



**Item No. {{item.number}}**  
**Town of Atherton**

**CITY COUNCIL STAFF REPORT – STUDY SESSION**

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

**FROM: ROBERT OVADIA, PUBLIC WORKS DIRECTOR**

**DATE: APRIL 5, 2023**

**SUBJECT: PROVIDE FEEDBACK AND DIRECTION REGARDING USE AND  
MAINTENANCE RESPONSIBILITIES ASSOCIATED WITH THE  
PUBLIC RIGHT-OF-WAY**

**RECOMMENDATION**

It is recommended that the Council provide feedback and direction to staff regarding the use and maintenance responsibilities associated with the public right-of-way.

**BACKGROUND**

As outlined in the California Streets and Highway Code (§5610) and the Atherton Municipal Code (§8.20.050 – Nuisance and §12.06.020 – Encroachments), responsibility for maintenance of the public right-of-way beyond the improved roadway (paved travel way) is the responsibility of the fronting property owner. These codes are excerpted below.

The California Streets and Highway Code (§5610) states:

*“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.”*

The Atherton Municipal Code outlines property owner responsibilities to maintain their frontages in both Chapter 8.20, Nuisance Abatement, and Chapter 12.06, Encroachments (***Emphasis Added***).

Section 8.20.050, Unlawful materials, conditions, and activities (nuisances per se), declares the

following as nuisances:

*F. Overgrown, dead, decayed, diseased or hazardous trees or other vegetation (with the exception of compost as defined in Section 8.20.030); weeds and other vegetation likely to harbor rats, vermin or nuisances, that constitute a fire hazard, or **vegetation that creates a vehicular, bicycle or pedestrian hazard or otherwise interferes with public circulation or which impedes drainage within the public right-of-way or watercourse;***

*Q. Logs, curbs, rocks, fences, screenings, sand, dirt, yard waste, compost materials or other similar obstacles, that create a vehicular, bicycle or pedestrian hazard or otherwise interfere with public circulation or which impede drainage within the public right-of-way or watercourse;*

Section 8.20.060 further states:

*“It is declared a public nuisance for any landowner or person leasing, occupying, directly controlling or having possession of any property in this town to maintain any condition described in Section 8.20.050 of this chapter, or to maintain any attractive nuisance. It is not the intent of the town that this chapter preempts any private nuisance action or any and all other legal remedies available to private parties. (Ord. 490 § 18 (part), 1996)”*

Section 12.06.020, Purpose and Intent, states:

*“It is the intent of the encroachment regulations to preserve the rural nature of the town and to leave the lot frontage strip portion of the public right-of-way safe, clear of obstacles and impervious surfaces, for drainage, parking, access and other similar uses. It is the intent of this chapter to clarify that it is the responsibility of adjoining property owners to maintain such areas. (Ord. 503 § 1 (part), 1999)”*

*The lot frontage strip is further defined as “**that portion of the public right-of-way between the property line and the paved street.**”*

Together, these Code Sections impute maintenance and liability to the adjacent property owner for improvements within that right-of-way. There have been changes in the law that will require that will require the Town’s Ordinances to be updated, but those changes only serve to further clarify the overall responsibility.

The Town has consistently advised property owners that all property street frontages (including side and rear frontages) are the responsibility of the adjacent property owners to maintain. This includes sidewalks, gravel areas, trees and landscaping, drainage, etc. and the responsibility to correct issues when they arise and/or complaints are received. Property owners are also advised to maintain drainage paths along their frontages, repair sidewalks, trim and maintain landscaping and trees in the right-of-way. Over the years, the Town has done extensive public outreach with regular articles in the Athertonian as well as via community meetings.

When frontage trees fall in the right-of-way, Public Works crews or contractors will clear the paved roadway to maintain public access on the roadway and stack the associated debris in front

of the tree owner's property for removal. The property owner is notified of their responsibility to remove the debris. PG&E will sometimes also stack tree debris associated with line safety trimmings on or on front of the associated property for removal.

## **ANALYSIS**

Though many property owners take pride in their property frontage and landscaping, there are some property owners that do not address issues in a timely manner. Maintenance issues include:

- Ruts in the unpaved areas adjacent to the roadway
- Shrubbery/landscaping encroaching into the required clear zones
- Tree maintenance, including addressing low branches and dead or dangerous trees
- Trip hazards, uplifted/damaged roadways and other issues caused by tree roots
- Sidewalk/right-of-way trip hazards
- Blocking drainage paths and causing upstream backups, including maintenance of driveway and landscape culverts
- Broken or uplifted drainage swales or gutters
- Timely removal of debris from the right-of-way
- Large obstructions such as boulders and tree stumps

Failure to maintain these and other issues within the frontage strip can at the very least be an eyesore and at the worst, result in injury to persons and property. When issues of liability arise, such as a trip and fall, falling debris, damaged vehicles, or other personal injury; property owners are advised of and often surprised by their liability. The need for further education and consistent application is becoming more evident with sidewalk trip hazards, ruts along various roadways, and frontage trees that have fallen in various locations (see sample images).

Several properties through Town have unmitigated issues along or associated with their frontages that have been brought to the Town's attention. Though many issues are resolved in a timely manner, other issues can be expensive to address and/or may adversely impact heritage trees. There remain property owners that are not aware and surprised to find that the responsibilities along the street frontage lay with the property owners. Staff is seeking feedback as to how best to enhance education around the maintenance responsibilities of property owners and the associated liability; and ensure that the Council is consistent in the message to the community as to the issues. This clear direction is needed to support enforcement and abatement of these issues.

This feedback will also be important with regards to additional improvements planned with the implementation of the Town's Bicycle and Pedestrian Master Plan, where the paved roadways may be widened to provide bike lanes and where walkway improvements are desired. Additional discussion may be needed with regards to the potential for development to fund and/or construct identified improvements along their frontages or to transit stops concurrent with their development.

## **FISCAL IMPACT**

None at this time.

## **GOAL ALIGNMENT**

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

- Goal Area A – Maintain Fiscal Responsibility
- Goal Area B – Preserve Small Town Character and Quality of Life
- Goal Area D – Manage Circulation and Improve Safety

## **POLICY FOCUS**

The Council policy focus should be on use and maintenance 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. Sample images