



## Item No. 5 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

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

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

**DATE: OCTOBER 18, 2023**

**SUBJECT: WAIVE THE SECOND READING BY SUBSTITUTION OF TITLE  
AND ADOPT AN ORDINANCE ADDING SECTION 12.06.030-D  
AND CHAPTER 12.10 TO THE ATHERTON MUNICIPAL CODE  
CLARIFYING 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 second reading by substitution of title and adopt 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 owner's of adjacent sidewalks and public right-of-way, as defined therein.

### **BACKGROUND**

This is the final reading by substitution of title and adoption of 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 owner's of adjacent sidewalks and public right-of-way, as defined therein.

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 5610) 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 areas where there are sidewalks with uplifting, the Town has notified the property owners of the risk assessment and required them to grind such areas down or replace the sidewalk to eliminate the risk. Alternatively, they can pay the cost of the Town to do so as part of a sidewalk risk remediation program.

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, Town staff receives 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. 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 remain the responsibility of the adjacent property owners.

While the Town does not have the resources to address all these issues, this ordinance provides procedures whereby the Town can intercede in the case of emergencies where an imminent risk of harm exists due to the condition of this 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 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.

## **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 permits local jurisdictions to impose on property owners the duty 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 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, recent case law has held that in order to continue to pass along 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.

Absent the ordinance codifying Section 5610 as the basis for holding adjacent property owner responsible for frontage maintenance, the Town cannot pass along liability improvements within the frontage areas and could be held liable for any dangerous condition of the frontage area, regardless of cause. 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 do 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.

Following the Study session, the Mayor and City Manager met with residents in the Lloyd Park neighborhood to discuss the ordinance and their concerns.

The City Council held a public hearing, waived the first reading and introduced the ordinance at

the Regular City Council Meeting on September 20, 2023. If approved, this ordinance will be effective thirty days following the adoption.

### **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