, shrubs, hedges, landscaping and other improvements (driveways, keypads, landscape lighting, private signage, etc.). That section covers all of the frontage area not just sidewalks and passes liability along to the property owner only if there is injury that occurs due to their *failure to maintain*. If the frontage is maintained free of hazards, there is no liability. It only attaches in the case of negligent maintenance. Both sections address liability only in the case of negligent maintenance. One is specific to sidewalks and one is more broad as the ordinance covers not just Lloyd Park where there are presently residential sidewalks but the entirety of Town. While Lloyd Park is the only significant area of residential neighborhood that currently has sidewalks, it is not and may not always be the only area. In fact, there are sidewalks in front of most of the local schools - Menlo Atherton High School, Laurel, Las Lomas, Town Center, Park, etc. And, as the Town develops over time, there may be improvements along street frontages for pedestrian ways either decomposed granite or paved sidewalks in specific areas.

As noted, the general rule (and that of State law) is that an adjacent or abutting property owner is liable for injuries caused by a dangerous condition of the public sidewalk, if the dangerous condition was created through the negligence of the homeowner. State law also provides that the adjacent or abutting property owner has a duty to maintain the right-of-way, inclusive of the sidewalk. The Town can create a specific Sidewalk Assessment, Maintenance and Repair Program that involves cost assessment and/or cost sharing. That is a budgetary and programmatic (policy) choice - not a codified Ordinance. A Sidewalk Assessment, Maintenance and Repair Program whereby the Town incurs a cost for assessment and basic grinding/general maintenance along with a potential 50/50 split for larger repairs is a policy decision. It would be a separate Town Program specifically related to sidewalks (outside of a local ordinance as it's budgetary and implementation related not regulatory). As noted, I would recommend to the Council that the Town be responsible for the costs of an annual or bi-annual sidewalk assessment program and that the Town consider bearing the cost of any related grinding and general maintenance. However, costs related to larger repair due to adjacent tree roots (unless it is clearly a Town maintained tree) or other private property maintenance issues be borne either entirely by the property owner or cost shared with the Town. If it were a 100% resident cost, the Council could certainly recommend that the neighborhood consider forming a Landscape Maintenance Assessment District to bear the costs more broadly.

Your Memorandum and the additional information shared over the course of these emails and staff directed investigations into

Your memorandum and the additional information shared over the course of these emails and staff directed investigations into the rubberized sidewalk areas in Redwood City (which they do not use any longer due to increased cost and liability) and other issues will all be discussed at the 9/20 City Council meeting as part of the Ordinance Introduction Public Hearing.

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On Sep 11, 2023, at 10:40 PM, Frank Burke < wrote:

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MEMORANDUM to George Rodericks.docx

