



## Item No. 16 Town of Atherton

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

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: GEORGE RODERICKS, CITY MANAGER**

**DATE: NOVEMBER 19, 2014**

**SUBJECT: INTRODUCTION AND FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CHAPTER 15.36 OF THE ATHERTON MUNICIPAL CODE RELATING TO SIGNS**

#### **RECOMMENDATION**

Introduce for first reading and waive future reading of an Ordinance of the City Council of the Town of Atherton amending Chapter 15.36 of the Atherton Municipal Code relating to Signs.

#### **BACKGROUND**

Amendments to the sign ordinance were presented to the City Council at the October 1 Study Session for discussion and feedback. Comments and discussion revolved around the size of the signage, removal period for construction signs, limitations for real estate open house events, and driveway and access visibility. Staff amended the sign ordinance based on comments from the Council.

#### **FINDINGS**

Amendments to the proposed ordinance based on comments include:

- 1) Expansion of Section 15.36.030 – Posting Generally

This section was expanded for clarity and consistency and is referenced in follow-up sections (i.e. construction signs and real estate signs). No signs of any height are allowed within ten (10) feet of any intersection or driveway, except where specifically permitted for flag lots and cul-de-sac frontage lots.

No signs are allowed within six (6) feet of the paved portion of any roadway.

The maximum sign height is limited to six (6) feet – inclusive of any support posts or fixtures.

The maximum square feet for any sign is limited to sixteen (16) square feet, including both sides where both sides of the sign are visible from the public road or right-of-way.

*The Council may wish to discuss this area of the ordinance to ensure a thorough understanding of its provisions. Staff has prepared some visuals along the sidewall of the Council Chambers for reference of a few dimensions.*

2) Amendment to Section 15.36.070(A) – Construction Signs

This section was amended as noted in No. 1 above and removal of these signs is set at fifteen (15) days after the sooner of either issuance of the final Certificate of Occupancy or the end of the Construction Time Limit.

3) Amendment to Section 15.36.070(B) – Real Estate Signs

This section was amended as noted in No. 1 above and with respect to temporary “open house” signs. Such signs are limited to open house events only and may be placed on Saturdays and Sundays only.

4) Amendment to Section 15.36.100 – Noncommercial Signs

This section was amended as noted in No. 1 above.

The new ordinance is far superior to the existing ordinance and comports with federal and state law. The new ordinance has been reviewed through the Town’s Builders Group as well as the Silicon Valley Association of Relators. Comments were considered from both groups. Staff recommends that the Council review and discuss the new ordinance and if appropriate, introduce the ordinance for first reading.

The City Attorney is present this evening and is prepared to address any issues related to the constitutionality of proposed regulatory measures.

**FISCAL IMPACT**

None.

**ATTACHMENTS**

- Attachment A – Current Chapter 15.36 – Signs
- Attachment B – Revised Chapter 15.36 – Signs
- Attachment C – Redline/Strikeout Version

ORDINANCE \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
ADOPTING A NEW CHAPTER 15.36, CREATING A NEW SIGN ORDINANCE

WHEREAS, current Chapter 15.36 of the Atherton Municipal Code regulates signs within the Town of Atherton; and

WHEREAS, that Chapter is not currently reflective of state and federal laws regarding regulation of signs at the local level; and

WHEREAS, staff recommends deletion of the current Chapter and replacement with a new Chapter 15.36 establishing a new Sign Ordinance for the Town.

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

SECTION 1: Current Chapter 15.36, SIGNS, is deleted, and in its place the following new Chapter 15.36 is adopted:

“Chapter 15.36

SIGNS

Sections:

- 15.36.001 Title.
- 15.36.002 Authority.
- 15.36.005 Purpose and Intent.
- 15.36.010 Compliance with regulations required.
- 15.36.020 Definitions.
- 15.36.030 Posting generally.
- 15.36.040 Commercial signs.
- 15.36.050 Signs on private property.
- 15.36.060 Signs on public right-of-way.
- 15.36.070 Restrictions applicable to specific uses (construction and real estate).
- 15.36.080 Maintenance—Notice to remove or alter.
- 15.36.090 Real Estate and construction signs—existing.
- 15.36.100 Noncommercial signs.
- 15.36.110 Billboard policy.

15.36.001 Title.

This Chapter shall be known as the Sign Ordinance of the Town of Atherton.

#### 15.36.002 Authority.

This Chapter is enacted pursuant to the City's general and police powers, California Constitution Article XI, Section 7; California Government Code Sections 65000 *et seq.*, 65850(b), 38774, and 38775; Business and Professions Code Sections 5200 *et seq.*, 5230, 5490 *et seq.*, 13530 *et seq.* and 13540; Penal Code Section 556 *et seq.*; and other applicable state laws.

#### 15.36.005 Purpose and Intent.

By adopting this Chapter, the City Council intends to create and implement a comprehensive system for the regulation of signs in a manner that does not prefer commercial speech over noncommercial speech and does not regulate noncommercial speech by, and serves governmental and public policy goals including: 1) preserving the Town's character as a scenic, rural, thickly wooded residential area with abundant open space; 2) accommodates the expression rights of the First Amendment to the U.S. Constitution and the corollary provisions of the California Constitution; 3) comports with all applicable principles of federal and state constitutional, statutory and administrative law; 4) serves the governmental and public interests in controlling visual clutter, community aesthetics, and safety of drivers, passengers, and pedestrians; 5) aids in the identification of properties and land uses; and 6) protects the natural beauty of the Town's open space.

#### 15.36.010 Compliance with regulations required.

It is unlawful for any person, firm or corporation to erect or maintain, or cause to be erected or maintained, any sign of any kind or character in violation of the provisions of this Chapter. Violation of this Chapter shall be punishable as set forth in Chapters 1.20 and 1.21 of the Atherton Municipal Code.

#### 15.36.020 DEFINITIONS.

"Billboard" means a sign which meets either or both of the following criteria: (1) the message display area, or any part thereof, is made available to message sponsors other than the owner(s) or operator(s) of the sign, typically for a fee or other consideration; (2) the sign is a principal or secondary use of the land, rather than appurtenant or accessory to some other principal use of the land.

"Construction site sign" means a temporary sign whose message pertains to identification of a building project located on the property where the sign is located.

"Free speech sign" means a sign displaying a non-commercial message.

"Incidental sign" means a sign that is minor and subordinate to another sign to which it is attached or connected.

“Informational sign” means a sign whose message provides functional or warning information to the viewer, such as “no trespassing” or “no solicitors”, underground utility notice, and similar messages.

“Non-commercial message” means a message concerning debate in the marketplace of ideas, in contrast to commercial message, which concerns a debate in the marketplace of goods and services. Non-commercial messages typically express views on topics such as politics, religion, protest, and opinions on the arts, sciences, and sports. This term includes messages urging a vote or support of a candidate or issue in an upcoming election.

“Political message” means a message on a sign that pertains to political views, including those urging a particular vote in an upcoming election.

“Real estate sign” means a sign whose message pertains to the sale, rental, exchange, lease or other economic transaction concerning real property. All signs mentioned in California Civil Code 713 are within this definition.

“Sign” means any name, figure, character, display, advertising device or any other thing of a similar nature used or intended to identify or attract attention, and shall include all parts, portions and materials comprising same. The following shall not constitute a sign:

1. Aerial banners towed behind aircraft;
2. Architectural features – decorative or architectural features of buildings (not including lettering, trademarks or moving parts), which do not perform a communicative function (examples include color stripes around a building);
3. Cornerstones and foundation stones not exceeding 4 square feet in area;
4. Historical monuments, plaques and tablets;
5. Holiday and cultural observance decorations displayed in season, including inflatable objects, on private residential property which are on display for not more than 45 calendar days per year (cumulative, per dwelling unit) and which do not include commercial messages;
6. Inflatable gymnasiums associated with legal residential uses – inflatable, temporary, moveable, gymnasium devices commonly used for children’s birthday parties, and similar devices (also called “party jumps” or “bounce houses”);
7. Interior graphics – visual communicative devices that are located entirely within a building or other enclosed structure and are not visible from the exterior thereof;
8. Mass transit graphics – graphic images displayed on duly licensed and authorized mass transit vehicles that legally pass through the city;

9. Personal appearance: makeup, masks, wigs, costumes, jewelry, apparel and the like;

10. Safety warnings on motorized or electrified equipment;

11. Symbols embedded in architecture – symbols of non-commercial organizations or concepts including, but not limited to, religious or political symbols, when such are permanently integrated into the structure of a permanent building which is otherwise legal, by way of example and not limitation, such symbols include stained glass windows on churches, carved or bas relief doors or walls, bells and religious statuary;

12. Vehicle and vessel insignia – on street legal vehicles and properly licensed watercraft: license plates, license plate frames, registration insignia, non-commercial messages, messages relating to the business of which the vehicle or vessel is an instrument or tool (not including general advertising) and messages relating to the proposed sale, lease or exchange of the vehicle or vessel.

13. Vending machines, automated intake devices and product dispensing devices which do not display off-site commercial messages or general advertising messages;

“Small sign” means a sign not exceeding 2 square feet in size;

“Temporary sign” means a sign whose physical nature is not appropriate for, or intended for, long term display; such signs are typically made of lightweight or flimsy materials, and are installed or mounted with ordinary hand tools, or is intended to be on public display for not more than 60 days.

15.36.030 Posting generally.

It is unlawful for any person, firm or corporation, except a public officer or employee in performance of a public duty, to paste, post, nail, tack or otherwise affix any card, banner, handbill, sign, poster, advertisement or notice of any kind, or cause the same to be done, on any public curbstone, lamppost, pole, hydrant, bridge, wall, fence, fence post, utility pole, or tree upon any public sidewalk, street, alley or other public place, except as required by law. This provision shall not prohibit placement of free speech signs in the public right-of-way as long as they are legally located and fixed to the ground.

All signs shall be posted in an appropriate place and manner in compliance with the provisions of this Chapter. No sign placed in the public right-of-way shall impede the flow of pedestrians or interfere with vehicle line of sight, or in any way create an unsafe condition.

Signs of any height shall not be located within 10 feet of any intersection or any driveway intersection with any street, or in any other location specifically not allowed in this

Chapter except as permitted in Section 15.36.060 regarding flag lots and cul-de-sac frontage lots. Signs greater than 4 feet in height shall not be located within 20 feet of any intersection or any driveway intersection with any street, or any other location specifically not allowed in this Chapter except as permitted in Section 15.36.060 regarding flag lots and cul-de-sac frontage lots. In no case shall signs be placed within 6 feet of the paved portion of any roadway. The maximum sign height, including any support posts or fixtures, shall be 6 feet.

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The sign may not exceed 16 square feet in size in total including both sides where both sides of the sign are visible from a public road or right-of-way.

Signs may be located on private property with permission of the owner or in the public right-of-way as restricted in 15.36.060. No sign may be posted in Holbrook Palmer Park, including adjacent to roadways in and around the Park, except for governmental signs posted by the Town.

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Signs placed in violation of this Chapter may be removed by Town personnel and stored. Any signs not claimed within 30 days AFTER NOTICE TO THE OWNER may be discarded or destroyed.

#### 15.36.040 Commercial signs.

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It is unlawful for any person, firm or corporation to erect, construct, install or maintain, or to cause or permit to be erected, constructed, installed or maintained, any commercial signs of any kind upon any private property, public sidewalk, street, alley, public right-of-way, public park, or other public place, except as required by law, or as allowed herein.

#### 15.36.050 Signs on private property.

No signs shall be permitted on private property except as set forth in this section. Permitted signs include: (1) political or free-speech signs, (2) address numbers, (3) construction site signs as set forth below, (4) real estate signs, (5) official non-commercial items such as flags of national, state, or local governments (6) historical plaques, memorials, building cornerstones and date-constructed stones none of which exceed 4 square feet in area, (7) small signs otherwise in compliance with the duration, number and size requirements of this chapter that display functional information such as prohibition of trespassing or soliciting, video surveillance warnings, or similar informational signs, and identification signs at entrances of properties located in the PFS (Public Facilities and Schools District) Zone not to exceed 150 square feet in size and approved by the Town Planner for compliance with the provisions of this Chapter. Incidental signs such as those displayed on licensed construction vehicles, construction trailers, portable toilets, and construction fences, and internal signs on premises in PFS Districts not visible from the adjacent public right-of-way, or similar applications are also permitted.

15.36.060 Signs on public right-of-way.

No signs shall be permitted in the public right-of-way except as set forth in this section. Permitted signs include: (1) political or free-speech signs as set forth below, (2) temporary real estate or construction signs as set forth below, (3) government signs for traffic, safety, street identification, government services, emergency services, historical locations, Town-sponsored events, or governmental signs authorized by the Town, (4) required signs such as official notices required by law, a court, or other government agency, and (5) any signs and structures which by tradition or designation are used for the purpose of communication by the general public, such as public kiosks, bulletin boards, benches upon which advertisement or recognition is authorized, and newspaper racks, provided that such structures shall have been placed in the right-of-way and approved by the Town.

No sign, other than government signs set forth in (3) above, may be placed in the right-of-way within 6 feet of the paved portion of any roadway. No signs of any height shall be located within 10 feet of any driveway intersection with any street, or in any other location specifically not allowed by this Chapter. Signs greater than 4 feet in height shall not be located within 20 feet of any intersection or any driveway intersection with any street. In the case of a flag lot or cul-de-sac frontage lot, a sign shall be permitted in a location approved by the Town that limits any interference with sight lines to and from the driveway intersection. No sign in the right-of-way shall impede the flow of pedestrians or interfere with vehicle line of sight.

**Deleted:** , or within 30 feet of any intersection or any driveway intersection with any street, or in any other location specifically not allowed in this chapter.

15.36.070 Restrictions applicable to specific uses (construction and real estate).

A. Construction site signs.

Temporary signs are permitted on construction sites as follows: one sign for each property for which an active building permit exists on the property where the construction is occurring, including on any fence bordering on a street or public right-of-way.

Construction site signs shall comply with the general provisions for signs set forth in section 15.36.030.

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Such signs must include the numerical street number for the site in contrasting type face not less than 4 nor more than 8 inches in height unless such numbers already exist on the property and are readily visible from the street, contact information including the telephone number for the person responsible for the site during construction such as the general contractor, if any, and may include the name, address, and phone number of related construction, architectural, and financial firms.

All information must be contained within the borders of the sign and no additional signs may be appended to this one permitted sign. The maximum sign area does not include

**Deleted:** The sign may not exceed 16 square feet in size in total including both sides where both sides of the sign are visible from a public road or right-of-way.

any support posts or decorative projections of the post or rails, but the posts or rails may not have any additional signage appended to them.

**Deleted:** The maximum sign height shall be 67 feet.

Construction site signs shall be temporary in nature, and must be removed within 15 days after issuance of the Final Certificate of Occupancy or the end of the Construction Time Limit, whichever is sooner.

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#### B. Real Estate signs.

Real Estate signs are permitted as follows: one sign for each property that is then currently for sale, lease, or rent, either on the property or in the public right-of-way.

Real Estate signs shall comply with the general provisions for signs set forth in section 15.36.030.

No sign in the right-of-way shall impede the flow of pedestrians or interfere with vehicle line of sight. Such sign must be on or immediately adjacent to the property that is for sale.

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No Real Estate sign shall be affixed to trees or shrubs, nor be illuminated directly or indirectly.

**Deleted:** Real Estate signs may not exceed 916 square feet in size in total including both sides where both sides of the sign are visible from a public road or right-of-way. All information must be contained within the sign and no additional signs may be appended to this one permitted sign. The maximum sign area does not include any support posts or decorative projections of the post or rails, but the posts or rails may not have any additional signage appended to them. The maximum sign height shall be 67 feet.¶

Temporary “open house” freestanding signs may be used in conjunction with a Real Estate sign when the premises for sale, lease, or rent is occupied by a real estate professional who is authorized to show the property, with no more than 2 such open house signs located at the nearest intersections to the property and 1 such sign located at the property being offered for sale. Such off-site signs shall be kept to the minimum necessary to direct the public to the site of the open house showing and may be used only on the day the of the open house event. Temporary “open house” freestanding signs are limited to open house events only and may be placed on Saturdays and Sundays only.

#### 15.36.080 Maintenance—Notice to remove or alter.

All signs, including signs installed prior to the adoption of the ordinance codified in this chapter, shall be constantly maintained in a state of security, safety and good repair. If the building inspector or other Town enforcement official finds that any sign is unsafe or insecure, or a menace to the public safety, or has been constructed, erected, relocated or altered after the effective date of the ordinance codified in this chapter in violation of the provisions of this Chapter, then the official shall give written or hand-delivered notice to the owner or the tenant of the property to remove or alter such sign to bring about compliance with this Chapter. If the owner or tenant fails to comply with the provisions of this Chapter within one day after such notice is received, the official may cause such sign to be removed and the cost thereof be paid by the owner or tenant. The official may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice, and in such case, the official will make reasonable efforts to notify the sign owner of the removal and offer the opportunity for the owner to reclaim the sign upon payment of the reasonably estimated cost of removal.

15.36.090 Real Estate and Construction site signs—Existing.

All existing real estate and construction site signs which complied with the provisions of Chapter 15.36 as of the date it was last amended shall be permitted to remain upon the site on which they are located until January 31, 2015, without having to comply with the revised provisions of this Chapter with respect to such signage, however after that date all such signs shall immediately comply with the location provisions of this revised Chapter 15.36.

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15.36.100 Noncommercial signs.

Noncommercial signs, including those expressing political views and those encouraging a particular vote in an upcoming election, shall be permitted but subject to the following regulations:

1. Such signs shall comply with the general provisions for signs set forth in section 15.36.030.

2. Signs shall not be illuminated either directly or indirectly.

Deleted: shall not be posted or affixed upon any public lamppost, pole, curbstone, trees, fences, fence posts, or public utility poles. Noncommercial signs shall not be placed, on any roof or vehicle top or open bed of any truck. Noncommercial signs shall not be , or located within 6 feet of the paved portion of any roadway. Noncommercial signs of any height shall not be placed within 10 feet of any intersection or any driveway intersection with any street, or in any other location specifically not allowed in this Chapter. Signs greater than 4 feet in height may not be placed or within 230 feet of any intersection or any driveway intersection with any street, or in any other location specifically not allowed in this Chapter. No sign in the right-of-way shall impede the flow of pedestrians or interfere with vehicle line of sight.

15.36.110 Billboard Policy.

Billboards are prohibited in all zones, and on all property, private and public.”

SECTION 2: Any and all provisions of the Atherton Municipal Code in existence at the time of adoption of this new Sign Ordinance that conflict with any provision of this new Chapter 15.36 shall be deemed to be superseded by this action. It is the express intent of the City Council that the terms and provisions of the new Chapter 15.36 shall take precedence over any contrary language in any other Chapter of the Atherton Municipal Code.

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Introduced this \_\_\_\_ day of \_\_\_\_\_, 2014.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

Deleted: 3. Such signs may be located on private property with permission of the owner or in the public right-of-way as restricted in 15.36.060 above. No noncommercial signs may be posted in Holbrook Palmer Park, including adjacent to roadways in and around the Park, except for governmental signs posted by the Town

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AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

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Cary Wiest, Mayor

ATTEST:

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Theresa DellaSanta, Deputy City Clerk

APPROVED AS TO FORM:

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William B. Conners, City Attorney