

ORDINANCE No. 658

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADOPTING CHAPTER 9.18 RELATED TO TARGETED RESIDENTIAL PICKETING

WHEREAS, the Town of Atherton ("Town") has a duty to protect the public peace, and safety, welfare, and tranquility of its residents, and;

WHEREAS, the targeted picketing of individual residences in the Town of Atherton creates threats to the public peace, safety, welfare, along with the tranquility of the residents of the Town of Atherton. This is particularly true given the Town's small geographic size with narrow roads that are mostly devoid of sidewalks. People loitering or standing in front of such residences, doing nothing else, could pose traffic and safety concerns for residents coming and leaving their homes, as well as vehicular and bicyclist traffic, generally, and;

WHEREAS, the public health, safety, welfare and the good order of the community require that citizens enjoy in their homes and neighborhoods with a feeling of safety, tranquility, privacy and to enjoy freedom from being a captive audience to unwanted speech in their homes. The practice of targeted picketing in residential areas causes emotional disturbance and distress to residents, and has the potential to incite breaches of the peace. Full opportunity exists for individuals to exercise their right of free speech without resorting to targeted residential picketing. The provisions of this chapter are enacted for the purpose of protecting the significant public interests stated above and not to suppress free speech rights or any particular viewpoint.

WHEREAS, the Town, through its police powers, has the authority to enforce a content-neutral, narrowly-tailored, time, place and manner restriction on picketing in a limited public forum to protect the peace, welfare and tranquility of its residents while leaving open ample alternative channels for communication available to picketers; and,

WHEREAS, the Town wishes to protect its residents from the targeted picketing of their personal residences and finds that the prohibitions and buffers provide ample alternative avenues for communicating messages and ideas by those who wish to picket or protest in Atherton; and,

WHEREAS, this Ordinance is a necessary time, place and manner restriction, intended to reconcile the needs and rights of protesters to peacefully and effectively communicate and express their views and of residents to enjoy privacy and respite in their own homes; and,

WHEREAS, local ordinances prohibiting the targeted picketing of homes have been upheld by the United States Supreme Court in *Frisby vs. Schulz* (1988) 487 U.S. 474, and a three hundred (300) foot buffer zone has been upheld by a California Court of Appeal as a reasonable exercise of the City's legislative discretion in regulating such targeted picketing (*City of San Jose v. Superior Court of Santa Clara County* (1995) 32 Cal. App. 4th 330).

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 amendment is to amend Title 9 of the Atherton Municipal Code to adopt Chapter 9.18 related to Targeted Residential Picketing, in order to protect the peace and

tranquility of Atherton residents in their homes. This is a content-neutral, narrowly-tailored time, place and manner restriction on picketing in a limited public forum that will preclude picketers from targeting individual residences by remaining at least 300 feet from any individual residence, while leaving open ample alternative channels for communication available to picketers. Chapter 9.18 additionally creates a private right of action enabling persons aggrieved by targeted picketing to bring an action against any person who has violated, conspires or proposes to violate acts prohibited under Chapter 9.18 and recover an award of a civil penalty of up to one thousand dollars, as well as costs and reasonable attorneys' fees.

Section 2. ADOPTION OF CHAPTER 9.18 OF THE ATHERTON MUNICIPAL CODE

Title 9 is amended to include Chapter 9.18, which reads:

Chapter 9.18

TARGETED RESIDENTIAL PICKETING

Sections:

- 9.18.010 Definitions.
- 9.18.020 Targeted residential picketing prohibited.
- 9.18.030 Picketing before or about a residential dwelling prohibited.
- 9.18.040 Private right of action.
- 9.18.050 Penalties.

9.18.010 Definitions.

A. Picketing – When a person or a group of people stands, marches, or patrols inside, in front of, or about any premise with the intent to persuade an occupant or patron of the premise regarding some point of view or to protest an action, attitude, or belief, or to publicly express any sentiment directed at an occupant or patron of said premise.

B. Residential Dwelling – Any permanent building being lawfully used by its occupants for residential uses.

C. Targeted Residential Picketing – Picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of, adjacent to or around that particular residential dwelling.

D. Picketing Before or About a Residential Dwelling – Picketing activity that proceeds on a definite course or route in front of or adjacent to a residential dwelling and is directed at or about that residential dwelling.

9.18.020 Targeted residential picketing prohibited.

A. No person shall engage in any picketing activity that is targeted at, and is within, three hundred (300) feet of a residential dwelling.

B. This chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.

C. This chapter does not and shall not be interpreted to preclude canvassing, advertising, or any other form of speech besides targeted residential picketing or picketing before or about a residential dwelling.

D. This chapter does not, and shall not be interpreted to, preclude targeted picketing of individual residents of the Town of Atherton in locations other than the targets' private residential neighborhoods, or in non-residential areas, to the extent permitted by law.

9.18.030 Picketing before or about a residential dwelling prohibited.

A. It is unlawful for any person to engage in picketing before or about a residential dwelling of any individual in the Town of Atherton.

B. Enforcement of this section shall be limited to those situations where the picketing proceeds on a definite course or route in front of or adjacent to a residential dwelling and is directed at that residential dwelling. The intent of this section is to prohibit picketers from evading the requirements set forth in Section 9.28.020 by attempting to march around or past the targeted residence.

C. This section does not and shall not be interpreted to preclude general marching through residential neighborhoods, provided no specific residential dwelling is targeted by the march.

9.18.040 Private right of action.

A. Any person who is aggrieved by an act prohibited by this chapter may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate, or proposes to violate the provisions of this chapter. Such action will be a civil dispute between the affected parties.

B. Any aggrieved person who prevails in such an action shall be entitled to recover from the violator those damages, costs, reasonable attorneys' fees and such other relief as determined by the court. In addition to all other damages or relief, the court may award to the aggrieved person a civil penalty of up to one thousand (\$1,000) dollars for each violation of this chapter.

C. The remedies provided by this chapter are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

9.18.050 Penalties.

It shall be unlawful for any person to violate or fail to comply with this Chapter. Any person violating the provisions of this chapter shall first be verbally warned. If, after the warning, the person continues to violate this Chapter, he or she will be guilty of a misdemeanor and separately subject to the provisions of Chapter 8.20 (Nuisance Abatement). Whenever in this Chapter any act or omission is made unlawful, it shall include causing, permitting, aiding, or abetting another to violate this Chapter.

Section 3. 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 4: EFFECTIVE DATE

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.

Introduced on the 18th day of January, 2023.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the 15th day of February, 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor Bill Widmer

ATTEST:

Anthony Suber, City Clerk/ACM