



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: Josh Rowan
Interim Director, OPW

SUBJECT: Violation of the Oakland Municipal Code Chapter 12.36 (Protected Tree Ordinance) at Assessor Parcel Number 48H-7672-18

DATE: December 16, 2025

City Administrator Approval


Michelle Phillips (Dec 3, 2025 15:16:51 PST)

Date: 12/03/2025

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution Finding Matthew Bernard And Lynn Warner, Owners Of Record of Assessor Parcel Number 48H-7672-18, In Violation Of Oakland Municipal Code Chapter 12.36 (Protected Trees) By Illegally Removing Thirty-Eight Protected Trees At Said Parcel And Imposing A Penalty, Pursuant To Chapter 12.36.150 Of The Oakland Municipal Code, Of A Total Sum Of Nine Hundred And Fifteen Thousand, One Hundred And Thirty-Five Dollars, And Forty Cents (\$915,135.40), To Place On Hold Any Building Permits, And Place A Lien For Said Property Until This Penalty Is Paid In Full.

EXECUTIVE SUMMARY

Oakland Municipal Code (OMC) Chapter 12.36 (Protected Trees Ordinance) regulates the removal of trees on public and private property in Oakland to prevent unnecessary tree loss, minimize environmental damage from improper tree removal, effectively enforce tree preservation regulations to maximize the public health, safety, and welfare benefits of trees, and to promote the appreciation and understanding of trees. The ordinance specifies what trees are protected, the removal permit process, and enforcement and penalties for violating this ordinance.

On multiple occasions between 2021 and 2022, Matthew Bernard, the co-owner of Assessor Parcel Number (APN) 48H-7672-18, acted in violation of this ordinance by removing numerous protected trees without a tree removal permit. These actions resulted in the destruction of a total of thirty-eight (38) protected trees on said parcel and two neighboring parcels not owned by Mr. Bernard (APN 48H-7678-8-1 and APN 48H-7672-19). One of those two adjacent parcels is owned by the City of Oakland. Mr. Bernard was notified multiple times of the ordinance and its requirements, including the necessity of applying for and obtaining a tree removal permit before removing any protected trees in the City of Oakland. Despite being provided this information multiple times, Mr. Bernard acted in direct violation of the ordinance by knowingly and willfully engaging in the removal of protected trees without the required tree permit. In accordance with the requirements of the Protected Tree Ordinance, staff have investigated the violations

committed and have made written preliminary findings, attached hereto as Exhibit A (**See Attachment 1: Exhibit A – Notice of Violation**). These violations demonstrate that numerous violations of the Protected Tree Ordinance have occurred. Per Chapter 12.36.150, staff recommends that the City Council conduct a public hearing and upon conclusion adopt a resolution finding Matthew Bernard and Lynn Warner in violation of the Protected Tree Ordinance, impose a penalty of a total sum of \$915,135.40, to place a hold on the issuance of any approvals or permits for APN 48H-7672-18, and to place on a lien on the property until the penalty is paid (per OMC Chapter 12.36.190).

BACKGROUND / LEGISLATIVE HISTORY

On February 2, 2021, at approximately 8:45 AM, City of Oakland Tree Services staff responded to a report of illegal tree removals in progress on a vacant lot adjacent to 7401 Claremont Avenue, APN 48H-7672-18. Tree Services staff observed approximately eight (8) mature trees, approximately 20" diameter at breast height (DBH) each, that were either recently removed or were in the process of being removed. These observations were made by Tree Services staff from the street level on Claremont Avenue, where visibility was partially obstructed by the substantial number of downed trees and woody debris. Tree Services staff observed an individual on the property cutting the trees down with a chainsaw. This individual identified himself as the property owner. Tree Services staff verbally informed this person that the trees are protected by the City of Oakland Protected Tree Ordinance, that a permit is required for the tree removals as codified in OMC Chapter 12.36, and to halt the tree removal work. The property owner, Matthew Bernard, responded to Tree Services staff by forcefully and abruptly telling staff, in sum, that this is his property, that he would not engage in dialogue with or respect the authority or jurisdiction of Tree Services staff, and that he refused to stop the tree removal work. There were no tree removal permits posted on site, nor was Oakland Public Works in possession of any tree removal permits or tree removal permit applications for this property at that time. No tree removal permits for this property have been issued to date.

On March 2, 2021, an Illegal Tree Removal Notification Letter was sent to the recorded property owners, Matthew Bernard and Lynn Warner (**See Attachment 2: Illegal Tree Removal Letter**). The letter stated that Tree Services received a citizen complaint of illegal tree removals on Claremont Avenue, APN 48H-7672-18. The letter indicated that the property may be inspected, a fine may be placed for the assessed value of the trees that have been removed, and all development-related permits will be placed on hold.

On March 25, 2021, Tree Services staff inspected the property to assess the number of protected trees that had been removed. Staff determined that a total of twenty-three (23) protected trees had been removed at that time from the property: nineteen (19) coast live oaks (*Quercus agrifolia*), two (2) bigleaf maples (*Acer macrophyllum*), and one (1) California buckeye (*Aesculus californica*). The property was later re-inspected on June 3, 2021, and staff determined that seven (7) additional protected trees had been removed following the prior inspection: four (4) coast live oaks (*Quercus agrifolia*), one (1) bigleaf maple (*Acer macrophyllum*), one (1) purple leaf plum (*Prunus cerasifera*) and one (1) California bay (*Umbellularia californica*). In total, at this time, staff determined that thirty (30) protected trees have been removed from APN 48H-7672-18 Claremont Avenue without a tree removal permit.

On June 4, 2021, property owner Matthew Bernard submitted Service Request #1118697 through OAK 311 for a Tree Removal Permit Waiver (**See Attachment 3: Permit Waiver Request APN 48H-7672-18**). Tree Services staff contacted Matthew Bernard and set up a site meeting for 1:00 PM on June 7, 2021. Matthew Bernard called Tree Services staff on the morning of June 7, 2021, to cancel the site meeting and withdraw the Permit Waiver Service Request. Tree Services staff sent an email to Matthew Bernard recapping the phone call. In the email, Matthew Bernard was informed again that a Tree Removal Permit is needed to remove green standing trees, and a Permit Waiver is needed to remove dead standing trees in the City of Oakland.

On June 25, 2021, Julian Tree Care, Inc. applied for a Tree Removal Permit for Claremont Avenue, APN 48H-7672-18, on behalf of Matthew Bernard (**See Attachment 4: Tree Removal Permit Application APN 48H-7672-18**). The application form indicated that the request was for the removal of two (2) trees on the property. The arborist report attached to the application, however, indicated that the request was for the removal of eight (8) trees. Staff contacted applicant Julian Tree Care Inc. for clarification and information related to this application. At that time, Julian Tree Care Inc. stated that they were no longer representing the property owner and did not provide the information required and requested for the permit application to move forward. The permit application was denied on August 10, 2021 (**See Attachment 5: Tree Permit Decision**). The reasons for denial include the following: 1) the number of trees proposed for removal was not clearly defined, 2) clear reasons for the removal of each tree were not provided, and 3) the pine tree listed on the application appears to be on the neighboring property. In addition, OMC Chapter 12.36.050(B)2 requires adequate provisions for drainage and erosion control, as the property is located on a steep slope, and most of the APN had been stripped of vegetation, and no drainage plan detailing this information was submitted with the application.

On March 18, 2022, at 12:15 pm, Tree Services staff responded to another report of illegal tree removals in progress at this property. The property owner, Matthew Bernard, was on the property removing protected trees without a permit. The trees being removed on this occasion included a 16" DBH coast live oak, a 20" DBH coast live oak, and a 2-stem 12", 18" DBH coast live oak. Mr. Bernard again refused to cooperate with requests from staff to stop work and instead continued to engage in illegal tree removal. Staff then called the City of Oakland Police to assist, and they were able to mediate a conversation with Matthew Bernard and Tree Services staff. Matthew Bernard was informed what permits and information were needed to obtain approval to remove a tree. The police informed Matthew Bernard that this situation could escalate if he continued to work without permits (**See Attachment 6: Police Report, Incident 220318000210 and Attachment 7: Police Report, Incident 220318000405**).

On April 30, 2022, at 2:00 pm, Tree Services staff responded to a report of an illegal tree removal at this property for a third time. Tree staff investigated and found a 33" DBH Canary Island pine (*Pinus canariensis*) that had been cut down. This tree appeared to be on the property line between 280 Stonewall Drive (APN48H-7672-8-1) and APN 48H-7672-18, as shown on surveys provided to staff and verified with aerial imaging. The adjacent property owners alleged that Mr. Bernard cut the tree.

On May 9, 2022, at 1:30 pm, Tree Services staff responded to a report of an illegal tree removal at this property for a fourth time. The inspection revealed that one (1) 20" DBH coast live oak and one (1) 18" DBH coast live oak had been removed. Tree Services staff were informed by the adjacent property owners that Mr. Bernard had removed the tree and that they had called the Oakland Police on May 7, 2022 (**See Attachment 8: Police Report, Incident 220507000245**).

On May 17, 2022, at 10:15 am, Tree Services staff responded to a report of an illegal tree removal in progress in this location for a fifth time. Tree Services staff found Mr. Bernard and a private company, Sonoma County Vegetation Management, were in the process of removing a 2-stem 18", 21" DBH coast live oak that was located on City of Oakland property, APN 48H-7672-9-1, that is adjacent to Mr. Bernard's property. Tree Services staff told Mr. Bernard and the tree removal company that they were working without the necessary tree permit and requested that they stop work. Mr. Bernard instructed the tree crew to keep working, told Tree Services staff to stop harassing his crew, and he and the tree crew finished removing the tree. City staff called the police for assistance with this matter, but the tree removal work was completed, and the crew and Mr. Bernard had all left the premises by the time the police arrived on site. Further inspection by City staff revealed that an additional 18" DBH coast live oak and a 20" DBH coast live oak had also been cut down.

In total, City staff have determined that between February 2021 and May 2022, Matthew Bernard removed 38 protected trees without the necessary tree removal permits. Tree Services staff assesses that 31 of these trees were located on Mr. Bernard's property, APN 48H-7672-18, one (1) tree was on City property, and six (6) were located on parcels owned by adjacent property owners. Chapter 12.36.150(B) states that any person violating any provision of this ordinance shall be deemed guilty of an infraction, so Mr. Bernard is responsible for the penalties incurred from the removal of the seven (7) trees that he removed on adjacent parcels.

On March 7, 2025, the Planning and Building Department was in receipt of an application from Mr. Bernard to build a single-family residence on APN 48H-7672-18. Chapter 12.36.040(b) states that tree removal permits must be authorized before the approval of any building permits.

Per Chapter 12.36, a Notice of Violation dated July 16, 2025, was emailed and mailed (via certified mail) to Matthew Bernard (**See Attachment 1: Exhibit A - Notice of Violation**). The certified mail was returned as undeliverable, but Mr. Bernard confirmed receipt of the emailed Notice of Violation and requested a hearing by email on July 16, 2025. The Notice of Scheduling a Hearing was sent to Matthew Bernard on July 23, 2025 (**See Attachment 9: Notice of Scheduling a Hearing**).

Additionally, per Chapter 12.36, Matthew Bernard was notified at least five days in advance of December 2, 2025, that this hearing would occur and was provided with further information, including any outstanding fees related to this hearing.

ANALYSIS AND POLICY ALTERNATIVES

OMC Chapter 12.36.020 defines a protected tree as any tree on any property with a diameter at breast height (DBH) of four (4) inches if a coast live oak (*Quercus agrifolia*) or a DBH of nine (9)

inches if any other species, except for *Eucalyptus* species or Monterey pine (*Pinus radiata*) unless the tree is on city property or in development-related situations where more than five Monterey pines per acre are proposed for removal. All 38 trees removed at APN 48H7672-18 meet these size and species thresholds and are therefore considered to be protected trees.

OMC Chapter 12.36.040 states that a protected tree may not be removed without a valid tree removal permit authorized by the City of Oakland. Matthew Bernard knowingly and willfully removed these 38 protected trees without an approved tree removal permit.

Per OMC Chapter 12.36.150, the penalties for a violation of this nature are as follows:

- A violator shall be required to provide replacement trees and/or fees, but not to exceed the value of the tree or trees legally removed or damaged, as evaluated by the formula developed by the International Society of Arboriculture.
- A violation shall be liable for all costs associated with the investigation and enforcement of this chapter by the city.
- Failure to comply with the ordinance shall not receive a certificate of occupancy for any project wherein the violation has occurred until all provisions of the ordinance have been fully satisfied.

OMC Chapter 12.36.180 specifies the process for placing a lien on the property for the costs associated with a violation of the ordinance.

As part of the Tree Reviewer's investigation, City staff calculated the dollar value of each illegally removed tree according to the International Society of Arboriculture's tree valuation protocols, as stated in the ordinance. The valuations are shown in **Table 1: Summary of Illegal Tree Removals and Appraised Values**.

Table 1: Summary of Illegal Tree Removals and Appraised Values*

Tree #	Species	Diameter at Breast Height (DBH)	APN #	Appraised Value
1	<i>Aesculus californica</i>	15"	48H-7672-19	\$1,980.00
2	<i>Quercus agrifolia</i>	12"	48H-7672-18	\$9,500.00
3	<i>Quercus agrifolia</i>	10"	48H-7672-18	\$6,700.00
4	<i>Quercus agrifolia</i>	20"	48H-7672-18	\$26,200.00
5	<i>Aesculus californica</i>	36"	48H-7672-18	\$62,800.00
6	<i>Quercus agrifolia</i>	23"	48H-7672-18	\$34,600.00
7	<i>Quercus agrifolia</i>	38"	48H-7672-18	\$94,100.00
8	<i>Quercus agrifolia</i>	9"	48H-7672-18	\$5,400.00
9	<i>Quercus agrifolia</i>	37"	48H-7672-18	\$89,200.00
10	<i>Quercus agrifolia</i>	16"	48H-7672-18	\$16,800.00
11	<i>Quercus agrifolia</i>	12"	48H-7672-18	\$9,500.00
12	<i>Quercus agrifolia</i>	22"	48H-7672-18	\$31,600.00
13	<i>Quercus agrifolia</i>	12"	48H-7672-18	\$9,500.00
14	<i>Quercus agrifolia</i>	7"	48H-7672-18	\$3,360.00

15	<i>Quercus agrifolia</i>	2-stems 22",14"	48H-7672-18	\$44,400.00
16	<i>Quercus agrifolia</i>	25"	48H-7672-18	\$40,800.00
17	<i>Quercus agrifolia</i>	15"	48H-7672-18	\$14,800.00
18	<i>Quercus agrifolia</i>	20"	48H-7672-18	\$26,200.00
19	<i>Quercus agrifolia</i>	10"	48H-7672-18	\$6,700.00
20	<i>Acer macrophyllum</i>	30"	48H-7672-18	\$7,800.00
21	<i>Quercus agrifolia</i>	15"	48H-7672-18	\$14,800.00
22	<i>Quercus agrifolia</i>	17"	48H-7672-18	\$19,000.00
23	<i>Acer macrophyllum</i>	2-stem 11",9"	48H-7672-18	\$1,780.00
24	<i>Prunus cerasifera</i>	9"	48H-7672-19	\$750.00
25	<i>Quercus agrifolia</i>	23"	48H-7672-18	\$34,600.00
26	<i>Quercus agrifolia</i>	15"	48H-7672-18	\$14,800.00
27	<i>Acer macrophyllum</i>	7-stem 6",4",2",5",4",6",3"	48H-7678-8-1	\$1,300.00
28	<i>Quercus agrifolia</i>	21"	48H-7678-8-1	\$28,800.00
29	<i>Quercus agrifolia</i>	12"	48H-7672-8-1	\$9,500.00
30	<i>Umbellularia californica</i>	10"	48H-7678-8-1	\$5,000.00
31	<i>Quercus agrifolia</i>	16"	48H-7672-18	\$16,800.00
32	<i>Quercus agrifolia</i>	20"	48H-7672-18	\$26,200.00
33	<i>Quercus agrifolia</i>	2-stem 12",18"	48H-7672-18	\$30,600.00
34	<i>Pinus canariensis</i>	33"	48H-7672-18 & 48H-7672-8-1	\$39,000.00
35	<i>Quercus agrifolia</i>	20"	48H-7672-18	\$26,200.00
36	<i>Quercus agrifolia</i>	18	48H-7672-18	\$21,200.00
37	<i>Quercus agrifolia</i>	20	48H-7672-18	\$26,200.00
38	<i>Quercus agrifolia</i>	2-stem 18",21	48H-7672-9-1	\$49,900.00
Total				\$909,600.00

Trees Nos. 1 and 24 are on the property of 7401 Claremont Avenue (APN 48H-7672-19), and trees Nos. 27, 28, 29, and 30 are on the property of 280 Stonewall Drive (APN 48H-7672-8-1). The trunk of tree No. 34 grew over the property line onto 280 Stonewall Drive (APN 48H-7672-8-1), making it a shared ownership tree. Tree No. 38 is located on property owned by the City of Oakland (APN 48H-7672-9-1).

OMC Chapter 12.36.150(D) states that a violation of the ordinance shall be liable for all costs associated with the investigation and enforcement. Costs associated with this violation are shown in **Table 2: Investigation & Enforcement Costs**. They include site visits, documenting incidents, and preparing for this enforcement by city staff. The total amount for staff time is \$5,535.40.

Table 2: Investigation & Enforcement Costs

Event	Staff Hours	Staff Cost	Equipment Hours	Equipment Cost	Total
Investigation & Documentation	12.5	\$1,591.30	6.5	\$113.82	\$1,705.12
Meetings & Preparation	18	\$3,830.28		NA	\$3,830.28
					\$5,535.40

The total cost for this violation is \$915,135.40.

FISCAL IMPACT

The investigation and enforcement of this violation cost the City \$5,535.40 in staff time. There is no additional fiscal impact on the City's budget.

Penalties received shall be deposited into a new project number in Tree Services (Organization: 30654, Program NB09) for the purpose of planting trees in Oakland (**See Table 3: Funding Codes to Deposit Funds Received**).

Table 3: Funding Codes to Deposit Funds Received

Fund	Organization	Project	Program
TBD	30654	TBD	NB09

PUBLIC OUTREACH / INTEREST

OMC Chapter 12.36.070 stipulates the public outreach process for tree removal, including posting of trees for removal and a public comment period before the tree permit designation (approval or denial) can be made. By violating the Oakland Municipal Code, Matthew Bernard and Lynn Warner have denied the public its right to be notified and respond before the trees were removed.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Trees provide a financial benefit through their environmental service. Carbon sequestration, reduction in energy costs, and pollution services are all allocated with dollar values based on the tree species, size, and location, using research-backed software such as i-Tree from the United States Department of Agriculture Forest Service and partners to identify the potential dollar value of a tree or group of trees.

Environmental: Research shows that trees provide a great many environmental benefits, including carbon sequestration, wildlife habitat, positive effects on human health, and more. The loss of these 38 trees without due process has led to the loss of these benefits for the community.

Race & Equity: Oakland's frontline communities are not directly affected by the illegal removal of these thirty-eight trees. The urban forest as a whole provides benefits to the greater community, such as the mitigation of air pollution and stormwater runoff, which can affect communities not within the vicinity of these specific trees.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (If Applicable)

The action being considered does not constitute a project within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental, organizational, or administrative activity that will not result in direct or indirect changes in the environment. Further, this action is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that this action will not have a significant effect on the environment.

Jestin D. Johnson, City Administrator

Subject: Violation of the Oakland Municipal Code Chapter 12.36 (Protected Tree Ordinance) at Assessor Parcel Number 48H-7672-18

Date: December 16, 2025

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ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution Finding Matthew Bernard And Lynn Warner, Owners Of Record of Assessor Parcel Number 48H-7672-18, In Violation Of Oakland Municipal Code Chapter 12.36 (Protected Trees) By Illegally Removing Thirty-Eight Protected Trees At Said Parcel And Imposing A Penalty, Pursuant To Chapter 12.36.150 Of The Oakland Municipal Code, Of A Total Sum Of Nine Hundred And Fifteen Thousand, One Hundred And Thirty-Five Dollars, And Forty Cents (\$915,135.40), To Place On Hold Any Building Permits, And Place A Lien For Said Property Until This Penalty Is Paid In Full.

For questions regarding this report, please contact Kristin Hathaway, Assistant Director, at (510) 238-7571.

Respectfully submitted,


Josh Rowan (Dec 3, 2025 11:03:44 PST)

Josh Rowan
Interim Director, Oakland Public Works

Reviewed by:

Kristin Hathaway, Assistant Director, OPW
Isaac Harvey, Arboricultural Inspector
Tod Lawsen, Arboricultural Inspector

Prepared by:

Gordon Matassa, Acting Tree Supervisor II
Parks & Tree Division

Attachments (9):

- Attachment 1: Exhibit A - Notice of Violation
- Attachment 2: Illegal Tree Removal Letter
- Attachment 3: Permit Waiver Request APN 48H-7672-18
- Attachment 4: Tree Removal Permit Application APN 48H-7672-18
- Attachment 5: Tree Permit Decision
- Attachment 6: Police Report, Incident 220318000210
- Attachment 7: Police Report, Incident 220318000405
- Attachment 8: Police Report, Incident 220507000245
- Attachment 9: Notice of Scheduling a Hearing