



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: STEPHANIE B. DAVIS, AICP, PRINCIPAL PLANNER
SALLY BENTZ DALTON, TOWN ARBORIST

DATE: JULY 20, 2022

SUBJECT: ADOPTION OF A MUNICIPAL CODE AMENDMENTS TO CHAPTER 17.50 “LANDSCAPE SCREENING” OF THE ATHERTON MUNICIPAL CODE (AMC)

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and adopt Municipal Code amendments to Chapter 17.50 to be titled “Landscape Screening” based on the following finding and for the reasons outlined in this report:

- 1. The proposed municipal code text amendments are consistent with the general plan goals, policies, and implementation programs.*

Basis for finding: The proposed Municipal Code amendments allow the Town to enhance the existing Landscape Screening Ordinance proposed to address the Land Use Element Goal LU-1: “To preserve the Town’s character as a scenic, semi-rural, thickly-wooded residential area with abundant open space.”, Policy LU-1.8, “Maximize preservation of heritage trees and existing trees within a development site to the greatest degree feasible, consistent with the Heritage Tree Ordinance and Tree Preservation Standards and Specifications. Require new development to comply with the Town’s requirements for tree protection, removal, and replacement.” and Open Space and Conservation (OSC) Policy OSC-2.2: “Wherever possible, drought tolerant native species trees shall be used for new and replacement planting and be tolerant of seasonal water inundation where used in or adjacent to green infrastructure facilities”.

BACKGROUND

In late 2019, it was noted to staff and a few Council members that some community concern had been expressed on the visual impact of newly constructed detached accessory buildings/structures on sloped lots and the resulting impact they could have to neighboring properties situated at lower elevations, since generally these detached buildings are required to maintain a 10-foot setback from rear and side property lines.

On January 13, 2021, City Council received a report from staff on the Town’s regulations regarding landscape screening, and possible AMC amendments or other solutions relative to landscape screening for hillside lots. The City Council had discussion, questions of staff on implementation and timing of landscape screening and referred this item to the Planning Commission for further evaluation and consideration. While staff was drafting the materials for discussion by the Planning Commission, additional Landscape Screening related concerns were posed by the Town Arborist; specifically related to Accessory Dwelling Units (ADUs) with smaller setbacks, “tower” elements or other vertical architectural treatments on main residences, and existing Ordinance language specific to minimum planting sizes. Since these additional landscape-related concerns were posed following initial Council discussion which was limited to landscape screening on hillside lots back in January 2021, Staff sought additional Council direction at their February 5, 2022 meeting. At this meeting the Council provided staff with additional direction related to minimum tree plantings sizes, reduced sloped percentage to consider for hillside lots, addressing lighting, and discussion on ADUs.

On April 27, 2022 the Planning Commission conducted a study session to discuss these additional landscape screening issues as discussed by the Council and provided additional direction to Staff:

- to evaluate the possibility of meeting landscape screening goals for detached Accessory Dwelling Units (ADUs) or other dwelling units only 4 feet from a property line to come to a voluntary, mutual agreement with their adjacent neighbor to allow plantings on the neighboring property.
- to evaluate and holistically consider other screening / privacy impacts that may result of small lots, and subsequently homes with smaller setbacks, as a result of SB9.
- to evaluate landscape screening for front yard walls/fences facing the public right-of-way.

Staff subsequently prepared a revised draft Ordinance and presented it to the Planning Commission at their May 25, 2022 meeting. At this meeting, the Planning Commission conducted a public hearing and voted 4-0 to recommend that the City Council adopt amendments to Chapter 17.50 “Landscape Screening”. The Planning Commission did not recommend any changes to the language of the draft Ordinance. The City Council conducted a public hearing on June 15, 2022 to consider the recommendation of the Planning Commission and unanimously approved introduction of such proposed amendments with the following direction to staff:

- to make further amendments to include language to allow the Town Arborist the discretion to approve smaller tree / shrub sizes where appropriate.

Staff has incorporated such direction as limited revisions within Attachment 1.

ANALYSIS

Amendments to the Landscape Screening Ordinance as directed by the City Council and summarized in the Background section above has been included as Attachment 1. The draft Ordinance has been reviewed and commented on by the Deputy City Attorney.

The proposed Ordinance amendments address the following topics:

1. Increased minimum landscape screening requirements for both hillside and non-hillside lots, details and specificity on planting types/species and sizes, and provisions to address the protection of existing heritage trees and screening of lighting.
2. Allowing for the ability of off-site planting on an adjacent property upon voluntary agreement with a neighboring property for projects which proposes setbacks less than the base underlying zoning district, or at 4 feet or less given the physical site constraints associated with such small distances.

As noted in the background, following the direction received by the Council at the June meeting, additional revisions were made to the draft Ordinance that gives the Town Arborist discretion to allow for smaller trees and/or planting sizes based on unique topography, soils, or other factors impacting the effect of the screening for an individual property.

ENVIRONMENTAL IMPACT

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15308, Actions by Regulatory Agencies for protection of the Environment.

POLICY FOCUS

It is the purpose of the Landscape Screening Ordinance “...to reduce the impact of structures on neighborhoods and to provide for the maintenance of the individual privacy of homes in a neighborhood to a reasonable degree by requiring landscape screening where appropriate”. Consideration of amendments to the Landscape Screening or any Ordinances of the AMC specific to attempting to mitigate aesthetic impacts of detached buildings and structures to neighboring properties on hillside lots and better address other related topics as discussed above could be found to support the following adopted General Plan goals:

- *Land Use Goal 1.210:* To preserve the Town’s character as a scenic, rural, thickly wooded residential area with abundant open space.
- *Land Use Goal 1.223:* To retain the high quality of maintenance and living environment existing in the Town’s residential neighborhoods.

FISCAL IMPACT:

Staff cost to prepare the Ordinance will be funded by the Town General Fund, Planning Division budget. Implementation of the provisions of the Landscape Screening Ordinance would be incurred by a project applicant.

GOAL ALIGNMENT

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

- Goal B – Preserve Small Town Character and Quality of Life
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

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

ATTACHMENTS

1. Draft Ordinance Chapter 17.50 “Landscape Screening”

ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING CHAPTER 17.50, LANDSCAPE SCREENING OF THE ATHERTON
MUNICIPAL CODE**

Whereas, in late 2019, staff and a several Council Members noted community concern about the visual impact of newly constructed detached accessory buildings/structures on sloped lots and the resulting impact on neighboring properties situated at lower elevations,

Whereas, on January 13, 2021, the City Council received a report from staff on the Town’s regulations regarding landscape screening, and possible AMC amendments or other solutions relative to landscape screening for hillside lots,

Whereas, the City Council discussed landscape screening and referred this matter to the Planning Commission for further evaluation,

Whereas, on February 5, 2022 Staff sought additional Council direction on this matter in light of additional issues that came to light while preparing draft changes to the Town’s landscape screening ordinance.

Whereas, on February 5, 2022, the City Council provided staff with additional direction related to minimum tree plantings sizes, reduced sloped percentage to consider for hillside lots, addressing lighting, and discussion on ADUs.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF ATHERTON DOES
ORDAIN AS FOLLOWS:**

Section 1: Chapter 8.14 of the Atherton Municipal Code is hereby amended to read as follows:

Chapter 17.50 LANDSCAPE SCREENING

17.50.010 Purpose.

17.50.020 Applicability.

17.50.030 General Requirements.

17.50.040 Maintenance.

17.50.050 Continued Landscaping.

17.50.060 Installation Requirements.

17.50.070 Plant Coverage and Tree Sizes-Non Hillside Lots.

17.50.080 Plant Coverage and Tree Sizes-Hillside Lots.

17.50.090 Protection of Heritage Trees.

17.50.100 Plant Coverage and Tree Sizes – Tower / Architectural Projections

17.50.110 Plant Coverage and Tree Sizes – Reduced Setbacks

17.50.120 Landscape Screening Plans

17.50.130 Violation.

17.50.140 Appeals.

17.50.010 Purpose.

The purposes of this chapter are to reduce the impact of structures on neighborhoods and to provide for the maintenance of the individual privacy of homes in a neighborhood to a reasonable degree by requiring landscape screening where appropriate.

17.50.020 Applicability.

The requirements of this chapter shall apply to the following projects:

- A. New construction that exceeds eighteen feet above grade; or
- B. New construction of an accessory structure or alteration to an existing accessory structure that is more than six feet above grade and is less than twenty-five feet from a property line; or

C. New construction of an accessory structure or alteration to an existing accessory structure that is ten feet above grade and less than thirty-five feet from a property line.

D. New construction of architectural projections (e.g. towers, cupolas) on main and accessory buildings implementing exceptions to Height Limits for Main Structures subject to Section 17.42.040 of this Title.

In the case of additions to existing structures, only those areas adjoining each addition that meet the above criteria are required to be landscape screened.

17.50.030 General Requirements.

The following general landscape requirements apply to all residential and nonresidential property within the town:

A. All front, side, and rear yards shall be landscape screened as described in this chapter. Front yards contiguous to a street shall not require landscape screening.

B. Plantings shall be provided by the owners and located to reduce the visual impact of structures. Planting with appropriate trees and plants shall be used where necessary to provide privacy. Landscaping on adjacent properties may be taken into consideration.

C. No plantings shall occur within five (5) feet from the outermost perimeter of a building and/or structure that may conflict with any requirements of the Fire Department.

C. The provisions contained in this chapter are intended to be minimum standards and shall not preclude application of additional requirements where, in the opinion of the town arborist, such additional requirements are necessary to attain the purposes of this chapter and to attain compatibility with the general plan and the goals and policies of the town.

17.50.040 Maintenance.

All landscape screening areas shall be maintained reasonably free of weeds, litter, and debris. All required planting shall be maintained in a healthy growing condition and, whenever necessary, replaced with plant materials approved by the town arborist to provide continued conformance with approved plans. All new screening plantings shall be provided with a water-efficient automatic irrigation system to be installed at the time of planting.

17.50.050 Continued Landscaping.

A landscape screening agreement shall be signed by the applicant and shall be submitted to the town before any planning or building application is deemed complete. The purpose of this agreement is to ensure that the landscaping will not be removed at a future date, resulting in a loss of privacy and landscape screening. At no time shall the landscape screening plan be modified or amended in a manner not consistent with the approved plan without prior approval of the town arborist. The intent is to maintain continued landscape screening of property consistent with the objectives of this chapter. Failure to comply with this requirement without

first receiving authorization from the town arborist may result in an administrative penalty and fine as established by the city council.

17.50.060 Installation Requirements.

Prior to the final inspection or issuance of a certificate of occupancy (unless delay is authorized by the building official) all required landscape screening shall be installed in conformance with the approved plans. In the case of phased building construction, the town building official may permit phased installation of landscape screening. If the required landscaping is not installed prior to the final inspection, then a minimum five thousand dollar deposit and an agreement in writing, approved as to form by the city attorney, stating that all required landscaping shall be installed within six months, shall be executed by the applicant and submitted to the town before approval of the final inspection or issuance of the certificate of occupancy.

17.50.070 Plant Coverage and Tree Sizes – Non-Hillside Lots.

For all lots with an average cross-slope (as determined under Section 16.24.050 Lot Size Requirements of the Town Municipal Code) of less than fifteen (15) percent, plantings shall be sized to adequately screen the proposed structure within a period of five years from the date of issuance of a building permit. The following shall constitute minimum standards for plant coverage and tree sizes for non-hillside lots:

A. *Adequacy of Screening.* All plantings shall be of adequate size and spacing to ensure compliance with the screening requirements. A site inspection shall be conducted after a completed landscape screening application has been submitted. It shall be at the discretion of the town arborist to assess the adequacy of the proposed planting to meet the screening requirement.

B. *Minimum Tree/Shrub Size and Growth Rate.* Unless as provided herein, all trees and shrubs shall be at least twenty-four-inch box container size at the time of installation and shall reach a minimum height of 22 feet at maturity in accordance with the Sunset Western Garden book, or similarly accepted industry standard reference guide. Smaller and/or larger trees and/or shrubs may be required in the sole discretion of the town arborist where deemed necessary to meet the objectives of this chapter and based on unique topography, soils, or other factors impacting the effect of the screening.

C. *Encouraged Tree and/or Shrub Species.* Where suitable, the planting of California native and/or drought-tolerant shrubs and/or trees is strongly encouraged.

D. *Prohibited Tree Species.* The following tree species shall be prohibited as part of any required landscape screening plan:

1. Acacia baileyana—Bailey acacia.
2. Acacia decurrens—Green wattle.
3. Acacia melanoxylon—Black acacia.

4. *Ailanthus altissima*—Tree of heaven.
5. *Albizia julibrissin* – Mimosa.
6. Any species of eucalyptus.
7. *Pinus radiata*—Monterey pine.
8. *Notholithocarpus densifloru* - Tan Oak

17.50.080 Plant Coverage and Tree Sizes – Hillside Lots

For all lots with an average cross-slope (as determined under Section 16.24.050 Lot Size Requirements of the Town Municipal Code) of fifteen (15) percent or greater shall be considered Hillside lots for purposes of this Chapter. Plantings shall be sized to adequately screen the proposed structure within a period of five years from the date of issuance of a building permit. The following shall constitute minimum standards for plant coverage and tree sizes on hillside lots:

A. *Adequacy of Screening.* All plantings shall be of adequate size and spacing to ensure compliance with the screening requirements. A site inspection shall be conducted after a completed landscape screening application has been submitted. It shall be at the discretion of the town arborist to assess the adequacy of the proposed planting to meet the screening requirement.

B. *Minimum Tree Size.* Unless as provided herein, all trees shall be at least thirty six-inch box container size at the time of installation and shall reach a minimum height of 22 feet at maturity in accordance with the Sunset Western Garden book arboricultural standards, or similarly accepted industry standard reference guide. Smaller and/or larger trees may be required in the sole discretion of the town arborist where deemed necessary to meet the objectives of this chapter and based on unique topography, soils, or other factors impacting the effect of the screening.

C. *Encouraged Tree and/or Shrub Species.* Where suitable, the planting of California native and/or drought-tolerant shrubs and/or trees is strongly encouraged.

D. *Screening of Lighting.* All Landscape Screening plans shall be designed so as to screen any lighting on any buildings / structures from such lighting hitting any buildings on adjacent parcels.

D. *Prohibited Tree Species.* The following tree species shall be prohibited as part of any required landscape screening plan:

1. *Acacia baileyana*—Bailey acacia.
2. *Acacia decurrens*—Green wattle.
3. *Acacia melanoxyton*—Black acacia.
4. *Ailanthus altissima*—Tree of heaven.

5. Albizia julibrissin – Mimosa.
6. Any species of eucalyptus.
7. Pinus radiata—Monterey pine.
8. Notholithocarpus densifloru - Tan Oak

17.50.090 Plant Coverage and Tree Sizes – Tower / Architectural Projections

In addition to all other applicable provisions within this Chapter, any landscape screening plan associated with an approved development permit implementing the provisions of Section 17.42.040 of the Town Code shall include the additional, minimum standards for plant coverage and tree sizes:

A. *Minimum Tree Quantity and Size.* Unless as provided herein, a minimum of two (2) trees at least thirty six-inch box container size at the time of installation, and shall reach a minimum height of 22 feet at maturity in accordance with the Sunset Western Garden book, or similarly accepted industry standard reference guide. Smaller and/or larger trees may be required in the sole discretion of the town arborist where deemed necessary to meet the objectives of this Chapter and based on unique topography, soils, or other factors impacting the effect of the screening..

B. *Tree Planting Location.* All trees to be planted to implement this Section shall be located inwards towards the main residence, in reasonable proximity to the tower / architectural projection and planted such that views from neighboring properties are screened to the maximum extent feasible.

17.50.100 Protection of Heritage Trees.

Existing on-site and adjacent heritage trees shall be protected and compliance with chapter 8.10 (Removal of and Damage to Heritage Trees) of the town municipal code relating to heritage trees is required. Landscape screening plans shall identify the location, size and species of all existing heritage trees and their associated Tree Protection Zone (TPZ) within the construction zone and shall demonstrate all proposed new landscaping is located a minimum 3x TPZ away from each existing heritage tree. Each application shall include a tree preservation plan in accordance with the requirements of Chapter 8.10 of the Town Municipal Code to be implemented during construction.

17.50.110 Plant Coverage and Tree Sizes – Reduced Setbacks

Any projects subject to the provisions of this Chapter in accordance with Section 17.50.020 which include side and/or rear yard setbacks less than the base underlying zoning district, shall include landscape screening of the building or structure to the greatest extent feasible, and may include off-site planting on an adjacent property if neighboring property owners voluntarily agree to allow planting on their property.

17.50.120 Landscape Screening Plans.

All landscape screening plans shall, at a minimum, contain the all information as prescribed on the Town's Landscape Screening Checklist form provided by the Town Arborist.

17.50.130 Violation.

Each violation of this chapter shall constitute a public nuisance and be subject to abatement as such. When, in the opinion of the town arborist or his or her duly authorized representative, this chapter is not being complied with, the town arborist may issue a stop work order for all construction work on the entire site.

17.50.140 Appeals.

Any property owner applicant affected by a decision of an official hereunder may appeal such decision to the city council in accordance with the provisions of section 17.06.100 (Appeals) of this title.

SECTION 2: California Environmental Quality Act (CEQA) Finding.

This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Furthermore, this Ordinance is also exempt from the requirements of CEQA pursuant to Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

SECTION 3: Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 17.50, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 4: Effective Date and Publication.

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.

ATTACHMENT 1

Town of Atherton, a municipal corporation

Introduced this 15th day of June, 2022.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the 20th day of July, 2022 by the following vote:

MAYOR: _____

RICK DEGOLIA

ATTEST: _____

ANTHONY SUBER, CITY CLERK

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney