

1 **Changes in redline. New changes since prior redline are in**
2 **yellow highlight.**

3
4 **ORDINANCE NO: _____**

5
6 **AN ORDINANCE AMENDING CHAPTER 12.11 OF TITLE 12 OF THE ALAMEDA**
7 **COUNTY GENERAL ORDINANCE CODE**

8
9
10 The Board of Supervisors of the County of Alameda ordains as follows:

11
12 **SECTION I**

13
14 ~~The Board of Supervisors of the County of Alameda repeals Sections 12.08.540,~~
15 ~~12.08.550, 12.08.560 and 12.08.570 of Chapter 12.08, Title 12 of the General~~
16 ~~Ordinance Code of the County of Alameda.~~

17
18 ~~_____~~ **SECTION II**

19
20 The Board of Supervisors of the County of Alameda ordains that Chapter 12.11
21 shall be ~~added to Title 12 of the General Ordinance Code of the County of~~
22 ~~Alameda~~ amended as follows:

23
24 **Chapter 12.11**

25
26 **REGULATION OF TREES IN COUNTY RIGHT-OF-WAY**

27
28 The County Board of Supervisors finds that the preservation of trees within the
29 ~~County~~ right-of-way enhances the natural scenic beauty, sustains the long term
30 potential increase in property values, protects the surrounding area from soil
31 erosion, moderates the effects of extreme weather conditions and temperatures,
32 improves air quality including increasing the oxygen output of the area which is
33 needed to combat air pollution, creates the identity and quality of the County's
34 businesses and residences, and improves the attractiveness of the County to
35 visitors.

36
37 The Board of Supervisors finds that to avoid future maintenance problems,
38 minimize conflicts with infrastructure, and prevent impediments to pedestrian,
39 motorized, and non-motorized traffic, it is necessary to regulate tree planting in the
40 right of way.

41

42 The Board of Supervisors finds that establishing and maintaining appropriate
43 diversity in tree species and age classes leads to a more robust and sustainable
44 urban forest.

45
46 For these reasons, the Board of Supervisors finds that in order to promote the
47 public health, safety and general welfare of the County, while at the same time
48 recognizing individual rights to develop private property in a manner which will not
49 be prejudicial to the public interest, it is necessary to enact this Chapter to preserve
50 trees located within the ~~County~~-right-of-way and to control the planting,
51 maintenance and removal of those trees.

52
53 This Chapter may be referred to collectively as the County’s “Tree Ordinance.”

54
55 **12.11.100 ~~A~~ Definitions.**

56 As used in this Chapter, the following terms, phrases and words are assigned
57 the following meanings unless the context indicates otherwise. Words not defined
58 in this Chapter shall have the definitions set forth in Section 12.08.020 of Chapter
59 12.08 of the ~~county's~~County’s General Ordinance Code. Other words not defined
60 herein or in Section 12.08.020 shall be given their common ordinary meaning.

61
62 a. ~~County~~ **Right-of-Way.** ~~“County “Right-of-way”~~ means land, which by deed,
63 conveyance, agreement, dedication, usage or process of law is reserved for use
64 ~~by the county or any other public entity or by the licensees or agents of the county~~
65 ~~or any other public entity as a public roadway.~~ For the purpose of this chapter, the
66 right-of-way shall include not only the surface of the roadway and the earth
67 beneath the roadway, but also all facilities and natural features located across,
68 along, beneath, in, on, over, under, upon and within the roadway.

69
70 b. **Day or Days.** Unless otherwise specified, ~~“day”~~ refers to a calendar day
71 and ~~“days”~~ refers to calendar days.

72
73 c. **Director.** ~~“Director”~~ refers to the Director of the Alameda County Public
74 Works Agency or his or her designee. The Director is authorized to promulgate
75 rules, regulations, and policies for the administration and implementation of this
76 Chapter. The Director shall also have the authority to interpret such rules,
77 regulations, and policies.

78
79 ~~D~~-d. **Dripline.** “Dripline” or “dripline area” refers to the area surrounding the
80 tree trunk whose outer perimeter is defined by the unaltered length of the
81 outermost branch tips.

82
83 e. **Maintenance or Maintaining.** ~~“Maintenance”~~ or ~~“maintaining”~~ includes
84 all actions affecting or which may affect the growth or health of any tree such as, by

85 way of example and not limitation, the cutting, trimming, ~~topping~~, pruning, or
86 ~~removal~~growth regulation of any tree. However, as used in this Chapter,
87 ~~"maintenance"~~ does not include the trimming, pruning, cutting or removal of tree
88 branches one inch or less in diameter.

89
90 ~~E. Tree f. Pollarding.~~ "Pollarding" is specialty pruning in which a tree with a
91 large-maturing form is kept relatively short. Starting on a young tree, intermodal
92 cuts are made at a chosen height, resulting in the development of callous knobs at
93 the cut height. Pollarding requires regular (usually annual) removal of the sprouts
94 arising from the cuts.

95
96 g. Pruning. "Pruning" involves removing branches (or occasionally roots) from
97 a tree using approved practices to achieve a specified objective. Topping and
98 attempted pollarding of mature trees." are not proper pruning methods, and are
99 not acceptable practices.

100
101 h. Recommended Tree List. The "Recommended Tree" or " List" is a
102 County-approved list of suitable tree species from which selection can be made to
103 plant trees" in the right of way.

104
105 i. Topping. "Topping" is excessive reduction of tree size by cutting live
106 branches and leaders to stubs, without regard to long-term tree health or structural
107 integrity. Topping is not an acceptable practice.

108
109 j. Tree or Trees. "Tree" or "trees" shall mean any tree that meets the following
110 criteria: ~~any~~ woody perennial plant characterized by having ~~with~~ a single trunk or
111 multi-trunk structure at least ten feet high and having a major trunk that is at least
112 two or multiple trunks which typically develop a mature size of over seven inches in
113 diameter taken at breast height (DBH) taken at four and one half feet from the
114 ground. ~~It~~ and ten or more feet in height. For the purposes of this chapter, Palms,
115 Yuccas, and any plant **required to be** planted as a replacement tree shall also
116 include those plants generally designated as trees and ~~any~~ be considered trees
117 that have been planted as replacement trees under the county tree ordinance or
118 any trees planted by the county.

119
120 ~~F. k. Tree Advisory Board.~~ "Tree Advisory Board" is a five-member board
121 comprised of citizens of the County who are appointed by the Board of
122 Supervisors. One appointment will be made by each member of the Board of
123 Supervisors. Each Tree Advisory Board member shall serve a term of ~~twenty four~~
124 (24) months subject to re-appointment. Should the term expire prior to
125 re-appointment, the existing member shall continue to serve until such
126 appointment is made. The Tree Advisory Board shall be an advisor to the ~~public~~
127 ~~works agency~~ Director, shall assist the Director in making policy decisions related

128 to this chapter, and Ordinance, including as to the Tree Manual, shall hear
129 all certain appeals and conduct certain hearings as provided in this Chapter, and
130 shall advise the Director on recommending action to the Board of Supervisors
131 where the administrative remedies established herein may not fully redress the
132 injury to trees in the County right-of-way.

133
134 ~~G. I. Tree policy manual.~~ **Manual.** "Tree policy manual" **Manual** means a
135 document prepared by the Public Works Agency that states policies, procedures
136 and other relevant information regarding the selection, planting, maintenance and
137 removal of trees located in the county-right-of-way.

138
139 ~~H. m. Utility or Utilities.~~ "Utility" or "utilities" means any person who owns,
140 leases, operates or licenses a facility in order to provide gas, water, electricity,
141 sewer, telecommunications, cable television or other customer services
142 regardless of whether such a person is deemed a public utility by the California
143 Public Utilities Commission (CPUC).

144
145
146 **12.11.110-- Protection of Trees**

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

151
152 B. No person shall attach or keep attached to any tree located within the County
153 right-of-way or to the guard or stakes intended for the protection of such a tree, any
154 rope, wire, nails, tacks, staples, advertising posters, or any other material or item.
155 This Section shall not apply to staking or other material used to secure a tree.

156
157 C. No person shall cause or allow any poison or other substance harmful to trees
158 to lie, leak, pour, flow or drip upon or into the soil within the dripline of any tree
159 located within the right-of-way.

160
161 D. No person shall set fire to or permit any fire to burn when such fire or heat
162 therefrom will injure or damage any tree located within the right-of-way.

163
164 E. No person shall operate any device or equipment, such as mechanical weeding
165 devices, in such a manner as to injure or damage any tree located within the
166 right-of-way.

167
168 F. If any construction, repair work or other similar activity is proposed in an area
169 adjacent to or in the right-of-way, the property owner shall take all necessary
170 measures prior to and during the work to protect any tree located in the right of

171 way. The costs of any such protection is the sole responsibility of the property
172 owner and the person or entity performing the work.

173
174
175 **12.11.120 Tree Planting, Maintenance, and Removal Responsibilities**
176 **And Requirements**

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

186
187 B. The Director shall have the authority to monitor, inspect, maintain, remove,
188 plant, or repair any tree located in the right-of-way, if necessary to further the goals
189 of this Chapter and/or protect the public health, safety or welfare.

190
191
192 **12.11.130 Abatement Authority**

193 A. If determined to be necessary in order to protect the public health, safety or
194 welfare or public convenience, the Director may require a property owner to trim,
195 cleanup, support, repair, replace, or perform other maintenance to any tree
196 adjacent to the frontage of the owner's property and located between the private
197 property line and the edge of the paved street within the right-of-way. The Director
198 shall also have the authority to require that a tree be removed from the right-of-way
199 under any of the following circumstances:

200
201 1. If the tree is dead or dying or is damaged by storm, accident or disease as to
202 be beyond the point of recuperation as determined by a certified arborist.

203
204 2. If the tree has damaged the roadway facilities (including but not limited to the
205 sidewalk, curb, gutter and pavement) and further damage cannot be prevented by
206 reasonable tree maintenance procedures such as root pruning or sidewalk/curb
207 realignment.

208
209 3. If the tree constitutes a hazard to the public.

210
211 4. In conjunction with an approved development of the adjacent property.

212
213 **[PARAGRAPH REMOVED FROM PREVIOUS REDLINE]**

214
215 B. Notwithstanding any other provision in this Chapter, in the event that there is an
216 immediate threat to public health and safety, the Director may summarily perform
217 work to remove such threat directly with County personnel or by retaining others to
218 do that work. The Director may seek the cost of such summary abatement,
219 including labor, equipment, materials, inspection, and administrative costs, from
220 the responsible property owner.

221
222 [PARAGRAPH REMOVED FROM PREVIOUS REDLINE]

223
224 C. Nothing in this Chapter shall be deemed to alter or diminish the Director's
225 authority to abate under any statutory authority or at common law.

226
227
228 **12.11.140 Encroachment Permit Required.**

229 A. The planting, maintaining, or removing of any tree in the ~~county~~ right-of-way,
230 and all associated facilities, such as irrigation systems, tree wells, root barriers and
231 supports, are encroachments subject to the permitting and other requirements of
232 this Chapter. It shall be unlawful for any person or utility to so encroach upon the
233 ~~county~~ right-of-way without first obtaining an encroachment permit as provided in
234 this Chapter. The application for an encroachment permit under this Chapter shall
235 be filed with the Director and approved by the Director prior to beginning the
236 proposed activity or work.

237
238 ~~B. All activities described~~ The planting, maintaining, or removing of any tree in
239 subsection (A) of this section the right-of-way shall be in conformance with
240 standards and procedures provided by the Director. ~~The director is authorized to~~
241 ~~promulgate necessary regulations for the administration and implementation of~~
242 ~~this chapter.~~

243
244 C. In issuing an encroachment permit under this Chapter, the Director may ~~impose~~
245 ~~reasonable conditions related to the encroachment activity or work under the~~
246 ~~provisions of Section 12.11.170 including but not limited to, requiring~~ require the
247 property owner or other applicant proposing to perform work in the right-of-way to
248 execute a written maintenance agreement with the County. and may require the
249 property owner to plant or replace trees pursuant to the Tree Manual.

250
251 ~~D. If determined necessary in order to protect the public health, safety or~~
252 ~~welfare or public convenience, the director may require a property owner to trim,~~
253 ~~cleanup, support or repair or perform other maintenance to any tree located within~~
254 ~~the county's right-of-way which has been planted or installed by the property owner~~
255 ~~or his or her predecessor. For purposes of this chapter, the term "predecessor"~~
256 ~~includes any prior owner or developer of the property.~~

257
258 ~~E. In the event that a property owner fails to perform the work requested by the~~
259 ~~director under this section, the director may perform the work directly with county~~
260 ~~personnel or retain others to do that work. Thereafter, the director shall request~~
261 ~~reimbursement from the owner for all costs and expenses incurred by the county in~~
262 ~~performing that work or by having others perform the work. The owner shall~~
263 ~~reimburse the county for all such costs and expenses within thirty (30) days of~~
264 ~~receipt of the county's request for reimbursement.~~

265
266
267 **~~12.11.120 – Protection of trees.~~**

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

273
274 ~~B. No person shall attach or keep attached to any tree located within the county~~
275 ~~right of way or to the guard or stakes intended for the protection of such a tree, any~~
276 ~~rope, wire, nails, tacks, staples, advertising posters, or any other material or item.~~
277 ~~This section shall not apply to staking or other material used to secure a tree.~~

278
279 ~~C. No person shall cause or allow any poison or other substance harmful to~~
280 ~~trees to lie, leak, pour, flow or drip upon or into the soil within the dripline of any tree~~
281 ~~located within the county right of way.~~

282
283 ~~D. No person shall set fire to or permit any fire to burn when such fire or heat~~
284 ~~therefrom will injure or damage any tree located within the county right of way.~~

285
286 ~~E. No person shall operate any device or equipment, such as mechanical~~
287 ~~weeding devices, in such a manner as to injure or damage any tree located within~~
288 ~~the county right of way.~~

289
290 ~~F. If any construction, repair work or other similar activity is proposed in an~~
291 ~~area adjacent to or in the county right of way, the property owner shall take all~~
292 ~~necessary measures prior to and during the work to protect any tree located in the~~
293 ~~right of way. The costs of any such protection is the sole responsibility of the~~
294 ~~property owner and the person or entity performing the work.~~

295
296
297 **~~12.11.130 – Tree planting, maintenance and removal requirements.~~**
298

299 ~~A.—D.~~ Unless excepted by the Director in writing in the encroachment permit or
300 otherwise, the planting, maintenance, or removal of any tree located in the ~~county~~
301 right-of-way for which an encroachment permit is required under this Chapter shall
302 be performed by a contractor holding a valid C27 or C61/D49 license of the
303 appropriate classification as described by with the California Business and
304 Professions Code State Contractors Licensing Board and such other additional,
305 valid license(s) as required underby federal, State, or state/local law to do the
306 proposed work.

307
308 ~~B.—E.~~ All maintenance work on trees located in the ~~county~~ right-of-way
309 (including but not limited to trimming or pruning) shall be in compliance with the
310 most recent version of the International Society of Arboriculture Tree Pruning
311 Guidelines and, the most recent version of the Standard Practices for Tree Care
312 Operations: Tree, Shrub, and other Woody Plant Maintenance (ANSIA300) or as
313 otherwise ANSI A300), the Tree Manual, and specifications provided by the
314 Director in the encroachment permit. Topping and attempted pollarding of mature
315 trees are not proper pruning methods, and are not acceptable practices.

316
317 ~~C.—F.~~ All maintenance work on trees located in the ~~county~~ right-of-way
318 (including but not limited to trimming or pruning) for purposes of providing
319 clearance for overhead utility facilities shall also be in accordance with the
320 *Specification for Utility Line Clearance Pruning and the Preferred Pruning*
321 *Technique of Alameda County*, copies of which are available from the Director.
322 Prior to beginning such work, any person or utility proposing to so encroach shall
323 submit to the Director a written plan prepared by a certified arborist showing the
324 nature and extent of the proposed work.

325
326 ~~D. _____ The director~~
327 ~~shall have the authority to monitor, inspect, maintain, remove, plant or repair.~~

328 ~~G. Any tree located in the right of way, if necessary to protect the public health,~~
329 ~~safety or welfare.~~

330
331
332 **12.11.140 – Tree removal.**

333 ~~A. It(s) planted under this Chapter shall be prohibited for any person or utility to~~
334 ~~remove or cause to be removed any trees selected from the~~
335 ~~right-of-way Recommended Tree List unless so authorized by an encroachment~~
336 ~~permit issued by the director pursuant to this chapter.~~

337
338 ~~B. The director shall have the authority to require that a tree be removed from~~
339 ~~the right of way under any of the following circumstances:~~

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

343
344 ~~2. If the tree has damaged the roadway facilities (including but not limited to the~~
345 ~~sidewalk, curb, gutter and pavement) and further damage cannot be prevented by~~
346 ~~reasonable tree maintenance procedures such as root pruning or sidewalk/curb~~
347 ~~realignment.~~

348
349 ~~3. If the tree constitutes a hazard to the public.~~

350
351 ~~4. _____ In conjunction with an otherwise approved development of by the adjacent~~
352 ~~property Director.~~

353
354 ~~C.~~ **H.** The Director shall have the authority to approve the removal of a tree
355 from the right-of-way as part of a scheduled tree removal and replacement
356 program or in conjunction with an approved roadway improvement project.

357
358 ~~D. The removal of a tree from the county right-of-way, when it has been planted~~
359 ~~by the property owner or his or her predecessor, shall be the responsibility of the~~
360 ~~property owner who shall bear all costs of the said removal and the associated~~
361 ~~restoration of the right-of-way. In the event that a property owner fails to respond to~~
362 ~~a request for removal, the director shall have the authority to perform such a~~
363 ~~removal and to bill the property owner for the costs thereof.~~

364
365 ~~E. When a tree has been removed from the county right-of-way without a~~
366 ~~permit, the director shall have the authority to require the property owner to replace~~
367 ~~that tree with another tree at the owner's sole expense. The installation and~~
368 ~~planting of the replacement tree shall conform to the requirements of this chapter.~~

369
370
371 **12.11.150 -- ~~Site specific permits.~~ Individual Permits**

372 A. An encroachment permit under this Chapter shall be referred to as a "~~site~~
373 ~~specific~~" "Individual" permit. An application for a ~~site specific~~ Individual
374 Permit shall be made to the County Public Works Agency or its designated agent
375 and shall contain the following information:

376
377 1. The property address where the work will be performed;

378
379 2. The name, address and phone number of the property owner; and,

380
381 3. If different than ~~paragraph (2) of this subsection above~~, the name, address and
382 phone number of the person who will perform the proposed work;

383

384 4. A detailed description of the work to be performed including, by way of example,
385 the number and type of trees to be planted, maintained or removed; and the
386 species of the replacement trees, if any; and,
387

388 5. The approximate date or dates when the work is to be done.
389

390 ~~B. If the applicant is a homeowners association or other association of property~~
391 ~~owners or an agent thereof, and the applicant proposes to remove a tree or trees~~
392 ~~on association property, the applicant shall deliver a written notice by mail or~~
393 ~~personal delivery to all association members of any tree to be removed. The notice~~
394 ~~shall identify the tree or trees which are proposed to be removed. Such an~~
395 ~~applicant shall certify in the application to the public works agency that it has~~
396 ~~provided the required notice to such members.~~
397

398 ~~C. If the applicant is an individual property owner and the subject property~~
399 ~~where the proposed work is to occur is part of or governed by a homeowners~~
400 ~~association, the applicant shall deliver a written notice by mail or personal delivery~~
401 ~~to the association of any tree to be removed. The notice shall identify the tree or~~
402 ~~trees which are proposed to be removed. Such an applicant shall certify in the~~
403 ~~application to the public works agency that he or she has provided the required~~
404 ~~notice to the association.~~
405

406 ~~D. The site specific~~ B. The Individual permit application must be accompanied
407 by payment of all applicable fees as established under this Chapter by the Director
408 and approved by the County Board of Supervisors.
409

410 ~~E. A site specific~~ C. An Individual permit is valid for a period of ninety (90) days
411 from the date of issuance, or, if on appeal, ninety (90) days from the final decision.
412 The duration of ~~a site specific~~ an Individual permit may be extended by the Director
413 for such additional reasonable time period following a request by the permittee
414 showing good cause to allow such an extension.
415

416
417 **~~12.11.160--Annual nonsite specific~~ Contractor Permits for Maintenance**
418 **Only.**

419 A. Licensed contractors may apply to the Public Works Agency or its designated
420 agent for an annual encroachment permit under this Chapter ~~which is not~~
421 ~~site specific and which is~~ for tree maintenance only. Such a permit shall be
422 referred to as a "~~nonsite specific~~" Contractor" permit and shall be for a maximum of
423 twelve (12) months in duration. Such a non-site specific permit shall not be used
424 for tree planting, removal or replacement which requires a site specific permit
425 under this chapter.
426

427 B. In lieu of obtaining ~~a site specific~~ an Individual encroachment permit for tree
428 maintenance, any person proposing to maintain any tree within the right-of-way
429 may retain a licensed contractor who has a valid, existing ~~non-site~~
430 specific Contractor permit at the time the work is to be performed. However,
431 retaining a licensed contractor with a valid, existing ~~nonsite specific~~ Contractor
432 permit shall not excuse that person proposing to encroach in the right-of-way from
433 any other provision or requirement of this Chapter unless specifically permitted by
434 the Director in writing before work proceeds.

435
436 C. In order to obtain a ~~non-site specific~~ Contractor permit, a contractor must meet
437 the following requirements:

438
439 1. The contractor has a valid C27 or C61/D49 license with the California State
440 Contractors Licensing Board and such other additional, valid license(s) as required
441 by federal ~~or~~ State, or local law to do the proposed work;

442
443 2. The contractor has agreed in writing to perform all permitted work in
444 accordance with County-approved International Society of Arboriculture standards
445 and other applicable standards or guidelines approved by the Director; and

446
447 3. The contractor has paid any applicable fee established by the Director, and
448 approved by the County Board of Supervisors.

449
450 ~~D. Any contractor performing work under a non-site specific permit shall furnish~~
451 ~~to the public works agency a monthly report signed by an authorized agent of the~~
452 ~~contractor regarding that work. The report shall contain the following information:~~

453
454 ~~1. The property address where the work was performed;~~

455
456 ~~2. The name, address and phone number of the property owner;~~

457
458 ~~3. If different than paragraph (2) of this subsection, the name, address and~~
459 ~~phone number of the person who retained the contractor; and~~

460
461 ~~4. A detailed description of the maintenance work performed including, by way~~
462 ~~of example, the number and type of trees maintained.~~

463
464 ~~E. The report required in subsection (D) of this section shall be provided to the~~
465 ~~public works agency on the last day of each month unless no permitted work has~~
466 ~~been performed in the preceding thirty (30) day period, in which case the permittee~~
467 ~~shall notify the public works agency that no work was performed in that time period.~~

470 **12.11.170 —Criteria for Issuance of Permit and Conditions**

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

474
475 **A.—1.** The nature and extent of the proposed work;

476
477 **B.—2.** The age, condition and health of the existing tree including disease, if
478 any, deadwood, and the tree's stability;

479
480 **C.—3.** Danger to the public or to property including adjacent residences and
481 other trees;

482
483 **D.—4.** Interference with existing utilities;

484
485 **E.—5.** The effect the tree is having on adjacent property or facilities including by
486 way of example sidewalk areas, and whether any effects on the property or
487 facilities can be mitigated by means such as a root barrier or relocation of the
488 facilities;

489
490 **F.—6.** Whether the proposed work is necessary in order to allow reasonable use
491 of the property;

492
493 **G.—7.** Whether the tree is anchoring or supporting a slope or the adjacent soil
494 and the effects the proposed work would have on slope or soil stability and/ soil
495 erosion;

496
497 **H.—8.** The number of other trees in the area and the effect the proposed work
498 would have on the neighborhood esthetics and general appearance;

499
500 **I.—9.** The effect the proposed work would have on surrounding property
501 values; and,

502
503 **J.—10.** The proposed efforts, if any, of the applicant to mitigate the effects or
504 results of the proposed work. In the case of proposed tree removal, such
505 mitigation might include, for example, efforts to replace an existing tree or trees
506 with one or more trees of a type consistent with the character of the neighborhood.
507

508
509 **12.11.180 Workers' Compensation Insurance**

510 The Director may shall require that the contractor performing the work, the property
511 owner, or any other applicant for a permit under this Chapter, wherein in the
512 judgment of the Director the estimated value proposed work is one hundred dollars

513 (\$100) or more, conform to the workers' compensation insurance requirements of
514 the California Labor Code.

515
516
517 **12.11.190** ~~—Insurance.~~

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

522
523
524 **12.11.200** ~~—Indemnification, Hold Harmless and Defense of County.~~

525 The Director may require that the property owner or any other applicant for a
526 permit under this Chapter furnish a statement indemnifying the County and
527 agreeing to hold harmless and defend the County in a format and manner
528 specified by the Director. Such a statement may be recorded with the County
529 ~~recorder's office.~~Recorder's Office.

530
531
532 **12.11.210** ~~—Emergency Situations.~~

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

539
540 B. When any emergency work is performed under these provisions, the property
541 owner or person performing the work shall promptly notify the Public Works
542 Agency about the emergency situation, advise the Agency of the work done and
543 apply for a permit under this Chapter for any further work to be performed to
544 address the situation.

545
546 C. In the case of removal of a tree under such an emergency situation, the person
547 removing the tree shall promptly notify the Public Works Agency about the
548 emergency, advise the Agency of the work performed and promptly apply for a
549 permit under this Chapter to replace the tree, and replace the tree with a fifteen
550 (15)-gallon tree of like kind pursuant to the Tree Manual or as otherwise ordered by
551 the Director applying the criteria of Section 12.11.170.

552
553 **12.11.220** ~~—~~ Fees

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

559
560 **12.11.230 Monitoring and Revocation of Permit.**

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

562
563 B. A permit issued under this Chapter may be revoked by the Director if the
564 conditions of the permit or any provision of this Chapter are being or have been
565 violated or are not fulfilled in a timely manner or the permittee or his or her
566 contractor is violating any other law, statute or ordinance by engaging in or
567 attempting to perform the permitted work.

568
569 C. Before taking any action to revoke the permit, the Director shall provide written
570 notice of intent to revoke the permit to the permittee of the proposed revocation.
571 The notice shall state the grounds for the proposed revocation and a
572 date, time and place of ~~aan administrative~~ hearing before the TAB in which the
573 permittee will be given an opportunity to respond or otherwise show cause why the
574 permit should not be revoked. The hearing shall be scheduled ~~within fifteen (15)~~
575 ~~days of the notice of intent to revoke for the next available TAB meeting.~~

576
577 D. The ~~director's~~ Director's written notice must be either personally served upon
578 the permittee or mailed to the permittee at the address shown on the application. If
579 personally served, that notice shall be provided to the permittee at least three (3)
580 days before the date of the hearing. If mailed, that notice shall be provided at least
581 five (5) days before the date of the hearing. If the notice is mailed, the five (5) day
582 notice period begins on the date the notice is mailed.

583
584 E. Upon conclusion of the hearing under this Section, the ~~director~~ TAB may revoke
585 the permit if the ~~director~~ TAB finds noncompliance as provided in subsection
586 (subpart B) of this section above, or if other good cause exists on which to do so.
587 The ~~director~~ TAB may allow the ~~permitee~~ permittee to proceed on such terms and
588 conditions as are necessary to ensure compliance with the terms of the permit, any
589 other provisions of this ~~chapter~~ Code or with any other law, statute or ordinance.

590
591 F. The ~~director's~~ TAB's decision ~~under subsection (E) of this section, may on~~
592 permit revocation shall be appealed as set forth in this chapter. writing, shall state
593 the basis for the decision, and shall be final.

594

595 G. Any permittee who has had a ~~nonsite specific~~Contractor permit revoked shall
596 not be eligible for a new ~~nonsite specific~~Contractor permit for a period of six
597 months from the date of the final decision revoking that permit. During that
598 six-month period, the permittee may apply for ~~site specific~~Individual permits. If a
599 permittee has his or her ~~nonsite specific~~Contractor permit revoked for a second
600 time, that permittee shall not be eligible for a new ~~nonsite specific~~Contractor permit
601 for a period of one year from the date of the final decision revoking that permit for a
602 second time. During that one year period, the permittee may apply for ~~site~~
603 ~~specific~~Individual permits.

604
605
606 **12.11.230 – Civil penalties. 240 Permit Denial Appeals**

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

610
611 B. All appeals to the Tree Advisory Board must be in writing and must specify the
612 grounds for the appeal. All appeals must also provide an address for the appellant
613 to which the County may send decisions or notices related to the appeal. All such
614 appeals must be filed with the Director no later than thirty (30) days after the
615 earliest of the following dates: (1) the date that written notice of the contested
616 action was mailed to the applicant; or (2) the date the contested action occurred if
617 the applicant had actual or constructive knowledge of the action. The appellant
618 must pay all applicable fees at the time of filing.

619
620 C. Untimely appeals may be summarily rejected by the Director. The Director’s
621 decision to summarily deny any appeal for untimeliness may be appealed to the
622 County Board of Supervisors in the manner provided for other appeals to the
623 Board of Supervisors under Section 12.11.270. The Tree Advisory Board may
624 consider an appeal without waiver of the County’s right to raise procedural defects
625 such as untimeliness.

626
627 D. The Tree Advisory Board’s decision on appeals of denials of permit
628 applications or any other related decision of the County Public Works Agency
629 under this Chapter shall be in writing, shall state the basis for the decision, and
630 shall be final.

631
632 **12.11.250 Administrative Penalties**

633 A. Unless otherwise specified, the violation of any provision of this chapter, or the
634 failure to comply with any of the mandatory requirements of this chapter, including
635 non-compliance with an abatement order, shall constitute a misdemeanor, except

636 that, notwithstanding any other provisions of this chapter, any such violation
637 constituting a misdemeanor under this chapter, may, at the discretion of the
638 Director, be charged and prosecuted as an administrative violation in accordance
639 with this section, and, if appropriate, may also be declared a public nuisance and
640 abated in accordance with provision Section 12.11.130 of this Chapter, and may
641 be subject to any other remedy provided by law.

642
643 B. Any person, including, but not limited to, the property owner, the person
644 performing the work, and/or any other responsible person, who violates the
645 provisions of this Chapter or any condition imposed upon any permit issued
646 hereunder shall be liable to the County for a civil penalty as established by the
647 director and approved by the board. If the violation results in damage to a tree,
648 there shall be, in addition to any other applicable penalty, a penalty of three times
649 the damage caused to the tree, or five hundred dollars (\$500), whichever is
650 greater. In the event a tree is removed in violation of any of the provisions of this
651 chapter, the additional penalty shall be three times the value of the tree. For
652 purposes of calculating the damage to the tree, the most recent edition of the
653 "Guide for Establishing Values of Trees and Other Plants" by the council of tree
654 and landscape appraisers (in effect of the time of the violation) shall be presumed
655 to provide the appropriate basis for determining damages under a schedule of
656 penalties established by the Director and approved by the Board.

657
658 B.—C. The foregoing monetary penalties shall be deemed non-exclusive,
659 cumulative and in addition to any other penalty or remedy the County may have at
660 law or in equity, including, but not limited to, injunctive relief to prevent violations of
661 this Chapter. The county reserves to itself in its discretion the ability to permit an
662 applicant or other person to replace any tree illegally removed, injured or damaged
663 with a new tree of equal or greater size or value in lieu of or in addition to any
664 penalties, civil damages, and criminal penalties.

665
666 D. The Director shall send notice of the assessment of administrative penalties to
667 the responsible party.

668 [SECTION ON LATE PAYMENT MOVED FROM PREVIOUS REDLINE INTO
669 NONCOMPLIANCE SECTION BELOW]

670
671 E. The Tree Advisory Board shall advise the Director on effective implementation
672 and enforcement of this ordinance. Where there are aggravating factors, such as
673 evidence of willful violations or damage to trees identified as high value in the
674 schedule of fines, the Tree Advisory Board may advise the Director as to whether

675 to recommend to the Board of Supervisors that additional remedies should be
676 sought.

677
678 **12.11.260 Appeals of Assessment of Administrative Penalties**

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

682
683 B. All appeals to the Tree Advisory Board must be in writing and must specify the
684 grounds for the appeal. All appeals must also provide an address for the appellant
685 to which the County may send decisions or notices related to the appeal. All such
686 appeals must be filed with the Director no later than thirty (30) days after the date
687 that written notice of the administrative penalties was mailed. The appellant must
688 pay all applicable fees at the time of filing.

689
690 C.— Civil Untimely appeals may be summarily rejected by the Director. The
691 Director’s decision to summarily deny any appeal for untimeliness may be
692 appealed to the County Board of Supervisors in the manner provided for other
693 appeals to the Board of Supervisors under Section 12.11.270. The Tree Advisory
694 Board may consider an appeal without waiver of the County’s right to raise
695 procedural defects such as untimeliness.

696
697 D. If no timely appeal is filed as provided above, the decision of the Director shall
698 be final.

699
700 E. Timely appeals shall be referred by the Director for hearing before the Tree
701 Advisory Board. Notice of hearing shall be sent to the appellant and shall set forth
702 the date, place and time of the hearing. The notice shall schedule the hearing for
703 the next available Tree Advisory Board meeting. The notice of hearing must be
704 either personally served upon the appellant or mailed to the appellant at the
705 address shown on the appeal. If personally served, that notice shall be provided to
706 the permittee at least three (3) days before the date of the hearing. If mailed, that
707 notice shall be provided at least five (5) days before the date of the hearing. If the
708 notice is mailed, the five (5) day notice period begins on the date the notice is
709 mailed. Where there is a timely appeal, the deadline to pay the penalty being
710 appealed shall be extended until conclusion of the appeal.

711
712 F. Upon conclusion of the hearing under this Section, the Tree Advisory Board
713 may affirm, reverse, or reduce the assessed administrative penalty.
714

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

717
718 **12.11.270 Appeals to the Board of Supervisors**

719 For any appeal to the Board of Supervisors described herein, the appeal must be
720 in writing and must specify the grounds for the appeal. Such an appeal to the
721 Board of Supervisors must be filed with the Clerk of the Board of Supervisors no
722 later than ten (10) days after the date of service of the Director's notice of summary
723 denial of the appeal for untimeliness. The appellant must pay all applicable fees at
724 the time of filing.

725 ~~The director is authorized to establish a schedule of fees, subject to approval by~~
726 ~~the board of supervisors, to recover the costs and expenses incidental to the~~
727 ~~administration or implementation of the provisions of this chapter. The schedule~~
728 ~~may include provision for annual or other periodic fee increases based on an~~
729 ~~appropriate consumer price index applicable to Alameda County.~~

730
731
732 **12.11.250 - Appeals.**

733 ~~A. The applicant for any permit under this section may appeal directly to the~~
734 ~~director the denial of a permit application or any other decision of the county public~~
735 ~~works agency related to a permit application or to a permit under this section or~~
736 ~~related to any civil penalties provided for in this section.~~

737
738 ~~B. All appeals to the director must be in writing and must specify the grounds~~
739 ~~for the appeal. All appeals must also provide an address for the appellant to which~~
740 ~~the county may send decisions or notices related to the appeal. All such appeals~~
741 ~~must be filed with the director no later than thirty (30) days after the earliest of the~~
742 ~~following dates: (1) the date that written notice of the contested action was mailed~~
743 ~~to the applicant; or (2) the date the contested action occurred if the applicant had~~
744 ~~actual or constructive knowledge of the action. The appellant must pay all~~
745 ~~applicable fees at the time of filing.~~

746
747 ~~C. The director shall refer the appeal to the tree advisory board and direct that~~
748 ~~the appeal be heard by that board. The director shall notify the appellant in writing~~
749 ~~of the referral of the appeal to the tree advisory board. The director retains the right~~
750 ~~to summarily reject appeals which are untimely. However, the director may refer~~
751 ~~the appeal to the tree advisory board without waiver of the county's right to reject~~
752 ~~the appeal due to procedural defects such as untimeliness.~~

753
754 ~~D. The tree advisory board shall provide notice of a hearing to the appellant~~
755 ~~setting forth the date, place and time of the hearing before the board which hearing~~

756 shall be conducted. The notice shall schedule the hearing within thirty (30) days of
757 the filing of the appeal or other date agreed to by the board and the appellant.

758
759 E. ~~Following a hearing conducted by the tree advisory board, and within five~~
760 ~~business days of the hearing, the board shall prepare and deliver its written~~
761 ~~decision to the appellant and copied to the director. Service of the written decision~~
762 ~~and other notices required under this section may be by personal delivery to the~~
763 ~~appellant or by regular United States mail to the address provided by the appellant~~
764 ~~in the written appeal.~~

765
766 F. ~~The tree advisory board's decision or the director's decision to summarily~~
767 ~~deny the appeal for untimeliness may be appealed to the county board of~~
768 ~~supervisors. Such an appeal to the board of supervisors must be in writing and~~
769 ~~must specify the grounds for the appeal. Such an appeal to the board of~~
770 ~~supervisors must be filed with the clerk of the board of supervisors no later than ten~~
771 ~~(10) days after the date of service of the director's notice of summary denial of the~~
772 ~~appeal for untimeliness or, in the case of an appeal heard by the tree advisory~~
773 ~~board, no later than ten (10) days after the date of service of the tree advisory~~
774 ~~board's written decision. The appellant must pay all applicable fees at the time of~~
775 ~~filing.~~

776
777 G. ~~Simultaneously with filing of the appeal with the clerk of the board of~~
778 ~~supervisors, the appellant shall also mail a copy of that appeal to the director.~~

779
780 H. ~~If no timely appeal is filed as provided above, the decision of the director or~~
781 ~~the tree advisory board shall be final.~~

782
783 I. ~~In the event of an appeal to the board of supervisors, the clerk of the board~~
784 ~~shall schedule and provide written notice to appellant of a hearing on that appeal~~
785 ~~within ninety (90) days of the filing of the appeal or on a date otherwise agreed to~~
786 ~~by the board and the appellant. Within sixty (60) days after the hearing before the~~
787 ~~board, the board shall issue its written decision on the appeal, which shall be final,~~
788 ~~and send a copy of that decision by regular United States Mail to appellant.~~

789
790 **12.11.240 – Fees, 280 Noncompliance**

791 Administrative penalties for violation of this Chapter shall be payable to the
792 County. Civil Administrative penalties provided for herein must be paid within ~~thirty~~
793 ~~(30)~~ days of notice of imposition of the penalty. Untimely payment of civil penalties
794 shall bear interest at the legal rate and may also be subject to an administrative
795 penalty as established by the Public Works Agency and approved by the Board.

796
797 If a property owner fails to comply with an order for abatement within the time
798 period specified, the Director may cause the nuisance to be abated by county

799 employees or through private contract. The cost of abatement shall be billed to the
800 property owner and shall become due and payable within thirty (30) calendar days
801 after that. If any person fails to timely pay any administrative penalty provided for
802 herein, the penalty shall bear interest at the legal rate and may also be subject to a
803 further penalty for late payment as established by the Public Works Agency and
804 approved by the Board.

805
806 **12.11.290 Solar Shade Control Act**

807 The County is exempt from the provisions of the Solar Shade Control Act, Chapter
808 12 (commencing with Section 25980) of Division 15 of the Public Resources Code.

809
810
811 **12.11.260 -- 300 Severability.**

812 Should any Section, ~~subsection~~subpart, clause, provision or any part of this
813 Chapter be declared by a Court of competent ~~jurisdiction~~jurisdiction to be
814 unconstitutional, beyond the authority of the County or otherwise invalid, such
815 decision shall not affect the validity of the remaining portion or portions of the
816 Section.

817
818
819 **12.11.270 -- Nonliability310 Non-Liability of County.**

820 Nothing in this ~~section~~chapter shall be deemed to impose any liability for damages
821 or a duty of care or maintenance upon the County or any of its officers or
822 employees. ~~The person who owns the~~ Nor does anything in this Chapter relieve
823 an adjacent property in which the county right-of-way is located shall have a owner
824 from the duty described herein to protect trees and to keep all trees located on his
825 or her property trees in a safe and healthysuch condition- as to prevent those trees
826 from constituting a hazard, imposing an impediment to travel, or otherwise creating
827 a public nuisance.

828
829
830 **SECTION II**

831
832 This ordinance shall take effect and be in force thirty (30) days from and after the
833 date of passage and before the expiration of fifteen (15) days after its passage it
834 shall be published once with the names of the members voting for and against the
835 same in the Inter-City Express, a newspaper published in the County of Alameda.

836 -
837 -
838 -
839 Adopted by the Board of Supervisors of the County of Alameda, State of
840 California, on the _____ day of _____ 2016, by the following called
841 vote:

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AYES:

NOES:

EXCUSED:

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SCOTT HAGGERTY, President of the Board of Supervisors
of the County of Alameda, State of California

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CRYSTAL K. HISHIDA, Clerk of the Board of Supervisors
of the County of Alameda, State of California

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Approved as to Form
DONNA R. ZIEGLER, County Counsel

-
By
-