



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Councilmember David Cohen  
Councilmember Dev Davis  
Councilmember Sergio Jimenez

**SUBJECT:** SEE BELOW

**DATE:** January 5, 2023

Approved

Date: 01/5/2023

**SUBJECT:** Collection and Use of Tree-Related In-Lieu Fees, Enforcement of Tree-Planting Conditions on Development, and the Cost of Tree Planting Audit Report.

## RECOMMENDATIONS:

Accept the report of the collection and use of tree-related in-lieu fees, enforcement of tree-planting conditions on development and the cost of tree planting audit, with the following additional direction to City Staff:

1. Report back to the Transportation & Environment Committee (T&E) meeting in June 2023 on the completion status of audit recommendations and a plan for completing Audit Recommendation #6, and come back to T&E at the end of 2023 with an update.
2. Report back to the T&E annually on the metrics for tree removal permitting and mitigation, with details on collection and utilization of in-lieu fees.
3. Ensure that tree removal mitigation adopted as part of the city's billboard policy is included as part of the monitored process.
4. Ensure that the City Tree Replacement Policy includes provisions for trees on private property, in public spaces, and along parking strips.
5. Place 50% of tree in-lieu fees collected to return to the district from which it was collected and the remaining 50% in the citywide tree mitigation fund.
6. Evaluate the city's tree removal permit and fee requirements to minimize difficulty for residents while still supporting the city's goal of preserving and enhancing San Jose's tree canopy.
7. Ensure a robust public outreach process is in place to inform the public about the usable process for free replacement trees.

## BACKGROUND:

First, we would like to thank the office of the City Auditor for drafting this audit and providing recommendations for how to improve our tree planting policies. The tree canopy in San Jose is a key tool to combat climate change. They not only provide shade to our homes and businesses,

but also reduce overall surface temperatures and capture carbon from the air. Trees are paramount in their role to reduce the effects of climate change, and the city must take a more proactive approach to ensure that the canopy not only remains intact but grows.

San Jose's tree canopy has been shrinking for a variety of reasons including: deferred tree plantings, underutilization of in-lieu fees, and a lack of internal processes for monitoring and enforcing our tree replacement requirements. As detailed in the audit, trees are being removed at a faster rate than they are being planted. This is due, in part, to a lack of follow-up regarding new tree plantings. Developers are often unable to plant all required replacement trees on their property, resulting in the need to pay in-lieu fees and for the city to plant trees elsewhere. However, this hand-off for tree planting is far from seamless as we continue to see a lack of follow-through from the City. In-lieu fees are not always collected, and those that have been underutilized, with only about 6% being spent in the 2021-2022 fiscal year. Given the time needed for new trees to establish and grow, it is critical that these funds be used quickly in order to restore San Jose's tree canopy. Furthermore, a portion of the in-lieu fees should return to the districts where they are collected in order to prevent the displacement of trees and retain the tree canopy of that district. This will be particularly important in District 4, which currently has the lowest tree canopy density, where upcoming large developments will inevitably result in the removal of some trees.

The growth of the tree canopy is also dependent on the types of trees that are replanted. Planting trees with a high canopy area is vital to ensure that the overall canopy remains intact. Revision of the tree replacement policy to include considerations for canopy size and optimal species must be expeditiously completed to ensure that tree replacements moving forward best contribute to the overall tree canopy.

In addition to the types of trees being replanted, the Tree Replacement Policy must also clearly address trees being removed not only on private property, but also on public spaces and along parking strips. The City must be held accountable for trees being removed on public property like city parks and libraries. In District 4, we are actively witnessing trees located on parking strips being removed. The Tree Replacement Policy must have an explicit ratio to replace such trees and guidance for appropriate locations for replacement, since parking strips are not always ideal locations for additional trees.

Flaws in the tree removal permit and fee requirements process also add another layer of tree displacement. In the cases of residents who directly wish to remove trees but are unable to afford fees, high fee prices and attaining tree removal permits may deter residents from following the city's tree removal process. District 6 received a significant proportion of complaints for illegal tree cutting, with a grand total of 58 reports. Additionally, District 5 saw the largest tree canopy loss between 2012-2018, but only 5 illegal tree cuttings were reported. To minimize the difficulty of this process, staff should evaluate permitting and fee requirements to encourage residents to follow the ordinance. Encouraging a higher rate of compliance will allow for

HONORABLE MAYOR AND CITY COUNCIL

January 10, 2023

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Page 3

essential documentation of these tree removals, so we know what remediation efforts are necessary.

Addressing the shrinking tree canopy in our city is integral to the continued efforts to mitigate the effects of climate change. The City must play an active role in ensuring the most appropriate trees are planted to retain and regrow the canopy. We are confident that the recommendations offered will send a strong message of the importance of our trees and bolster the recovery of San Jose's tree canopy.

*The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.*