

Appeal No. 19-099

Appellant: Zachary Karnazes

Respondent: San Francisco Public Works Bureau Of Urban Forestry

Date Filed: September 9th 2019

Hearing Date: November 6th 2019

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## **I. Introduction**

Appellant, Zachary Karnazes, respectfully appeals the Department of Public Works' decision "to approve the removal of 48 street trees along 24 th Street with replacement." from Public Works Order No: 201771.

## **II. Argument Summary**

- The physical notices posted on the street trees that were a part of this order number were not made fully accessible to the disabled public.
- Public Works (DPW) and numerous City Officials were notified of accessibility issues multiple times regarding these notices, prior to their posting, including in person at the SF Board Of Appeals hearing on January 23rd, 2019.
- These physical notices are an exclusionary process of informing the public. They do not include people who are blind or low vision, people with severe mobility impairments, or people who are bedridden for long periods of time such as myself.
- These physical notices are in an incredibly small font, and are often obscured by weather damage, poor posting practices, and/or vandalism.

- Due to the lack of accessibility of the tree notices for this order number (201771), I was not able to be informed or attend the "public" hearing for these trees that occurred on June 5th, 2019.
- These notices and the tree removal notification process is in violation of Title II of the Americans With Disabilities Act of 1990. Department of Public Works has had ample notification time to address these issues with an online database of tree notices but continues to skirt their public responsibilities.
- I have sent emails requesting a response on the following dates in 2019:

**July 26th:** sent an email to Chris Buck and DPW with a request for ADA compliance (did not receive a full response).

**September 6:** sent detailed response replying to Chris Buck and all DPW requesting a full response. I also requested accessibility information from Nicholas Crawford (no reply).

**September 10:** sent email to Chris Buck and DPW asking for a reply.

**September 14 through September 16:** sent emails to Chris Buck and DPW and to Mayor's office on Disability asking for assistance in getting a reply.

**September 20:** I went to MOD in person to ask for assistance in getting a reply from Chris Buck and DPW.

**September 25:** sent email to Chris Buck and DPW asking for a reply.

**October 14:** sent email to Chris Buck and DPW asking for a reply.

- As of the time of this filing, I have not received communication from Chris Buck or DPW that has addressed all of my inquiries for ADA compliance. In fact, there has been no response from the department for over a month.
- DPW and Chris Buck promised replacement trees with this contested decision, however, they have not followed through on this promise in the past. The public is still waiting on four (4) replacement trees that were promised for 3500 Mission Street over five (5) years ago. This was brought up in person at the SF Board of Appeals meeting on January 23, 2019 that Chris Buck attended, as well as numerous times over email.
- DPW, Chris Buck, and Nancy Sariel continue to neglect their role in informing the public about their hidden process for these public trees. The notices that are posted do not inform the public of the appeals process, of when appeals dates and hearings are going to be happening, info on the community meetings, or any accessibility information. Instead, the trees stand barren at the time of this writing, relying on members of the public to volunteer their time to inform the community of the appeals status, decision outcomes, etc. In the past 2 years, they have never spoken at the Mayor's Office on Disability (or any disability community as far as I know) to help keep the disabled public informed of these tree removals which have inaccessible notices.
- DPW has a poor track record of caring for saplings and newly planted trees. DPW has neglected to approve an adequate budget for new trees, and since they are not watered or cared for properly, they experience a high mortality rate. It is nonsensical for DPW to be

destroying trees that are firmly established in favor of ones that will be neglected and quickly become sick and die (if they will be planted all).

- Given the lack of accessibility to disabled people, the poor notification of this process to the public, the negligence of DPW staff in replying to ADA concerns, the negligence of DPW staff in planting new trees or caring for new trees and saplings, and the overall health and vigor of the 24th Street tree canopy, I request the SF Board of Appeals to reject Order No. 201771 and ask Department of Public Works to continue caring for the mature old growth trees along 24th St. between Mission St. and Potrero St.
- I also request that the SF Board of Appeals order the Department of Public Works to comply with Title II of the American with Disabilities Act, evaluate its own notification problems such as the ADA requires, and come up with an accessible solution such as an online database.

### **III. Factual Background**

Chris Buck was physically present and submitted rebuttals to me when I commented on accessibility issues during the January 23, 2019 SF Board of Appeals meeting [Exhibit C-01]. Yet, on August 23rd, 2019, or seven (7) months later, Chris Buck responded with surprise at my accessibility requests (made again over email on June 14, 2019) stating, "Your inquiry is the first time I have ever heard it framed as an Accessibility issue." [Exhibit D]. I'm still awaiting a reply from Chris Buck or his department regarding ADA compliance many months later. Another

request was made July 26th, 2019 with more than half a dozen subsequent emails requesting a response, including enlisting help from the Mayor's Office on Disability [Exhibits A and B].

Title II of the American with disabilities act is not vague in how it asks for compliance from local government agencies. The **II-8.2000 Self-evaluation** states:

*2) A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.*

*3) A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others...*

( copied from <https://www.ada.gov/taman2.html> )

On July 28, 2014, the Department of Public Works held a public hearing concerning the removal of four (4) public trees at 3500 Mission Street [Exhibits E]. At this hearing, the public was promised four (4) replacement trees for those that were removed (due to negligence in construction). As of the time of this filing, none of those trees appear to be replaced, and two sapling trees were recently cut down and removed instead of planting new ones (again without notice to me even though DPW knows that I'm physically disabled and cannot access the notices) [Exhibit F, Exhibit G-03, Exhibit G-04]. DPW knows that I attended the previous hearing for these trees and I emailed as recently as January 15th, 2019 concerning this intersection's trees

[Exhibits G-01, G-02, G-03, G-04]. This comes across as a real slap in the face to disabled people for trying to engage in this exclusionary process.

On January 23rd, 2019 I spoke at the SF Board of Appeals to offer suggestions and ideas for better community outreach for these tree notices, in addition to the failures of the outreach that was attempted for the SF main library trees [Exhibit C-02]. I have also spoke in person at Mayors Office on Disability on public record [Exhibit C-03], and emailed two (2) different videos I made showing the inaccessibility of these notices [Exhibit C-04]. To the best of my knowledge, all or nearly all of these suggestions have been ignored.

#### **IV. Argument**

As of the time of this filing, the only way to be informed of a public tree removal in San Francisco before someone appeals it is to physically canvas a neighborhood and look for a notice stapled or taped to a tree. These notices are in an incredibly small font, not at wheelchair height, difficult to reach, and completely inaccessible to many disabled people. I have had to spend months confined to my bed due to chronic pain and accessibility problems. When I leave my home, sometimes for the first time in 30 or 60 days, I use a motorized wheelchair and cannot travel far and when I go outside. It's absolutely heartbreaking to see so many trees in my neighborhood are cut down or about to be cut down without my having a word of input. Even though I've expressed my concerns to DPW, they fail to inform me of which trees are planned for removal. I'm completely excluded from a public process, denied my right to protest the removal of public trees. I've asked for the same rights as everyone else, by asking DPW to comply with the ADA and provide an online database so that disabled people can find out which trees are being removed in their neighborhoods. After exhausting myself from these requests,

Urban Forestry Inspector Sara Stacy finally said in an email dated July 2, 2019: "The database is something we want to explore. It is a great idea and would provide better transparency."

However, the department refuses to provide a timeline for these changes or put a stay on tree removals until these notices can be made accessible. I ask, what good is an accessible database if all the trees are cut down before disabled people can access it? There are hundreds of San Francisco public trees slated for destruction at the time of this filing.

These are the circumstances under which the 24th Street trees have been slated for removal. Due to my disabilities, I was not able to travel outside of my home to 24th Street during the 30 day posting period or attend the "public" hearing held for this order number. As a disabled San Franciscan, I was completely were excluded from this process, which is undemocratic and completely inaccessible.

Chris Buck and DPW have had ample time to respond to and rectify the accessibility issues that were brought to their attention multiple times in the past. In the months leading up to the notices posted on the 24th Street trees from this contested order number (201771), Chris Buck, Nancy Sarieh, and staff at DPW / BUF failed to include people with disabilities and comply with Title II of the American with Disabilities Act. This failure was deliberate negligence, and not an accidental misstep, as DPW staff was informed of the issue through the exhaustive attempts I've made. It takes no small amount of effort and pain for me to attend meetings at City Hall and volunteer my time towards informing public officials of an ADA violation. That DPW not only ignored this information, but actually proceeded to remove additional trees without even trying to address it, is unconscionable.

Chris Buck and DPW's negligence in responding to my ADA requests over the past 2 months further shows a professional neglect and misconduct in their roles as government official

/ entity. The ADA Title II self-evaluation policy clearly states that "*A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities...*" Not only has DPW neglected to do this, but it has ignored the help I have offered to inform them of their own violation.

At the time of this filing, we still do not have four (4) new trees to replace the ones a 3500 Mission St. that were cut down in 2014. This is a clear example of DPW's lack of a commitment and following through with their promise of planting new trees when they do removals. Not only that, but of the trees that are located at 3500 Mission St., two (2) more have been recently removed without notification to me, even though they know I'm disabled and have gone to a hearing for this area before. It seems DPW continues to cut down as many trees as fast as possible before being in compliance with the ADA.

Of the new trees that are planted, many are sick and die quickly. [Exhibit H] The mortality rate is extremely high for young trees, so it makes no sense to cut down old growth trees, when they have proven durable in the harsh urban environment.

DPW would be better off spending its resources watering and caring for these trees, instead of neglecting them entirely, with hopes that they can get an arborist to declare them sick or dead later. It is a terrible pattern that continues to repeat itself with this department (DPW) which avoids transparency, avoids accountability, avoids ADA compliance, and is negligent and unresponsive to the public.

## **V. Conclusion**

Given the lack of accessibility to disabled people, the poor notification of this process to the public, the negligence of DPW staff in replying to ADA concerns or in planting new trees, the negligence of DPW in caring for new trees and saplings, and the overall health and



vigor of the 24th Street tree canopy, I request the SF Board of Appeals to reject Order No. 201771 and ask Department of Public Works to continue caring for the mature old growth trees along 24th St. between Mission St. and Potrero St.

I also request that the SF Board of Appeals order the Department of Public Works to comply with Title II of the American with Disabilities Act, evaluate its own notification problems such as the ADA requires, and come up with an accessible solution such as an online database.

I think the evidence here clearly shows that DPW and Chris Buck have neglected their responsibilities for including the disabled public with these notices, among other grievances. DPW/ BUF and Chris Buck have poor planning policies for budget, treatment, and replacement of these trees, which if allowed to "replace" (assuming they even bothered to do this) would just have saplings destroyed soon from neglect, just like those at Holly Park Circle and at 3500 Mission Street. [Exhibit H and Exhibit F]

Respectfully submitted,  
Zachary Karnazes

Signature:

Date: