



**Office of the City Auditor**

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**Report to the City Council  
City of San José**

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**AUDIT OF TOWING  
SERVICES: CHANGES TO  
CONTRACT TERMS AND  
CONSOLIDATED  
OVERSIGHT COULD  
IMPROVE OPERATIONS**

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**Report 18-10  
December 2018**

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December 19, 2018

Honorable Mayor and Members  
Of the City Council  
200 East Santa Clara Street  
San José, CA 95113

**Audit of Towing Services: Changes to Contract Terms and Consolidated Oversight  
Could Improve Operations**

The City of San José contracts with six tow companies to remove vehicles from public streets. These towing contractors (all of which have done business with the City for decades) each tow from a dedicated geographic zone within the City. The agreements between the City and the towing contractors outline the fees to be paid and operational requirements. These requirements include timeliness of response, physical specifications for the tow yard and building, and information that must be reported to City staff.

This is the second of two audits of the vehicle abatement and towing programs. The first audit, published in August 2018, focused on the City's vehicle abatement program – a complaint driven program to remove abandoned vehicles from City streets.

**Finding 1: Tow Contract Violations Should Be Addressed.** Two of the City's towing contractors are in violation of the terms of their agreements with the City. These contractors have refused to tow vehicles when requested, failed to submit required payments to the City, and/or stored vehicles in a substandard yard without permit. Under the current agreements, the City has little recourse to ensure vehicles continue to be towed. The City can penalize towing contractors who violate the terms of the agreement, however, the current penalties (liquidated damages) have not been effective. We recommend that any future towing services agreements include an escalating penalty structure of liquidated damages, suspensions, and contract termination. Additionally, any future agreements should include provisions requiring adjacent towing contractors to respond (with different timeliness standards) to another tow zone in case of a tow refusal, suspension, or termination.

**Finding 2: The City Should Be Explicit That Towing Contractors Are Allowed to Charge California Highway Patrol (CHP) Approved Rates.** Currently, the City sets towing and storage fees by aligning the rates to those set by the CHP in the San José area. However, the process for how this alignment happens is unclear in the contract, and has created confusion among staff and delays for the towing contractors. Although minimum fees for a customer to recover a towed vehicle in San Jose are higher than other large cities, the primary driver of that was the City's high vehicle release fee (which we recommended the City review in our previous audit). The CHP-approved towing and storage fees are comparable to other local jurisdictions. We recommend that the City should clarify

in the towing services agreements that contractors shall set their customer tow and storage fees at no more than their CHP-approved rates.

**Finding 3: The City Should Issue A New Request for Proposals with Streamlined Contract Terms.** The current towing services agreements end in March 2021, but the terms of an interim pilot program are set to expire on June 30, 2019. The pilot program under which the towing contractors are currently operating lowered the contract fee per towed vehicle, reduced required security deposits, and allowed reimbursement for disposal of qualified oversized vehicles. We recommend the City should issue a new RFP for the towing services agreements, taking into consideration the issues identified and recommendations made in this report.

To promote competition for future RFPs, we recommend that the City institute a process by which potential towing contractors propose a contract fee in their response to an RFP, rather than the City setting the fee in advance. To further improve current operations, the City should formalize the junk vehicle reimbursement program, close a contract loophole related to cancellation fees for late tows, and clarify the contract language regarding Code Enforcement tows of inoperable vehicles.

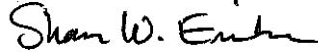
To further simplify the contract and to allow more options for potential contractors, we recommend the City allow towing contractors to have tow yards anywhere within the City limits. The current requirement is that the tow yard be within the designated zone, though half of the current tow yards are already allowed to be located outside the towing contractor's zone. Other options include changing the requirements for tow yard size and necessary equipment, allowing towing contractors to tow for private businesses, and modifying the tow zone boundaries to create a more equitable distribution of tows across the City.

**Finding 4: The City Should Improve Management of Data and Billing.** The City currently lacks useable data on towed vehicles. The City relies on information provided by the towing contractors, which is limited and may not be provided if the contractor does not submit the associated fees. The City should enforce the reporting requirements set out in the towing services agreements, and consider requiring contractors to use a database for tracking tows. The lack of data makes contract oversight, including invoicing for contract fees and dispatch fees, difficult. We recommend improving the process for invoicing the contract fees due, and combining the dispatch fee and contract fee.

**Finding 5: The City Should Consolidate and Improve Program Oversight.** The current contract administrators are in Code Enforcement, but staff from several City departments are involved in the towing services program. We recommend that the administration of the towing services agreements be consolidated in the Police Department. The Police Department is already involved in every stage of the towing services program, while Code Enforcement has very limited involvement. While six of the seven cities we surveyed had towing operations monitored by their police departments, some cities had third party administrators to perform some day-to-day management and handle interactions with tow companies. To improve operations, we recommend the Police Department standardize how dispatchers record tow violations, and re-establish a process for City staff to more regularly sign-off on the disposal of low-value vehicles.

This report has 17 recommendations. We plan to present this report at the January 15, 2019 meeting of the City Council. We would like to thank Planning, Building and Code Enforcement (PBCE); the Department of Transportation (DOT); the Police Department (PD); the City Attorney's Office; and the Finance Department for their time and insight during the audit process. The Administration has reviewed this report and their response is shown on the yellow pages.

Respectfully submitted,



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This report is also available online at [www.sanjoseca.gov/audits](http://www.sanjoseca.gov/audits)

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# Introduction

The mission of the City Auditor’s Office is to independently assess and report on City operations and services. The audit function is an essential element of San José’s public accountability and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services.

In accordance with the City Auditor’s fiscal year (FY) 2018-19 work plan, we have completed an audit of towing services. The objective of our audit was to review the City’s monitoring of towing services agreements and evaluate the current towing services program structure. This is the second of two audits of the vehicle abatement and towing programs. The first audit focused on the vehicle abatement program.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the “Audit Objective, Scope, and Methodology” section of this report.

The Office of the City Auditor thanks the management and staff from Planning, Building and Code Enforcement (PBCE); the Department of Transportation (DOT); the Police Department (PD); the City Attorney’s Office; and the Finance Department for their time, information, insight, and cooperation during the audit process.

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## Background

The City authorizes tows of vehicles from public streets for a variety of reasons, including when vehicles are abandoned, inoperable, illegally stored,<sup>1</sup> reported stolen, involved in accidents, evidence in criminal cases, or in violation of a parking or vehicle law. The City contracts with tow companies to perform these public right-of-way tows. Under the terms of the City’s current towing services agreements, the City’s towing contractors are not permitted to tow for private businesses (such as from a shopping center parking lot), but are allowed to tow for other government agencies and for insurance companies (including AAA).

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<sup>1</sup> Vehicles towed under the Vehicle Abatement Program for being abandoned, inoperable, or illegally stored were reviewed under the previous Audit of Vehicle Abatement, available on the [City Auditor’s website](#).

A City-generated tow begins when City staff call Police Department Dispatch staff to request that a vehicle be towed. Dispatchers contact the towing contractor, which tows the vehicle to their tow yard. When a vehicle owner wishes to retrieve their vehicle, they have to pay the Police Department a fee if the vehicle is impounded and any City or State fines. The vehicle owner then pays the towing contractor the accumulated towing, storage, and extra fees (such as an after-hours fee). Once all fees have been paid, the owner may take their vehicle from the tow yard. If the owner never claims the vehicle, the towing contractor can sell, scrap, or dispose of the vehicle, but the vehicle owner is still liable for any fees and fines (see Exhibit 4).

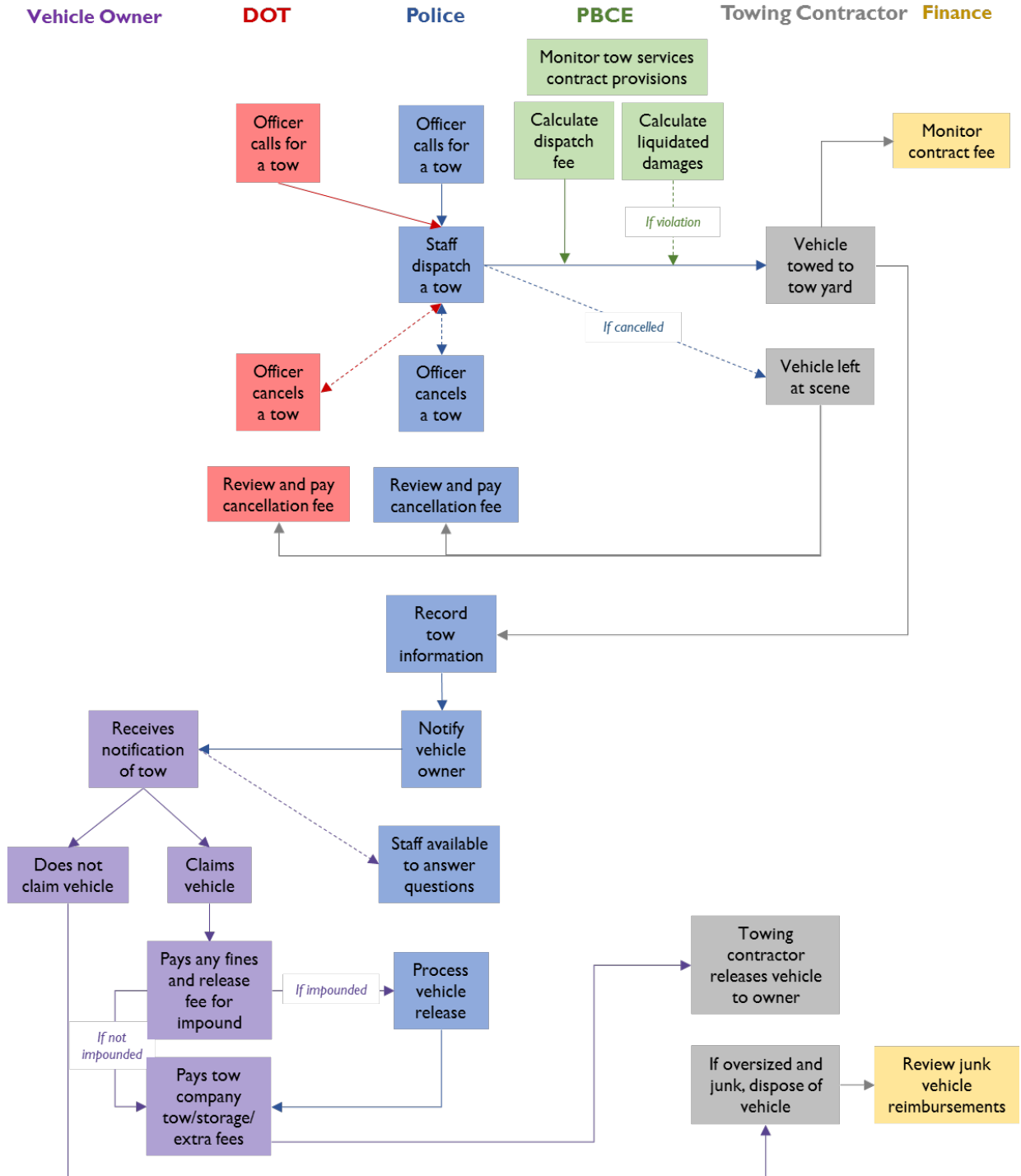
### **Towing Services Program**

In FY 2017-18, 15,700 vehicles were towed under the City's towing services agreements, an increase of about 1,200 tows from FY 2016-17.

It should be noted that the City receives reimbursement through the Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA) for removing or abating abandoned wrecked, dismantled, or inoperable vehicles as public nuisances from public or private property. In FY 2017-18, the County provided the City with disbursements totaling over \$800,000 through the AVASA program, which went to the General Fund.

Several City departments are involved in towing a vehicle and monitoring the City's towing services agreements. The following exhibit illustrates the process of towing a vehicle and the monitoring performed by City staff. It should be noted that towing contractors do not tow vehicles on behalf of the City without first receiving a request from City staff.

**Exhibit I: Process of Towing a Vehicle for the City Involves Several City Departments**

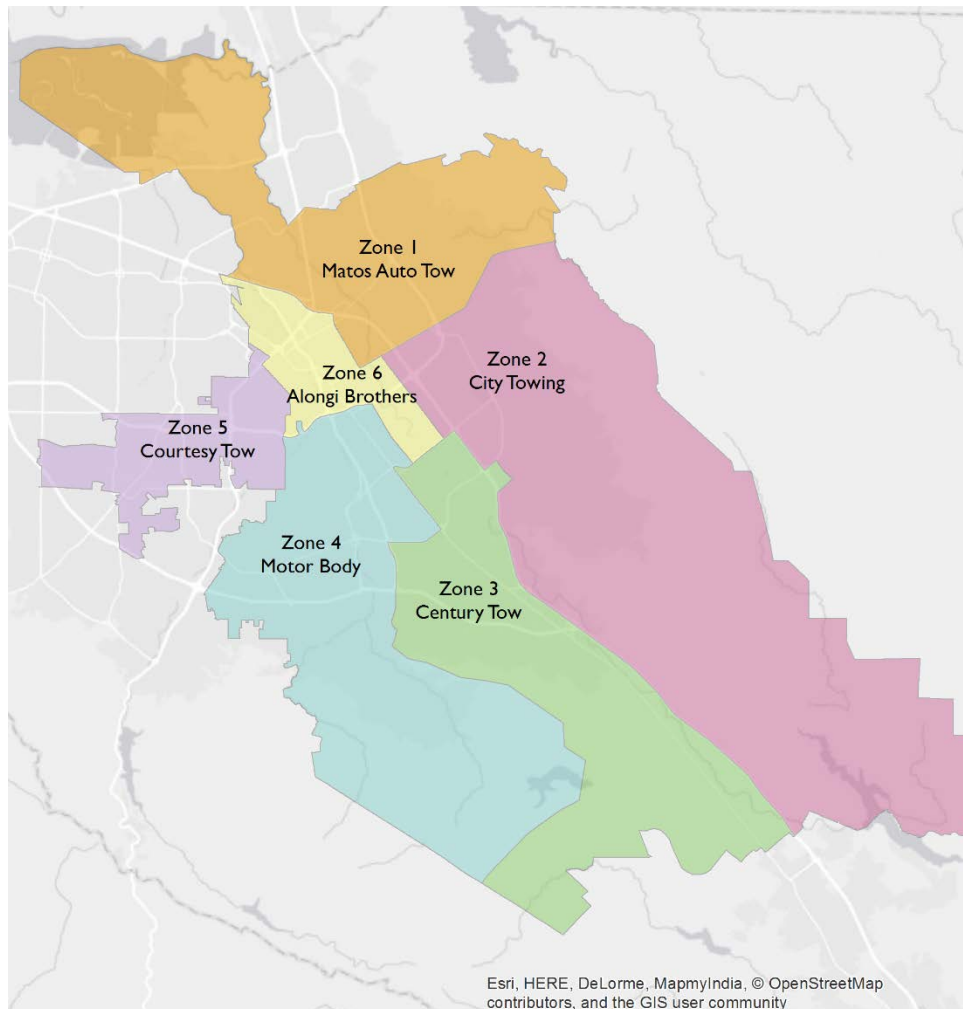


Source: Auditor analysis of the City's towing process

Note: Towing contractors will also scrap or sell vehicles if they are not claimed by their owners. Code Enforcement also authorizes tows of inoperable vehicles off private property, which are currently not performed under the terms of the towing services agreement. Included in Code Enforcement's contract monitoring is investigating any complaints about a towing contractor.

Which company tows a vehicle depends on where in the City the vehicle is located. The City has six geographic tow zones, each with a dedicated towing contractor. Within each zone, the designated towing contractor has exclusive rights to public right-of-way tows.<sup>2</sup>

**Exhibit 2: The City Has One Towing Contractor for Each of its Six Tow Zones<sup>3</sup>**



Source: Planning, Building and Code Enforcement map file based on boundaries drawn and described in towing service contracts

The current towing contractors have all done business with the City for decades. Most of the companies began contracting with the City in the 1970s or 1980s.

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<sup>2</sup> If a company refuses to tow a vehicle, other companies will generally be called and can tow the vehicle even though it is not in their geographic zone. If it is considered an emergency tow (e.g. hazardous) and the designated company refuses to tow a vehicle, dispatchers will call another tow company until one accepts the tow (or until all six refuse the tow). If the tow is not hazardous, only one other company may be called.

<sup>3</sup> It should be noted that Alongi Brothers and Motor Body share ownership, and Matos Auto Tow and Courtesy Tow share ownership.

One company has been towing for the City since the 1960s. The following exhibit illustrates a few key dates in the history of the City's towing services program.

### Exhibit 3: Timeline of Key Dates in the Towing Services Program

1961	City Towing starts providing towing service to the City.
1974	Matos Towing is founded and starts providing towing service to the City.
1977	Motor Body starts providing towing service to the City.
1981	Century Tow starts providing towing service to the City.
1981	Delta Towing starts providing towing service to the City. Delta Towing was later bought and re-named Alongi Brothers.
June 1986	Council amends Muni Code to establish tow zones.
March 1995	City amends the contract to allow for 30-day impounds for unlicensed drivers.
December 1995	Housing Committee reviews alternatives to contract model but makes no changes.
September 1997	Courtesy Tow buys and starts operating Matos Towing.
June 1998	City Auditor publishes an audit of Towing Service Agreements.
1999	City modified tow zones to allow for Motor Body's new location to be within Zone 4.
May 2000	A consultant study of the City's towing rates is published, which recommends switching from a revenue-sharing to a fee-per-tow service.
December 2002	City Council changes the contract compensation model to a flat rate of \$50 for each tow (contract fee) and \$5 for each dispatch (dispatch fee). Tow and contract fees are set to increase with inflation.
January 2003	City receives 12 proposals on a new RFP. The same incumbents were selected and awarded contracts.
2008	Code Enforcement recommends 8 tow zones instead of 6, but the zones were not changed.
March 2008	New tow fees adopted. Council approves policy to set rates to CHP maximum.
March 2009	New contracts are approved. City received 9 proposals on RFP and selected the same incumbents.
August 2009	New tow fees adopted by the City Council
January 2011	City discontinues 30-day impounds for driving without a valid license.
February 2012	New tow fees adopted by the City Council.
July 2013	New tow fees adopted by the City Council.
April 2016	New contracts are approved. Only the six incumbent towing contractors submitted proposals for the RFP.
April 2017	New tow fees adopted by the City Council.
October 2017	City Council changes the compensation structure in response to towing contractor concerns.

Source: Auditor analysis of past City Council memoranda and towing services contracts, the San José Municipal Code, and the 1998 Audit of the City of San José's Towing Service Agreements

Over the years, concerns about the towing program and ideas for improvements to the structure of the program have been discussed. These include: modifying the zone boundaries, increasing/decreasing the number of zones, changing the structure of payments to the City (including the addition of liquidated damages), changing the system of setting rates charged to vehicle owners, allowing

contractors to bid on more than one tow zone, altering the requirements for tow yard location (whether inside the zone or in the City limits), and adding or modifying requirements for the tow yards. Additionally, some ideas were discussed but not acted on, such as changing the zone boundaries to distribute tow volume more equitably or align with police beats.

Many of these same issues are discussed in this report. The towing industry and the needs of the City change over time, and as demonstrated by the numerous discussions over the past forty years, a 1998 audit report, a 2000 consultant study, and the request for this audit, reviewing the structure of the towing services program is an ongoing process.

### **Towing Services Agreements**

Under the current towing services agreements, towing contractors pay the City a set fee per dispatch and a separate fee per towed vehicle for the exclusive right to tow in their dedicated zone. The compensation structure is not bid during the RFP process, as it typically would be for City contracts. The agreements include certain requirements for the tow yard, tow equipment, and staff, among other stipulations. The agreements also set out timeliness requirements, towing-related fees, and charges for cancelled tows. The current agreements were signed in 2016.

In 2017, towing contractors voiced concerns that the increase in oversized junk vehicles, the decline of scrap prices and lien sale revenues, and increased labor costs were creating financial hardships. In October 2017, Finance Department staff came forward to the City Council with a recommendation to revise the towing services agreements under a pilot program. The pilot program:

- Lowered the contract fee per towed vehicle,
- Reduced the required amount for the towing contractors' security deposits, and
- Allowed towing contractors to request reimbursement for qualified oversized vehicles that they have to pay to dispose.

The terms of this pilot program are set to expire on June 30, 2019.

Because of the contract terms, payments are exchanged between the City and the towing contractors on a regular basis.

- Towing contractors pay the City a fee per dispatch, a fee per tow, and any liquidated damages that are charged for violations of the contract (such as arriving to the scene late, or failing to provide a tow truck when requested).



- The City pays the towing contractors when City staff cancel a tow after it had been dispatched, and when the towing contractors have to dispose of oversized junk vehicles.<sup>4</sup>

In addition, vehicle owners pay the City a vehicle release fee, and pay the towing contractor for towing, storage, and any extra fees. Exhibit 4 illustrates the different fees paid during the towing process and the agency that sets them.

#### Exhibit 4: Who Pays What in the Tow Process?

What is it?	Who pays it?	Who gets the payment?	How much is it?	What is it for?	Who set the amount?
Dispatch fee	Towing contractor	City of San José	\$8 per dispatch	Recovering the cost of Police dispatching a tow	City Council / City's towing services Agreements
Contract fee	Towing contractor	City of San José	\$59 per vehicle towed	Referral fee per tow	City's towing services agreements
Liquidated Damages	Towing contractor	City of San José	\$35 - \$70 per violation	Violations of the towing services agreement terms	City's towing services agreements
Cancellation fee	City of San José	Towing contractor	\$53.75 per ¼ hour	Cost of towing contractor's time when no vehicle was towed	City's towing services agreements
Vehicle Release Fee*	Vehicle Owner	City of San José	\$290 per vehicle	Recovering the cost of processing an impounded vehicle	City Council
Citation fines or Vehicle Registration fines/fees	Vehicle Owner	City of San José and/or State of California	Varies	Any required citation fines or payments for vehicle registration	City Council and State of California
Towing, Storage, and Extra fees	Vehicle Owner	Towing contractor	\$215 for basic tow, \$87.50 per day for storage, and any extra charges	Cost of towing a vehicle, vehicle storage, and any extras (such as an after-hours fee)	City Council adopts rates set by the California Highway Patrol (CHP)
Junk vehicle disposal costs	City of San José	Towing contractor	Varies, average \$1,500 per vehicle	Actual costs towing contractor incurred disposing of large junk vehicles	City's towing services agreements

Source: Auditor analysis of the towing services agreements, the City Fees and Charges schedule, and the DMV policy on payment of late registration fines. Note: if a vehicle is sold through the lien sale process, a new owner is responsible for expired registration payments. As discussed later in this report, the dispatch fee amount is included in both the City's Fees and Charges schedule and the towing services agreements.

\*The vehicle release fee was discussed in the previous Audit of Vehicle Abatement

<sup>4</sup> The towing contractors sometimes credit their disposal costs against the per-tow contract fee each month. City staff will audit the junk vehicle disposal credits and invoice for any discrepancies if necessary.

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**Audit Objective, Scope, and Methodology**

This audit was requested by the City Council when the Finance Department proposed the pilot program for a new compensation structure in October 2017. We reviewed the City's Vehicle Abatement program in a separate audit, published in August 2018.

The objective of this audit was to review the City's monitoring of towing services agreements and evaluate the current towing services program structure. We sought to understand and evaluate the controls over the City's towing services program. To achieve our objective, we:

- Reviewed past Council memoranda, minutes, and agenda items to understand the history of the towing services program;
- Reviewed towing services agreements, and relevant amendments, from 1996 to 2018 to understand changes to the towing services program delivery and contractual requirements;
- Reviewed the 1998 Audit of the City of San José's Towing Service Agreements and the 2000 DMG-MAXIMUS consultant study to evaluate how past recommendations may have contributed to changes in towing services;
- Evaluated the process for amending the contract in 2017 and the financial results of that amendment;
- Assessed current contract requirements in comparison to those of other jurisdictions and previous contracts;
- Interviewed staff from Code Enforcement, the Finance Department, the Police Department, the Department of Transportation, the City Attorney's Office, and the Environmental Services Department about contract monitoring and towing company requirements;
- Evaluated the monitoring provided by Code Enforcement and Finance over contract fees and provisions;
- Reviewed available contract fee payment information from FY 2016-17 and FY 2017-18 and junk vehicle receipt submissions from January – June 2018;
- Reviewed available data on towed vehicles and dispatches over time;
- Evaluated changes in the number of contract violations resulting in liquidated damages since 2010;
- Mapped dispatch data for the month of June 2018 and compared to the current tow zone boundaries;
- Reviewed a past contract and evaluated options for contracting for towing from private property under the City's abandoned/inoperable vehicle program in Code Enforcement;

- Reviewed the City's payment of cancellation fees to towing contractors;
- Assessed the availability of data on the City's towing programs;
- Understood the prevalence of tow refusals and evaluated the effectiveness of the City's recourse when a vehicle is refused;
- Reviewed relevant policies and procedures from the Police Department's Communications Center regarding tows and contract violations;
- Reviewed salary and benefit information from the City's Department Human Resources and Office of Employee Relations;
- Reviewed the requirements for the Title VI tow company permit process;
- Interviewed a representative from the California Highway Patrol to understand the process for setting tow rates;
- Interviewed representatives of all the City's towing contractors and visited all primary tow yards;
- Benchmarked information about towing services to other jurisdictions through interviews and/or contract and website review, including: City of Los Angeles, City of San Diego, City and County of San Francisco, City of Sunnyvale, City of Santa Clara, City of Milpitas, City of Campbell, City of Oakland, City of Sacramento, City of Stockton, and the California Highway Patrol.

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# **Finding I      Tow Contract Violations Should Be Addressed**

## **Summary**

Two of the City's towing contractors are in violation of the terms of their agreements with the City. Issues include contractors refusing to tow vehicles when requested, failing to submit required payments to the City, and/or storing vehicles in a yard that is neither up to the towing services agreement's standards nor for which the contractor has a special use permit. Although the City can penalize towing contractors who violate the terms of the agreement, the current penalties (liquidated damages) have not been increased in years and the City has little recourse to ensure vehicles continue to be towed. We recommend that future towing services agreements include an escalating penalty structure of liquidated damages, suspensions, and contract termination, as well as provisions requiring adjacent towing contractors to respond (with different timeliness standards) to another tow zone in case of a tow refusal, suspension, or termination.

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## **Two Towing Contractors Are in Violation of the Terms of Their Agreements With the City**

As of the time of this audit, both City Towing (Zone 2) and Century Towing (Zone 3) were in violation of the terms of their contracts with the City. City Towing owes the City over \$400,000 after withholding some part of their payments since November 2016.<sup>5</sup> City Towing has also frequently refused to tow vehicles from within its tow zone, often citing that its tow yard was full. Between January and September 2018, City Towing was fined 162 times for not towing a vehicle and 130 times for timeliness violations (i.e. failing to arrive within 25 minutes of dispatch). This figure is likely an underestimate, because the Department of Transportation has documented additional tow refusals that have not resulted in a fine (see Finding 5).

Separately, Century Towing provided some payments to the City in 2018, but did not provide the documentation for its number of tows. The City had to verify the appropriate payment amounts through its annual audit of tow company records. It also moved its tow yard in July. The new location did not meet San José Municipal Code requirements nor some contract requirements. During a City inspection of its new tow yard, its business tax certificate and its insurance certificate had both expired. The location did not have adequate lighting nor an

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<sup>5</sup> Finance Department staff are working with City Towing on a payment plan for the overdue payments. This total reflects what is due for the contract fee; additional payments are due for the dispatch fee, late payments, and liquidated damages.

afterhours phone outside the building. The lot was also partly unpaved. All of these factors violate the terms of its contract with the City. Century moved its tow yard again in December 2018. According to City staff, Century does not have a special use permit for their new location to be operating as a towing business. At the time of our review, Century had not submitted current insurance certificates to the City. Between January and September 2018, Century Towing was fined 33 times for not towing a vehicle and fined 189 times for timeliness violations.

### **The City's Recourse When a Tow Is Refused Is Insufficient**

When a vehicle needs to be towed, Police Dispatch will call the towing contractor for that tow zone. In some cases, the towing contractor will refuse to tow the vehicle even though this refusal violates the terms of their contract. The towing contractor will be assessed liquidated damages in the amount of \$50 for "failure to provide required equipment." However, the City may be unable to remove the vehicle from the street.

When a tow is refused, Police Dispatch will call other towing contractors to see if any of them are able to accept the tow.<sup>6</sup> The contractors are not obligated to accept the tow, and in many cases, they will also refuse to tow the vehicle. In these cases, the City has no recourse, and the vehicle will remain on the street. The City may repeat the same process again when an officer revisits the same vehicle.

This poor response is costly to staff time, especially Police and Parking Officers, who must wait with vehicles that are eventually refused and then make a subsequent visit.

The City's lack of an effective contingency plan means that if the City were to nullify its contract with a towing contractor, the City does not have a plan that would enable it to tow vehicles from those zones. As such, the City has maintained the contracts with both towing contractors even though they have violated the terms of their contract and present operational challenges.

### **Other Cities Have Contracts with Additional Safeguards Against Tow Refusals**

Los Angeles and Sacramento both have tow zones like San José, although their systems operate differently to provide a safeguard against tow refusals. Los Angeles has 19 tow zones. In its contracts with towing contractors, there is a clause that the contractor for a particular zone may be required to tow in a neighboring zone if there is a tow refusal or contract violation.

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<sup>6</sup> If it is considered an emergency tow (e.g. hazardous) and the designated company refuses to tow a vehicle, dispatchers will call another tow company until one accepts the tow (or until all six refuse the tow). If the tow is not hazardous, only one other company may be called.

Sacramento has tow zones that function differently: each tow zone has its own tow rotation. In their towing operation, if a towing contractor does not tow a vehicle promptly when requested, another company in the rotation may be dispatched. If a company refuses a number of times, they may face a 3-day or 7-day suspension.

Either of these operations could provide models for building a contingency plan for the City. However, the Sacramento model would be a profound change from San José’s current approach of exclusive zones.

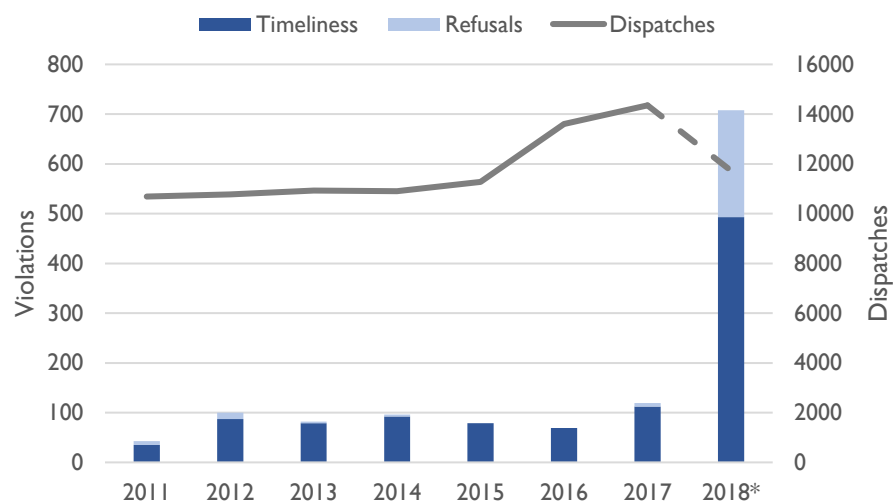
**Liquidated Damages Should Be Revisited**

When a towing contractor violates specific contract terms, the City will charge liquidated damages. Violations include refusing to tow a vehicle, failing to respond within 25 minutes, and failing to answer calls from City Dispatch within four rings.

Although only a couple of the towing contractors have frequently refused tows, all of them have committed this violation at least once in 2018. As noted above, City Towing refused to tow a vehicle at least 162 times in the first 9 months of 2018. As a result of its refusals and other violations, City Towing has been fined an average of \$1,400 per month for liquidated damages alone. In a particularly egregious case, City Towing refused to tow the same vehicle eight times, so the abandoned vehicle remained on the street for 93 days. This resulted in eight unnecessary visits by City staff to this vehicle.

Timeliness violations have also increased dramatically. Taken together, timeliness violations and refusals to tow from January to September 2018 were already nearly six times higher in 2018 than they were in all of 2017. The following exhibit shows this change over time.

**Exhibit 5: The Number of Violations Grew Significantly in 2018**



Source: Code Enforcement liquidated damages and dispatch fee billing data  
 \* 2018 data only includes January – September

However, the fines for liquidated damages have not changed since at least 2003, even as other fees within the contract have increased. For example, the fine for failure to respond in 25 minutes was 32 percent of a basic tow fee in 2003. Currently, the fine is only 16 percent of the basic tow fee.

**Exhibit 6: Liquidated Damages for Contract Violations Range From \$35 - \$70 per Occurrence**

<b>Contract Violation</b>	<b>Liquidated Damages</b>
Failure to respond with 25 minutes	\$35 per occurrence
Lack of yard staffing during required hours	\$35 per occurrence
Failure to answer calls from City Dispatch within four rings	\$70 per occurrence
Failure to provide required equipment	\$50 per occurrence
Failure to respond to customer complaints within the required time	\$50 per occurrence
Failure of employee to wear name badge	\$50 per occurrence
Failure of subcontractor to display magnetic sign	\$50 per occurrence
Failure to maintain storage facility standards	\$50 per occurrence

Source: Towing Services Agreements

Given that these contract violations have increased dramatically within the last year, and the liquidated damages have not been adequate to dissuade towing contractors from committing them, these fines should be much higher to ensure towing contractors comply with the contract.

**The City Needs Recourse for Short- and Long-Term Problems, And More Effective Contingency Plans for Towing Vehicles**

When a towing contractor violates its contract with the City, the City does not have sufficient contingency plans to ensure vehicles can still be removed from public property in a safe, timely manner. Potential contract violations may include refusing to tow a vehicle, overdue fees, or other contract violations.

The problems the City has recently faced with its towing contractors demonstrate the two types of contingency plans that the City needs: a short-term plan to tow an individual vehicle that a towing contractor has refused to tow, as well as a long-term plan to suspend towing contractors for more egregious violations of the contract.

Los Angeles and Sacramento demonstrate the two operational models that the City could adopt. In the case of a towing contractor suspension, the City could split the towing contractor’s zone into smaller areas that neighboring towing contractors would be required to tow (similar to Los Angeles). Alternatively, the City could create a tow rotation list of the City’s other towing contractors and require them to tow on a rotating basis (similar to Sacramento). Any contingency



plan should be developed in consultation with Police Dispatch. In addition, the City should charge liquidated damages for all violations.

**Recommendation #1: To provide a method to address violations, the City should include in future towing services agreements:**

- **An escalating penalty structure of liquidated damages, suspensions, and contract termination. Liquidated damages should be increased over time.**
- **Provisions requiring towing contractors to respond to another tow zone in case of a tow refusal or suspension (with a different timeliness standard).**

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## **Finding 2      The City Should Be Explicit That Towing Contractors Are Allowed to Charge CHP-Approved Rates**

### **Summary**

Currently, the City sets towing and storage fees by aligning the rates to those set by the CHP in the San José area. However, the process for how this alignment happens is unclear in the contract, and has created confusion among staff and delays for the towing contractors. Although minimum fees for a customer to recover a towed vehicle in San Jose are higher than other large cities, the primary driver of that was the City's high vehicle release fee (which we recommended the City review in our previous audit). The CHP-approved towing and storage fees are comparable to other local jurisdictions. We recommend that the City should clarify in the towing services agreements that contractors shall set their customer tow and storage fees at no more than their CHP-approved rates.

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### **Authority to Regulate Towing Fees**

The City has the authority to regulate towing fees for tow companies it publicly contracts with. Previously, the City would determine towing fees through its own review process, generally by looking at fees in other jurisdictions.

However, the City's prior review process was administratively burdensome. In 2000, a consultant hired by the City published a review of the City's towing fees, among other features of the towing contracts. In 2002, the City Council adopted a new set of towing fees and a policy to adjust fees annually based on inflation beginning in 2004, but the policy was disputed by the towing contractors. Towing fees were not adjusted again until 2008.

In March 2008, City staff recommended aligning towing fees for its public contracts to the maximum rates approved by the California Highway Patrol San José Area Office (CHP-San José). The recommendation included updating Council Policy 9-08 (Rate Review Process for Tow Car Services) to establish an annual review process for setting towing fees not to exceed the CHP-San José rates. The goal of this new policy was to both reduce the administrative burden of determining appropriate towing fees and align the City's towing fees with those charged by other agencies in San José (e.g., CHP, Sheriff).

Per Council Policy and the City's towing services agreements, City staff must review the CHP-San José's annual towing fee adjustments within 60 days and return to City Council with a recommendation to adopt the new towing fees. Council may then adopt the recommended towing fees. The last towing fee

increase was adopted in April 2017, which set the basic tow rate<sup>7</sup> to \$215 to align with CHP-San José's rates for 2016-17.

### **The CHP Rate-Setting Process**

Each area office of the California Highway Patrol manages a rotation list of tow companies that officers will call to tow vehicles from interstates, freeways, or unincorporated territories.<sup>8</sup>

Each tow company on the rotation proposes rates to the local CHP area office for towing fees it will charge to the public for CHP-initiated tows. These include towing fees, indoor storage rates, and outdoor storage rates. The area office determines whether the proposed rates are reasonable, and whether they are in line with rates charged by other public agencies. Each year, a tow company is allowed to propose changes to its rates no more than twice.

### **City Council Discretion**

All six of the City's towing contractors are also part of the CHP-San José's rotation list. The CHP-San José approved new tow rates for the City's contractors for 2018-19. For most of the towing contractors, the towing rates were increased.

However, under the current towing services agreement with the City, all six towing contractors may only charge the \$215 basic tow rate for City-initiated tows. This means that the City's current towing rates are below the CHP-San José approved rates for most of the towing contractors.

When City staff recommended increases to the towing fees in March 2017, eight months after the CHP approved rates for 2016-17, members of the City Council expressed concerns about the high cost of towing and its impact on low-income residents. City Council was advised by City staff that, per the agreement, the towing rates must conform to the CHP-San José approved rates.

The towing contractors have requested another increase to conform to the CHP rates approved for 2018-19. As of the time of this audit, these rates had not yet been approved. The towing services agreements could be revised to be more explicit that each tow companies' rates will increase effective upon approval by the CHP.

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<sup>7</sup> "Basic tow rate" refers to the hourly rate charged for a tow with a Class A (regular duty) tow truck.

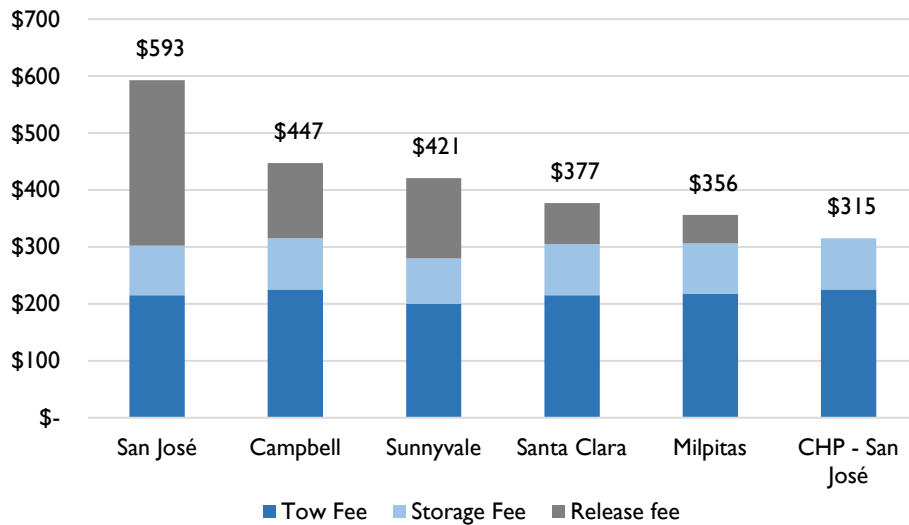
<sup>8</sup> The terms of the rotation list are governed by the CHP's Towing Services Agreement for the given fiscal year, but the agency does not directly contract with any of the tow companies on the rotation; the rotation is voluntary. As long as a tow company meets all qualifications, it may be placed on the CHP's rotation. Each company may have a different approved set of rates.

**Local Jurisdictions Have Similar Tow and Storage Rates**

As shown in the previous Audit of Vehicle Abatement, the tow and storage fees charged by San José’s towing contractors are higher than other large California cities. However, the tow and storage fees are in line with those of other South Bay agencies. Like San José, several jurisdictions in the South Bay (Campbell, Milpitas, and Santa Clara) also defer to CHP-approved rates for their contractors.<sup>9</sup>

As also noted in the previous audit, the City’s vehicle release fee for impounds is higher than other large California cities, which makes the cost of retrieving a vehicle that has been impounded higher in San José.<sup>10</sup> That audit recommended reevaluating the City’s vehicle release fee. As shown in the exhibit below, this would bring San José fees more in line with rates in other jurisdictions.

**Exhibit 7: San José’s Tow and Storage Fees Are In Line with CHP-Approved Rates In Other Local Jurisdictions**



Source: Interviews with towing contractors, city staff, and reviews of city documents. Note: Towing rates as of July 1, 2018. Release fees as of most recently available data. Assumes outdoor storage fee. For several jurisdictions, different towing contractors were allowed to charge different rates; shown is a sample of one towing contractor. The CHP-San José rates for tow and storage shown are the highest allowed for any tow company.

It should be noted that if the City were to allow towing companies to charge their new CHP-approved rates, different areas of San José would have slightly different

<sup>9</sup> The CHP-San José rotation also includes tow companies in the South Bay around San José, such as in Mountain View, Sunnyvale, Campbell, Los Gatos, Milpitas, and Santa Clara.

<sup>10</sup> Unlike San José, Campbell and Milpitas charge separate, higher vehicle release fees for 30-day impounds. The vehicle release fees shown in Exhibit 7 are for general impounds. The CHP does not charge a fee for vehicle releases. When a vehicle owner has their vehicle impounded in most California cities, they must pay a fee to the City to release their vehicle and then pay fees to the tow company.

towing fees for City-initiated tows. The following exhibit shows the assigned tow zone and the 2018-19 CHP-approved rates for the City’s towing contractors.

**Exhibit 8: The City’s Contractors Have Different CHP-Approved Rates**

<b>Towing Contractor</b>	<b>Tow Zone</b>	<b>Towing</b>	<b>Storage</b>
Matos	Zone 1 (North San José)	\$215	\$87.50
City	Zone 2 (East San José)	\$225	\$90
Century	Zone 3 (South San José)	\$225	\$90
Motor Body	Zone 4 (South/Central San José)	\$225	\$90
Courtesy	Zone 5 (West San José)	\$215	\$87.50
Alongi Brothers	Zone 6 (Central San José)	\$225	\$90

Source: California Highway Patrol San José Area Office. Note: Assumes outdoor storage fee.

One of the benefits of aligning the City’s towing rates with the CHP-San José towing rates was consistency of towing rates among various public agencies within San José. In other words, San José residents could expect to pay the same rates if their vehicle were towed by the CHP, the Sheriff, or the City. Additionally, aligning the City’s towing rates to CHP rates would require less resources than having City staff determine an appropriate and fair towing fee schedule.

Per state law, any companies towing for private businesses in San José may charge either their CHP-approved rates or the rates the City allows for its towing services agreements, whichever is higher. By aligning the City’s rate to the CHP, San José residents would also have consistent towing rates for private business tows.

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**Automatic Alignment to CHP Rates for the Duration of Each Agreement**

Allowing each towing contractor to automatically align their rates with their CHP-San José rates for the duration of a towing services agreement would remove the City Council from the process and make explicit that towing contractors may charge their individual CHP-approved rates for City-initiated tows.<sup>11</sup> In the event that towing contractors have differing CHP-approved rates, there would be different tow rates across the City’s tow zones.

This option is consistent with other local jurisdictions in the South Bay. Deferring to CHP to regulate rates would give towing contractors greater predictability of their towing rates while reducing the City’s administrative burden for determining rates.

This would not preclude the City Council’s ability to set new tow rates or determine a new tow rate-setting process with subsequent towing services agreements. However, based on the City’s history of tow fee-setting, it may

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<sup>11</sup> Per the towing services agreements, the towing contractors are required to publicly post at their facilities all towing-related fees for City-initiated tows. The Police Department also posts some towing fees on their website.

require significant dedication of resources for the City to determine its own fair rates for its towing services agreements.

**Recommendation #2: The City should structure future towing services agreements to clarify that towing contractors may charge no more than their California Highway Patrol (CHP)-approved tow rates.**

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## **Finding 3      The City Should Issue a New Request for Proposals with Streamlined Contract Terms**

### **Summary**

The pilot program under which the towing companies are currently operating lowered the contract fee per towed vehicle, reduced required security deposits, and allowed reimbursement for disposal of qualified oversized vehicles. The terms of the pilot program are set to expire on June 30, 2019. We recommend the City should issue a new RFP for the towing services agreements, taking into consideration the issues identified and recommendations made in this report.

To promote competition for future RFPs, we recommend that the City institute a process by which potential towing contractors propose a contract fee in their response to an RFP, rather than the City setting the fee in advance. To further improve current operations, the City should formalize the junk vehicle reimbursement program, close the contract loophole that allows contractors to charge cancellation fees if a tow is cancelled that would have arrived late, and clarify the contract language regarding Code Enforcement tows of inoperable vehicles.

To further simplify the contract and to allow more options for potential contractors, we recommend the City allow towing contractors to have tow yards anywhere within the City limits instead of the current requirement that the tow yard be within the designated zone (half of the current tow yards are already allowed to be located outside the towing contractor's zone). Other options include changing the requirements for tow yard size and necessary equipment, allowing towing contractors to tow for private businesses, and modifying the tow zone boundaries to create a more equitable distribution of tows across the City.

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### **The City Should Issue a New, Updated RFP**

The City issued its most recent Request for Proposal (RFP) for towing services in October 2015, with proposals due December 2015. The towing services agreements are in place until March 31, 2021, with 5 one-year options to extend, but the pilot program that began on January 1, 2018 is set to expire on June 30, 2019. Staff report that without action from the City Council, the terms of the original agreement will resume on July 1, 2019 when the pilot ends. Towing contractors have voiced concerns about returning to the original agreement terms.

During the course of our review, we identified operational problems that should be corrected in the towing services program. These recommended changes are outlined in Findings 1 and 2. In our opinion, our findings, along with the fact that the pilot program will soon end, warrant the issuance of a new RFP.

We also identified ways to streamline the program by simplifying some requirements, which are outlined in this Finding. These provisions will also help the City ensure that its contract provisions make business sense for contractors. The recommendations included in this Finding should also be considered when issuing a new RFP.

**Recommendation #3: The City should issue a new RFP for the towing services agreements, taking into consideration the issues identified and recommendations made in this report.**

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### The City Should Allow Companies to Propose a Contract Fee

As described in the background, the towing services agreements are atypical in that the City sets the compensation that the contractors pay and what contractors can charge for their services. This has remained true despite changes over time in the contract compensation model.

#### History of the Contract Compensation Structure

For decades, the City has received compensation from towing contractors for the right to tow vehicles for the City.

In 1981, the City Council established franchises for police-generated tows in the Municipal Code. The ordinance included a requirement that towing contractors pay 13 percent of their gross annual receipts.

By 1996, the compensation model had changed. Towing contractors were required to pay the City a \$15 flat rate per tow, and also share with the City a portion of the revenue generated from storage fees and lien sales. According to an audit this office published in 1998, between April 1996 and December 1997, 35 percent of the City's overall towing revenue was generated from the flat-rate fee, 52 percent was from storage fees, and 12 percent was from lien sales.

However, a consultant study conducted in 2000 suggested changing the model to simply a flat rate fee per tow. The reason was to base the City's revenue off the one factor it could control: the number of vehicles towed. The study calculated that to move from the fee and revenue sharing model to just a fee model, while holding revenues constant, the fee should increase from \$15 to \$46 per tow. The study stated that this would relieve the City of "the risk of changing market conditions."<sup>12</sup>

In 2003, the City's signed contracts included only a flat fee per tow (contract fee), set at \$50, and \$5 per dispatch (dispatch fee). In 2009, the fee was increased to

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<sup>12</sup> This consultant study was conducted by DMG-MAXIMUS, and was provided to Code Enforcement in May 2000.

\$60 per tow and \$6 per dispatch, and in 2013, it increased to \$80 per tow and \$8 per dispatch.

### **Change in City Impounding Policy**

The 2003 fee-per-tow contract model was calculated during a time when the City conducted 30-day impounds on vehicles of unlicensed drivers, which began in 1995. In 2011, the Police Department changed its policy on 30-day impounds. The change to the policy would “ensure that 30-day impounds would continue for the vehicles of the most serious offenders, while reducing the number of tows and impounds for persons whose violations are not related to serious driving offenses,” such as unlicensed drivers. A 30-day impound carries high storage fees—currently over \$2,600—in addition to the other fees necessary to release a vehicle.

Ten months after the change was announced, the Police Department issued a memo about the results of the change. The memo stated that the City’s revenue from impound fees was remaining constant and that more registered owners (R/Os) were claiming their vehicles. The memo also noted: “*These same changes in the vehicle recovery patterns by R/O’s could be affecting the tow companies’ revenues due to a lower amount of storage fees collected and fewer vehicle auctions, however, at this time staff does not have any specific data to support this.*”

### **Pilot Contract Compensation Structure**

Despite the consultant’s study’s assertion that the flat per-tow rate would relieve the risk to the City of changing market conditions, in 2017, towing contractors came forward with concerns about their finances. The memo provided by Finance with the recommendation to implement a pilot program stated:

*[The tow] operators cited skyrocketing expenses primarily due to the growing number of recreational vehicles (RV’s), trailers and boats; (“junk vehicles”)[;] the decline of scrap metal prices which reduces the revenue generated from salvaged vehicles; the decline of revenues generated from lien sales; and increased labor costs.*

These concerns related directly to changes in market conditions, and in October 2017, the City Council approved a pilot program that included lowering the contract fee to \$59 per tow, reducing the required amount for the towing contractors’ security deposits, and reimbursing the costs of disposing “junk vehicles.”

Under the new terms, between January – June 2018 the actual amount that each contractor ended up paying per tow varied. The following exhibit shows the variation in financial relief for towing contractors and the overall loss that the City incurred due to the new contract structure.

**Exhibit 9: Impacts of the Pilot Program Compensation Structure<sup>13</sup>**

January - June 2018	Zone 1 Matos	Zone 2 City	Zone 3 Century*	Zone 4 Motor Body	Zone 5 Courtesy	Zone 6 Alongi	Total
<b>Workload</b>							
Total Dispatches	1,173	1,715	1,259	1,442	737	1,324	7,650
Total Tows	1,225	1,813	1,317	1,518	779	1,375	8,027
Junk Vehicles	32	10	0	39	1	42	124
<b>Original Payment Structure</b>							
Dispatch fee (\$8 per dispatch)	\$9,384	\$13,720	\$10,072	\$11,536	\$5,896	\$10,592	\$61,200
Contract fee (\$80 per tow)	\$98,000	\$145,040	\$105,360	\$121,440	\$62,320	\$110,000	\$642,160
Total Due	\$107,384	\$158,760	\$115,432	\$132,976	\$68,216	\$120,592	\$703,360
<b>Pilot Program Payment Structure</b>							
Dispatch fee (\$8 per dispatch)	\$9,384	\$13,720	\$10,072	\$11,536	\$5,896	\$10,592	\$61,200
Contract fee (\$59 per tow)	\$72,275	\$106,967	\$77,703	\$89,562	\$45,961	\$81,125	\$473,593
Junk Vehicle Disposal Costs	(\$52,647)	(\$7,794)	\$0	(\$59,250)	(\$1,326)	(\$66,855)	(\$187,872)
Total Due	\$29,012	\$112,893	\$87,775	\$41,848	\$50,531	\$24,862	\$346,921
<b>Difference between Original and Pilot Program Payments</b>	<b>(\$78,372)</b>	<b>(\$45,867)</b>	<b>(\$27,657)</b>	<b>(\$91,128)</b>	<b>(\$17,685)</b>	<b>(\$95,730)</b>	<b>(\$356,439)</b>

Source: Auditor analysis of documentation submitted to Finance Revenue Management and Finance staff annual reconciliation of tow counts, January – June 2018, as of the time of our review. Note: this exhibit shows revenue owed to the City, not what payments were actually made. Additionally, City Towing did not have an executed agreement for the pilot program at the time of our review (pending an agreement for a payment plan for late payments).

\* According to Finance, Century Tow had submitted no junk vehicle reimbursement documentation at the time of our review.

**Other Jurisdictions Employ a Variety of Compensation Models**

There are several different approaches that jurisdictions take to contract compensation. As shown in the following exhibit, several jurisdictions—including those closest geographically to San José—do not require any compensation from towing contractors.

<sup>13</sup> The pilot program did not change the amount due for the dispatch fee.

### Exhibit 10: Contract Compensation Models Vary by Jurisdiction

City	Model
San José	\$59 flat rate per tow (contract fee) + \$8 per dispatch (dispatch fee)
Oakland	\$54 referral fee + \$172,000 annual fee + 3% of gross revenues
Los Angeles	7% of gross revenues
San Diego	\$74 franchise fee + \$22 tow management fee
Sacramento	\$0
Santa Clara	\$0
Sunnyvale	\$0
CHP – San José	\$0

Source: Auditor review of jurisdictions' towing services agreements and interviews with staff

#### Determining a Fair Contract Fee Is Administratively Burdensome

The past two occasions on which the City altered the model of the contract compensation each required a significant dedication of resources.

As was previously referenced, in 2000 a consultant study was provided to the City. The primary purpose of the study was to review the rates charged to customers for tow services, but the study also included a recommendation to change the City's contract compensation model. The study included detailed analyses of the towing contractor's finances as well as benchmarking surveys to a variety of jurisdictions.

When the towing contractors requested a change to the compensation model in 2017, staff involved in the program met extensively to discuss possible amendments to the contract. This included weeks of Finance Purchasing staff time.

#### The City Should Request Proposals for Contract Fees

Though the City has changed contract compensation models at least four times in the course of this program's history, during our audit towing contractors continued to express concerns about the current structure. History indicates that each model presents new problems as the towing industry changes and as the City's towing needs change.

For some contracts in which the City sets the rates charged to customers, the City requires that proposers on an RFP submit the costs that the contractor expects to incur to fulfill the terms of the towing services agreement. Structuring a towing services RFP to require potential contractors to propose a contract fee is a similar concept: the City would set a rate that the contractors could charge to vehicle owners, and potential contractors would propose what the company could provide to the City as a contract fee, based on the contractor's expected costs and revenue. This could result in a different contract fee per zone which, as

Exhibit 9 shows, may be reasonable based on the costs associated with each zone. This process would reduce the City's involvement in determining what contract compensation may be appropriate given current market conditions.

Additionally, this could increase the competitiveness of the City's towing services agreement to other potential contractors. Potential contractors would not be bound by a set fee that applies across the City, but could propose a fee that would work for their business.

As recommended elsewhere in this report, this contract fee could also incorporate other costs currently exchanged between the City and the towing contractors, such as the dispatch fee and reimbursements for the disposal of junk vehicles. The City could require proposed contract fees meet a minimum amount, particularly if the City wants to recover the costs of dispatching and City oversight.<sup>14</sup>

**Recommendation #4: The City should consider allowing contractors to submit proposals for a contract fee, paid by the contractor to the City per towed vehicle, as part of the Request for Proposal process. The amount of the contract fee should be evaluated along with other aspects of a potential contractor's proposal.**

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### The City Should Continue to Reimburse Towing Contractors for Junk Vehicle Disposal

The pilot program approved in October 2017 allowed towing contractors to submit receipts and receive reimbursement for the disposal of oversized junk vehicles. Staff reported that one of the primary towing contractor concerns regarding financial hardship was the growth in expenses due to oversized junk vehicles. A memo from the Finance Department to the City Council stated:

*Since 2015, the operators have experienced a significant increase in tows of "junk" recreational vehicles (RVs), boats, and trailers. Most of these vehicles are unclaimed, and they are often filled with garbage, and human and pet waste. The vehicles are in such poor condition that they cannot be sold at auction, and they have little or no scrap or salvage value; therefore, the operators must dispose of these vehicles at their own expense. The tow companies state that the average cost to dispose of an RV or similarly-sized vehicle*

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<sup>14</sup> To set such a minimum fee, the City would need to determine which costs are to be recovered. The current dispatch fee recovers 100 percent of costs, and is \$8 per dispatch. Recovering the costs of current City oversight—without the costs to review the dispatch fee, since we recommend changing that review process—would be between \$9 and \$10 per tow. This would put a cost-recovery contract fee at approximately \$17 to \$18 per tow. Other changes, such as the transfer of the contract administration to the Police Department and more regular write-offs of low-value vehicles, will change the cost of City oversight.

*is estimated at \$1,100, including the labor cost of cleaning and preparing the vehicle before the garbage company will accept it.*

According to the memo, the number of junk vehicles increased from 87 in 2012 to 350 in 2016. During our interviews, towing contractors expressed the same concerns voiced in the memo about the costs of disposing of vehicles and the seemingly rapid increase in the number of junk RVs that they have to tow. As the memo also noted, other jurisdictions have faced similar problems with junk vehicles. News articles in 2017 reported that in the City of Los Angeles, the problem of RV tows grew severe enough that the tow operators stopped towing the vehicles.

To address these concerns, Finance’s October 2017 memo recommended that the City Council amend the towing services agreements to:

*Credit the operators for the expenses that they incur to dispose of vehicles that have no salvage or resale value against the \$59 contract fee owed to the City. In addition, this credit will compensate the operators for potential lost profits due to the vehicles use of yard space. The credits will not exceed the contract fees paid.*

This recommendation was adopted, and the program began on January 1, 2018. Between January and June 2018, five towing contractors submitted documentation to Finance Revenue Management to claim credits under the program. This amounted to a total of 124 vehicles, resulting in a total cost of \$188,000 or an average of \$1,500 per vehicle.

**Exhibit 11: The City Reimbursed Towing Contractors \$188,000 For Disposal of Junk Vehicles Over Six Months**

January - June 2018	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Total
	Matos	City	Century*	Motor Body	Courtesy	Alongi	
Junk Vehicles Claimed	32	10	0	39	1	42	124
Average cost per vehicle disposed	(\$1,645)	(\$779)	\$0	(\$1,519)	(\$1,326)	(\$1,592)	(\$1,515)
Cost of vehicle disposal	(\$52,647)	(\$7,794)	\$0	(\$59,250)	(\$1,326)	(\$66,855)	(\$187,872)

Source: Auditor analysis of documentation submitted to Finance Revenue Management and Finance staff annual reconciliation of tow counts, January – June 2018, as of the time of our review.

\* According to Finance, Century Tow had submitted no junk vehicle reimbursement documentation at the time of our review.

Other jurisdictions have similar programs to reimburse towing contractors for the cost of disposing of junk RVs or other oversized vehicles. Los Angeles, for example, reimburses costs up to \$540 for RVs that aren’t claimed or sold (or will pay the difference between \$540 and the RV sale price). Sacramento allows their

heavy duty towing contractor to receive reimbursement for the costs of disposing of a junk vehicle.

Based on our review, junk vehicles still appear to be a problem. Rather than allowing the pilot program to expire in June, the City Council should continue to provide financial assistance for the costs of junk vehicle disposal going forward. This could either be the continuation of the junk vehicle reimbursement or, if the City decides to have potential contractors propose a contract fee for the next contract cycle (as recommended in this Finding), the continuation of a junk vehicle reimbursement may be unnecessary if proposers are provided historical information about junk vehicles towed from each zone to inform their proposal.

**Recommendation #5: In future towing service agreements, the City should continue the junk vehicle reimbursement program or, in conjunction with Recommendation #4, request that proposed contract fees account for the costs of junk vehicle disposal.**

### **City Should Develop Guidelines for Hazardous Waste and Junk Vehicle Disposal**

The City should ensure that hazardous waste and junk vehicles are disposed of appropriately. Per the first amendment of the current towing services agreements, towing contractors can seek credits towards their contract fee for “lost profits and expenses related to disposing of Qualified Vehicles.” Qualified vehicles include motor homes, campers, trailers, large trucks, and even construction vehicles or street sweepers. In addition to these credits, contractors can receive reimbursement for the disposal costs of these vehicles, including the removal of hazardous waste, acquiring dumpsters, and towing the vehicle to the disposal company.

#### *Removal of Hazardous Waste*

The contract amendment does not specify how a contractor should remove hazardous waste from vehicles. For example, some RVs are towed with human waste in the vehicle’s tanks. In the receipts submitted between January – June 2018, there were no receipts for contracts with a company permitted or equipped to remove such waste from the tanks. However, in conversations with towing contractors, they reported that recyclers or waste disposal sites have not taken vehicles with human waste in tanks.<sup>15</sup> It is unclear how the towing contractors should be addressing this issue.<sup>16</sup>

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<sup>15</sup> One recycler may now take vehicles with human waste, but not all towing contractors work with this recycler.

<sup>16</sup> The County of Santa Clara registers septic tank/chemical toilet Haulers. Information on the County Waste Hauler Program can be found at: <https://www.sccgov.org/sites/swp/programs/toilet/Pages/toilet.aspx>. [Information](#) on the San



To ensure that contractors are disposing of waste in a vehicle appropriately, the City should establish clearer guidelines for waste removal in the towing services agreements.

#### *Disposal Facilities*

To receive the credits, the City requires receipts from the recycling or waste disposal company. The contract amendment refers to “recycling or waste disposal companies,” but it is not clear how staff reviewing the receipts are meant to evaluate whether the company provides recycling or waste disposal services. While in most cases, the receipts submitted for reimbursement were itemized and from local recycling or disposal companies, there were instances in which receipts were simply for a total dollar figure, and it is unclear what the business’s services were.

The junk vehicle credit was structured so that the City will pay for the cost of disposing junk vehicles where the tow company has no potential for profit. The City has an interest in ensuring that the vehicle is actually disposed, since many of them may include fiberglass or hazardous waste. As such, it is in the City’s interest to work with the towing contractors to ensure that these junk vehicles are disposed in an environmentally sound manner.

**Recommendation #6: The City Administration, in consultation with appropriate departments, should establish clear guidelines for the appropriate disposal of hazardous waste and junk vehicles.**

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### **The City Should Update the Contract Language Regarding Code Enforcement Private Property Tows**

The Code Enforcement division authorizes the towing of inoperable vehicles off private property. This happens infrequently – in calendar year 2017, Code Enforcement staff authorized the towing of 10 vehicles in total. These tows do not follow the same process as public right-of-way tows because vehicles must be immediately scrapped. Staff do not require towing contractors to comply with the terms of the towing services agreements when towing these vehicles, such as responding with 25 minutes. However, staff still call the towing contractor assigned to the geographic area of the vehicle under the towing services agreements.

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José – Santa Clara Regional Wastewater Facility Portable Toilet and Septic Hauler Program can be found at: <http://www.sanjoseca.gov/septichaulers>.

Whether the current towing services agreement applies to these Code Enforcement tows is unclear.<sup>17</sup> The City should clarify language in the towing services agreements to specify that towing contractors are expected to tow inoperable vehicles from private property when requested by Code Enforcement staff.

**Recommendation #7: The City should clarify future towing services agreements regarding tows of inoperable vehicles off private property.**

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### Contract Loophole Allows Contractors to Charge the City Cancellation Fees for Late Tows

According to the current towing services agreements, the City will pay towing contractors \$53.75 per quarter hour for cancellations (i.e. “response by a Tow Truck to a request by or on behalf of the person in lawful possession of a vehicle, or by a police officer, but towing is found not to be necessary”). This fee is intended to compensate the towing contractor for their time when a tow is found to be unnecessary.

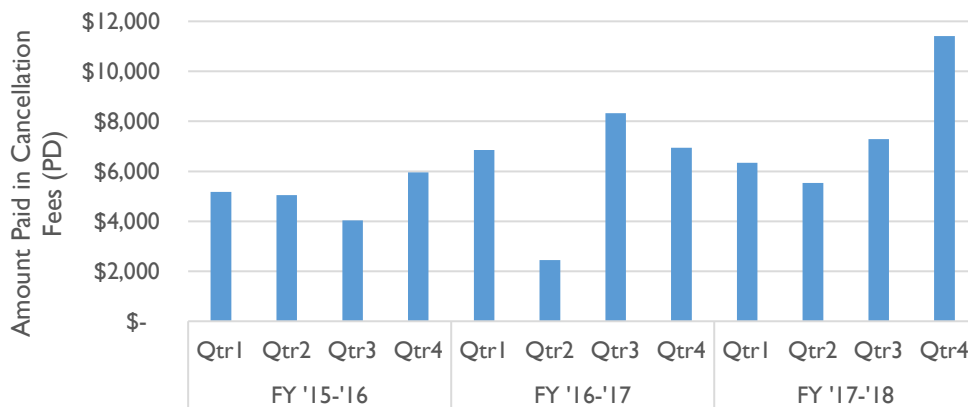
Tow cancellations have become increasingly expensive for the City. In FY 2017-18, the Department of Transportation paid \$9,000 in cancellations, and between July and October 2018, paid an additional \$7,000. Meanwhile, the exhibit below shows the steady increase of cancellations that the Police Department paid in recent years, including over \$24,5000 in FY 2016-17 and over \$30,500 in FY 2017-18.

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<sup>17</sup> The towing services agreement’s definition of “VIN Tows” includes: [... ]*Tows of abandoned and/or unattended vehicles left standing for periods of time greater than permitted under applicable state laws or municipal ordinances, and which vehicles have been tagged and marked by the San Jose Police Department, Department of Streets and Traffic, Airport Department, Department of Convention, Cultural and Visitor Services, and the Planning, Building and Code Enforcement Department for removal from public streets or property or from private property in accordance with law [emphasis added].* However, later the agreement stipulates that for VIN tows, “vehicles shall be stored in the primary lot until checked and cleared by the SJPD or the Contract Administrator.” This does not seem to apply to the inoperable vehicles that Code Enforcement authorizes tows for, since those vehicles have to go directly to a dismantler. The definition of VIN tows has not been updated in a number of years, since it refers to now-defunct departments. Additionally, the agreement states: *No Private Property Towing shall be allowed under the Agreement except where Contractor may be in contract with a dismantling facility under contract with the City, for removal of vehicles from private property as authorized by the City of San José Municipal Code or the California Vehicle Code.*

The City entered into a 3-year agreement in 1999 with a dismantler for the towing of off-street inoperable and dismantled vehicles. The language above was added in the 2003 agreements but was not included in 1996. The City does not currently have a contract with the dismantler.

**Exhibit 12: Police Department Cancellation Charges Have Increased**



Source: Auditor analysis of Financial Management System (FMS) records provided by the Police Department

The department that requests the dispatch (Police or Transportation) receives an invoice from the tow company for the cancellation. Staff verify that the cancellation is accurate and pay the fees.

One of the reasons for the increase in cancellation fees may be that Police Officers are unaware that there are cancellation fees. For example, officers may incur fees when they call a tow truck to be on stand-by but there is no immediate need for a tow. PD has indicated that they plan to train officers to increase awareness of these fees.

This fee is problematic, however, if the tow was cancelled due to the towing contractor’s failure to respond in a timely manner: within 25 minutes, as allowed by the agreement. If a tow was cancelled after 25 minutes because the City staff at the scene needed to leave for another location, the towing contractor would owe the City \$35 for liquidated damages, but the City would owe the tow company at least \$107.50 for the cancellation. The towing contractor would effectively have a net gain of \$72.50 even in a case where the tow was cancelled because the tow company failed to respond in a timely manner.

As shown in Exhibits 5 and 12, both timeliness violations and cancellations have increased, but it is unclear the degree to which towing contractors are taking advantage of this loophole. Different departments handle these fees: Police and Transportation will pay the cancellation fees when they receive an invoice, while PBCE will fine the towing contractors for timeliness violations. As a result, it is difficult to ascertain how often the City has made cancellation payments for late tows. However, the City should close this loophole to prevent misuse in the future.

**Recommendation #8: The City should modify the terms of future towing services agreements to specify that the City will not pay a cancellation fee to towing contractors for responses that violate timeliness requirements.**

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### **The City Should Reevaluate Its Tow Zone Requirements**

The City's towing program uses a geographic zone-based model for allocating tows to towing contractors. Each towing contractor is given the rights to perform all City-initiated tows within its assigned zone. This differs from a tow-rotation model, where tows are assigned to towing contractors in order, based on a list. The current towing services agreements require the towing contractors to have their office and tow yard located within their assigned zone.<sup>18</sup>

The tow zone model was intended to provide two main benefits. One benefit was to City staff, since they would not need to wait as long for a tow truck to arrive. Generally, police officers and parking officers must remain at the scene while a vehicle is being towed. The second benefit was for residents, who would have more convenient access to the tow yards if they were located closer to their place of residence.

#### **Half the City's Towing Contractors Are Not Located in Their Assigned Zones**

The requirement to have a towing contractor's tow yard located within their assigned zones has changed over time. For example, in the 1996 towing services agreements, towing contractors were required to have their tow yard be located in their assigned zones. The 2003 and 2009 agreements only required that the tow yard be located within San José city limits. The current towing agreements (2016) reintroduced the requirement to have the primary tow yard be located within one's assigned zone. Throughout all of these agreements, the City had the same six towing contractors.

However, the current agreements made exceptions to the rule of being located within the tow zone for Zones 3 and 5. Currently, Courtesy (Zone 5) shares a tow yard with Matos (Zone 1). Meanwhile, Century (Zone 3) was in a yard in Zone 2, moved to a new tow yard in Zone 4, and is now in a tow yard in Zone 5.

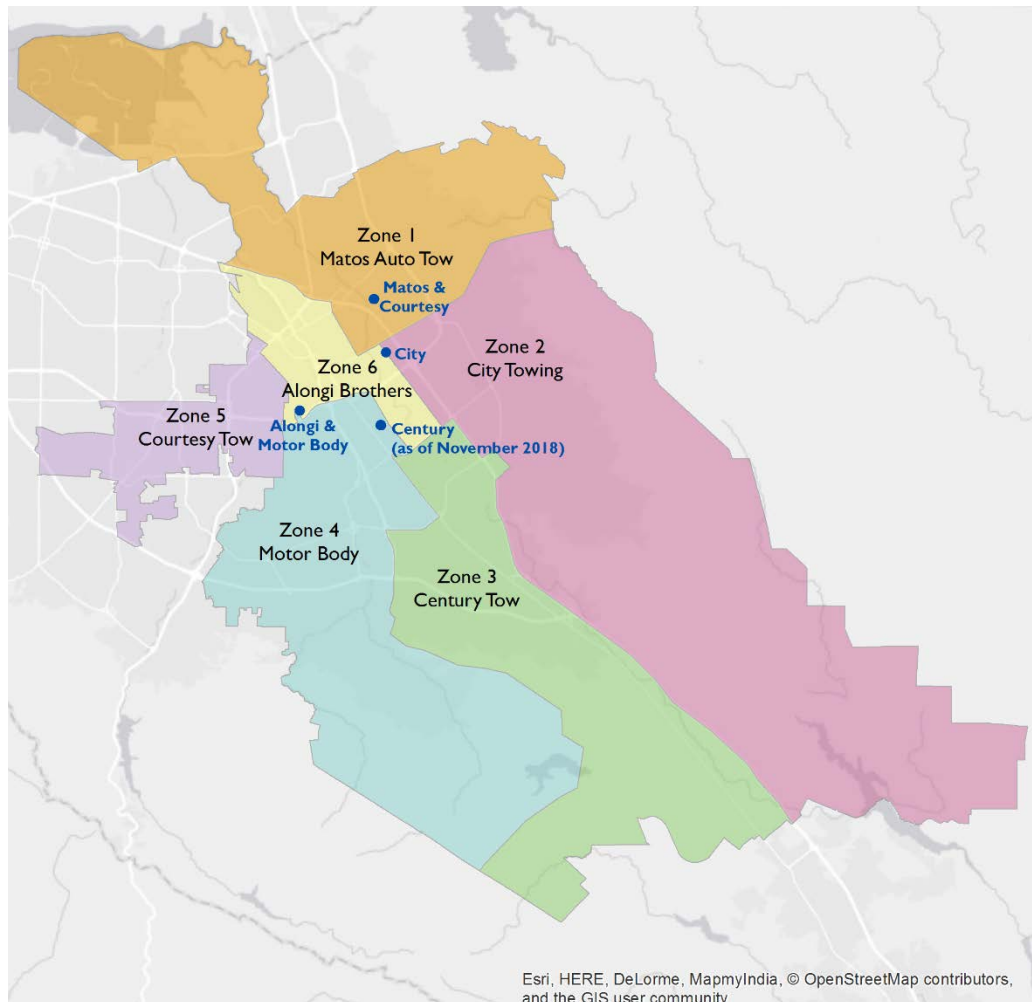
A similar modification to the agreements had been made during the 1996 contract cycle. Motor Body (Zone 4) had moved into a tow yard in Zone 6. The agreement was amended in 1999 to redraw Zone 4 such that it would encompass the tow yard's new location, and the towing contractor would no longer be out of compliance. During the current contract cycle, Motor Body and Alongi Brothers

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<sup>18</sup> The towing services agreements provide exceptions for Zone 3 and Zone 5, where the assigned contractors may be located outside of those zones.

(Zone 6) now share a tow yard in the redrawn Zone 4 location. In total, this means the Zone 3, 5, and 6 contractors are not located within their assigned zones.<sup>19</sup>

**Exhibit 13: Three of the City’s Six Towing Contractors Are Located Outside Their Assigned Tow Zones**



Source: Tow zone map developed by Public Works; auditor geocoding of towing contractor addresses

**The City Should Loosen the Requirement for Towing Contractors to Be Located Within Their Assigned Zones**

As mentioned previously, the City loosened the requirements for tow yard locations with the towing services agreements from 2003. In 2002, a memo from City staff expressed concerns about the competitiveness of the existing tow zones and recommended modifications to the towing services agreements. The result

<sup>19</sup> It should be noted that the tow yard shared by the Zone 4 and Zone 6 contractors, while located in Zone 4, is across the street from Zone 6. The towing contractor got approval from the City for this arrangement during the RFP process.

was that potential proposers would be required to have a tow yard within San José city limits, and not necessarily within the proposed tow zone.

The City received 12 proposals for the 2003 agreements and selected the six incumbent towing contractors. When the current agreements reintroduced the requirement to have a tow yard within the assigned zone, only those six incumbents responded to the RFP. By then, three of those towing contractors were no longer located in their proposed zones and the agreements had to be modified to accommodate that situation.

Having towing contractors be located within a certain geographic boundary can provide benefits to City staff and to residents, but this requirement was not fully enforced in previous or current agreements. Two of the towing contractors moved or consolidated yards during a period when the agreements did not require being located within the assigned tow zone. Reestablishing this restriction required the City to create exceptions for those contractors in the current agreements. Creating exceptions or modifying tow zone boundaries to accommodate incumbent contractors can give an appearance of favoritism, which could discourage potential contractors and reduce competition.

### *Service Level Impacts*

The tow zones were intended to facilitate timely towing of vehicles and provide more convenient access to tow yards for residents. However, there is no indication that tow yard location has an impact on the incidence of late tows (when a towing contractor arrives after more than 25 minutes). For example, Matos and Courtesy share a tow yard in Zone 1. Nonetheless, both contractors have had around the same number of timeliness violations since the current agreements came into effect. This is also true for Motor Body and Alongi Brothers, which both share a tow yard in Zone 4.

Further, as shown in Exhibit 13, the current towing contractors are all located near the center of the City, within several miles of each other, including those located within their assigned zones. Requiring towing contractors to be located within their zones has not necessarily resulted in an even distribution of tow yards across the City.

**Recommendation #9: The City should modify future towing services agreements to allow towing contractors to have tow yards located outside of their assigned zones, such as anywhere within the City limits.**

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## Other Opportunities Exist to Further Simplify the Towing Services Agreements

In March 2016, members of the City Council expressed concerns about the lack of respondents to the towing services agreements. The same six towing contractors from the previous agreement were the only companies that submitted a proposal. In 2008, nine proposals were submitted to the RFP, and in 2003, 12 proposals were submitted.<sup>20</sup> The current towing contractors have all towed together for the City since at least the 1987 contract cycle.

As recommended earlier, allowing contractors to propose a contract fee would provide some flexibility to potential contractors, possibly growing the pool of qualified candidates. Allowing towing contractors to have tow yards outside their designated tow zones could also increase the candidate pool. However, there are other requirements in the contract that could be reexamined with the intent to simplify requirements and also increase competition.

### Tow Yard Size Requirements

The current towing services agreements require contractors to have a tow yard with capacity for at least 100 vehicles, with some clearance room between vehicles. Most other jurisdictions we surveyed either had lower requirements or did not specify a number of vehicles. A possible benefit of a tow yard capacity requirement is to ensure the towing contractors will always have enough space to store vehicles when the City requests a tow. However, as mentioned previously, the City has had issues with contractors refusing to tow vehicles due to lack of space in the tow yards.

The four tow yards (for six towing contractors) in the City each have capacity for at least 300 vehicles, far more than the required 100 per tow zone. Los Angeles, another city with one towing contractor per tow zone, does not specify the number of vehicles its contractors' tow yards should hold, but only requires that it be sufficient.

When requesting proposals for the towing services agreements, if the City can provide data on the expected number of tows per zone and the expected time City-towed vehicles may stay in the tow yards, proposing tow companies can determine the size and number of tow yards needed to meet service standards. Rather than the City determining a specific minimum yard capacity, the size of the yard may be considered when determining which potential contractor should be awarded the agreement.

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<sup>20</sup> For fiscal year 2018-19, there were 19 tow companies, including the City's contractors, located in San José that qualified to tow for the California Highway Patrol's tow rotation. However, the CHP and the City may have different requirements for their towing programs.

### **Towing for Private Businesses**

The current towing services agreements prohibit the City's contractors from engaging in towing for private businesses.<sup>21</sup> This can include, for example, a tow company contracted by a shopping center or apartment complex to remove vehicles from its parking lots. Of the other jurisdictions reviewed, San José is the only one to have this prohibition in its public towing services agreements.

According to staff, the purpose of this prohibition was to ensure that the tow yards would have sufficient room for City-towed vehicles and not be crowded out by private business tows. However, private business towing could help diversify revenue sources for tow companies, and tow companies that already engage in private business towing may not be willing to terminate those contracts in order to tow for the City. Since refusing City tows is already penalized under the agreements, prohibiting private business towing may not be necessary to ensure room for City-initiated tows. The City can simplify the agreements by allowing towing contractors to tow for private businesses, while also potentially increasing competition for the City's RFPs.

### **Required Equipment**

The City's towing contractors are required to own a minimum of five tow trucks, and they must own, lease or subcontract at least one Class B, Class C, or Class D tow truck. Other jurisdictions have varying requirements for tow trucks, and some, such as Los Angeles and San Francisco, only require that their towing contractors have "sufficient" tow trucks to meet performance standards. The number of tow trucks needed largely depends on the expected tow volume and the various towing services a company may provide. One City towing contractor suggested five tow trucks were too many for their tow volume. Another contractor utilizes around 40 tow trucks to service all of its contracts, including the City's. Given that the City's agreements already impose a set of service delivery standards, the number of tow trucks contractors would need to meet those standards could be at the discretion of the tow company and a part of its proposal.

### **Tow Zone Boundaries**

The tow zones currently do not have an equal distribution of tows. In 2017-18, Zone 2 had approximately 3,500 tows for the City while Zone 5 had approximately 1,500 tows. Since the City currently only allows one contractor per zone, and the contractor must be located in the proposed zone, it could be difficult for potential new contractors to absorb the work of a high volume tow zone. Also, having unequal tow zones can create uncertainty for towing contractors in the event the

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<sup>21</sup> Some City contractors tow for insurance companies, which is not prohibited as part of the towing services agreements. As discussed earlier, towing contractors do tow inoperable vehicles off private property for Code Enforcement, but this program needs to be clarified in the contract.



City implements a contingency plan for tow refusals (e.g., other contractors must take over the tows for a suspended/terminated contractor).

The City could consider redrawing tow zone boundaries such that each zone has a roughly equal number of expected tows. This change could make every tow zone just as manageable in terms of tow volume to potential towing contractors, which may increase competition.

**Recommendation #10: The City should consider additional changes to future towing services agreements, such as:**

- a) Specifying that tow yard capacity must be sufficient, and having respondents propose tow yard capacity;**
- b) Allowing towing contractors to engage in private business towing;**
- c) Specifying that the number of tow trucks must be sufficient; and/or**
- d) Redrawing the tow zone boundaries such that they have an equal number of expected tows.**

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## **Finding 4      The City Should Improve Management of Data and Billing**

### **Summary**

The City currently lacks useable data on towed vehicles. The City relies on information provided by the towing contractors, which is limited and may not be provided if the contractor does not submit the associated fees. The City should enforce the reporting requirements set out in the towing services agreements, and consider requiring contractors to use a database for tracking tows. The lack of data makes contract oversight, including invoicing for contract fees and dispatch fees difficult. We recommend improving the process for invoicing the contract fees due, and combining the dispatch and contract fee.

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### **The City Receives Incomplete Data on Towed Vehicles**

The City's towing agreements require the towing contractors to maintain certain data for every tow performed for the City. This includes:

- Contact information for the vehicle owner;
- Vehicle information (i.e., VIN, license plate number, make and model);
- Date and time the tow was called, where the vehicle was towed from, and which tow truck driver towed the vehicle;
- The reason for the tow;
- When and to whom the vehicle was released;
- All towing fees and charges;
- All proceeds from lien sales; and
- Date towing fees and charges were paid.

There are no requirements in the agreements for what format the data should be kept in or how the data should be managed. However, the City does rely on towing contractor data in order to charge the contract fee. Per the agreements, the towing contractors are required to submit the following data every month with their payment of the contract fee:

- Number of tows;
- Copies of the CHP 180 forms or Tow Services Audit Forms;
- Number of dispatches received;
- Any liquidated damages being paid;

- Number of vehicles that were claimed, sold, and scrapped; and
- Any services for which the towing contractor can invoice the City (e.g., canceled tows).

In other words, the City relies on the towing contractors in order to understand the total number of tows performed by the City. When the City receives data from its towing contractors, it is on a paper Towing Remittance Form, and City staff must manually reconcile the data with paper records from the contractors' tow yards. This can be an administratively burdensome process, as noted later in this Finding.

### **Vehicle Claim Rate**

As stated previously, the towing contractors are required to submit, among other information, the number of vehicles claimed, sold, and scrapped. However, during the period we reviewed, the City's Towing Remittance Forms only asked for data on the number of vehicles sold and scrapped, not those that were claimed by their owners.

Having consistent data on the number of vehicles claimed can tell the City how often vehicle owners are picking up their vehicles (whether impounded or otherwise stored) by tow zone and also City-wide. The rate at which vehicles are claimed also serves as a rough indication of how towing contractors may be doing financially. Depending on the value of the vehicles being towed, tow companies may gain more revenue when vehicle owners pick up their vehicles and pay all towing fees than when the vehicles must be sold or scrapped. The towing contractors suggested that low claim rates were part of the reason some of them were facing financial difficulties.

According to the City's towing contractors, the claim rate among the different tow yards can vary between 20 and 55 percent for City-towed vehicles. However, the City does not have any historical data to verify this. Assuming all vehicles that were not sold or scrapped were claimed, the claim rate would be around 60 to 70 percent per tow yard for the first six months of 2018, but this does not seem to conform to the stated experiences of the towing contractors.

### **Data Management in Other Cities**

Other jurisdictions generally have more robust data management solutions for their towing programs than San José. San Francisco contracts with a third party to administer its towing services, tow yards, and tow dispatching. San Francisco's staff are granted access to the third party's towed vehicle management database. Staff can use this data to appropriately assess any contract fees owed. Oakland requires its towing contractor to manage a towed vehicle database and to provide regular reports to the city. Los Angeles requires its towing contractors to use the towed vehicle database managed by their Official Police Garage Association, or procure

their own, with regular reporting to the city. San Diego contracts with a third-party towing dispatcher that manages towed vehicle data.

An added benefit is that, in all of these cities, vehicle owners have access to an online search tool, connected to the database, to see if their vehicle was towed, and to where. In some cases, vehicle owners can get an estimate of the tow fees they would need to pay to pick up their vehicle. San José does not currently have a database that would allow it to provide this online tool for vehicles the City tows.

### **Vehicle Abatement Data**

As referenced in the Audit of Vehicle Abatement conducted by this office, the City's vehicle abatement program manages workflow through its Unity database. This database can be used to report on the number of vehicle abatement tows for a given period, including information such as the reason for the tow or the type of vehicle. The Unity system also communicates with the City's My San Jose service request app. However, it does not contain information on any tows performed by DOT unrelated to vehicle abatement, nor any tows performed by police officers.

### **The City Does Not Consistently Receive Tow Data**

As noted earlier in this report, some of the City's towing contractors were not consistent about submitting either the Towing Remittance Forms or the payments owed. Century Towing did not submit Towing Remittance Forms for all of FY 2017-18, though they submitted some payments. City Tow submitted most of their Towing Remittance Forms for FY 2017-18, but they did not submit most of their payments. In cases where a contractor does not submit data, the City must rely on the annual reconciliation of paper records performed by Finance staff to get a verified count of tows. This process can only verify tow data and fees owed; it would not recover missing data on claimed or sold vehicles.

As noted later in this Finding, there is some difference between the number of dispatches and the number of tows, so dispatches would not be a reliable way to verify the count of tows. Additionally, dispatch records do not include information about the vehicle itself.

The City's definitive record of impounded, stored, stolen, and recovered vehicles comes from the hard-copy California Highway Patrol Form 180 (Vehicle Report, or CHP 180), which officers will fill out by hand whenever they have a vehicle towed. Copies of this form are provided to the tow company and the vehicle owner, and the original is kept by the City's Vehicle Records Unit.

The City does not currently store CHP 180 data in an electronic format or database.<sup>22</sup> In order to use CHP 180 forms to determine the number of tows for

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<sup>22</sup> The State of California's Department of Justice maintains a Stolen Vehicle System (SVS) accessible to all law enforcement agencies across the state. Any vehicle reported stolen, impounded, repossessed, or towed from private property must be reported through the SVS. In San José, this is performed by the Police Department's Vehicle Records Unit. Authorized

a given period, they would need to be manually counted. More detailed information, such as the reason for the tow or the towing contractor that towed the vehicle, would also need to be manually examined. These forms also do not contain any information on the outcomes of towed vehicles (claimed, sold, or scrapped).

### **The City Should Improve Its Access to Towed Vehicle Data**

The City relies on its towing contractors to track and report on towing data. This not only facilitates the City's assessment of fees and enforcement of the contract, it also provides the opportunity to analyze trends and identify issues with the towing program. For example, data showing decreasing numbers of vehicles being claimed at the tow yards or increasing numbers of abandoned vehicle tows could have alerted the City to potential impacts on the towing contractors' business.

The City should, at the minimum, ensure it receives all information towing contractors must already report per the agreements, as well as require that the contractors' tow records (tow logs) be supplied in an electronic format, such as a spreadsheet. The agreements should be modified to require that this data be submitted to the City regardless of whether the towing contractor is unable to make the accompanying payment. This would improve the City's current record-keeping of tows, monitoring of fees, and ability to analyze data.

However, the City should also consider, for future agreements, requiring some form of towed vehicle database system for its towing contractors. This could be a system procured by the City, or it could be procured by towing contractors (as is done in some other cities we surveyed). If the system is procured by towing contractors, City staff should have access to this database to verify any reporting. In either case, the database should allow the ability for vehicle owners to search for their vehicle online. Per the current towing agreements, contractors may already be required to implement any systems necessary to integrate with the City's Computer Aided Dispatch (CAD). It should be noted that requiring contractors purchase and maintain a towed vehicle database would present added costs to the towing contractors.

**Recommendation #11: The City should require towing contractors to submit all information as specified in the City's towing services agreements (including claimed vehicles), regardless of whether payments are missed or late.**

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City staff can query information from the SVS, and so it may be possible to obtain a general list of entries for all vehicles towed by the City for a given period. For this audit, City staff requested data from the SVS for that purpose. However, the number of tows in the SVS data was considerably different from the number of verified tows provided by Finance. As such, it is not clear that SVS data would be a useful way of determining the City's total tows. The SVS is not necessarily meant as a reporting tool, and other cities surveyed for this report did not report using this method to determine their number of tows.

**Recommendation #12: In future towing services agreements, the City should require towing contractors to provide tow records in an electronic format or consider requiring the use of a towed vehicle database system (either procured by the City or by towing contractors with access granted to City staff).**

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### **The Lack of Data Hampers Fee Invoicing**

The lack of useable data impacts the City's ability to bill for both the contract fee and the dispatch fee. As a result, the contract fee invoicing has not followed the process set out in the towing services agreements, and the dispatch fee invoicing is extremely time-consuming.

#### **The Contract Fee Invoicing Process Should Be Clarified**

The Finance Department's Revenue Management team monitors and collects payments for the contract fee. In FY 2017-18, prior to any deductions for reimbursements or charges for late payments, the total due to the City for the contract fee was \$1.1 million.

The tow program has historically relied on a self-reporting without an invoicing process. The current process is as follows:

1. Towing contractors provide reports on the number of tows per month along with a payment for the contract fee (\$59 per towed vehicle).<sup>23</sup>
2. Once a year, Finance staff reconcile the count of the vehicles submitted by the towing contractors to the records kept at the tow yards.
3. If there is any difference, Finance staff either provide payment or seek reimbursement for the over-/undercharges, and include any penalties for late payments calculated from the original month of the tow.

Finance staff do not currently provide towing contractors with an invoice for the contract fee because staff do not have any useable data on the number of tows by contractor in a given month until the towing contractors provide it. Without that information, staff do not have a way to accurately calculate an invoice amount. Finance staff have expressed concern that they currently do not have a method of complying with the language in the towing services agreements, which reads:

*The City shall invoice Contractor for dispatch services performed by the Central Communications Center on a monthly basis. The invoice shall be for both dispatch services and flat rate tow fees. Contractor shall track the number of tows and pay the City for City-generated*

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<sup>23</sup> If the towing contractor disposed of junk vehicles in that month, in some cases they reduce the payment for the contract fee by the amount spent on the junk vehicle disposal.

*tows based on the number of tows recorded during the prior month. Contractor's payment shall be due and payable to the City within thirty (30) days from the date of the invoice.*

Finance staff have advised that due to the limited data and the timing of submittals for junk vehicle reimbursements, issuing an invoice increases the administrative burden on Revenue Management staff. If the City were to implement a database system for towed vehicles, this could facilitate a more robust invoicing process. In the meantime, the City should clarify the appropriate process for collecting the contract fee and update the language of future towing services agreements as needed.

**Recommendation #13: In future towing services agreements, the City should clarify the collection process for the contract fee.**

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### **Charging the Dispatch Fee Based on Vehicles Towed Would Reduce Costs**

The dispatch fee was first established in 2003, when the compensation model of the contract changed. A 2002 memo to the City Council states:

*Our recommendations include the creation of a new fee charged to tow companies to the Centralized Communication Center per tow event for Police Dispatch services. This will ensure that the City will be compensated for the services it provides and generate funding for modifying the new CAD system with tow zone information.*

Though the term “tow event” is unclear in this context, in practice, the dispatch fee has been charged on the number of dispatched tows and recovers the cost of the Police Dispatcher’s time.

The dispatch fee is invoiced to the towing contractors on a monthly basis along with any charges for liquidated damages by staff in Code Enforcement. The process for calculating the dispatch fee amount and ascertaining liquidated damages is manual and very time-consuming. This is due to difficulties in obtaining useable data.

- I. The tow liaison (a Code Enforcement Inspector I or II) pulls data from the Police Department’s CAD system by towing contractor. The data includes tow-related events or entries that were entered by dispatchers for the preceding month. The entries could be:
  - a. Actual dispatched tows,
  - b. Tows for other reasons aside from the contract (such as the tow of a fleet vehicle or to a AAA-contracted tow company),



- c. Cancelled tows,
  - d. Updates to an event (such as if an officer calls in asking for information), or
  - e. Violations recorded by Police Dispatchers.
2. The data is exported as a PDF file. The tow liaison then proceeds to open every event and read the CAD record to understand which type of entry it was.
  3. The tow liaison tallies actual dispatched tows and violations by towing contractor. In some cases, the dispatch was received by a different towing contractor than indicated by the CAD system, and violations are sometimes not logged as violations. The tow liaison corrects these errors and bills for the appropriate amount.
  4. An invoice is sent to the towing contractor for the actual dispatches and any liquidated damages based on the violations.

This review process takes about two weeks of the tow liaison's time every month. As described in Finding 5, it is the largest component of the City's monitoring, and it is not cost effective. The cost of calculating the dispatch fee, and determining any violations, was an estimated \$118,000. The \$8 dispatch fee generated \$120,000 in FY 2017-18<sup>24</sup>, intended to recover the estimated cost of police dispatchers' time. Liquidated damages generated an additional \$18,000.

### **Combining the Contract and Dispatch Fees**

There is a relatively small difference between the number of dispatches and the number of tows. In FY 2017-18, there were 15,000 dispatches and 15,700 vehicles towed. If the \$8 fee had been assessed based on the number of towed vehicles, the difference in charges to the towing contractors would have been minimal.<sup>25</sup>

Cost recovery calculations are estimates. In the case of the dispatch fee, the fee was intended to recover 5 minutes of a Public Safety Radio Dispatcher's time. Basing the charges on the total tows gives a variation of less than 5 percent of the total fee—equivalent to about 13 seconds of the 5-minute time in FY 2017-18. In our opinion, such a variation is within reason in a cost recovery estimate. For future cost recovery analyses, the Police Department should use the total number of vehicles towed to determine the appropriate dispatch fee.

If this fee was charged on the number of tows and combined with the contract fee, it would eliminate the need for two separate review processes. Finance staff could perform the same review as they do currently.

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<sup>24</sup> Combined with dues for the contract fee, the total amount due to the City (prior to any reimbursements, late charges, or liquidated damages) was \$1.2 million. Not all of these fees were paid by the towing contractors.

<sup>25</sup> The difference amounted to \$0.37 more per dispatch in FY 2017-18 and \$0.12 more per dispatch in FY 2016-17.

*Including the Dispatch Fee in a Proposed Contract fee*

If the City decides to request that potential towing contractors propose a contract fee in a response to an RFP, a separate dispatch fee may no longer be required. Potential contractors could be instructed to factor into their proposed contract fee that there would no longer be a dispatch fee.

*Eliminate Discrepancy in Dispatch Fee Setting*

The fee is currently set at cost recovery, but is included both in the towing services agreement and the City's Fees and Charges schedule. These amounts have not always aligned: between FY 2013-14 and FY 2017-18, the Fees and Charges schedule set the fee at \$7 while the towing services agreements set the fee at \$8. If the City continues to have a contract fee and a dispatch fee, the towing services agreement should specify whether the fee is set by the agreement or by the Fees and Charges schedule.

**Recommendation #14: To reduce time required to oversee contract terms, in future towing services agreements the City should charge one consolidated fee to towing contractors based on the number of towed vehicles.**

## **Finding 5      The City Should Consolidate and Improve Program Oversight**

### **Summary**

The current contract administrators are in Code Enforcement, but staff from several City departments are involved in the towing services program. We recommend that the administration of the towing services agreements be consolidated in the Police Department. The Police Department is already involved in every stage of the towing services program, while Code Enforcement has very limited involvement. To improve operations, we recommend the Police Department standardize how dispatchers record tow violations, and re-establish a process for City staff to sign-off on the disposal of low-value vehicles through more frequent visits to tow yards and training other City employees to perform this function.

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### **Staff From Several City Departments Monitor Towing Services**

Staff from multiple departments provide ongoing monitoring of the towing services agreements.

The contract administration is housed in Code Enforcement. Code Enforcement staff administer contract provisions, coordinate with City staff, answer questions about the contract, investigate any complaints about a towing contractor,<sup>26</sup> and resolve any issues that arise. Reviewing information relating to the contract fee and dispatch fee, performed by staff in Finance and Code Enforcement, is labor intensive. Finance staff also review reimbursements for oversized junk vehicles on a quarterly basis (following the implementation of the pilot program in January 2018). Staff from both DOT and the Police Department review documentation submitted by towing contractors for cancellation fees.

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<sup>26</sup> The City has a complaint process that all towing contractors are obligated to follow. If a vehicle owner has a complaint, they can submit a form to the towing contractor. The towing contractor then investigates and forwards the result of any investigation to the City's tow liaison/contract administrator. The tow liaison reviews the towing contractor's results and performs an investigation as needed. In some cases, towing contractors report that they resolve issues with vehicle owners before a complaint is even filed. Vehicle owners also have the option of submitting a form directly to the City. Complaints submitted through this form are also forwarded to the tow liaison.

**Exhibit 14: Multiple City Staff Monitor the Towing Services Agreements**

Department	Role	Duties	Position Title	% of Job	\$ Estimate (annual)
PBCE	Tow Contract Administrator	Bill for dispatch fee and liquidated damages	Code Enforcement Inspector I/II	50%	\$118,000
	Tow Contract Administrator	Monitor contract provisions, point of contact for City staff about tow contracts		25%	\$58,000
	Tow Contract Supervisor	Supervises Tow Contract Administrator, works with towing contractors for rate increases and contract changes	Code Enforcement Supervisor	15%	\$39,000
Finance	Review Fee Revenue	Verifies payments from towing contractors for contract administration fee	Accountant II	5%	\$8,000
	Review Junk Vehicle reimbursements	Reviews receipts submitted to reimburse for junk vehicle disposal		8%	\$12,000
Police	Review Tow Cancellations	Reviews Police Department tow cancellations to ensure invoices are appropriate	Police Sergeant	5%	\$18,000
DOT	Review Tow Cancellations	Reviews Department of Transportation tow cancellations to ensure invoices are appropriate	Staff Specialist	5%	\$12,000
<b>Total</b>				<b>1.13 FTE</b>	<b>\$265,000</b>

Source: Auditor analysis of staff interviews, City-wide Human Resources/Employee Relations 2018-19 salary and benefit rates, and the overhead rates from the City's 2018-19 Citywide Cost Allocation Plan

Note: The cost estimate assumes the employee is a mid-range and includes both Tier 1 and Tier 2 benefit rates as appropriate. Finance staff do not have any overhead included as Finance is a central service department and does not have a Citywide overhead rate.

The estimates in the preceding exhibit only cover the ongoing monitoring of actual towing services. It does not include the work provided by the City Attorney's Office, Finance Purchasing staff, and senior department staff when issues arise in the contract that require resolution or during an RFP cycle. While City Attorney's Office and Finance Purchasing staff time is generally captured in overhead, both departments indicated that the time dedicated by their teams can be substantial. Finance Purchasing staff, in particular, dedicated more time than normal in addressing changes to the contract. Additionally, City staff spend time sending invoices or remitting payments to the towing contractors, which is also not captured above. As such, the preceding exhibit does not represent the total cost to the City of the towing services agreements.

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## **The Administration of the Towing Services Agreements Should Be Consolidated Under the Police Department**

The contract administrator for the towing services agreements is Code Enforcement, despite the fact that Code Enforcement currently authorizes very few tows of vehicles (and these tows are not currently performed under the terms of the towing services agreement). The reason that Code Enforcement provides the contract administration appears to be a legacy from when Code Enforcement had the vehicle abatement program. The Department of Transportation (DOT) and the Police Department (PD) are the primary users of the towing services agreements.

Having a contract administrator with direct knowledge of the service would be beneficial for the City. When the City issued an RFP for the towing services agreements in 2015, little had changed in the terms of the agreement despite towing contractors reporting that they were having problems. Purchasing staff did not receive guidance from department staff that a change to the contracts was necessary. Two years later, when towing contractors brought up concerns about the terms of the agreement, Finance Purchasing staff became deeply involved in reviewing the program due to a lack of clear direction from any other City staff. Generally, Purchasing staff relies on the expertise of department staff to structure an RFP.

Additionally, towing contractors reported that they did not feel they had a clear liaison with the City. They have reported that in the past, their contact with the City had been much smoother.

As illustrated in Exhibit I in the Background section, PD staff are involved in nearly every step of a vehicle being towed. PD staff request tows, dispatch tows, review cancellations, record towed vehicle information, notify vehicle owners that their vehicle was towed, and process vehicle releases. DOT staff, on the other hand, only request or cancel tows and review cancellations, while Code Enforcement (within PBCE) only provides monitoring (and very limited tows off private property). Our benchmarking with other jurisdictions showed that six of the seven cities had their police department administer the contract.

PD also currently issues tow company permits for all tow companies within San José, including the City's towing contractors. In order to receive or renew a tow company permit, all owners and drivers submit to a background check, including fingerprinting. Additionally, a tow company must complete an application, which includes:

- A current copy of the City of San José Business Tax Certificate.<sup>27</sup>

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<sup>27</sup> The application refers to a "City of San Jose Business License" but Finance staff have reported that this term is not accurate.

- A copy of the insurance policy for the company and all vehicles verified by the City's Risk Management Division.
- A list of company phone numbers.
- A list of contact phone numbers of all owners/managers.
- A current business financial sworn statement with profit/loss itemizations and balances.
- A list of all San José permitted drivers with date of birth, California Drivers License number and expiration date, SJPd driver permit number and expiration date.
- A copy of all vehicle registration cards for each vehicle.
- A list of all vehicles used in San Jose, which includes:
  - Year, make and model of vehicles;
  - Company tow numbers;
  - VIN numbers and license plate numbers;
  - Current vehicle mileage for each tow vehicle.

Consolidating the administration of the towing services agreements and putting the responsibility on a primary user department would improve communications and provide more thorough oversight of the towing services program. Due to PD staff's involvement in a variety of aspects of the towing services program, PD is the most appropriate fit for the contract administration.

### **Required Responsibilities That Would Be Transferred to PD**

If our previous recommendation regarding the basis for charging the dispatch fee is implemented, the task which consumes the majority of the contract administrator's time will be eliminated and not transferred to PD. This should significantly reduce the time required to oversee the towing services agreements. The current responsibilities, then, that PD would take over from Code Enforcement would be:

- Reviewing CAD reports monthly to calculate liquidated damages (which would, ideally, be invoiced along with the combined dispatch and contract fees by Finance);
- Communicating with user departments about any issues with towing contractors;
- Monitoring contract provisions, such as by conducting annual inspections of the tow yards;
- Responding to and investigating any complaints about towing companies;
- Working with towing contractors on requests for increases in tow fees (if tow fees do not automatically adjust to CHP rates); and

- Providing guidance to Purchasing staff when a new RFP needs to be issued.

If other recommendations in this report are implemented, the above duties may change. This may include visiting or overseeing visits to tow yards to assess low-value vehicles for scrap. Because the exact job duties that the PD contract administrator would be responsible for are subject to change, it is difficult to estimate the resources that may be required to oversee the agreements going forward. As the City determines the future of the program and contract terms, the Police Department will need to evaluate the responsibilities of the new contract administrator and whether any additional resources are required.

#### *Contracting for Some Tow Program Management*

As mentioned in the previous Finding, the City and County of San Francisco uses a third-party contractor to manage some day-to-day operations of its towing program. The contractor's responsibilities include managing its own contracts with tow companies, operating a customer service center, and operating the impound yards. City staff are responsible for overseeing the contract, including enforcement of performance standards and monitoring fees and payments. The City of San Diego uses a third-party contractor to manage tow dispatching and monitor tow company performance.

Using a contractor to perform some towing program functions in San José could potentially reduce the City staffing resources needed to oversee the towing agreements. However, the full cost of outsourcing would vary depending on how such a program is implemented.

**Recommendation #15: For improved oversight over the towing services agreements, the administration of the contract should be consolidated in the Police Department with an evaluation of the resources needed to perform this responsibility.**

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### **The City Could Improve the Recording of Towing Violations**

Currently, liquidated damages are calculated using data recorded by dispatchers in CAD. If the dispatch fee were to be charged on the number of tows or included in a contract fee, the tow liaison would use CAD data only to calculate the liquidated damages that each company owes for the month.

#### **Standardizing Police Dispatch Procedures**

The process of identifying violations could be significantly less time consuming than the current process. In the CAD data, there is an event type for a violation or a late tow (which may or may not end up being a true violation). This makes identifying a violation relatively quick.

In Dispatch's procedures, the instructions regarding the use of the event type for a violation ("VIOL") or a late tow ("LTOW") are specific:

*Tow companies are required to respond within 25 minutes from the time they receive the request from communications. When the requested tow company fails to respond to the scene within the required time, field personnel will be required to notify the channel dispatcher of the delay in arrival. The dispatcher will check the original request and verify if the request is in violation. If the tow response is over the required time then the original "TOW" event shall be changed to the type code "VIOL" with no further documentation needed. If the channel dispatcher is unable to check the delay of a tow, they may create an event for service by utilizing the type code "LTOW." The service dispatcher will then verify if the response is over the required time by checking the original tow event. If a violation has occurred, the service dispatcher will change the original request to "VIOL" with no further documentation needed.*

However, use of these codes has been inconsistent. Sometimes, dispatchers are using the "VIOL" code to mark violations beyond late tows, such as when a towing contractor refuses to tow a vehicle. For example, 16 of the 24 violations for tow refusals in June 2018 were marked as violations. For all events, dispatchers were recording the information within the CAD record. Dispatchers also note whether the towing contractor answered the phone in the required amount of time, but have not been consistently marking them as violations either. Overall for the month of June, 37 percent of the violations for reasons other than lateness were marked as "tows," not violations.<sup>28</sup>

Having dispatchers change the type of event to a violation is very helpful for the process of calculating liquidated damages. Without that marking, a member of City staff would have to manually review every CAD tow event to ensure that the appropriate liquidated damages are charged—as is being done now. Since the practice of changing the type of event to a violation is already happening in the majority of cases, standardizing this practice should not be a significant increase in dispatcher workload.

### **Liquidated Damages for Vehicle Abatement Tow Refusals**

Based on our review, it does not appear that all vehicle abatement tow refusals are being charged as liquidated damages. For example, the Department of Transportation database indicates that for the month of August 2018, there were 101 instances in which a towing contractor refused to tow a vehicle. However,

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<sup>28</sup> This does not include events that were marked as "LTOW" and resulted in a violation. Whether a late tow is a violation must be determined by reviewing the CAD record. However, "LTOW" is a separate event type, so they are also easy to identify and review.



only 72 tow refusals were charged that month in liquidated damages—and that would include any refusals from a police-generated tow.

Tow dispatchers are asked to call other towing contractors if one towing contractor refuses a tow. As such, dispatch staff should already be aware when a tow has been refused and time is already spent working on the tow refusal. Clearer direction on how tow refusals should be communicated and standardizing how refusals are recorded would ensure that violations of the agreement are charged as appropriate. Going forward, if the City changes contract terms and/or what constitutes a contract violation, these changes should be communicated to Police Dispatch so staff are clear on what they should flag as a violation.

**Recommendation #16: To ensure that liquidated damages are appropriately charged, the Police Department should update its procedures to record a tow dispatch event as a violation when dispatchers are notified that any violation has occurred.**

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### The City Should Work to Increase Turnover of Vehicles in Tow Yards

If a towing contractor tows a low-value vehicle (assessed at \$500 or less), the City can authorize the disposal of that vehicle. However, low-value vehicles must remain unclaimed in the tow yard with no fees paid for at least 15 days before they can be disposed of. If the City does not provide an authorization for disposal, the contractor must attempt to sell the vehicle through the lien sale process<sup>29</sup> just as it would with other towed vehicles. If there is no buyer for the vehicle, then the contractor becomes the new owner and could scrap it. Towing contractors report that this process often takes six to eight weeks from the original tow to eventually being scrapped.

According to the California Department of Motor Vehicles, an employee of the City may sign a REG 462 form to authorize scrapping a low-value vehicle. The Auto Theft Unit within the Police Department handles this function and may visit towing contractors to authorize scrapping low-value vehicles. However, those visits have been less frequent in recent years. Apart from a police officer, a Community Service Officer (CSO) or other City employee could be designated to authorize scrapping low-value vehicles.

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<sup>29</sup> For public agency tows, a *lien* arises once the towing contractor has taken the vehicle to the tow yard. This means the contractor has the right to sell an unclaimed vehicle to recover unpaid towing and storage fees. For a low-value vehicle, the contractor has 15 days to request vehicle information from the DMV. After receiving the information, the contractor must send a notice of lien sale to the owner 31 to 41 days before the date of the lien sale. After that period, if the vehicle is not claimed or bought, the towing contractor may scrap or dispose of the vehicle. In some cases, the vehicle may be sold to a dismantler through the lien sale process.

The towing contractors claim that turnover in their yards has decreased in recent years, so there is increasing likelihood that their lots are full. In some cases, towing contractors have refused the City's tows because their lots are full and City inspections have verified this. Currently, 30 percent of the vehicles towed by the City are scrapped, and only 8 percent are sold through a lien sale. If the City could authorize scrapping those 30 percent of vehicles more quickly and frequently, the City would open yard space for additional vehicles. This would increase operational efficiency with its towing contractors and enable contractors to increase turnover in their tow yards.

Opening yard space will be even more necessary if the City increases the volume of tows for towing contractors by requiring that the towing contractors tow vehicles outside of their zone in the event another contractor is violates the agreement.

**Recommendation #17: The City should re-establish a process for designated City staff to routinely sign-off on the disposal of low-value vehicles through more frequent visits to tow yards.**

# Conclusion

The City contracts with six tow companies to remove vehicles from public streets. In recent years, two towing contractors have breached contract terms and all towing contractors have at some point refused to tow vehicles. We recommend that the City establish an escalating penalty structure and add contract provisions to provide better recourse. The City should also clarify the current towing services agreement language that towing contractors should charge no more than their established CHP rates. To address operational issues, and to provide the City the opportunity to streamline the contract terms, and potentially increase contract competition, the City should issue a new, updated RFP. This RFP should also include a proposed contract fee, the continuation of the junk vehicle reimbursement program, and potential changes to tow zones and tow yard requirements. To better manage the program, the City should improve how data is collected and how fees are billed. Finally, City oversight should be consolidated in the Police Department, and the Police Department should improve how violations are recorded by Police Dispatchers and the turnover of low-value vehicles in tow yards.

## RECOMMENDATIONS

### **Finding 1: Tow Contract Violations Should Be Addressed**

Recommendation #1: To provide a method to address violations, the City should include in future towing services agreements:

- a) An escalating penalty structure of liquidated damages, suspensions, and contract termination. Liquidated damages should be increased over time.
- b) Provisions requiring towing contractors to respond to another tow zone in case of a tow refusal or suspension (with a different timeliness standard).

### **Finding 2: The City Should Be Explicit That Towing Contractors Are Allowed to Charge CHP-Approved Rates**

Recommendation #2: The City should structure future towing services agreements to clarify that towing contractors may charge no more than their California Highway Patrol (CHP)-approved tow rates.

### **Finding 3: The City Should Issue a New Request for Proposals with Streamlined Contract Terms**

Recommendation #3: The City should issue a new RFP for the towing services agreements, taking into consideration the issues identified and recommendations made in this report.

Recommendation #4: The City should consider allowing contractors to submit proposals for a contract fee, paid by the contractor to the City per towed vehicle, as part of the Request for Proposal process. The amount of the contract fee should be evaluated along with other aspects of a potential contractor's proposal.

Recommendation #5: In future towing services agreements, the City should continue the junk vehicle reimbursement program or, in conjunction with Recommendation #4, request that proposed contract fees account for the costs of junk vehicle disposal.

Recommendation #6: The City Administration, in consultation with appropriate departments, should establish clear guidelines for the appropriate disposal of hazardous waste and junk vehicles.

Recommendation #7: The City should clarify future towing services agreements regarding tows of inoperable vehicles off private property.

Recommendation #8: The City should modify the terms of future towing services agreements to specify that the City will not pay a cancellation fee to towing contractors for responses that violate timeliness requirements.

Recommendation #9: The City should modify future towing services agreements to allow towing contractors to have tow yards located outside of their assigned zones, such as anywhere within the City limits.

Recommendation #10: The City should consider additional changes to future towing services agreements, such as:

- a) Specifying that tow yard capacity must be sufficient, and having respondents propose tow yard capacity;
- b) Allowing towing contractors to engage in private business towing;
- c) Specifying that the number of tow trucks must be sufficient; and/or
- d) Redrawing the tow zone boundaries such that they have an equal number of expected tows.

### **Finding 4: The City Should Improve Management of Data and Billing**

Recommendation #11: The City should require towing contractors to submit all information as specified in the City's towing services agreements (including claimed vehicles), regardless of whether payments are missed or late.

Recommendation #12: In future towing services agreements, the City should require towing contractors to provide tow records in an electronic format or consider requiring the use of a towed vehicle database system (either procured by the City or by towing contractors with access granted to City staff).

Recommendation #13: In future towing services agreements, the City should clarify the collection process for the contract fee.

Recommendation #14: To reduce time required to oversee contract terms, in future towing services agreements the City should charge one consolidated fee to towing contractors based on the number of towed vehicles.

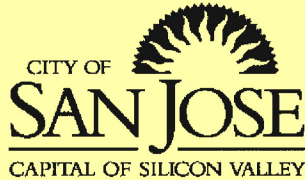
**Finding 5: The City Should Consolidate and Improve Program Oversight**

Recommendation #15: For improved oversight over the towing services agreements, the administration of the contract should be consolidated in the Police Department with an evaluation of the resources needed to perform this responsibility.

Recommendation #16: To ensure that liquidated damages are appropriately charged, the Police Department should update its procedures to record a tow dispatch event as a violation when dispatchers are notified that any violation has occurred.

Recommendation #17: The City should re-establish a process for designated City staff to routinely sign-off on the disposal of low-value vehicles through more frequent visits to tow yards.

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# Memorandum

**TO:** Sharon Erickson  
City Auditor

**FROM:** Rosalynn Hughey  
Edgardo Garcia  
Julia H. Cooper

**SUBJECT:** SEE BELOW

**DATE:** December 14, 2018

Approved:

Date:

12-14-18

**SUBJECT: RESPONSE TO AUDIT REPORT – TOWING SERVICES: CHANGES TO CONTRACT TERMS AND CONSOLIDATED OVERSIGHT COULD IMPROVE OPERATIONS**

The Administration has reviewed the audit of towing services (*Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations*) and agrees substantially with all 17 recommendations identified in the report. This memorandum captures the Administration's response to each recommendation, and presents an overview of the work required to fully implement the recommendations, and the associated timeframes for completion.

Consistent with other priority-setting processes, the City Council adopted a new framework for the Administration's response to Audit recommendations in May of 2015. As with other priority setting processes, the green, yellow, and red light system is utilized to convey the Administration's operational readiness to undertake the workload demands, as well as identify budgetary issues that may impact implementation of recommendations.

## **BACKGROUND**

The purpose of the Audit was to review the City's towing services agreements and evaluate the current towing services program structure. As noted in the report, the towing services program is multi-faceted and experiences high volume with 15,700 tows in 2017-2018, which equates to an average of 43 vehicles per day. While the current program management is spread among several departments, the Audit recommends the Administration consolidate program oversight under the Police Department.

In addition, the Audit recommends that the Administration issue a new Request for Proposal (RFP), under which a modernized tow program would be developed. The Audit includes several recommendations to be considered in the future tow program and towing services agreements.

**ANALYSIS**

There are three broad areas of work that the Administration must undertake to accomplish the recommendations outlined in this audit:

1. ***New Request for Proposals to Develop New Tow Services Agreements*** – Most of the Audit recommendations in this report require the implementation of new tow services agreements, presumably before the expiration of the existing agreements in 2021. A significant amount of work is necessary to develop a quality Request for Proposals (RFP), manage the RFP process, and establish new agreements. Before issuing an RFP, the Administration will need to research the current tow industry and marketplace, and identify best practices from other jurisdictions. The Audit identifies several areas where past practices and contract requirements should be revised, considering how the tow industry has evolved in recent years. Staff’s research will need to include outreach to Bay Area and San Jose towing companies to ensure an understanding of the marketplace, and ultimately to generate a robust response to a future RFP. After conducting this essential research, the Administration will develop and issue a new RFP.

The target date for permanent implementation of a modernized tow program, that incorporates the relevant Audit recommendations, is July 2020. As outlined below, starting in January 2019, staff estimates it will take up to 10 months to properly assess the program and develop RFP specifications, followed by an additional six to nine months to allow for the RFP noticing, evaluation, contract negotiations, and consideration by City Council.

<b>Market Review, Service Model Options, RFP Development Milestones</b>	
<b>Task</b>	<b>Timeline</b>
Assess the Tow Industry and Marketplace <ul style="list-style-type: none"> <li>• Develop needs assessment</li> <li>• Define assumptions and constraints</li> <li>• Market research and benchmarking</li> <li>• Survey other agencies</li> <li>• Survey all 19 tow companies in San Jose</li> <li>• Possible Request for Information</li> </ul>	4-6 months
Define New Service Delivery Model and Develop RFP Scope of Work <ul style="list-style-type: none"> <li>• Identify best practices and practical application</li> <li>• Evaluate strengths and weaknesses of potential models</li> <li>• Develop RFP</li> </ul>	4-6 months
Conduct RFP <ul style="list-style-type: none"> <li>• RFP Noticing and Submissions</li> <li>• RFP Evaluation/Interviews/Best and Final Offer</li> <li>• Contract drafting/negotiation</li> <li>• Council report and consideration of Tow Service Agreements</li> </ul>	6-9 months
Implementation of New Service Delivery Model	Up to 3 months



The Finance, Police, Planning, Building and Code Enforcement (PBCE), and Transportation Departments will work together to develop the RFP. Various types of service delivery options will be studied and evaluated before finalizing the scope of a new RFP. The RFP development and implementation process is expected to occur through 2019-2020, with new agreements recommended for implementation in July 2020. It is anticipated that one-time staffing and/or consulting resources will be necessary to support the research and analysis associated with completing the milestones to implement the Audit recommendations. The Administration plans to absorb staffing and research costs across departments to the extent possible in 2018-2019, and evaluate the 2019-2020 needs as part of the 2019-2020 budget process within the context of the overall budget situation.

2. ***Continuation of Pilot Program*** - Given the time to research, develop, and issue a quality RFP, the Administration recommends extending current pilot program provisions through June 2020. The current pilot is scheduled to expire in June 2019. The Code Enforcement Division of PBCE, Finance, and the Police Department will collaborate on identifying the terms to include in the extension of the pilot program amendments, and initiate discussions with the current tow operators with the goal of reaching a mutually acceptable extension of the pilot program through June 2020. Staff will work to finalize amendments and bring the final pilot extension to City Council for consideration prior to the expiration in June 2019. It is important to note that the City developed the pilot in response to “junk” vehicle disposition issues raised by the tow operators. If the pilot is not extended, the original (higher) contract fee would apply through the end of the term of the agreement, March 2021.
3. ***Program Oversight*** – The Audit recommends that the Administration consolidate program oversight under the Police Department with the implementation of the new tow services agreements. The Administration conceptually agrees and will explore this. However, before implementing this consolidation, the Administration must assess existing resources assigned to program oversight and contract management in PBCE and other departments. The Administration also must evaluate whether there are any changes in the resources required resulting from any future service delivery model and tow services agreements. Through that process, the Police Department will analyze existing resources and evaluate potential gaps should the program move to the Department. Given the timeline of the RFP process, the earliest that a transfer of program oversight could occur would be in July 2020, which would align the program resources with new tow agreements. Any additional ongoing resources to implement this model will be evaluated as part of a future budget process and will be considered within the context of the City’s overall fiscal condition and other city-wide priorities. In the interim, the PBCE Department will continue to manage the tow agreements and will work to address immediate issues to the extent its feasible and practicable. The Police, Finance, PBCE, and Transportation Departments will work in partnership to assist in the program delivery.

The Administration is working cross-departmentally to put in place a robust work plan and to identify staffing and potential consultant resources needed to implement a new tow program that meets the changing needs and realities of the tow industry marketplace in San José and the Bay

Area, and has the best chance to evolve over time as the industry likely continues to change. The Administration does not intend to mostly rely on historical models, but intends to research the current marketplace and best practices in formulating a new service model and agreements for future City Council consideration. Following are the Administration's response to each of the Audit findings, which will inform this work.

## **RECOMMENDATIONS AND ADMINISTRATION'S RESPONSE**

### **Finding 1: Tow Contract Violations Should Be Addressed**

**Recommendation #1:** To provide a method to address violations, the City should include in future towing services agreements:

- a) An escalating penalty structure of liquidated damages, suspensions, and contract termination. Liquidated damages should be increased over time.
- b) Provisions requiring towing contractors to respond to another tow zone in case of a tow refusal or suspension (with a different timeliness standard).

**Administration Response:** The Administration agrees with this recommendation.

**Yellow** – With respect to Recommendation 1(a), violations of contract terms have increased significantly within the last year, particularly among certain tow operators, and the liquidated damages have not been adequate to dissuade certain towing contractors from committing them. The liquidated damages should be higher to ensure towing contractors comply with the contract, but must be established within the context of the overall framework of a new service model and agreements. The Administration plans to include methods to better address violations in future agreements with towing contractors, and will research best practices in the development of the new a service delivery model and RFP.

With respect to Recommendation 1(b), the Administration is exploring alternatives for including requirements in the pilot extension to improve services city-wide.

To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

**Finding 2: The City Should Be Explicit That Towing Contractors Are Allowed to Charge CHP-Approved Rates**

**Recommendation #2:** The City should structure future towing services agreements to clarify that towing contractors may charge no more than their California Highway Patrol (CHP)-approved tow rates.

**Administration's Response:** The Administration agrees with this recommendation.

**Yellow** - By aligning the City's rate with the CHP's rate, San José residents would have consistent towing rates by company for private business tows and with other public agencies, but likely some small level of variation may exist within San Jose depending upon which tow operator conducted the tow. Additionally, aligning the City's towing rates with CHP rates would require fewer staff resources than having City staff determine an appropriate and fair towing fee schedule. Rate charges will ultimately be addressed in the future RFP, once a service delivery model is finalized. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

In the interim however, staff will be bringing forward rate adjustments to align tow rates with current CHP rates as is required under the current agreements. While this may result in a small increase to the private tow rate for cars towed, the Administration anticipates bringing forward reductions in the City's towed vehicle release fee during the 2018-2019 Mid-Year Budget Review, so the vehicle owner will likely see a lower overall rate for San José tows.

**Finding 3: The City Should Issue a New Request for Proposals with Streamlined Contract Terms**

**Recommendation #3:** The City should issue a new RFP for the towing services agreements, taking into consideration the issues identified and recommendations made in this report.

**Administration's Response:** The Administration agrees with this recommendation.

**Yellow** – As outlined in the Analysis section above, the work plan for issuing a new RFP is complex and labor-intensive. It will require research into the current marketplace and industry best practices, including outreach to the Bay Area towing industry; and RFP development, circulation, review, and evaluation. Once research is completed, and the future service delivery model is developed, RFP development, issuance and evaluation can occur. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

In the interim, the pilot program, currently set to expire on June 30, 2019, will be brought forward for extension to align with the target date for permanent program implementation to ensure operational continuity as staff works through program changes. Staff will consider incorporating recommendations from this report into the shorter term amendments where applicable and practicable.

**Recommendation #4:** The City should consider allowing contractors to submit proposals for a contract fee, paid by the contractor to the City per towed vehicle, as part of the Request for Proposal process. The amount of the contract fee should be evaluated along with other aspects of a potential contractor's proposal.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The implementation of this recommendation depends on which type of service delivery model the City ultimately establishes. The Administration will consider the potential revenue and budget impacts of this recommendation as it develops a new service delivery model before deciding to move forward with implementation. Once a service delivery model is finalized, an RFP can be developed and issued. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

**Recommendation #5:** In future towing service agreements, the City should continue the junk vehicle reimbursement program or, in conjunction with Recommendation #4, request that proposed contract fees account for the costs of junk vehicle disposal.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The implementation of this recommendation depends on the type of service delivery model the City ultimately establishes. For example, some cities contract directly for junk vehicle disposal, separate from tow contracts. The Administration will consider this recommendation as it develops a new service delivery model and will be incorporate it, as applicable, into the RFP. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020. With the proposed extension of the current pilot, the Administration anticipates continuing the junk vehicle reimbursement program.

**Recommendation #6:** The City Administration, in consultation with appropriate departments, should establish clear guidelines for the appropriate disposal of hazardous waste and junk vehicles.

**Administration's Response:** The Administration agrees with this recommendation.

**Yellow** – The Administration will work to develop these guidelines and incorporate them into the pilot program extension. Appropriate disposal of hazardous waste and junk vehicles will also be incorporated into the future service delivery model. To adequately account for the long-term program changes recommended in this report, the target date for implementation is July 2020.

**Recommendation #7:** The City should clarify future towing services agreements regarding tows of inoperable vehicles off private property.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The Administration plans to clearly articulate the treatment of tows of inoperable vehicles off private property as part of the RFP. To adequately account for the program changes recommended throughout this report, the target date for permanent implementation is July 2020.

**Recommendation #8:** The City should modify the terms of future towing services agreements to specify that the City will not pay a cancellation fee to towing contractors for responses that violate timeliness requirements.

**Administration's Response:** The Administration agrees with this recommendation.

**Green** – The Administration will incorporate this recommendation into the RFP for future towing services agreements. In the interim, Administration will also work to incorporate this recommendation into the extension of the pilot program that will be brought forward before June 2019. To adequately account for the long-term program changes recommended throughout this report, the target date for permanent implementation is July 2020.

**Recommendation #9:** The City should modify future towing services agreements to allow towing contractors to have tow yards located outside of their assigned zones, such as anywhere within the City limits.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The implementation of this recommendation depends on the type of service delivery model ultimately established by the City. This recommendation will be taken into consideration in the research of best practices and development of a new service delivery model and potentially incorporated into the RFP. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

**Recommendation #10:** The City should consider additional changes to future towing services agreements, such as:

- a) Specifying that tow yard capacity must be sufficient, and having respondents propose tow yard capacity;
- b) Allowing towing contractors to engage in private business towing;
- c) Specifying that the number of tow trucks must be sufficient; and/or
- d) Redrawing the tow zone boundaries such that they have an equal number of expected tows.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The implementation of this recommendation will depend on the type of service delivery model ultimately established by the City. Once a service delivery model is finalized, an RFP can be developed and conducted. The RFP may include performance measure criteria that the towing contractors will be required to adhere to as opposed to specifying yard size or number of tow trucks. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

#### **Finding 4: The City Should Improve Management of Data and Billing**

**Recommendation #11:** The City should require towing contractors to submit all information as specified in the City's towing services agreements (including claimed vehicles), regardless of whether payments are missed or late.

**Administration's Response:** The Administration agrees with this recommendation.

**Green** – The Administration is moving forward with implementation, within the limits of the existing agreement requirements, with a target date of January 30, 2019. Long-term, best

practices will be researched and included in the development of the new service delivery model and RFP. The target date for permanent implementation is July 2020.

**Recommendation #12:** In future towing services agreements, the City should require towing contractors to provide tow records in an electronic format or consider requiring the use of a towed vehicle database system (either procured by the City or by towing contractors with access granted to City staff).

**Administration's Response:** The Administration agrees with this recommendation.

**Yellow** - The Administration will explore best practices around tow records and towed vehicle database systems in its analysis of service delivery models for inclusion in the RFP. For example, some cities use third-party vehicle database systems, which would be one method to address this recommendation. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

**Recommendation #13:** In future towing services agreements, the City should clarify the collection process for the contract fee.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The implementation of this recommendation will depend on the type of service delivery model ultimately established by the City. The new service delivery model and RFP will include clear direction and processes to address this recommendation. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

**Recommendation #14:** To reduce time required to oversee contract terms, in future towing services agreements the City should charge one consolidated fee to towing contractors based on the number of towed vehicles.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – The implementation of this recommendation will depend on the type of service delivery model ultimately established by the City. This recommendation will be taken into consideration in the development of a new service delivery model and will be incorporated as

applicable. To adequately account for the long-term program changes recommended throughout this report, the target date for implementation is July 2020.

**Finding 5: The City Should Consolidate and Improve Program Oversight**

**Recommendation #15:** For improved oversight over the towing services agreements, the administration of the contract should be consolidated in the Police Department with an evaluation of the resources needed to perform this responsibility.

**Administration's Response:** The Administration conceptually agrees with this recommendation.

**Yellow** – As discussed above, to successfully transfer the program to the Police Department, the Administration will need to complete the RFP process and analyze the workload and staffing needs going forward. The Administration will analyze existing staffing and resources assigned to management and oversight of the tow program as well as evaluate any changes in resource needs based on the service delivery model established through the RFP process. The program development and RFP process is expected to take place through 2019-2020 with the transition to the Police Department occurring in July 2020. One-time resource needs for program development will be evaluated as part of the 2019-2020 budget process. The ongoing needs associated with the transition of program oversight to the Police Department will be analyzed as part of the 2020-2021 budget process and will be considered in light of the City's overall fiscal condition and other city-wide priorities. The target date for implementation is July 2020.

**Recommendation #16:** To ensure that liquidated damages are appropriately charged, the Police Department should update its procedures to record a tow dispatch event as a violation when dispatchers are notified that any violation has occurred.

**Administration's Response:** The Administration agrees with this recommendation.

**Green** – The Police Department will evaluate the Police Dispatcher procedures and update the process accordingly. This review and update are targeted to be completed by March 31, 2019.

**Recommendation #17:** The City should re-establish a process for designated City staff to routinely sign-off on the disposal of low-value vehicles through more frequent visits to tow yards.



**Administration's Response:** The Administration agrees with this recommendation.

**Green** – The Police Department will evaluate the existing procedures and update the process accordingly. Implementation of this recommendation will require additional training and is targeted to be completed by June 30, 2019.

### **COORDINATION**

This memorandum had been coordinated with the City Attorney's Office, City Manager's Budget Office, and the Department of Transportation.

### **CONCLUSION**

The audit report provides recommendations to revamp the current towing services program and have the Police Department assume program management. The Administration agrees or conceptually agrees with all 17 recommendations and will immediately begin work to implement improvements. The Administration is developing a robust work plan to transition program management and issue a new RFP for towing contractors, as well as an interim step of extending the current pilot program with some improvements. Implementation of these recommendations will require cross-departmental coordination for success, but in the long-term, a streamlined and more accountable approach to program management is expected to increase customer service and contract compliance. The Administration values these recommendations for opportunities to improve and would like to thank the City Auditor and staff for this operational review.

/s/  
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and Code Enforcement

/s/  
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/s/  
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