



Item No. 2 Town of Atherton

CITY COUNCIL STAFF REPORT – STUDY SESSION

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

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

DATE: FEBRUARY 2, 2022

SUBJECT: DISCUSSION OF THE TOWN’S MUNICIPAL CODE REGULATIONS
RELATIVE TO LANDSCAPE SCREENING AND POSSIBLE
AMENDMENTS RELATIVE TO STRUCTURES ON HILLSIDE LOTS
AND OTHER AREAS OF STUDY

RECOMMENDATION

It is recommended that the City Council receive a report from staff on the Atherton Municipal Code (AMC) regulations regarding landscape screening and possible amendments relative to landscape screening for structures on hillside lots and other areas of study.

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 (Attachment 2) 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 is seeking additional Council direction before presenting this item to the Planning Commission for further review and discussion as originally directed by the Council.

ANALYSIS

Existing Regulations

Chapter 17.50 “Landscape Screening” (Attachment 1) of the AMC governs landscape screening requirements for new construction, additions, and accessory building and structures over certain heights and at certain distances from property lines. The purpose is 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. This chapter requires plantings be of adequate size and spacing, with trees being a minimum of 24-inch box size and shrubs being a minimum of 15 gallon in size, and that such selected plantings will adequately screen within a period of five (5) years from date of issuance of building permit. However, the Ordinance does give discretion to the Town Arborist to require additional and/or larger plantings in order to achieve adequate landscape screening for the individual property. The requirement that such approved landscape screening plan will adequately screen within five (5) years, begins the day a permit is issued for a new building/structure. In the case of a development site that has multiple permits (such a permit for a main residence, permit for a pool house, permit for an ADU, permit for a detached covered patio, etc.), and in which permits may be issued at staggered times, the five (5) year deadline will begin at time of permit issued for the main residence, even if subsequent permits for other ancillary buildings/structures do not happen for some time after the main residence.

Approved landscape screening plans are required to be installed in conformance with the approved plans prior to the final inspection or issuance of a certificate of occupancy (unless delay is authorized by the Building Official). However, in the case of phased building construction, the Town Building Official may permit phased installation of landscape screening, and if the required landscaping is not installed prior to the final inspection, then a deposit and written agreement stating that all required landscaping shall be installed within six months, may be executed.

The Ordinance does not require landscape screening in the front of homes contiguous to a street, only along the sides and the rear. It also does not distinguish the specific type/species of plantings or reference an approved Town plant/tree list. The Town Arborist assesses each property, and its neighbors, existing physical landscaped condition(s) in reviewing for compliance of a landscape screening plan. There are no requirements specific to plantings on hillside lots where buildings may appear taller than actual height limits due to surrounding slopes¹.

Landscape Screening Topics for Discussion and Requested Direction

¹ Allowable development regulations for detached accessory buildings/structures are governed by Chapter 17.40 “Accessory Buildings and Structures” and Chapter 17.42 “Building Height and Measurement” of the AMC. Generally, such buildings/structures have the following setback requirements for a standard (non-corner) lot; 10 feet from side and rear property lines, and 120 feet from the front property line or 30 feet behind the front line of the main residence, whichever is less. Accessory buildings/structures have a maximum overall height of 15 feet, maximum sidewall height of 11 feet, with both measurements taken from Average Natural Grade (ANG). ANG is defined as, “...the average elevation of the natural grade ... along the perimeter of the building prior to any cut and fill.”

1. Hillside Screening

Concern has been expressed to staff on the visual massing impact for down sloped neighbors looking up at neighboring buildings/structures. These concerns have been largely limited to detached accessory buildings/structures which typically have a 10-foot side and/or rear setback requirement. Main residences are typically situated between 50 – 60 feet from a neighboring property so there is less concern. On a “hillside” lot, depending on the actual amount and percentage of slope, the resulting overall detached accessory building/structure height may appear taller than the allowed 15 feet (or up to 16 feet for an Accessory Dwelling Unit (ADU) which is discussed separately below) when viewed at a lower elevation.

The Zoning Ordinance does not have a defined hillside overlay district or other mapped, defined means of designating a sloped lot as a “hillside” lot. From a practical perspective, any lot in Town with sloped topography that could be of concern will typically exist west of Alameda de las Pulgas within Town boundaries. For reference, there are approximately 300 single family residential parcels west of Alameda.

Possible Ordinance Amendments:

- While the Zoning Ordinance has no regulations pertaining to hillside lots, the Subdivision Ordinance does have standards for new subdivisions – effectively the steeper the lot, the greater the minimum lot area, lot width and depth. Specifically, any lot proposing to subdivide with an average cross slope greater than 19.9% is required to have a larger lot of area, width and depth.

While implementation of the Landscape Screening Ordinance is not necessarily associated with a subdivision, the awareness of mitigating an impact from steeper sloped lots is vetted in existing Town policy and regulations through the Subdivision Ordinance.

The Town could consider amending the Landscape Screening Ordinance to include provisions requiring landscape screening plans to include the average lot cross slope which will assist staff during the plan check process in identifying lots with potentially problematic slopes. Subsequently, the Ordinance could be further refined to include a requirement that lots with an average cross slope greater than 19.9% (or some other defined percentage) would be considered “hillside lots” and as such, be required to have both a greater amount, and larger size of, screen plantings. It is recommended that any Ordinance amendments specific to hillside lots could specify minimum planting sizes somewhere between 36-inch to 48-inch box size.

- Others per direction of the City Council.

2. Specificity on Planting Types/Species and Sizes

The Town Arborist notes that most landscape screening applications propose only to plant shrubs (no trees), and the Arborist’s subsequent determinations primarily result in the requirement to plant tree(s) at a minimum 24-inch box size or larger in order to meet screening purpose and intent. Bushes are a better screening mechanism than trees, since trees have trunks, the bottom part of the tree does not provide screening. The largest bushes available

for purchase from nurseries is typically 24-inch box size. There are no requirements for some or all plants to be native to California or drought tolerant.

Possible Ordinance Amendments:

- The Town Arborist notes that the majority of screening within landscape screening plans is accomplished through the planting of shrubs, instead of trees because in most cases shrubs can grow faster and can be planted more compactly to provide more extensive screening. As such, the Arborist recommends a possible amendment to require an increased minimum size of shrub planting to be 24-inch box size (current requirement is a 15-gallon size).
- The Town Arborist has found that a project Landscape Architect will propose a landscape screening plan generally consistent with the overall architectural style of the site's development, and as such, the Arborist does not recommend that a Town-specified list of shrubs/trees be created. Instead, the Arborist recommends giving property owners more discretion as to the landscaping aesthetic. This will help avoid the planting of the same species throughout Town which could be problematic in the future if overtaken by a certain pest or disease which could be more likely to happen if a mono crop of species is planted. However, where suitable, the planting of California native and/or drought-tolerant plants could be appropriate, so it is recommended to include language strongly encouraging such native and/or drought resistant plantings where appropriate be considered.
- The Town Arborist has noted that landscape screening requirements could also benefit from amendment language that addressed existing trees. New screening within the dripline of existing trees may damage a tree through excavation for planting and/or irrigation, and irrigation levels, so by adding specific regulatory language within the Ordinance, such damage may be avoided in the future.
- Others per direction of the City Council.

3. Accessory Dwelling Units (ADUs)

Allowable development regulations for Accessory Dwelling Units (ADUs) are governed by Chapter 17.52; the intention is to provide for additional housing opportunities consistent with state law. Detached ADUs have a height limit of 16 feet, and rear and side yard setbacks for any ADU may be reduced to four feet – significantly less than the Town's minimum setback standards. Current Ordinance language for landscape screening of ADUs is noted "*shall be installed to the greatest extent feasible.*" In considering any objective landscape screening standards relative to ADUs, the Town should be sensitive that any such standards need to be "*sufficiently objective to allow ministerial review of an ADU and.... must not unduly constrain the creation of ADUs*" in accordance with State law.

Possible Areas to Evaluate:

- The Town Arborist has noted the challenges in developing a landscape screening plan that adequately meets the purpose and intent of the Landscape Screening Ordinance with

such a small, constrained area (i.e. within a 4-foot setback, or 4-foot clearance between a building and a fence). The Arborist notes that any planting/tree larger than 24-in box in size would not fit and further, could cause infrastructure and property line conflicts. However, the Arborist notes that including language recommending that landscape screening related to ADU's encouraging plantings of a 24-inch box size may assist in encouraging such developments to be cognizant and aware of attempting to address the purpose and intent of landscape screening, as well as assist in future implementation of the Ordinance.

- Others per direction of the City Council.

4. "Towers" / Vertical Architectural Projections

The Zoning Ordinance has a maximum allowable overall height of 30 feet and 22 feet for a sidewall for a main residence and further allows some minor exceptions to these height limits under certain criteria. Notably, on main buildings, architectural projections (e.g. towers) totaling no more than four hundred square feet in footprint area are allowed to extend from the main building to a maximum of twenty-eight feet to the sidewall and thirty feet to the roof top. The Town Arborist has noted some concerns in the ability to adequately screen these vertical, architectural projections during review of a landscape screening plan as those architectural details specifying whether or not a "tower"/vertical projection exists are not typically included.

Possible Areas to Evaluate:

- Trees of a larger box size, such as a 36" to 60" box, could be required for approved main residence plans that have approved, vertical architectural projections integrated into the design. Language could be also included which notes the location of such screening may be required to be situated more interior towards the lot (i.e. not just along a shared property line as typical) in order to best screen the massing and would be in addition to the standard landscape screening required for the main residence. Applicants could be notified of such requirement as a condition of approval early in the plan check stages, prior to any building permit issuance to allow time for a landscape screening plan to be developed.
- Others per direction of the City Council.

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 Ordinances of the AMC specific to attempting to mitigate aesthetic impacts of detached buildings and structures, ADUs, and tower/vertical architectural elements, to neighboring properties lots can 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

The cost associated with the preparation of the draft Ordinance amendments are included within the annual Planning Department budget. The cost to implement the Ordinance will be paid for the applicants of related development projects.

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.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item X has or has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)
- Tree Committee (meets each month)

ATTACHMENTS

1. AMC Chapter 17.50 “Landscape Screening”.
2. [City Council Staff Report January 13, 2021 – Study Session, Discussion of the Town’s Municipal Code Regulations Regarding Landscape Screening and Possible Municipal Code Amendments Relative Landscape Screening for Hillside Lots or Other Solutions](#) (*online link)

Chapter 17.50 LANDSCAPE SCREENING

Sections:

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.

17.50.080 Protection of Heritage Trees.

17.50.090 Violation.

17.50.100 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. (Ord. 582 § 1 (Exh. A) (part), 2009)

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.

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. (Ord. 582 § 1 (Exh. A) (part), 2009)

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. 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. (Ord. 582 § 1 (Exh. A) (part), 2009)

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. (Ord. 582 § 1 (Exh. A) (part), 2009)

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. (Ord. 582 § 1 (Exh. A) (part), 2009)

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. (Ord. 582 § 1 (Exh. A) (part), 2009)

17.50.070 Plant Coverage and Tree Sizes.

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:

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. All trees shall be at least twenty-four-inch box container size at the time of installation. Larger trees may be required in the sole discretion of the town arborist where deemed necessary to meet the objectives of this chapter. Fifteen-gallon trees or shrubs may be allowed at the discretion of the town arborist, when it can be shown that they will achieve the desired landscape screening requirements. (Ord. 582 § 1 (Exh. A) (part), 2009)

17.50.080 Protection of Heritage Trees.

Every reasonable effort shall be made to protect heritage trees during the course of construction. 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 all heritage trees within the construction zone. Each application shall include a tree preservation plan to be implemented during construction. (Ord. 582 § 1 (Exh. A) (part), 2009)

17.50.090 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. (Ord. 582 § 1 (Exh. A) (part), 2009)

17.50.100 Appeals.

ATTACHMENT 1

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. (Ord. 582 § 1 (Exh. A) (part), 2009)

The Atherton Municipal Code is current through Ordinance 646, passed October 21, 2020.

Disclaimer: The city clerk's office has the official version of the Atherton Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.atherton.ca.us/>

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[Code Publishing Company](#)