



## Item No. 17 Town of Atherton

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

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

**FROM:** WILLIAM B. CONNERS, CITY ATTORNEY

**DATE:** September 10, 2019

**SUBJECT:** WAIVE THE FIRST READING AND INTRODUCE BY TITLE ONLY, AN ORDINANCE REVISING ATHERTON MUNICIPAL CODE CHAPTER 15.40.190 REMOVING THE CAP ON MAXIMUM PENALTIES THAT CAN RESULT FROM VIOLATION OF THE CONSTRUCTION TIME LIMIT PROVISION

#### **RECOMMENDATION**

Waive the first reading and introduce by title only, an Ordinance amending Chapter 15.40.190 of the Atherton Municipal Code removing the existing maximum amount (cap) of any penalty applied in accordance with the provisions of the Construction Time Limit provision set forth in AMC §§15.40.160 through 15.40.220.

#### **BACKGROUND**

The current Construction Time Limit provision as set forth in AMC §§15.40.160 through 15.40.220 provide time limits in which to complete construction of structures requiring building permits to limit the amount of construction nuisance to be shouldered by neighbors close to such construction. In Chapter 15.40.190 a table is set forth which establishes penalties to be applied to building projects that exceed the maximum time limits of the provision. At the present time, the maximum penalty applied at \$1,000 per day is the cap of \$250,000. On several occasions, the cap amount was reached well in advance of the completion of the project. The purpose of the penalty is to incentivize owners to complete projects as quickly as possible, and to penalize in a meaningful way those that fail to complete their construction in a timely manner. With this philosophy, a cap on the maximum penalty that can accrue is not consistent with the objectives of the ordinance, since the level of nuisance from the construction itself continues until the project is completed.

#### **ANALYSIS**

Construction Time Limit (CTL) regulations were adopted in 2006 in response to community concerns over the length of construction projects. Since 2015, there have been a total of thirteen

(13) projects that have exceeded the time limit where deposits were collected and forfeited, totaling \$538,800. Since the adoption of the Ordinance in 2006, there has been one extension granted by staff. Presently, there is \$780,000 in CTL deposits collected on projects not finalized that could result in a forfeiture in 2019.

### **POLICY FOCUS**

Staff suggests the Council focus on the purpose of the penalty, and the fact that the underlying construction nuisance continues until finished; and, deciding whether the penalty should continue uncapped until such time as the construction ceases.

### **FISCAL IMPACT**

Approval of the Ordinance will result in increase in penalty amounts where time limits are exceeded for lengthy periods without just cause. The removal of the cap will apply prospectively only – applicable to new projects that obtain building permits after the effective date of the ordinance.

### **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 \_\_\_ has or  X  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)

### **ATTACHMENTS**

1. Draft Ordinance

ORDINANCE \_\_\_\_

**ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AMENDING ATHERTON MUNICIPAL CODE CHAPTER 15.40.190,  
CONSTRUCTION TIME LIMIT PENALTIES**

WHEREAS, current Chapter 15.40.190 of the Atherton Municipal Code establishes a system of imposing penalties in situations where a property owner fails to complete construction by the applicable time limit established in this Chapter; and

WHEREAS, this Chapter sets forth penalties for periods of time that the project remains incomplete beyond applicable time limits set forth in a table therein; and

WHEREAS, the penalties as they currently exist are capped at a maximum penalty of \$250,000, and staff believes that this cap should be removed given the size and value of homes covered by the construction time limits; and

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

SECTION 1: The current table set forth in Chapter 15.40.190, Penalties, is revised by removing the words “(to a maximum of \$250,000.00)” from the text therein.

SECTION 2: Remaining provisions of Chapter 15.40.190 shall remain in full force and effect.

Introduced this 18th day of September, 2019 during the public meeting of the City Council and had its second reading ad was passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of October, 2019, by the following vote:

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

ATTEST:

\_\_\_\_\_  
William Widmer, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony Suber, City Clerk

\_\_\_\_\_  
William B. Conners, City Attorney