MEMORANDUM

To: George Rodericks
From: Sharon Hume, HALP President; John Maulbetsch, HALP Vice President; David and Elyse Barca; James and Kathy Janz; Walt Robinson; Bijal Vakil; Frank and Mary Burke; Jim and Judy Massey (all are residents of Lloyden Park)

CC: All other Lloyden Park Residents

Re: New Sidewalk Ordinance adding Section 12.06.030-D and Chapter 12.10

Thanks George for the information you have provided at and since our meeting with you and the Mayor last week. This is a follow up from a few folks who were at the meeting and a few others who have been following this closely. We appreciate all the items you mentioned where the town has taken action with respect to rights-of-way. Those of us who have lived in Lloyden Park for many years have witnessed the construction, modification and maintenance of our sidewalks by the Town.

We are therefore interested in why any change should take place. We do understand the advice you have received that, to make Section 5610 applicable the town needs to give notice of that section. However, this ordinance seems to go well beyond that.

You recently wrote to Walt Robinson that it will be your recommendation to the Council that the Town continue to 100% fund all damage assessment and grinding efforts; but that any repair that needs to replace the entirety of a sidewalk panel due to the adjacent resident's tree roots or other maintenance issues (such as failed irrigation lines, negligent damage, etc.) would be either 100% the responsibility of that resident or 50/50 cost share with the Town.

Thank you for that very constructive proposal on how to share the burden on residents by having the Town continue its maintenance and grinding efforts. We hope this means that the Town will deal with other normal wear and tear such as cracks in the sidewalk due to natural settling, earth shifting, and the like. It would be helpful if some changes can be made in the proposed ordinance based on your new proposal. We hope that Sections 12.10.010 B and C, Sections 12.10.040, 12.10.080 and 12.010.090 will be modified to draw a distinction between routine grinding efforts and major damage that requires the replacement of one or more sidewalk panels in their entirety.

We would also request that the Town take a second look at why to include sections 12.10.010E, 12.10.150 and 12.10.160. Those deal with duties and attempt to impose sole liability on the homeowner to third parties with respect to sidewalks. (For some reason section 12.10.150 is broader than 12.10.010E.)

As you may recall, Frank Burke mentioned at the meeting last week that Sections 12.10.01E and 12.10.150 and 12.10.160 as written appear to be unenforceable as they directly conflict with the Town's responsibilities under Government Code §835 which states:

"Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

Section 835.2 states:

"(a) A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.

(b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to:

(1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property.

(2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition."

In *Peters v City and County of San Francisco, 41 Cal,. 2d 419, 427, 429 (1953)* the California Supreme Court held: "[I]t is well settled that the city will be charged with constructive notice of substantial defects in the public sidewalk which have existed for

such a length of time and are of such a conspicuous character that a reasonable inspection would have disclosed them…
The city is under a duty to keep sidewalks in safe condition, it is directly liable to pedestrians for failing to correct a dangerous condition of which it had notice, and it is not relieved of its responsibility in this regard merely because the condition was created or maintained by a property owner who might also be liable to pedestrians for injuries resulting therefrom."

Aside from the above mentioned concerns, we understand why the Town feels the need to adopt new Code Sections 12.10.010 to 12.10.140 to meet its obligations under Government Code 835-835.2 and the *Peters* case.

However, we feel that new Code Sections 12.10.010E, 12.10.150 and 12.10.160 go too far in trying to impose sole liability on the homeowner to third parties and place every homeowner in Atherton at risk of unwarranted claims. Third parties have separate rights and can use Section 5610 without the Town trying to somehow modify and enlarge that liability. Successful lawsuits have been brought by injured parties without such a provision. The provisions as drafted ignore that if someone claimed to suffer damage as a result of a defective sidewalk condition, there are still other issues to be resolved before there is liability. For instance, since California applies comparative negligence in personal injury cases, the relative responsibilities and actions of the homeowner, the Town and the pedestrian would all be taken into account.

We note that the Menlo Park Sidewalk Ordinance Chapter 13.08 has similar notice and repair provisions to those set forth in the new Atherton statute but does not attempt to impose sole liability on the homeowner. That City has miles of sidewalks and we have a few blocks.

Thank you for considering Lloyden Park residents' concerns. We have enjoyed many years of cooperative relationships with the Town and very much hope that can continue.