



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jim Ortbal
Harry Freitas

SUBJECT: RESPONSE TO THE AUDIT
OF OUR CITY FOREST

DATE: March 13, 2017

Approved

Date

3/14/17

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

The Audit of Our City Forest was presented by the City Auditor to the Transportation and Environment Committee on March 6, 2017. However, due to the extensive demands on staff to respond to and manage the heavy storms and subsequent Coyote Creek Flood in February, the Administration was unable to fully review the audit and complete the Administrative Response in conjunction with the Auditor's report. This supplemental memorandum provides the Administration's response to the Audit of Our City Forest.

BACKGROUND

Our City Forest (OCF) is a San Jose-based non-profit whose mission is to cultivate a green and healthy Silicon Valley by engaging community members in the appreciation, protection, growth and maintenance of our urban ecosystem, in particular the City's community forest. The City of San Jose is fortunate to have a longstanding partnership with Our City Forest that dates back to 1994. Currently, the City provides two ongoing grants and other one-time funding managed by the Department of Transportation. OCF also has Fee for Service agreements with the Environmental Services Department (ESD) and Parks, Recreation, and Neighborhood Services (PRNS). Our City Forest provides a wide array of services for the City of San Jose. These services include but are not limited to the following:

- OCF uses the City of San Jose funds as leverage to obtain hundreds of thousands of dollars in additional funding from numerous other State and Federal Grants and private donors.
- OCF provides tree planting and establishment care services directly to the City of San Jose for its parkstrips, medians, neighborhood parks, community centers and libraries.

- OCF recruits and trains AmeriCorps service members to be urban forestry and outreach specialists who assist the community with their tree care needs.
- OCF organizes volunteers and conducts numerous (50+) neighborhood tree planting events on an annual basis increasing both the public's awareness of the Community Forest and sense of community.
- OCF provides education and awareness training about the community forest to local schools, community groups and individual residents.

RECOMMENDATIONS AND RESPONSE

The objective of this audit was to review the expenditure of City funding by OCF, and determine compliance with the terms of its Operating and Matching Grants and off-site tree replacement program. The audit results indicate that OCF has largely been in compliance with its grant requirements; however, the Auditor's Office made the following recommendations with the intent of enhancing the working relationship between the City of San Jose and OCF.

Recommendation #1: DOT should request all documents required by its current Operating Grant, and follow up as needed.

Administration Response: The Administration agrees with and has implemented this recommendation. The 2016-17 Operating Grant Agreement defines reporting requirements and timelines for submittal by OCF. For FY 2016-17, OCF's Year-End Final Report is due to the City by August 15, 2017 and OCF must also provide the City with its audited financial statements by December 29, 2017. Additional information related to OCF's performance under this agreement and corresponding reporting period include: a full list of all non-City grants and partnerships applied for; copies of all grant and partnership agreements; copies of accepted OCF board meeting minutes; and copies of Arbor Day related materials, including announcements and event photos.

These materials are due to the City as they become available throughout the reporting period. DOT and OCF will discuss upcoming reporting requirement as part of their regular monthly coordination meetings and DOT will follow-up with OCF via email or written correspondence, if necessary. The City may also consider additional language in future agreements with OCF that require timely reporting requirements as a condition for OCF to receive full Operating Grant payment.

Green – The Administration has implemented this recommendation.

Recommendation #2: To ensure that the City's Matching Grant Agreement is in alignment with OCF's AmeriCorps grant, DOT should request to be notified of AmeriCorps grant submittals, request a copy of Our City Forest's annual grant agreement with AmeriCorps, request all documents required by its current Matching Grant with the City, and follow up as needed.

Administration Response: The Administration agrees with and has implemented this recommendation. The 2016-2017 Operating Grant Agreement now requires OCF to provide copies of any grant agreements that it enters into, and the reporting requirement sections of the FY 2016-17 Matching Grant Agreement requires that OCF provide the City with copies of all proposals submitted and reports required as part of an AmeriCorps grant.

These reports will enable DOT to more effectively track OCF's progress and make a more accurate determination on whether the AmeriCorps activities are in alignment with the terms specified in the Matching Grant Agreement. Further, the reports will provide details on AmeriCorps member enrollment, performance measures, community outreach events and community demographics.

DOT and OCF will discuss upcoming reporting requirement as part of their regular monthly coordination meetings and DOT will follow-up with OCF via email or written correspondence, if necessary. The City may also consider additional language in future agreements with OCF that require timely reporting requirements as a condition for OCF to receive full Matching Grant payment.

Green – The Administration is implementing this recommendation.

Recommendation #3: The City Administration should review and formalize its off-site tree replacement process. If the City desires to contract for these services, it should determine whether a competitive process is required to select a provider(s), establish an agreement(s) for these services (including a cost per tree), and require documentation of the tree plantings and maintenance provisions.

Administration Response: The replacement tree requirement of the Planning Tree Removal Permit process is one that the City is unable to fulfill on behalf of the public, and thus this service is best provided by an external provider as the City cannot require a member of the public to plant and maintain trees on property they do not own. If these services are to be conducted by a third party, the Administration agrees that a formalized process for off-site replacement that includes a specified current cost for planting and maintaining a tree until establishment is necessary.

Planning's current practice of requiring receipt of payment can be expanded to require photographic evidence of off-site plantings or other proof of off-site plantings, however the burden of this evidence would currently be on the property owner as Our City Forest would currently be unable to provide this evidence to them, unless current practice is modified.

Green: This recommendation can be implemented.

Recommendation #4: To ensure permit conditions are met, the Planning Division should:

- a) **Require permittees (developers and homeowners/landowners) to provide proof of off-site tree mitigation plantings;**

Administration Response: As discussed above, Planning's current practice of requiring documentation can be expanded to require photographic or other proof of off-site replacement plantings, however if off-site planting is conducted through Our City Forest, their current practice may need modification to be able to provide such proof.

Green: This recommendation can be implemented.

- b) **For development permits, require proof of off-site replacement plantings prior to the issuance of building permits;**

Administration Response: The sequential timing of planning, grading, building, and occupancy permits and the resulting timeline for construction varies by project. In some cases, Planning can require proof of off-site replacement plantings prior to issuance of building permits. However, the timing of off-site planting arrangements cannot always be obtained, resulting in unintended consequences of delaying project construction. A solution may be to require off-site planting to occur prior to final building occupancy or by bonding or similar method to ensure replacement planting ultimately is fulfilled.

Yellow: Bonding will require additional research.

- c) **For tree removal permits, continue to require proof of off-site replacement plantings within 30 days of removal of the trees, and utilize Code Enforcement to ensure compliance;**

Administration Response: Addressing the recommendation to utilize Code Enforcement to ensure compliance will require an increase in staff resources for monitoring and tracking this information. Code Enforcement staff work is not currently budgeted for this recommendation and specific enforcement of this requirement on tree removal permits would require the budgeting of additional staff time. Other methods for ensuring compliance can be incorporated into the Tree Removal Permit process improvement work.

Yellow: Implementation of this recommendation is subject to budget adjustment.

- d) **Retain documentation of verification of compliance with off-site replacement tree conditions; and**

Administration Response: Addressing this recommendation will require an incremental increase in staff resources for monitoring, tracking and inserting information into the City's permit system. The added process would range from entering comments in the permit system to retrieving and scanning documentation and/or sending documentation to imaging.

Green: This recommendation can be implemented.

- e) **Require maintenance period for replacement trees and replanting if they fail within that period.**

Administration Response: The tracking and recordation component of this recommendation is outside of the scope of the current Planning budget, however this recommendation could be implemented through contracting a third party to provide monitoring and reporting on the maintenance of off-site replacement trees. The cost of this work would need to be established and included in the cost of the in-lieu fee which is paid when tree plantings are conducted off-site. Full methods for addressing this recommendation, in addition to exploration of how a maintenance period would be defined and in what circumstances it would be applied, would need further exploration through incorporation into Planning's Tree Removal Permit work program priority.

Green: Parameters of how a maintenance period is applied will be established through Planning's Tree Removal Permit process improvement work, and monitoring of the maintenance period will be implemented by contracting through a third party (possibly OCF).

Response to Transportation and Environment Committee Meeting Dated March 6th

The committee requested that Planning staff respond to questions regarding: (a) the formal Tree Removal Process; and (b) the inclusion of OCF in the evaluation of tree removals.

- (a) **Green:** This process is currently being implemented. The formal process for tree removals is identified in Chapter 13.32 of the Municipal Code, regulates the removal of all trees on private property which are over 56 inches in circumference. The Planning Division reviews trees proposed for removal to ensure that they either are diseased or dying, present a hazard to public safety, or inhibit the full economic use of the property. Planning staff reviews applications, pictures, arborist reports, consults with the City Arborist, and sometimes conducts site visits in order to ensure that tree removals comply with the Municipal Code. PBCE and DOT staff provide a consistent level of expertise and professional recommendation for each tree proposed for removal.
- (b) **Yellow:** Each tree that is approved to be removed is required to be replaced, either on the property it is removed from, or in the instance that that is infeasible, by replacing the tree off-site. The City currently does not have the ability to locate alternative sites and plant and maintain new trees and this is where a third party contract with Our City Forest or others could assure such compliance. As PBCE and DOT staff are well coordinated and maintain the appropriate expertise to efficiently evaluate tree removals, the Administration does not recommend adding a third party to the tree removal process due to the required increase in staff resources and required processing time.

CONCLUSION

DOT and the Planning Department would like to thank the City Auditor and staff, for their time in preparing these findings. DOT has implemented the Auditor's Office recommendations and will continue to closely monitor the OCF Operating and Matching grants moving forward.

OCF's JUNE 2016 REQUEST FOR ADDITIONAL FUNDING

As described in the Audit Report, OCF requested a significant increase in grant funding from the City at the June 21, 2016 City Council meeting. OCF requested that the City's two grants be increased from a total of \$270,000 to \$550,000. Following the request by OCF, the City Council established an Urban Forestry Services Reserve in the amount of \$200,000 as part of the 2015-2016 Annual Report with the potential use of the funding to be considered pending the outcome of the OCF Audit.

The Audit found that OCF ended Fiscal Year 2015-16 with a surplus, but faces ongoing fiscal challenges (Finding 1). The Audit determined that OCF had an annual surplus of \$351,225 at the end of FY 2015-16, but noted that much of this surplus was the result of an unexpected amount of mitigation money received (\$298,800). Staff is now reviewing OCF's current fiscal situation

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for 2016-2017 and ongoing, and the outcome of that review, considering the City's own budgetary outlook, will result in a recommendation regarding the use of the reserve for City Council consideration within the coming weeks.

CONCLUSION

DOT and the Planning Department would like to thank the City Auditor and staff, for their time in preparing these findings. DOT has implemented the Auditor's Office recommendations and will continue to closely monitor the OCF Operating and Matching grants moving forward.

/s/

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/s/

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