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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:  
10

11 **SECTION I**  
12

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**  
17

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.  
28

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.  
37

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.

55  
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.

71  
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.

75  
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.

88

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

93

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

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

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

107

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

120

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

125

126       m. **Utility or Utilities.** “Utility” or “utilities” means any person who owns,  
127 leases, operates or licenses a facility in order to provide gas, water, electricity,  
128 sewer, telecommunications, cable television or other customer services  
129 regardless of whether such a person is deemed a public utility by the California  
130 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.

176  
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:

191  
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.

194  
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.

199  
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.

210  
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.

223  
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.

242  
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.

256  
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.

259

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.

281  
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.

290  
291 G. Any tree(s) planted under this Chapter shall be selected from the  
292 Recommended Tree List unless otherwise approved by the Director.

293  
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.

297  
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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.

327  
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,

354  
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:

363  
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;

371  
372 4. Interference with existing utilities;

373  
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;

377  
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;

384  
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;

387

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

390  
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.

427  
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.  
440

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.  
472

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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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.

497  
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.

513

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.

518  
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.

537  
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.

552

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.

557  
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