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Clarification sought regarding Landscaping in the Right-of-Way Ordinance

By Vera Kochan

In order to reduce confusion regarding landscaping responsibilities of Moraga's property owners, the town staff has requested council members to amend an ordinance with respect to trees, shrubs, hedges and other landscaping in the public right-of-way.

A prior June 10, 2020 clarification ordinance apparently had some gray areas involving two sentences about sidewalks and public right-of-way that were subject to misinterpretation by the public.

According to Public Works Director/Town Engineer Shawn Knapp's staff report during the Sept. 28 town council meeting, "In one case, a property owner has contended to the MOFD [Moraga-Orinda Fire District] Board that one side of their property does not affront a sidewalk or pathway because their sidewalk area does not contain a hardscaped sidewalk; thus, they have no responsibility to maintain the 'sidewalk area'. To clarify this misunderstanding, the staff recommends adding a Sidewalk Area definition."

The report cites another instance whereby "a property owner has contended that the town is responsible for the maintenance of the shrubs and trees in the Public ROW affronting their property that were replaced during a public works project completed by the Town or a utility company that may have occurred after the installation of underground improvements. The Town's position for these situations is if the Town, contractor, or utility company disturbed a Public ROW area maintained by property owner(s), this party should restore the area, but this party does not assume maintenance responsibilities indefinitely. This is analogous to work within the street pavement where contractors and utility companies have underground facilities like pipes beneath portions of paved streets within the Public ROW."

The proposed ordinance would help to clarify certain sections of the Moraga Municipal Code by detailing the definition of "Abutting property owner;" "Public ROW;" and "Sidewalk Area."

Town Manager Cynthia Battenberg explained that because these two little sentences are causing residents to appeal their responsibility to undertake work, they have become an issue for the fire district's fire prevention efforts, "so [the district] asked us to clarify these two issues. One is to make sure that the sidewalk definition doesn't actually require a sidewalk; and the other is to make sure that in instances where a utility or other company has come in and done a public works improvement that that improvement now returns to the responsibility of the property owner."

With a 3-2 vote (Mayor Steve Woehleke and Council Member Mike McCluer voting against), the council approved the waiving of the first reading of a language clarification to an ordinance revision.

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[back](#)

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