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3 **ORDINANCE NO: O-2016-66**

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5 **AN ORDINANCE AMENDING CHAPTER 12.11 OF TITLE 12 OF THE ALAMEDA**
6 **COUNTY GENERAL ORDINANCE CODE**
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8
9 The Board of Supervisors of the County of Alameda ordains as follows:
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11 **SECTION I**
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13 The Board of Supervisors of the County of Alameda ordains that Chapter 12.11
14 shall be amended to read as follows:
15

16 **Chapter 12.11**
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18 **REGULATION OF TREES IN COUNTY RIGHT-OF-WAY**
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20 The County Board of Supervisors finds that the preservation of trees within
21 the right-of-way enhances the natural scenic beauty, sustains the long term
22 potential increase in property values, protects the surrounding area from soil
23 erosion, moderates the effects of extreme weather conditions and temperatures,
24 improves air quality including increasing the oxygen output of the area which is
25 needed to combat air pollution, creates the identity and quality of the County's
26 businesses and residences, and improves the attractiveness of the County to
27 visitors.
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29 The Board of Supervisors finds that to avoid future maintenance problems,
30 minimize conflicts with infrastructure, and prevent impediments to pedestrian,
31 motorized, and non-motorized traffic, it is necessary to regulate tree planting in
32 the right of way.
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34 The Board of Supervisors finds that establishing and maintaining appropriate
35 diversity in tree species and age classes leads to a more robust and sustainable
36 urban forest.
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38 For these reasons, the Board of Supervisors finds that in order to promote the
39 public health, safety and general welfare of the County, while at the same time
40 recognizing individual rights to develop private property in a manner which will
41 not be prejudicial to the public interest, it is necessary to enact this Chapter to
42 preserve trees located within the right-of-way and to control the planting,
43 maintenance and removal of those trees.
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45 This Chapter may be referred to collectively as the County’s “Tree
46 Ordinance.”

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48 **12.11.100 Definitions.**

49 As used in this Chapter, the following terms, phrases and words are assigned
50 the following meanings unless the context indicates otherwise. Words not
51 defined in this Chapter shall have the definitions set forth in Section 12.08.020 of
52 Chapter 12.08 of the County’s General Ordinance Code. Other words not
53 defined herein or in Section 12.08.020 shall be given their common ordinary
54 meaning.

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56 **a. Right-of-Way.** “Right-of-way” means land, which by deed, conveyance,
57 agreement, dedication, usage or process of law is reserved for use as a public
58 roadway. For the purpose of this chapter, the right-of-way shall include not only
59 the surface of the roadway and the earth beneath the roadway, but also all
60 facilities and natural features located across, along, beneath, in, on, over, under,
61 upon and within the roadway.

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63 **b. Day or Days.** Unless otherwise specified, “day” refers to a calendar day
64 and “days” refers to calendar days.

65
66 **c. Director.** “Director” refers to the Director of the Alameda County Public
67 Works Agency or his or her designee. The Director is authorized to promulgate
68 rules, regulations, and policies for the administration and implementation of this
69 Chapter. The Director shall also have the authority to interpret such rules,
70 regulations, and policies.

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72 **d. Dripline.** “Dripline” or “dripline area” refers to the area surrounding the tree
73 trunk whose outer perimeter is defined by the unaltered length of the outermost
74 branch tips.

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76 **e. Maintenance or Maintaining.** “Maintenance” or “maintaining” includes all
77 actions affecting or which may affect the growth or health of any tree such as, by
78 way of example and not limitation, the cutting, trimming, pruning, or growth
79 regulation of any tree. However, as used in this Chapter, “maintenance” does
80 not include the trimming, pruning, cutting or removal of tree branches one inch or
81 less in diameter.

82
83 **f. Pollarding.** “Pollarding” is specialty pruning in which a tree with a large-
84 maturing form is kept relatively short. Starting on a young tree, intermodal cuts
85 are made at a chosen height, resulting in the development of callous knobs at the
86 cut height. Pollarding requires regular (usually annual) removal of the sprouts
87 arising from the cuts.

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g. Pruning. “Pruning” involves removing branches (or occasionally roots) from a tree using approved practices to achieve a specified objective. Topping and attempted pollarding of mature trees are not proper pruning methods, and are not acceptable practices.

h. Recommended Tree List. The “Recommended Tree List” is a County-approved list of suitable tree species from which selection can be made to plant trees in the right of way.

i. Topping. “Topping” is excessive reduction of tree size by cutting live branches and leaders to stubs, without regard to long-term tree health or structural integrity. Topping is not an acceptable practice.

j. Tree or Trees. “Tree” or “trees” shall mean a woody perennial plant with a single or multiple trunks which typically develop a mature size of over seven inches in diameter and ten or more feet in height. For the purposes of this chapter, Palms, Yuccas, and any plant required to be planted as a replacement tree shall be considered trees.

k. Tree Advisory Board. “Tree Advisory Board” is a five-member board comprised of citizens of the County who are appointed by the Board of Supervisors. One appointment will be made by each member of the Board of Supervisors. Each Tree Advisory Board member shall serve a term of 24 months subject to re-appointment. Should the term expire prior to re-appointment, the existing member shall continue to serve until such appointment is made. The Tree Advisory Board shall be an advisor to the Director, shall assist the Director in making policy decisions related to this Ordinance, including as to the Tree Manual, shall hear certain appeals and conduct certain hearings as provided in this Chapter, and shall advise the Director on recommending action to the Board of Supervisors where the administrative remedies established herein may not fully redress the injury to trees in the County right-of-way.

l. Tree Manual. “Tree Manual” means a document prepared by the Public Works Agency that states policies, procedures and other relevant information regarding the selection, planting, maintenance and removal of trees located in the right-of-way.

m. Utility or Utilities. “Utility” or “utilities” means any person who owns, leases, operates or licenses a facility in order to provide gas, water, electricity, sewer, telecommunications, cable television or other customer services regardless of whether such a person is deemed a public utility by the California Public Utilities Commission (CPUC).

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12.11.110 Protection of Trees

A. In accordance with the California Government Code, Section 53067, no person shall top, head back, stub or pollard any tree located within the right-of-way. A tree that has been pollarded in the past may continue to be pollarded in the future so long as the property owner obtains the Director’s prior, written approval.

B. No person shall attach or keep attached to any tree located within the County right-of-way or to the guard or stakes intended for the protection of such a tree, any rope, wire, nails, tacks, staples, advertising posters, or any other material or item. This Section shall not apply to staking or other material used to secure a tree.

C. No person shall cause or allow any poison or other substance harmful to trees to lie, leak, pour, flow or drip upon or into the soil within the dripline of any tree located within the right-of-way.

D. No person shall set fire to or permit any fire to burn when such fire or heat therefrom will injure or damage any tree located within the right-of-way.

E. No person shall operate any device or equipment, such as mechanical weeding devices, in such a manner as to injure or damage any tree located within the right-of-way.

F. If any construction, repair work or other similar activity is proposed in an area adjacent to or in the right-of-way, the property owner shall take all necessary measures prior to and during the work to protect any tree located in the right of way. The costs of any such protection is the sole responsibility of the property owner and the person or entity performing the work.

12.11.120 Tree Planting, Maintenance, and Removal Responsibilities And Requirements

A. The planting, maintenance, removal, or replacement of any tree located in the right-of-way between the private property line and the edge of the paved street shall be the responsibility of the adjacent property owner on whose frontage the tree is located irrespective of who planted said tree. It is a public nuisance for such property owners to fail to maintain, to injure, to improperly remove or improperly fail to remove, or to conduct unauthorized planting of trees in the right-of-way. The adjacent property owner shall bear all costs of such planting, maintenance, removal, and replacement and shall restore the right-of-way if the

174 right-of-way is disturbed in the course of such planting, maintenance, removal, or
175 replacement.

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177 B. The Director shall have the authority to monitor, inspect, maintain, remove,
178 plant, or repair any tree located in the right-of-way, if necessary to further the
179 goals of this Chapter and/or protect the public health, safety or welfare.

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182 **12.11.130 Abatement Authority**

183 A. If determined to be necessary in order to protect the public health, safety or
184 welfare, or public convenience, the Director may require a property owner to trim,
185 cleanup, support, repair, replace, perform other maintenance, or take other
186 corrective action with respect to any tree adjacent to the frontage of the owner's
187 property and located between the private property line and the edge of the paved
188 street within the right-of-way. The Director shall also have the authority to
189 require that a tree be removed from the right-of-way under any of the following
190 circumstances:

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192 1. If the tree is dead or dying or is damaged by storm, accident or disease as
193 to be beyond the point of recuperation as determined by a certified arborist.

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195 2. If the tree has damaged the roadway facilities (including but not limited to
196 the sidewalk, curb, gutter and pavement) and further damage cannot be
197 prevented by reasonable tree maintenance procedures such as root pruning or
198 sidewalk/curb realignment.

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200 3. If the tree constitutes a hazard to the public.

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202 4. In conjunction with an approved development of the adjacent property.

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204 B. Notwithstanding any other provision in this Chapter, in the event that there is
205 an immediate threat to public health and safety, the Director may summarily
206 perform work to remove such threat directly with County personnel or retain
207 others to do that work. The Director may seek the cost of such summary
208 abatement, including labor, equipment, materials, inspection, and administrative
209 costs, from the responsible property owner.

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211 C. The Director will require replacement of a tree within the right-of-way that is
212 improperly removed or damaged. Where replacement is inadequate to correct
213 the harm caused by an improperly removed or damaged tree or is impracticable,
214 the Director may also require the property owner to pay the loss of value of such
215 tree into a tree mitigation fund as abatement for such loss of value. Said
216 mitigation fund shall be used for purposes of preservation and enhancement of

217 the urban forest, consistent with the purposes of this ordinance, and pursuant to
218 policies and procedures set forth in the Tree Manual. For purposes of calculating
219 loss of value from a removed or damaged tree, the most recent edition of the
220 "Guide for Establishing Values of Trees and Other Plants" by the council of tree
221 and landscape appraisers (in effect of the time of the violation) shall be
222 presumed to provide the appropriate measure.

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224 D. If the Director requires abatement or seeks costs from a property owner when
225 County personnel performs summary abatement work, the Director shall provide
226 notice of the need for abatement or request for costs. Such notice will describe
227 the necessary abatement and provide opportunity for the property owner to
228 correct the condition if such condition can be corrected. Upon receipt of such
229 notice, the property owner may request a hearing before the Tree Advisory
230 Board. Upon such request, the Director will refer the matter to the Tree Advisory
231 Board, which shall provide notice of a hearing to the person who requested the
232 hearing. Such notice shall set forth the date, place and time of the hearing. The
233 notice shall schedule the hearing within 30 days of the property owner's request
234 or at a regularly-scheduled Tree Advisory Board meeting. At the requested
235 hearing, the Tree Advisory Board shall hear the matter and make a written
236 recommendation to the Board of Supervisors. In its discretion, the Board of
237 Supervisors may adopt the recommendation of the Tree Advisory Board without
238 further hearing or it may set the matter for de novo hearing. If the property owner
239 does not request a hearing within ten days after the Director mails the notice of
240 the need for abatement, the Director shall have the authority to order abatement
241 and/or specially assess the costs of abatement without further action.

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243 E. Nothing in this Chapter shall be deemed to alter or diminish the Director's
244 authority to abate under any statutory authority or at common law.

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247 **12.11.140 Encroachment Permit Required**

248 A. The planting, maintaining, or removing of any tree in the right-of-way, and all
249 associated facilities, such as irrigation systems, tree wells, root barriers and
250 supports, are encroachments subject to the permitting and other requirements of
251 this Chapter. It shall be unlawful for any person or utility to so encroach upon the
252 right-of-way without first obtaining an encroachment permit as provided in this
253 Chapter. The application for an encroachment permit under this Chapter shall be
254 filed with the Director and approved by the Director prior to beginning the
255 proposed activity or work.

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257 B. The planting, maintaining, or removing of any tree in the right-of-way shall be
258 in conformance with standards and procedures provided by the Director.

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260 C. In issuing an encroachment permit under this Chapter, the Director may
261 require the property owner or other applicant proposing to perform work in the
262 right-of-way to execute a written maintenance agreement with the County and
263 may require the property owner to plant or replace trees pursuant to the Tree
264 Manual.

265
266 D. Unless excepted by the Director in writing in the encroachment permit or
267 otherwise, the planting, maintenance, or removal of any tree located in the right-
268 of-way for which an encroachment permit is required under this Chapter shall be
269 performed by a contractor holding a valid C27 or C61/D49 license with the
270 California State Contractors Licensing Board and such other additional, valid
271 license(s) as required by federal, State, or local law to do the proposed work.

272
273 E. All maintenance work on trees located in the right-of-way (including but not
274 limited to trimming or pruning) shall be in compliance with the most recent
275 version of the *International Society of Arboriculture Tree Pruning Guidelines*, the
276 most recent version of the *Standard Practices for Tree Care Operations: Tree,*
277 *Shrub, and other Woody Plant Maintenance* (ANSI A300), the Tree Manual, and
278 specifications provided by the Director in the encroachment permit. Topping and
279 attempted pollarding of mature trees are not proper pruning methods, and are not
280 acceptable practices.

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282 F. All maintenance work on trees located in the right-of-way (including but not
283 limited to trimming or pruning) for purposes of providing clearance for overhead
284 utility facilities shall also be in accordance with the *Specification for Utility Line*
285 *Clearance Pruning and the Preferred Pruning Technique of Alameda County*,
286 copies of which are available from the Director. Prior to beginning such work,
287 any person or utility proposing to so encroach shall submit to the Director a
288 written plan prepared by a certified arborist showing the nature and extent of the
289 proposed work.

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291 G. Any tree(s) planted under this Chapter shall be selected from the
292 Recommended Tree List unless otherwise approved by the Director.

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294 H. The Director shall have the authority to approve the removal of a tree from
295 the right-of-way as part of a scheduled tree removal and replacement program or
296 in conjunction with an approved roadway improvement project.

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299 **12.11.150 Individual Permits**

300 A. An encroachment permit under this Chapter shall be referred to as an
301 "Individual" permit. An application for an Individual Permit shall be made to the

302 County Public Works Agency or its designated agent and shall contain the
303 following information:

- 304 1. The property address where the work will be performed;
- 305 2. The name, address and phone number of the property owner; and,
- 306 3. If different than (2) above, the name, address and phone number of the
307 person who will perform the proposed work;
- 308 4. A detailed description of the work to be performed including, by way of
309 example, the number and type of trees to be planted, maintained or removed;
310 and the species of the replacement trees, if any; and,
- 311 5. The approximate date or dates when the work is to be done.

312 B. The Individual permit application must be accompanied by payment of all
313 applicable fees as established under this Chapter by the Director and approved
314 by the County Board of Supervisors.

315 C. An Individual permit is valid for a period of ninety (90) days from the date of
316 issuance, or, if on appeal, ninety (90) days from the final decision. The duration
317 of an Individual permit may be extended by the Director for such additional
318 reasonable time period following a request by the permittee showing good cause
319 to allow such an extension.

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322 **12.11.160 Contractor Permits for Maintenance Only**

323 A. Licensed contractors may apply to the Public Works Agency or its designated
324 agent for an annual encroachment permit under this Chapter for tree
325 maintenance only. Such a permit shall be referred to as a "Contractor" permit
326 and shall be for a maximum of twelve (12) months in duration.

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328 B. In lieu of obtaining an Individual encroachment permit for tree maintenance,
329 any person proposing to maintain any tree within the right-of-way may retain a
330 licensed contractor who has a valid, existing Contractor permit at the time the
331 work is to be performed. However, retaining a licensed contractor with a valid,
332 existing Contractor permit shall not excuse that person proposing to encroach in
333 the right-of-way from any other provision or requirement of this Chapter unless
334 specifically permitted by the Director in writing before work proceeds.

335 C. In order to obtain a Contractor permit, a contractor must meet the following
336 requirements:

345
346 1. The contractor has a valid C27 or C61/D49 license with the California State
347 Contractors Licensing Board and such other additional, valid license(s) as
348 required by federal, State, or local law to do the proposed work;

349
350 2. The contractor has agreed in writing to perform all permitted work in
351 accordance with County-approved International Society of Arboriculture
352 standards and other applicable standards or guidelines approved by the Director;
353 and,

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355 3. The contractor has paid any applicable fee established by the Director, and
356 approved by the County Board of Supervisors.

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359 **12.11.170 Criteria for Issuance of Permit and Conditions**

360 The Director shall consider all relevant information in evaluating a permit
361 application under this Chapter and in imposing reasonable conditions, if any, on
362 the permittee including, but not limited, to:

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364 1. The nature and extent of the proposed work;

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366 2. The age, condition and health of the existing tree including disease, if any,
367 deadwood, and the tree's stability;

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369 3. Danger to the public or to property including adjacent residences and other
370 trees;

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372 4. Interference with existing utilities;

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374 5. The effect the tree is having on adjacent property or facilities including by way
375 of example sidewalk areas, and whether any effects on the property or facilities
376 can be mitigated by means such as a root barrier or relocation of the facilities;

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378 6. Whether the proposed work is necessary in order to allow reasonable use of
379 the property;

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381 7. Whether the tree is anchoring or supporting a slope or the adjacent soil and
382 the effects the proposed work would have on slope or soil stability and/ soil
383 erosion;

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385 8. The number of other trees in the area and the effect the proposed work would
386 have on the neighborhood esthetics and general appearance;

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388 9. The effect the proposed work would have on surrounding property values;
389 and,

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391 10. The proposed efforts, if any, of the applicant to mitigate the effects or results
392 of the proposed work. In the case of proposed tree removal, such mitigation
393 might include, for example, efforts to replace an existing tree or trees with one or
394 more trees of a type consistent with the character of the neighborhood.

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397 **12.11.180 Workers' Compensation Insurance**

398 The Director shall require that the contractor performing the work, the property
399 owner, or any other applicant for a permit under this Chapter, wherein in the
400 judgment of the Director the estimated value proposed work is one hundred
401 dollars (\$100) or more, conform to the workers' compensation insurance
402 requirements of the California Labor Code.

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405 **12.11.190 Insurance**

406 The Director shall require that the contractor performing the work, the property
407 owner, or any other applicant for a permit under this Chapter furnish evidence of
408 insurance coverage in an amount and to the extent specified by the Director.
409 The Director may also require payment and/or performance bonds as necessary.

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412 **12.11.200 Indemnification, Hold Harmless and Defense of County**

413 The Director may require that the property owner or any other applicant for a
414 permit under this Chapter furnish a statement indemnifying the County and
415 agreeing to hold harmless and defend the County in a format and manner
416 specified by the Director. Such a statement may be recorded with the County
417 Recorder's Office.

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420 **12.11.210 Emergency Situations**

421 A. If personal injury or property damage is imminent due to the hazardous or
422 dangerous condition of a tree located in the right-of-way, the tree may be
423 removed, pruned or trimmed or other necessary action taken without a permit so
424 long as the action taken in response to the emergency situation is reasonable
425 under the circumstances and does not exceed the type of action necessary to
426 address the emergency situation.

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428 B. When any emergency work is performed under these provisions, the property
429 owner or person performing the work shall promptly notify the Public Works
430 Agency about the emergency situation, advise the Agency of the work done and

431 apply for a permit under this Chapter for any further work to be performed to
432 address the situation.

433
434 C. In the case of removal of a tree under such an emergency situation, the
435 person removing the tree shall promptly notify the Public Works Agency about
436 the emergency, advise the Agency of the work performed and promptly apply for
437 a permit under this Chapter to replace the tree, and replace the tree pursuant to
438 the Tree Manual or as otherwise ordered by the Director applying the criteria of
439 Section 12.11.170.

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441 **12.11.220 Fees**

442 The Director is authorized to establish a schedule of fees, subject to approval by
443 the Board of Supervisors, to recover the costs and expenses incidental to the
444 administration or implementation of the provisions of this Chapter. The schedule
445 may include provision for annual or other periodic fee increases based on an
446 appropriate consumer price index applicable to Alameda County.

447
448 **12.11.230 Monitoring and Revocation of Permit**

449 A. The Director shall have the authority to monitor and inspect any permitted
450 work.

451
452 B. A permit issued under this Chapter may be revoked by the Director if the
453 conditions of the permit or any provision of this Chapter are being or have been
454 violated or are not fulfilled in a timely manner or the permittee or his or her
455 contractor is violating any other law, statute or ordinance by engaging in or
456 attempting to perform the permitted work.

457
458 C. Before taking any action to revoke the permit, the Director shall provide
459 written notice of intent to revoke the permit to the permittee of the proposed
460 revocation. The notice shall state the grounds for the proposed revocation and a
461 date, time and place of an administrative hearing before the TAB in which the
462 permittee will be given an opportunity to respond or otherwise show cause why
463 the permit should not be revoked. The hearing shall be scheduled for the next
464 available TAB meeting.

465
466 D. The Director's written notice must be either personally served upon the
467 permittee or mailed to the permittee at the address shown on the application. If
468 personally served, that notice shall be provided to the permittee at least three (3)
469 days before the date of the hearing. If mailed, that notice shall be provided at
470 least five (5) days before the date of the hearing. If the notice is mailed, the five
471 (5) day notice period begins on the date the notice is mailed.

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473 E. Upon conclusion of the hearing under this Section, the TAB may revoke the
474 permit if the TAB finds noncompliance as provided in subpart B above, or if other
475 good cause exists on which to do so. The TAB may allow the permittee to
476 proceed on such terms and conditions as are necessary to ensure compliance
477 with the terms of the permit, any other provisions of this Code or with any other
478 law, statute or ordinance.

479
480 F. The TAB's decision on permit revocation shall be in writing, shall state the
481 basis for the decision, and shall be final.

482
483 G. Any permittee who has had a Contractor permit revoked shall not be eligible
484 for a new Contractor permit for a period of six months from the date of the final
485 decision revoking that permit. During that six-month period, the permittee may
486 apply for Individual permits. If a permittee has his or her Contractor permit
487 revoked for a second time, that permittee shall not be eligible for a new
488 Contractor permit for a period of one year from the date of the final decision
489 revoking that permit for a second time. During that one year period, the
490 permittee may apply for Individual permits.

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492
493 **12.11.240 Permit Denial Appeals**

494 A. The applicant for any permit under this Chapter may appeal the denial of a
495 permit application or any other related decision of the County Public Works
496 Agency under this Chapter to the Tree Advisory Board.

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498 B. All appeals to the Tree Advisory Board must be in writing and must specify
499 the grounds for the appeal. All appeals must also provide an address for the
500 appellant to which the County may send decisions or notices related to the
501 appeal. All such appeals must be filed with the Director no later than thirty (30)
502 days after the earliest of the following dates: (1) the date that written notice of the
503 contested action was mailed to the applicant; or (2) the date the contested action
504 occurred if the applicant had actual or constructive knowledge of the action. The
505 appellant must pay all applicable fees at the time of filing.

506
507 C. Untimely appeals may be summarily rejected by the Director. The Director's
508 decision to summarily deny any appeal for untimeliness may be appealed to the
509 County Board of Supervisors in the manner provided for other appeals to the
510 Board of Supervisors under Section 12.11.270. The Tree Advisory Board may
511 consider an appeal without waiver of the County's right to raise procedural
512 defects such as untimeliness.

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514 D. The Tree Advisory Board's decision on appeals of denials of permit
515 applications or any other related decision of the County Public Works Agency
516 under this Chapter shall be in writing, shall state the basis for the decision, and
517 shall be final.

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519 **12.11.250 Administrative Penalties**

520 A. Unless otherwise specified, the violation of any provision of this chapter, or
521 the failure to comply with any of the mandatory requirements of this chapter,
522 including non-compliance with an abatement order, shall constitute a
523 misdemeanor, except that, notwithstanding any other provisions of this chapter,
524 any such violation constituting a misdemeanor under this chapter, may, at the
525 discretion of the Director, be charged and prosecuted as an administrative
526 violation in accordance with this section, and, if appropriate, may also be
527 declared a public nuisance and abated in accordance with provision Section
528 12.11.130 of this Chapter, and may be subject to any other remedy provided by
529 law.

530

531 B. Any person, including, but not limited to, the property owner, the person
532 performing the work, and/or any other responsible person, who violates the
533 provisions of this Chapter or any condition imposed upon any permit issued
534 hereunder shall be liable to the County for a civil penalty of up to \$1000 per
535 violation, under a schedule of penalties established by the Director and approved
536 by the Board.

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538 C. The foregoing monetary penalties shall be deemed non-exclusive, cumulative
539 and in addition to any other penalty or remedy the County may have at law or in
540 equity, including, but not limited to, injunctive relief to prevent violations of this
541 Chapter, civil damages, and criminal penalties.

542

543 D. The Director shall send notice of the assessment of administrative penalties
544 to the responsible party.

545

546 E. The Tree Advisory Board shall advise the Director on effective
547 implementation and enforcement of this ordinance. Where there are aggravating
548 factors, such as evidence of willful violations or damage to trees identified as
549 high value in the schedule of fines, the Tree Advisory Board may advise the
550 Director as to whether to recommend to the Board of Supervisors that additional
551 remedies should be sought.

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553 **12.11.260 Appeals of Assessment of Administrative Penalties**

554 A. A person who has been assessed administrative penalties under this Chapter
555 may appeal the assessment or amount of such penalties to the Tree Advisory
556 Board.

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558 B. All appeals to the Tree Advisory Board must be in writing and must specify
559 the grounds for the appeal. All appeals must also provide an address for the
560 appellant to which the County may send decisions or notices related to the
561 appeal. All such appeals must be filed with the Director no later than thirty (30)
562 days after the date that written notice of the administrative penalties was mailed.
563 The appellant must pay all applicable fees at the time of filing.

564
565 C. Untimely appeals may be summarily rejected by the Director. The Director's
566 decision to summarily deny any appeal for untimeliness may be appealed to the
567 County Board of Supervisors in the manner provided for other appeals to the
568 Board of Supervisors under Section 12.11.270. The Tree Advisory Board may
569 consider an appeal without waiver of the County's right to raise procedural
570 defects such as untimeliness.

571
572 D. If no timely appeal is filed as provided above, the decision of the Director shall
573 be final.

574
575 E. Timely appeals shall be referred by the Director for hearing before the Tree
576 Advisory Board. Notice of hearing shall be sent to the appellant and shall set
577 forth the date, place and time of the hearing. The notice shall schedule the
578 hearing for the next available Tree Advisory Board meeting. The notice of
579 hearing must be either personally served upon the appellant or mailed to the
580 appellant at the address shown on the appeal. If personally served, that notice
581 shall be provided to the permittee at least three (3) days before the date of the
582 hearing. If mailed, that notice shall be provided at least five (5) days before the
583 date of the hearing. If the notice is mailed, the five (5) day notice period begins
584 on the date the notice is mailed. Where there is a timely appeal, the deadline to
585 pay the penalty being appealed shall be extended until conclusion of the appeal.

586
587 F. Upon conclusion of the hearing under this Section, the Tree Advisory Board
588 may affirm, reverse, or reduce the assessed administrative penalty.

589
590 G. The Tree Advisory Board's decision on appeals of administrative penalties
591 shall be in writing, shall state the basis for the decision, and shall be final.
592

593 **12.11.270 Appeals to the Board of Supervisors**

594 For any appeal to the Board of Supervisors described herein, the appeal must be
595 in writing and must specify the grounds for the appeal. Such an appeal to the
596 Board of Supervisors must be filed with the Clerk of the Board of Supervisors no
597 later than ten (10) days after the date of service of the Director’s notice of
598 summary denial of the appeal for untimeliness. The appellant must pay all
599 applicable fees at the time of filing.

600
601 **12.11.280 Noncompliance**

602 Administrative penalties for violation of this Chapter shall be payable to the
603 County. Administrative penalties provided for herein must be paid within 30 days
604 of notice of imposition of the penalty. Untimely payment of civil penalties shall
605 bear interest at the legal rate and may also be subject to an administrative
606 penalty as established by the Public Works Agency and approved by the Board.

607
608 If a property owner fails to comply with an order for abatement within the time
609 period specified, the Director may cause the nuisance to be abated by county
610 employees or through private contract. The cost of abatement shall be billed to
611 the property owner and shall become due and payable within thirty (30) calendar
612 days after that. If any person fails to timely pay any administrative penalty
613 provided for herein, the penalty shall bear interest at the legal rate and may also
614 be subject to a further penalty for late payment as established by the Public
615 Works Agency and approved by the Board.

616
617 **12.11.290 Solar Shade Control Act**

618 The County is exempt from the provisions of the Solar Shade Control Act,
619 Chapter 12 (commencing with Section 25980) of Division 15 of the Public
620 Resources Code.

621
622
623 **12.11.300 Severability**

624 Should any Section, subpart, clause, provision or any part of this Chapter be
625 declared by a Court of competent jurisdiction to be unconstitutional, beyond the
626 authority of the County or otherwise invalid, such decision shall not affect the
627 validity of the remaining portion or portions of the Section.

628
629
630 **12.11.310 Non-Liability of County**

631 Nothing in this chapter shall be deemed to impose any liability for damages or a
632 duty of care or maintenance upon the County or any of its officers or employees.
633 Nor does anything in this Chapter relieve an adjacent property owner from the
634 duty described herein to protect trees and to keep trees in such condition as to

635 prevent those trees from constituting a hazard, imposing an impediment to travel,
636 or otherwise creating a public nuisance.

637

638

639

SECTION II

640

641 This ordinance shall take effect and be in force thirty (30) days from and after the
642 date of passage and before the expiration of fifteen (15) days after its passage it
643 shall be published once with the names of the members voting for and against
644 the same in the Inter-City Express, a newspaper published in the County of
645 Alameda.

646

647

648

649 Adopted by the Board of Supervisors of the County of Alameda, State of
650 California, on the 6th day of December 2016, by the following called vote:

651

652 AYES: Supervisors Carson, Miley, Valle, Chan -4

653

NOES:

654

EXCUSED: President Haggerty -1

655

656

SCOTT HAGGERTY

657

President of the Board of Supervisors

658

County of Alameda, State of California

659

660

ATTEST: ANIKA CAMPBELL-BELTON

661

Clerk of the Board of Supervisors, County of Alameda

662

663

Approved as to Form

664

DONNA R. ZIEGLER, County Counsel

665

666

By: Kathy Lee

667