

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Alaric Degrafinried, Interim Director, Public Works

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: July 23, 2021

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on July 20, 2021:

**File No. 210805**

**Ordinance amending the Public Works Code to eliminate administrative objections to removal of Hazard Street Trees, require Public Works to plant replacement Street Trees within 120 days of removal, require that Street Trees removed without a permit be replaced by Street Trees of equal size, require that Tree protection plans include the applicant's acknowledgement of potential Tree replacement costs, and set maximum administrative penalties for removing or injuring Street Trees; and affirming the Planning Department's determination under the California Environmental Quality Act.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [erica.major@sfgov.org](mailto:erica.major@sfgov.org).

cc: David Steinberg, Public Works  
Jeremy Spitz, Public Works  
John Thomas, Public Works  
Lena Liu, Public Works

1 [Public Works Code - Street Tree Planting and Removal]

2

3 **Ordinance amending the Public Works Code to eliminate administrative objections to**  
4 **removal of Hazard Street Trees, require Public Works to plant replacement Street Trees**  
5 **within 120 days of removal, require that Street Trees removed without a permit be**  
6 **replaced by Street Trees of equal size, require that Tree protection plans include the**  
7 **applicant’s acknowledgement of potential Tree replacement costs, and set maximum**  
8 **administrative penalties for removing or injuring Street Trees; and affirming the**  
9 **Planning Department’s determination under the California Environmental Quality Act.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18

19 Section 1. CEQA Findings.

20 The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
23 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
24 determination.

25

26 Section 2. Article 16 of the Public Works Code is hereby amended by revising  
27 Sections 806, 808, 809, and 811, to read as follows:

1           **SEC. 806. PLANTING AND REMOVAL OF STREET TREES.**

2           **(a) Planting and Removal by the Department.**

3           \* \* \* \*

4                       **(3) Appeal of Tree Removal.**

5                       (A) If within 30 days after the giving of Notice for Street Tree Removal,  
6 as specified in ~~Subsection (a)(2), or if within 15 days after the giving of notice for Removal of a~~  
7 ~~hazard Street Tree, as specified in Subsection (a)(4)~~, any Person files with the Department written  
8 objections to the Removal, the Director shall hold a hearing to consider public testimony  
9 concerning the proposed Tree Removal. Written Notice of the date, time, and place of the  
10 hearing shall be posted on the affected Tree, provided in a newspaper of general circulation,  
11 and sent to the objecting party, the owner of the property abutting the affected Tree, and all  
12 Interested San Francisco organizations, not less than seven days prior thereto.

13                      (B) The Director shall issue ~~his or her~~ a written decision and order on the  
14 objections after the public hearing specified above.

15                      (C) The Director's decision shall be final and appealable to the Board of  
16 Appeals.

17                      **(4) Removal of Hazard Street Trees.**

18                      (A) No ~~h~~Hazard Street Tree shall be cut down or removed by the  
19 Department unless:

20                               (i) The Department gives 15 days' prior written Notice to the  
21 owner of the property abutting the affected Tree; and

22                               (ii) Fifteen days prior to the Removal date, the Department notifies  
23 all Interested San Francisco organizations and, to the extent practical, owners and occupants  
24 of properties that are on or across the block face where the affected Tree is located. In  
25

1 addition, 15 days prior to the Removal date, the Department shall post a notice on the  
2 affected Tree.

3 (B) Hazard Street Tree shall have the same meaning as Hazard Tree in  
4 Section 802 except that a ~~H~~Hazard Street Tree is located within the public right-of-way.

5 (5) **Emergency Removal.** In the case of manifest danger and immediate  
6 necessity, as determined by the Director, the Department may remove any Street Tree  
7 immediately. After such emergency Removal, the Department shall provide Notice of the  
8 necessity for such action to the owner of the property abutting the affected Tree, all Interested  
9 San Francisco organizations and, to the extent practical, all owners and occupants of  
10 properties that are on or across from the block face where the affected Tree was removed.

11 (6) Replacement of Street Trees. If the Department removes a Street Tree under this  
12 subsection (a), the Department shall replace the Street Tree at the same location within 120 days of its  
13 removal, with the following exceptions and qualifications.

14 (A) If the Department removes a Street Tree and cannot replace it in the same  
15 location due to accessibility requirements or interference with underground utilities, the Department  
16 shall plant a new Street Tree in a new location as close as reasonably possible to the location of the  
17 Street Tree that the Department removed.

18 (B) The Department shall not be required to replace a Street Tree, if a private  
19 party has agreed to plant, within the 120 days of removal, and Maintain a new Street Tree at the same  
20 location, under Section 805(c).

21 (C) If the Department is unable to replace a Street Tree within 120 days of  
22 removal, the Department shall record, in a Delayed Replacement Tree Report, the Tree's location, the  
23 reason for delay, and the date the Department projects replacement will take place. The Department  
24 shall promptly plant Trees listed in the Delayed Replacement Tree Report as resources are available or  
25

1 constraints are resolved and shall compile and track the average length of time that Trees remain on  
2 the Delayed Replacement Tree Report.

3 (b) **Planting and Removal by Persons Other Than the Department.**

4 (1) **Planting and Removal Permits.** It shall be unlawful for any person to plant or  
5 to remove any Street Tree without a valid permit for such work issued by the Department. All  
6 permits for the Planting or Removal of Street Trees issued by the Director for residential  
7 properties shall be recorded on the Report of Residential Building Records in accordance with  
8 Section 351 of the Housing Code. All work associated with a Street Tree permit must be  
9 completed within six months of issuance, unless an extension has been granted by the  
10 Department.

11 \* \* \* \*

12 (3) **Removal.**

13 (A) An abutting property owner who desires a permit to remove a Street Tree  
14 shall apply to the Department on the designated form. The Department may grant or deny the  
15 permit in accordance with the following procedures and requirements. If the Department  
16 grants a Tree removal permit, it shall require that a Street Tree or Trees of equivalent  
17 replacement value to the one removed be planted in the place of the removed Tree or impose  
18 an in-lieu fee unless it makes written findings detailing the basis for waiving or modifying this  
19 requirement.

20 (i) Where an abutting property owner removed a Street Tree or Trees without  
21 obtaining a permit, the Department shall require that the property owner plant a replacement Street  
22 Tree or Trees with total diameter six-inches above ground that is equal to or greater than the total  
23 diameter of the Street Tree or Trees that were removed without a permit.

24 (ii) The fee for a permit to remove ~~1-3~~one to three Street Trees shall be  
25 \$607.~~00~~ when the permit is requested to allow for development or construction; the fee for a

1 permit to remove ~~1-3~~ one to three Street Trees shall be \$300.~~00~~ when the permit is requested to  
2 remove a hazard or a diseased Tree or to prevent damage to the sidewalk; the fee for a  
3 permit to remove ~~4-9~~ four to nine Street Trees shall be \$808.~~00~~; and the fee to remove 10 or  
4 more Street Trees shall be \$1,214.~~00~~.

5 (iii) **Additional Fees.** The Director, in ~~his or her~~ the Director's discretion,  
6 may require an applicant or permittee to pay additional fees as set forth in Section 2.1.3.

7 (iviii) **Fee Review and Adjustment.** Beginning with fiscal year 2010-  
8 2011, the fees that are established herein shall be reviewed and adjusted each year in  
9 accordance with the procedures set forth in ~~Public Works Code~~ Section 2.1.2.

10 (B) Thirty days prior to the Removal date, the Department shall give Notice to all  
11 Interested San Francisco organizations and, to the extent practicable, the owners and  
12 occupants of properties that are on or across from the block face or adjacent to where the  
13 affected Tree is located. In addition, 30 days prior to the Removal date, the Department shall  
14 post a notice on the affected Tree. If within 30 days after the giving of such notice any person  
15 files with the Department written objections to the Removal, the Director shall hold a hearing  
16 prior to removing the Tree. Written notice of the date, time, and place of the hearing shall be  
17 posted on the affected Tree and sent to the objecting party and all Interested San Francisco  
18 organizations not less than seven days prior thereto.

19 (C) The Director shall issue ~~his or her~~ a written decision and order on the  
20 objections after the public hearing specified above.

21 (D) The Director's decision shall be final and appealable to the Board of  
22 Appeals.

23 \* \* \* \*

24 **SEC. 808. PROTECTION OF TREES AND LANDSCAPE MATERIAL.**

25 \* \* \* \*

1           (c) **Construction Work: Protection of Trees Required.**

2           (1) It shall be unlawful for any person to engage in any construction work on  
3 private or public property without first taking steps to protect Street Trees, Significant Trees,  
4 and Landmark Trees from damage, including damage caused by soil compaction or  
5 contamination, excavation, or placement of concrete or other pavement or foundation  
6 material. If excavation, construction, or Street work is planned within the dripline of a  
7 Significant Tree, a Landmark Tree, or a Tree on any Street or other publicly owned property  
8 said Tree(s) shall be adequately protected. If any construction work results in the Injury or  
9 damage to such Trees, the responsible party(ies) may be subject to the penalties set forth in  
10 Section 811 of this Article.

11           (2) Prior to Department of Building Inspection issuance of a building permit or site  
12 permit, the applicant for a project that may damage one or more Street Trees, Significant  
13 Trees, and/or Landmark Trees shall submit a Tree protection plan to the Director for review  
14 and approval.

15           (3) Prior to issuance of a Public Works permit for excavation, construction, or  
16 Street work that will occur within the dripline of a Significant Tree, a Landmark Tree, or a Tree  
17 on any Street or other publicly owned property, the applicant shall submit a Tree protection  
18 plan to the Director for review and approval.

19           (4) If the Public Utilities Commission or Municipal Transportation Agency plans to  
20 perform any excavation, construction, or Street work within the drip line of a Significant Tree,  
21 a Landmark Tree, or a Tree on any Street or other publicly owned property, said department  
22 shall submit a Tree protection plan to the Director for informational purposes only.

23           (5) The Tree protection plan referenced above in §§ subsections (c)(2)-(4) shall be  
24 prepared by a certified arborist: and shall contain the certified arborist's estimate of the total  
25 replacement cost of all Trees subject to the Tree protection plan. The Tree protection plan shall

1 include a section for the applicant to acknowledge receipt of the total estimated replacement cost and  
2 the applicant's understanding that failure to adhere to the plan shall result in liability for the  
3 replacement costs as well as any other fines, penalties, or fees for violating the provisions of this  
4 Article 16.

5 \* \* \* \*

6 **SEC. 809. HAZARD TREES; ABATEMENT.**

7 (a) **Notice.** Upon a finding by the Director that a Tree on private property or a Street  
8 Tree for which a private party is responsible is a "hazard tree" as defined herein, the Director  
9 shall provide notice to the private party which describes the condition creating the hazard, the  
10 actions required to be taken to abate the hazard, and the date by which compliance must be  
11 completed. Required action may include replacement or removal of the Street Tree in  
12 accordance with applicable requirements and procedures provided in this Article 16 for its  
13 removal. In cases of extreme danger, as determined by the Director, the Director may require  
14 immediate compliance.

15 \* \* \* \*

16 **SEC. 811. PENALTIES FOR VIOLATION OF ORDINANCE.**

17 \* \* \* \*

18 (c) **Administrative Penalties.**

19 (1) In addition to the penalties set forth in ~~§~~subsections (a) and (b) above, the  
20 Director may require any person who removes, ~~injures,~~ or destroys a Tree in violation of the  
21 provisions of this Article 16 to pay, for each Tree removed or destroyed, a sum of \$10,000 or the  
22 Tree's Replacement value, whichever is greater. The Director may require any person who injures a  
23 Tree in violation of the provisions of this Article 16 to pay a sum of money equal to the ~~Tree's~~  
24 Replacement value or the diminishment of the Tree's value as set forth in the current edition of  
25 the Guide for Plant Appraisal (Council of Tree and Landscape Appraisers).



1                      (2) Further, iIn addition to the penalties set forth in §subsections (a) and (b)  
2 above, the Director may require any person who removes, fails to maintain, injures, or  
3 destroys sidewalk landscaping or the associated design improvements in violation of the  
4 provisions of Sections 808(b) or 810B to pay a sum of money equal to the Replacement value  
5 of the affected Landscape Material and associated design improvements or the diminishment  
6 of the value of the Landscape Material as set forth in the current edition of the Guide for Plant  
7 Appraisal (Council of Tree and Landscape Appraisers). In no case shall the administrative  
8 penalty be less than \$500 per violation.

9                      (3) When one or more additional violations of the provisions of this Article 16 occur  
10 within one year of the first violation, the Director may assess a responsible party \$20,000 for  
11 each removed or destroyed Tree and double the ~~Tree's Replacement value or the~~ diminishment of  
12 the injured Tree's value. Depending on the nature and seriousness of the misconduct,  
13 including unpermitted removal of or damage to a Landmark or Significant Tree; the  
14 unpermitted removal of or damage to Sidewalk landscaping installed pursuant to a permit  
15 issued under Section 810B; the number of violations; the persistence of the misconduct; the  
16 length of time over which the misconduct occurred; or the willfulness of the defendant's  
17 misconduct, the Director may assess additional penalties in excess of the amounts specified  
18 in this subsection (c)(3) above.

19                      (4) In addition to the administrative penalty assessed pursuant to this Section  
20 811, the Director may assess enforcement costs to cover the reasonable costs incurred in  
21 enforcing the administrative penalty, including reasonable attorneys' fees.

22                      (5) Any and all amounts paid or collected pursuant to this subsection (c), with  
23 the exception of enforcement costs under subsection (c)(4), shall be deposited into the Adopt-A-  
24 Tree Fund.

1                   (62) Notwithstanding the monetary limitation specified above in this ~~§~~ subsection  
2 (c), if a responsible party performs Major Maintenance on a Street Tree subject to the  
3 provisions of Section 805.1(b) without a permit or injures, destroys, or removes such a Tree,  
4 the Department may assess a penalty of up to \$10,000 per violation in addition to the other  
5 remedies specified above.

6                   (73) The Department shall send Notice of the assessment of administrative  
7 penalties to the responsible party. Such Notice shall include a statement that payment is due  
8 within 60 days of the mailing date of the Notice. If a responsible property owner fails timely to  
9 remit payment, the Department shall send a second Notice of payment due. Such second  
10 Notice shall include a statement that failure timely to remit payment in full to the City within 30  
11 days of the mailing of the second Notice shall cause the Director to institute lien proceedings  
12 pursuant to Sections 706.4-706.7 of this Code. Enforcement and collection of liens for costs  
13 associated with Hazard Tree abatement shall be in accordance with Sections 706.4-706.7 ~~of~~  
14 ~~this Code~~, except that all monies received in payment of such liens with the exception of  
15 enforcement costs, shall be credited to the Adopt-a-Tree Fund.

16                   (84) **Hearings.** At the written request of any person who has been assessed an  
17 administrative penalty under this subsection~~s~~ (c)(1)-(2), the Director, or the Director's designee,  
18 shall hold a public hearing regarding the proposed penalty. The Director, or the Director's  
19 designee, must receive the written request for a hearing within 60 days of the Department's  
20 notice of the assessed penalty. After the public hearing, the Director's, or the Director's  
21 designee's, decision on the assessed penalty shall be final.

22  
23                   Section 3. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

10  
11  
12 APPROVED AS TO FORM:  
13 DENNIS J. HERRERA, City Attorney

14 By: /s/ Robb Kapla  
15 ROBB KAPLA  
16 Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Public Works Code - Street Tree Planting and Removal]

**Ordinance amending the Public Works Code to eliminate administrative objections to removal of Hazard Street Trees, require Public Works to plant replacement Street Trees within 120 days of removal, require that Street Trees removed without a permit be replaced by Street Trees of equal size, require that Tree protection plans include the applicant's acknowledgement of potential Tree replacement costs, and set maximum administrative penalties for removing or injuring Street Trees; and affirming the Planning Department's determination under the California Environmental Quality Act.**

### Existing Law

Article 16 of the Public Works Code, the San Francisco Urban Forestry Ordinance, outlines the responsibilities, requirements, and processes for protecting and growing the City's urban forest canopy. The current provisions allow for individuals to file written objections to Public Works' proposed removal of any Street Tree, including Hazard Street Trees. Article 16 does not currently mandate that the Department replace Street Trees within a certain amount of time after removal, nor does Article 16 provide guidelines for the minimum size of replacement trees required when property owners remove Street Trees without a permit. Article 16 requires that any person proposing development that may impact a Significant Tree, Landmark Tree, or Street Tree, submit an arborist-prepared Tree protection plan for Public Works' review and approval. Where a property owner has damaged, destroyed, or removed a Street Tree in violation of the provisions of Article 16, administrative penalties may be imposed up to the calculated replacement value of the removed tree or the diminished value of an injured tree.

### Amendments to Current Law

The Proposed Legislation would eliminate the 15-day period for filing written objections to Public Works' proposed removal of a Hazard Street Tree.

The Proposed Legislation would also mandate Public Works replace Street Trees removed by the Department in the same location within 120 days of removal. The exceptions to Department replacement within 120 days include: the Department determining that replanting in place would conflict with existing utilities and the replacement tree is planted at the closest feasible location instead; where a private party has agreed to plant and maintain the replacement tree instead of the Department; and where the Department logs the reason why replacement was not possible within 120 days in a Delayed Replacement Tree Report.

Where a Street Tree is removed by a private party without first obtaining a tree removal permit from the Department, the Proposed Legislation would require—in addition to any administrative penalties—that the responsible party plant a replacement tree that is the same or greater diameter as the removed tree.

The Proposed Legislation would require that Tree protection plans include the arborist's estimate of the total replacement costs for all trees covered by the plan and the applicant's acknowledgement of receipt of the estimate and potential responsibility for replacement costs if the trees are injured or destroyed.

The Proposed Legislation would revise the maximum administrative penalties for destroying or removing a tree without a permit to the Tree's Replacement value or \$10,000, whichever is greater for the first violation, and \$20,000 or double the replacement value for any additional violations by the same party within one year of an initial violation.

### Background Information

The Proposed Legislation seeks to resolve issues flagged by the community, Public Works, and the Board of Appeals regarding the current provisions in Article 16. These issues include the need for Public Works to proceed with removal of Hazard Street Trees in a timely fashion; the lack of clear requirements for replacement trees; difficulty calculating replacement value after trees have been removed; and general lack of public awareness of tree value, which can lead to disregard for tree protection provisions. The Proposed Legislation addresses these issues by: removing administrative objections to Hazard Street Tree removal to allow the Department to address hazardous conditions and avoid personal injury or property damage; requiring Public Works replace removed Street Trees within 120 days and instituting a reporting mechanism to track and assess the reasons for any delays beyond that deadline; mandating that Tree protection plans provide appraisals of existing tree values to project developers before any development takes place; and providing an objective dollar value metric in addition to difficult *post hoc* replacement value calculations to set the administrative penalties limit for removing, damaging, or destroying a Street Tree without a permit.

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