



# TOWN OF FAIRFAX

## STAFF REPORT

### March 2, 2016

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager *GT*

**SUBJECT:** Introduction and first reading by title only of an ordinance amending Chapter 12.44 ("Street Trees and Shrubs") of the Town Code

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#### **RECOMMENDATION**

Introduce and waive first reading and read by title only An Ordinance of the Town Council of the Town of Fairfax Amending Chapter 12.44 ("Street Trees and Shrubs") of the Town Code.

#### **DISCUSSION**

This amendment is proposed to provide more clarity regarding the liability of owners of property abutting the sidewalk area. Under existing Town Code, property owners are responsible for maintaining sidewalks and landscaping fronting their properties regardless if the Town initially installed the improvements and/or landscaping. The Town would only be required to maintain the sidewalk if it can be demonstrated that the Town both installed the sidewalk and landscaping and continued to maintain the landscaping causing the damage. The proposed amendment also provides for more consistency within the Chapter. For the Council's convenience, attached is a redline of the existing Town Code Chapter 12.44.

If introduced tonight, the ordinance will come back for a second reading and possible adoption at the Council's April meeting.

#### **FISCAL IMPACT**

None

#### **CEQA**

Exempt from the California Environmental Quality Act per 14 CCR 15061(b)(3), as it can be shown with certainty that the action will have no adverse significant effect on the environment.

#### **ATTACHMENT**

1. Ordinance No. \_\_\_
2. Redline of Town Code Chapter 12.44

AGENDA ITEM # 10

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
AMENDING CHAPTER 12.44  
("STREET TREES AND SHRUBS") OF THE TOWN CODE

**WHEREAS**, the Town regulates the maintenance of street trees and shrubs within the Town through Chapter 12.44 ("Street Trees and Shrubs") of the Town Code; and

**WHEREAS**, Section 12.44.020 of the Town Code ("Trees – Property Owner Maintenance Responsibility and Duty to Public") provides for the imposition of a duty on the owner of property abutting the sidewalk area to maintain trees, shrubs, hedges or other landscaping in such area in a safe and non-dangerous condition; and

**WHEREAS**, Section 12.44.030 ("Maintenance and Repair of Sidewalks") of the Town Code provides for the imposition of a duty on the owner of property abutting the sidewalk area to maintain the sidewalk in such area in a safe and non-dangerous condition; and

**WHEREAS**, Section 12.44.040 of the Town Code ("Liability for Injuries to Public") provides for the imposition of liability on the owner of property abutting the sidewalk area for damages and injury to members of the public for failure to maintain the sidewalk area in a safe and non-dangerous condition; and

**WHEREAS**, the Town of Fairfax now desires to clarify the liability of the owner of property abutting the sidewalk area to members of the public for failure to maintain the sidewalk;

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

**SECTION 1:** Subdivision (E) of Section 12.44.020 of the Town Code is hereby amended to read as follows:

"(E) The requirements of this section shall not apply to any sidewalk damaged by any tree, shrub, hedge or other landscaping installed and maintained by the Town of Fairfax."

**SECTION 2:** Subdivision (D) of Section 12.44.030 of the Town Code is hereby amended to read as follows:

"(D) The requirements of this section shall not apply to any sidewalk damaged by any tree, shrub, hedge or other landscaping installed and maintained by the Town of Fairfax."

**SECTION 3:** Section 12.44.040 of the Town Code is hereby amended to read as follows:

"The property owner of a lot or portion of a lot fronting on or adjacent to any portion of a street or any portion of a sidewalk area between the property line of the lot and the street line, and any person in possession of such lot by virtue of any permit or right, shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any

property owner or person in possession of the property, to maintain the sidewalk area in a non-dangerous condition, any person suffers injury or damage to person or property, the property owner or person in possession of the property shall be liable to such person for the resulting damages or injury. The requirements of this section shall not apply to any sidewalk damaged by any tree, shrub, hedge or other landscaping installed and maintained by the Town of Fairfax.”

**SECTION 4:** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 2<sup>nd</sup> day of March 2016, and duly adopted at the next regular meeting of the Town Council on the \_\_\_ day of \_\_\_\_\_, 2016, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Renée Goddard, Mayor

Attest:

\_\_\_\_\_  
Michele Gardner, Town Clerk

\_\_\_\_\_  
Date

## REDLINE CHAPTER 12.44: STREET TREES AND SHRUBS

### § 12.44.010 PERMIT REQUIRED TO CUT OR TRIM.

It is unlawful for any person to cut, girdle, trim, top, disfigure, remove, destroy or in any manner injure or to cause to be cut, girdled, trimmed, topped, disfigured, removed, destroyed or in any manner injured or to aid or assist in cutting, girdling, trimming, topping, disfiguring, removing, destroying or in any manner injuring a tree, shrub or plant growing or standing upon any street sidewalk, lane, alley or public park or place within the town without first having obtained a written permit from the Town Council to do so.

(Prior Code, § 12.44.010)

### § 12.44.020 TREES - PROPERTY OWNER MAINTENANCE RESPONSIBILITY AND DUTY TO PUBLIC.

(A) The owner of a lot fronting on or adjacent to any portion of a street shall maintain any trees, shrubs, hedges or other landscaping along said street or within the street right-of-way adjacent to his or her property in such non-dangerous condition that the trees, shrubs, hedges or other landscaping will not interfere with the public convenience or safety in the use of the streets and sidewalks. Said owners shall maintain such street trees so that there is a minimum eight-foot vertical pedestrian clearance from the top of the sidewalk and a minimum thirteen-foot vertical clearance from the top of the curb or the edge of pavement if no curb exists, to any part of a street tree.

(B) For purposes of this part, maintenance of trees, shrubs, hedges and other landscaping includes but is not limited to: deep root altering, root pruning, installing root barriers, clearance and structural trimming, fertilizing, pest control, and removal of branches, leaves and other debris.

(C) Property owners required by this section to maintain trees, shrubs, hedges and other landscaping shall owe a duty to members of the public using public streets and sidewalks to maintain such trees, shrubs, hedges or other landscaping in compliance with provisions under this title in a safe and non-dangerous condition for users of the public streets and sidewalks.

(D) If any fronting or adjacent property owner fails to maintain any adjacent trees, shrubs, hedges or other landscaping in a non-dangerous condition as required by this section, and any person suffers damage or injury to person or property, the fronting or adjacent property owner shall be liable for all damages or injuries caused by the failure of the owner to maintain these areas.

~~(E) The requirements of this section shall not apply with respect to any trees, shrubs, hedges and other landscaping installed and maintained by the Town of Fairfax. The requirements of this section shall not apply to any sidewalk damaged by any tree, shrub, hedge or other landscaping installed and maintained by the Town of Fairfax~~

(Ord. 713, passed 9-7-2005)

### § 12.44.030 MAINTENANCE AND REPAIR OF SIDEWALKS.

(A) The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefor.

(B) For the purpose of this chapter, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal of impervious paving materials from street tree planting strips, or other right-of-way landscape planters, removal of weeds and/or debris, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including planting strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of said sidewalk area.

(C) Anything in this chapter to the contrary notwithstanding, with respect to maintenance and repair of sidewalk areas and the making, confirming and collecting of assessment for the costs and expenses of said maintenance and repair, the town may proceed under the provisions of Cal. Streets and Highways Code Division 7, Part 3, Chapter 22 as the same is now in effect or may hereinafter be amended. Should the town choose to proceed under Cal. Streets and Highways Code Division 7, Part 3, Chapter 22, notwithstanding the provisions of Cal. Streets and Highways Code § 5614, the Director of Public Works may, in his or her discretion, and for sufficient cause, extend the period within which required maintenance and repairs of sidewalk area must commence by a period not to exceed 74 days from the time the notice referred to in Cal. Streets and Highways Code § 5614 is given. Costs recoverable by the town may include a charge for the Town of Fairfax's costs of inspection and administration whenever the town awards a contract for such maintenance and repair and including the costs of collection of assessment for the costs of maintenance and repair or the handling of any lien placed on the property due to the failure of the property owner to promptly pay such assessments.

~~(D) The requirements of this section shall not apply with respect to any sidewalks damaged by any trees, shrubs, hedges and other landscaping installed and maintained by the Town of Fairfax. The requirements of this section shall not apply to any sidewalk damaged by any tree, shrub, hedge or other landscaping installed and maintained by the Town of Fairfax~~  
(Ord. 713, passed 9-7-2005)

#### **§ 12.44.040 LIABILITY FOR INJURIES TO PUBLIC.**

The property owners of lots or portions of a lots fronting on or adjacent to any portion of a street or any portion of a sidewalk area between the property line of the lots and the street line, and any persons in possession of such lots by virtue of any permit or right, shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner or person in possession of the property, to maintain the sidewalk areas in a non-dangerous condition, any person suffers injury or damage to person or property, the property owner or person in possession of the property shall be liable to such person for the resulting damages or injury. ~~The requirements of this section shall not apply with respect to any sidewalks installed by the Town of Fairfax or damaged by any trees, shrubs, hedges and other landscaping installed and maintained by the Town of Fairfax.~~  
(Ord. 713, passed 9-7-2005)