



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARINGS

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

**FROM: ROBERT OVADIA, PUBLIC WORKS DIRECTOR
ANDREAS BOOHER, ASSISTANT CITY ATTORNEY**

DATE: SEPTEMBER 20, 2023

SUBJECT: WAIVE THE FIRST READING AND INTRODUCE BY TITLE ONLY, AN ORDINANCE ADDING SECTION 12.06.030-D AND CHAPTER 12.10 TO THE ATHERTON MUNICIPAL CODE CLARIFYING MAINTENANCE RESPONSIBILITIES OF OWNERS OF PROPERTY ADJACENT TO PUBLIC RIGHTS OF WAY AND IMPOSING LIABILITY ON OWNERS OF PROPERTY ADJACENT TO PUBLIC SIDEWALKS FOR INJURIES SUFFERED ON PUBLIC SIDEWALKS, AS DEFINED

RECOMMENDATION

It is recommended that the Council waive the first reading and introduce by title only, an Ordinance adding Section 12.06.030-D and Chapter 12.10 to the Atherton Municipal Code ("AMC") to clarify the maintenance responsibilities of property owners of adjacent sidewalks and public right-of-way, as defined therein.

BACKGROUND

Chapter 8.20 of the AMC defines public nuisance and provides for nuisance abatement code enforcement on private property. For street frontage areas, the Town has historically used a combination of local law (Chapter 12.06 Encroachments) and State law (California Streets and Highways Code 5600) to pass along maintenance responsibilities and legal liability for street frontage areas to adjacent property owners. Street frontage areas are those portions of the public right-of-way between the property line and the paved street.

When the Town identifies an issue with the frontage area, the adjacent property owner is notified their frontage is in violation via Code Enforcement and they are required to bring it into compliance within a reasonable period of time, depending on the nature of the issue (i.e., trees, shrubs, sidewalks, irrigation, drainage, DG, etc.).

In the case of construction projects, the Town reviews plans for compliance with the Encroachment

Ordinance for any frontage being improved. For any improvements placed in the right-of-way via an Encroachment Permit, the property owner is required to obtain a revocable permit that passes on all liability and a responsibility for maintenance of those improvements to the property owner.

Each year, staff receive numerous complaints regarding frontage maintenance issues ranging from weeds, ruts, and depressions to sidewalk trip hazards and blocked access routes and visibility issues due to tree limbs and shrubbery, downed trees, or deteriorated pavement or other surface treatments. Due to the limited funds available to the Town for the maintenance of streets, the Town does not have the resources to take on the maintenance obligations for all these deficiencies in the right-of-way, some of which are caused due to negligent maintenance of the adjacent property owner or deliberate placement within the right-of-way of non-conforming materials.

The Town currently only maintains trees in the Town Center, the Park, and selected areas of the Town (i.e., medians, ECR, Middlefield Road, etc.) where the Town has taken over responsibility for tree maintenance along major thoroughfares. Most of the lot frontages throughout Town are the responsibility of the adjacent property owner.

While the Town does not have the resources to address all these issues, this Ordinance clarifies the procedures whereby the Town can intercede in the case of emergencies where an imminent risk of harm exists due to the condition of the area between the street and the property line, and provides for cost recovery from the adjacent property owner for such emergency work.

Finally, due to the maintenance responsibility resting with adjacent property owners, the proposed Ordinance also imposes a duty and liability on property owners for any injuries caused due to the nuisance conditions occurring on the public rights of way located on or adjacent to their properties resultant from their failure to maintain the area in a safe condition.

ANALYSIS

Since 1941, Section 5610 of the Streets and Highways Code has provided:

“The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.”

Through this section, the Streets and Highways Code imposes a duty on property owners to maintain the area between their property line and the street to ensure those areas between the street and their property line are free of nuisances and hazards that could endanger people or property, or interfere with the use of the public right-of-way.

Historically, the Town has relied on Section 5610 in combination with our Encroachment Ordinance to hold property owners responsible for maintaining the frontage area. The Encroachment Ordinance prescribes that no one can place anything in the adjacent street frontage area without the permission of the Town and that anything put within that right-of-way is the responsibility of the adjacent property owner to maintain. Through the Encroachment Ordinance, the Town imposes standards for landscaping in the frontage areas, which include maximum heights, clearances, and setbacks. The property owners are responsible for maintaining such landscaping in a healthy growing condition so as not to create a safety hazard or public nuisance and they are required to maintain the frontage strips free of weeds, litter and debris and they shall not impede any drainage.

While the Town has relied on Section 5610, case law has held that in order to continue to pass along the duty and maintenance obligations to adjacent property owners, local jurisdictions must affirmatively point to this authority in its ordinances. To date, the Town has not done so. The proposed ordinance adds Chapter 12.10 to the AMC to accomplish this requirement as well as make a few clarifications with respect to maintenance obligations, liability, enforcement procedures, and provides a cost-recovery mechanism for the Town where it must intercede due to hazards that pose an imminent risk of harm. The Ordinance is modeled after the San Jose Ordinance and the provisions of Sections 5610-5618 of the Streets and Highways Code.

Absent an ordinance codifying Section 5610, the Town cannot pass along maintenance and liability responsibility within the frontage areas; and liability will be a fact-dependent analysis should there be damage or injury resultant from a condition within that frontage. If the Town were to be liable for dangerous conditions in the right-of-way, which currently exist due to maintenance adjacent property owners have failed to undertake, staff would need to begin a much more proactive code enforcement and risk assessment program to identify where those risks are and proactively mitigate risks through an aggressive tree trimming and right-of-way maintenance program.

Despite the fact that the Streets and Highways Code permits assigning maintenance obligations on adjacent property owners, not all jurisdictions do so. There are no statistics on what percentage of jurisdictions state-wide hold adjacent property owners responsible, but it is a very common practice to do so. In San Mateo County, approximately two-thirds of the incorporated cities clearly place maintenance responsibilities on adjacent property owners.

At its September 6, 2023, Study Session, the City Council reviewed the draft ordinance. Council directed staff to bring the Ordinance back for consideration with minor corrections. In addition, following the Study Session, the Mayor and City Manager met with residents in the Lloyd Park neighborhood to discuss the ordinance and their concerns. A memorandum regarding the proposed Ordinance was provided to the City Manager from Lloyd Park residents following the meeting (Attachment 2). A response to the residents from the City Manager is attached as Attachment 3.

Issues Raised

Additional Information Regarding Streets & Highways Code Provisions

The Streets and Highways Code very clearly passes along responsibility for maintenance and repair of sidewalks and other frontage to the adjacent property owner. The Streets and Highways Code is more than simply Section 5610. The additional information in the Town's proposed ordinance is modeled after that additional information as well as the [City of San Jose's Ordinance \(linked here\)](#) which has been tested by the courts. Attachment 4 is an expanded version of the State law. This mirrors the Town's ordinance for notice, repair, etc.).

Other Jurisdiction Ordinances

In addition to the City of San Jose's Ordinance, — Menlo Park and Redwood City programs were referenced in both the Town's Study Session and the Lloyden Park meeting. Here are links to their programs. [Menlo Park \(Link\)](#) and [Redwood City \(Link\)](#).

Liability

As the City Attorney has noted, while the State law passes on the duty to maintain the frontage area to the adjacent property owner, it does not strictly pass on liability. Recent court decisions, like the one in the case of San Jose's Ordinance, provide that jurisdictions must affirmatively pass on that liability as well as the maintenance obligation by incorporating existing State law. At a minimum, the Town's ordinances must reference and incorporate Section 5600. Here are some other resources (white papers, PowerPoint, etc.) that provide some broad educational information. [PARSAC Risk Pool PowerPoint - Managing Sidewalk Liability](#); League of Cities White Paper - [But It's YOUR Sidewalk \(2014\)](#)

Recent Sidewalk Inspections and Cost to Repair

The Town did conduct a sidewalk survey of Lloyden Park about in April/May 2023 around the time the Council discussed rights-of-way issues at the April 5 Study Session. Staff has access to a pooled contract for sidewalk assessment and grinding work via PLAN JPA (Town's Insurance Pool). Staff used the services of Precision Concrete Cutting (PCC) to do the assessment. Precision Concrete Cutting (PCC) has a fixed/negotiation price for Sidewalk Assessment and Grinding - Sidewalk Assessment is ~\$386/sidewalk mile - roughly \$1,000 per day. Sidewalk grinding costs vary based on the amount of uplift - ~\$43 for 3/8" to 1/2" of uplift; \$80 for 1/2" to 1" of uplift; and \$165 for 1" to 2" of uplift. Anything larger than 2" - the full panel must be replaced and that is not a part of their service scope.

PCC identified 825 instances of sidewalk uplift that they could address through grinding; 55 areas of sidewalk replacement that must be bid out separately (greater than 2" of uplift or slabs broken/unstable); and 6 utility box sections that need reporting to utility agencies for uplift. The 825 instances of sidewalk uplift that they could address via grinding totaled approximately \$45,000 worth of work. The 55 areas of removal and replacement totaled approximately 2,848 square feet. This work would need to be publicly bid and has an estimated cost of \$20-\$25 per square foot

(depending on the market - could be higher) - would come to another \$70,000+. This could be \$300 to \$3,000 per property depending on the length of sidewalk repair in front of their parcel.

At the Lloyd Park meeting, the neighbors provided the City Manager with photographs of damaged or uplifted sidewalk areas deeming them hazardous. This would be considered “notice” to the Town of the hazard. Staff will use these photos and the recent field survey to paint or otherwise highlight and identify the hazard locations in the field. Staff will then need to work with the adjacent property owners for repair - using current State and local laws to do so (adjacent property owners are responsible).

In the past, the Town has contracted and paid for all basic grinding work for uplifted sidewalks using Parcel Tax funds. If the remedial work required panel replacement or root work, the Town would group up these areas and get three (3) public bids for the work. Each bid was separated by address/parcel. Staff would then reach out to each adjacent property owner and let them know they were responsible for the repair costs and the repair. Staff advised them of the Town’s cost and the property owner could opt to have the Town do the work and be invoiced for it or do it themselves based on the Town’s standard for construction. Most chose to have the Town do the work.

Additional Considerations

Concurrent with consideration of this Ordinance, the Council may discuss potential policy options around implementation and public education. These policy options include development of a sidewalk repair program (separate from the Ordinance), review of the Heritage Tree Ordinance as it pertains to sidewalk and right-of-way hazards, and public education.

Sidewalk Repair Program

Several jurisdictions have sidewalk repair programs to assist property owners in addressing sidewalk trip hazards. Most programs include provisions for concrete grinding, asphalt ramping, and sidewalk replacement. Some jurisdictions place the cost burden fully on the adjacent fronting property owners (either directly via citation or billing, or indirectly via an assessment district), others share the cost burden with the property owners, particularly if the issues are associated with publicly owned trees. Some jurisdictions take a shared approach, where the jurisdiction takes on the ramping and grinding aspects, where appropriate, and leaves requires permanent repairs by the property owner.

Heritage Trees

As noted above, many within the sidewalk area are related to vegetation and trees. Where sidewalks and streets are impacted by tree roots of heritage trees, it may be necessary to prune/remove large roots or remove trees in their entirety. The Heritage Tree Ordinance may need to be revised to include consideration of tree removals associated with such hazards in the public right-of-way. Additionally, the Town would need a release of liability from the property owner should repair work impact adjacent trees or improvements.

Public Outreach

Following adoption of the Ordinance, education materials advising property owners of their responsibilities will be developed. Such materials would be available on-line and distributed through Town publications such as the Athertonian. Additional materials may be developed regarding any additional programs as they are developed.

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.

FISCAL IMPACT

The proposed Ordinance does not involve or authorize and direct expenditures.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal Area B – Preserve Small Town Character and Quality of Life
- Goal Area D – Manage Circulation and Improve Safety
- Goal Area F – Be Forward-Thinking, Well-Managed, and Well-Planned

POLICY FOCUS

The Council's policy focus should be on maintenance and liability responsibilities associated with improvements in the public right-of-way beyond the paved roadway.

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 Protection District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item has not been before a Town Committee or Commission

ATTACHMENTS

1. Draft Ordinance
2. Lloyd Park Memorandum to City Manager
3. City Manager Response to Lloyd Park residents
4. Streets and Highways Code Sections 5610 – 5618