



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Chris Burton

SUBJECT: See Below

DATE: February 3, 2025

Approved

Date:

2/12/2025

COUNCIL DISTRICT: 3

SUBJECT: Large Format Digital Signage on City-Owned Property

RECOMMENDATION

- (a) Adopt a resolution adopting the Mitigated Negative Declaration for the Electronic Signs on City-Owned Property – Downtown Sites project and adopting a related Mitigation Monitoring and Reporting Program, in accordance with the California Environmental Quality Act (CEQA), as amended.
- (b) Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute lease agreements with Orange Barrel Media, LLC, for four City-owned properties in downtown San José for the installation of five large format digital signs, each lease for a 10-year initial term with up to two additional five-year renewal terms upon satisfaction of certain tenant-controlled renewal criteria, and with a required payment of 33% of gross revenue generated for all leases, except the San José McEnery Convention Center in which the required payment is 30% of gross revenue generated, but in no instance less than the minimum guaranteed payments for the 20-year term as follows:
 - (1) San José Center for the Performing Arts: \$8,722,292
 - (2) San José McEnery Convention Center: \$6,728,625
 - (3) Market/San Pedro Street Parking Garage: \$3,115,104
 - (4) Second and San Carlos Street Parking Garage: \$2,492,083

SUMMARY AND OUTCOME

Approval of the recommendations above will allow the placement of five large format digital signs and an accompanying sign enhancement on four City-owned properties in downtown San José. The minimum guaranteed revenue generated from the leases

associated with these four locations over the twenty-year term is \$21,058,104. Based on a 30% share of revenue generated for the San José McEnery Convention Center lease and a 33% share of revenue generated for all other leases, Orange Barrel Media projects revenue to the City of \$37,511,793 over the 20-year term.

BACKGROUND

The placement of large format digital signage and accompanying sign enhancements on City-owned property seeks to enhance the commercial vibrancy and artistic aesthetic of downtown San José, generate revenue opportunities for the City, and explore digital technologies that allow real-time emergency notifications and City messaging to residents.

In December 2015, City Council included electronic digital off-site signs and billboard installations as a City Council Policy Priority work item. Staff in Planning, Building, and Code Enforcement and the City Manager's Office of Economic Development and Cultural Affairs initiated a scope, analysis, and stakeholder engagement in 2016 and later provided periodic status reports to the Community and Economic Development Committee.

On December 19, 2017, City Council directed staff to investigate removing existing barriers to off-premise (off-site) commercial advertising within the City of San José and implement a phased work plan to allow the following:

- Phase 1: New off-site advertising on City-owned sites; and
- Phase 2: New off-site advertising for non-City-owned freeway-facing sites citywide; additional off-site advertising options for sites in the Downtown Sign Intensification Zone and within the North San Jose Development Area; and signage opportunities within the public right-of-way.

Off-premise commercial advertising is advertising on a sign that promotes a business, product, or service that is not located on the same property as the sign.

On September 25, 2018, the City Council approved City Council Policy 6-4 (Signs on City-Owned Land¹), allowing billboards, programmable electronic signs, and signs displaying offsite commercial speech. City Council Policy 6-4 identifies 17 City-owned sites that could potentially accommodate up to 22 signs. A program-level CEQA analysis was completed for the 17 sites. Staff was directed to prepare and release Request for Proposal (RFP) solicitations for building-mounted digital signs in downtown and free-standing freeway-facing signage on City-owned property. The work was divided into two separate RFP processes beginning in 2019. In March 2020, the COVID-19 pandemic redirected City staff priorities to managing emergency relief programs that prioritized human health and quality of life for San José's most vulnerable

¹ <https://www.sanjoseca.gov/home/showpublisheddocument/50829/637153744794670000>

residents and included critical assistance to the small business community in San José. These efforts delayed any significant progress of digital signage-related efforts for two years.

At the February 25, 2021, Special Meeting of the City Council on the City Roadmap, the City Council directed staff to stop work on Phase 2 of the electronic billboard City Council Policy priority item and removed it from the 2020-2021 City Roadmap of projects slated for completion by June 2021.

Staff focused efforts on digital signage on City-owned property and implementation was divided into two processes: 1) the Select Sites process and 2) the Alternative Sites process. The staff recommendations in this memorandum are focused on the Select Sites process.

In the Select Sites process, the City issued an RFP for signage at eight properties in the downtown core. The solicitation sought proposals for leases to install, operate, and manage building-mounted static and/or digital commercial advertising signs in these City locations. The solicitation also requested that each sign have an accompanying artistic enhancement as part of its installation. The eight properties are listed below.

1. Market/San Pedro Street Parking Garage
2. Second and San Carlos Street Parking Garage
3. Hammer Theatre
4. San José Center for the Performing Arts
5. San José McEnery Convention Center
6. Third Street Parking Garage
7. San José Museum of Art
8. The Tech Interactive

The initial RFP solicitation was released in August 2019 with a Notice of Intended Award (NOIA) issued in December 2019. This RFP solicitation was subsequently re-issued due to a technical issue following issuance of the NOIA.

The second Select Sites RFP solicitation was issued in May 2020. The second solicitation included two modifications: 1) allowance for the proposal of free-standing signs and 2) the reduction from eight sites to six sites. The San José Museum of Art and the Third Street Parking Garage were removed based on further staff consideration regarding location and building architecture.

Proposals for this solicitation were received in July 2020, and a NOIA for five City-owned sites was issued to Orange Barrel Media in December 2022. Based on the evaluation of proposals received, staff elected not to issue a NOIA for a sign on the Hammer Theatre. The Select Sites NOIA award was pending project-level environmental clearance, final lease negotiations, and City Council approval. In the

notice, staff recommended a conditional award of contract for the Second and San Carlos Street Parking Garage pending future potential development.

In early 2023, staff began CEQA-related work, including executing CEQA-related funding agreements for City staff time and conducting appropriate environmental reviews for each sign. Staff also began lease discussions, including coordinating the logistical and technical parameters of signs with each location where they may be installed, reviewing sign design, and negotiating final lease terms.

ANALYSIS

Five digital signs are proposed at four locations in downtown San José. The four locations are the San José Center for the Performing Arts, the San José McEnergy Convention Center, the Market/San Pedro Street Parking Garage, and the Second and San Carlos Street Parking Garage. Of the five signs, three signs are proposed to be attached to existing structures, while two signs at the San José Center for the Performing Arts are proposed as free-standing signs.

The Tech Interactive

The lease agreement between the City and The Tech Interactive gives The Tech Interactive certain rights related to the use of the building and surrounding property. The lease states that The Tech Interactive has exclusive use/control of the site with certain exceptions carved out for City use. Upon staff's additional review of the lease, it was clarified that the City use is explicitly stated in the lease and does not include the installation of signage on the building. While staff and Orange Barrel Media have engaged with The Tech Interactive to address its concerns about the signage—including the impact on its contributed revenue, the amount of promotional time received on the sign, and general association with commercial advertising—the discussions have not ended in an acceptable resolution for The Tech Interactive. Accordingly, staff's recommendation is to remove The Tech Interactive from consideration as a location for digital off-site advertising at this time. The Tech Interactive site does remain in the environmental clearance as it was included in the Mitigated Negative Declaration for the Electronic Signs on City-Owned Property – Downtown Sites project.

Environmental Considerations and Clearance

All downtown locations are proposed to be cleared under a single Mitigated Negative Declaration. The scope of work for a Mitigated Negative Declaration was provided to the City from consultant David J. Powers in May 2023 and the formal project description was submitted by the consultant in October 2023. Public circulation of the environmental document began on October 25, 2024, and concluded on November 18,

2024. Approximately 110 emails and letters were received during the public circulation period.

CEQA does not require formal responses to comments received on a Mitigated Negative Declaration. However, the City prepared a Response to Comments document to provide responses to comments raising environmental concerns. Comments received discussed potential impacts of the project to topic areas including, but not limited to, human health and driver safety; visual impacts from lighting on biological resources, aesthetics, and the Lick Observatory; blight; energy use; historic resources; and conformance with the San José Municipal Code, City Council Policy 6-4, and other regulations for digital signs.

Responses to comments on the merits of the project (or generalized comments and opinions on electronic signs), economic/fiscal effects, or other non-environmental concerns generally are not responded to individually but are comprehensively addressed in the Response to Comments document. The Response to Comments will be posted to the [project-specific website²](#) on the City's Environmental Review Documents website no later than February 19, 2025.

Proposed Lease Terms

Key terms of the four recommended leases with Orange Barrel Media are outlined below.

Term

- The term of each lease is 10 years and may be extended for up to two additional five-year extension periods if Orange Barrel Media is in good standing with the following renewal criteria.
 - Orange Barrel Media has never been in default of the lease;
 - The LED screens on each sign have been refreshed prior to the end of the tenth lease year;
 - Orange Barrel Media has responded to any written requests for maintenance within 24 hours following their receipt of such request from the City; and
 - Rent received by City in the previous two years exceeds 120% of the minimum annual guaranteed rent amount.

Rent

- The rent is payment of 33% of gross revenue generated at the Market and San Pedro Garage, the Second and Carlos Garage, and the Center for the Performing Arts, and payment of 30% of gross revenue generated at the

² <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/electronic-signs-on-city-owned-property-project-downtown-sites>

McEnergy Convention Center, provided that in no event will the payment to the City be less than the Minimum Annual Guarantee amount. The Minimum Annual Guaranteed rent for each location is defined below. The amounts are 25% greater than the proposed minimum amounts in Orange Barrel Media’s proposal response.

| Location | 20 Year Total Minimum Guarantee | Years 1–10 Minimum Guarantee | Option 1 Years 11–15 Minimum Guarantee | Option 2 Years 16–20 Minimum Guarantee | 20 Year Total Projected Revenue Share |
|--|---------------------------------|------------------------------|--|--|---------------------------------------|
| McEnergy Convention Center | \$6,728,625 | \$2,902,500 | \$1,895,760 | \$2,197,705 | \$9,924,106** |
| Market/San Pedro Garage | \$3,115,104 | \$1,343,750 | \$877,669 | \$1,017,459 | \$8,945,959* |
| Second and San Carlos Garage | \$2,492,083 | \$1,075,000 | \$702,133 | \$813,965 | \$3,046,413* |
| Center for the Performing Arts (2 signs) | \$8,722,292 | \$3,762,500 | \$2,457,466 | \$2,828,877 | \$15,595,313* |
| Total | \$21,058,104 | \$10,783,750 | \$7,337,295 | \$8,505,936 | \$37,511,793 |

*Projection of 33% of revenue based on OBM’s project proforma.

**Projection of 30% of revenue based on OBM’s project proforma.

Sign Operation

- Sign operation must abide by City Council Policy 6-4, including content limitations and prohibiting illumination between the hours of midnight and 6:00 a.m.
- Orange Barrel Media will install connections and pay for all utilities required to operate the signage at each location.
- The City will receive free use of 15% of the advertising time on all five signs, to present its own non-commercial messages.
- The City will receive all unsold advertising time across all signs to display City messaging, which is typically 10% to 35% of the total time.
- The City may assign any or all of its non-commercial messaging time to Team San Jose to promote events and performances at Team San Jose-managed facilities.
- Orange Barrel Media is responsible for all maintenance and repair of the signs, and restoration of the property upon termination of the lease agreement.
- For any national or international championship event, but not more often than three times in any five-year period, the City may exercise “black-out” periods prohibiting advertising of businesses in competition with event sponsors.

- The City shall have the right to preempt the use of the signs in the event of federal, state, or national emergencies.

Second and San Carlos Street Parking Garage

- The City reserves the right to terminate the lease at the Second and San Carlos garage in the event of a sale of the property, pursuant to the terms included in the Request For Proposal exemplar lease. Orange Barrel Media will take down, store, and reinstall the sign at its own expense in the event the property is redeveloped.

San José McEnery Convention Center

- The San José McEnery Convention Center shall be allocated up to 15 total visual takeover days per year, during which the event sponsors shall have 100% of all advertising time on site at no charge.
- San José McEnery Convention Center event sponsors may purchase up to 15 additional days of total visual takeover at a 30% discounted rate.
- The San José McEnery Convention Center shall also be allocated 15 days in which advertising from competitors of designated event sponsors will be prohibited.

San José Center for the Performing Arts

- Orange Barrel Media will incorporate the name of the building, The Center for the Performing Arts, into its two proposed signs at the location.
- Orange Barrel Media will not show advertising on the screens at this location for the types of live performances scheduled at the Center for the Performing Arts or the three other Team San José-operated theatres - Montgomery Theater, San José Civic, and California Theatre - to the extent the advertising promotes shows in another Bay Area jurisdiction.

Artistic Sign Enhancements

As mentioned in the Background section of this memorandum, the Select Sites RFP required that each sign have an accompanying artistic enhancement as part of its installation.

Oakland-based artists Sadie Barnette and Woody De Othello have developed site-specific sign enhancements for the proposed installations on the San José McEnery Convention Center and the Second and San Carlos Street Parking Garage. Sadie Barnette's installation on the San José McEnery Convention Center will be one from her ongoing series of drawings titled Text Compositions. She will create an architectural scale work that reads "Feelings." Visible by both car and pedestrian traffic, in daylight and evening, this statement piece is an invitation to pause, to think, or to stop thinking — and feel. Woody De Othello will develop a custom clock sculpture with jumbled numbers and whimsical clock hands for the Second and San Carlos Street Parking Garage. He will create a maquette of unique clock sculpture, which will be 3D-scanned

and scaled up to building size. The purpose of the piece is not to tell the time but to have viewers think about their relationship with time as they view the enhancement.

Orange Barrel Media will work in good faith with the City and the contractor selected by the City to construct the Brian Brush commission, "Lineal," which is currently planned to encompass the facade of the Market/San Pedro Street Parking Garage. Such good faith efforts will involve construction and utilities coordination, and temporary sign removal during construction of the art commission if required and may involve a financial contribution toward the installation.

Should City Council approve the recommendations in this memorandum, City staff and Orange Barrel Media will work toward the installation of signage in at least two locations by February 2026.

EVALUATION AND FOLLOW-UP

Should City Council approve staff's recommendations, staff will negotiate and execute lease agreements with Orange Barrel Media consistent with the recommendations in this memorandum, and Orange Barrel Media will proceed to secure the necessary City permits associated with installing the proposed signs.

COST SUMMARY/IMPLICATIONS

The total guaranteed revenue to the General Fund for the four leases over the course of the initial 10-year lease term is \$9,239,653. Guaranteed revenue over the first five-year option period is \$5,473,345, and guaranteed revenue over the second five-year option period is \$6,345,107. Total guaranteed revenue over the full, 20-year lease term for all four leases is \$21,058,104. Revenues from these leases are expected to be received by the City starting in the fiscal year 2025-2026 and will be incorporated into the 2025-2026 City Manager's Budget Request and 2026-2030 Five-Year Forecast and Revenue Projections document scheduled to be released at the end of February 2025.

COORDINATION

The memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the February 25, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Mitigated Negative Declaration, File No. ER23-034, Electronic Signs on City-Owned Property – Downtown Sites.

PUBLIC SUBSIDY REPORTING

This item itself does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City’s Open Government Resolution.

/s/

NANCI KLEIN

Director of City Manager’s Office of
Economic Development and Cultural
Affairs

/s/

CHRIS BURTON

Director, Department of Planning,
Building, and Code Enforcement

For questions, please contact Blage Zelalich, Deputy Director, City Manager’s Office of Economic Development and Cultural Affairs, at blage.zelalich@sanjoseca.gov or (408) 535-8172; Kevin Ice, Assistant to the City Manager/Director of Real Estate, City Manager’s Office of Economic Development and Cultural Affairs at kevin.ice@sanjoseca.gov or (408) 535-8197; and Cort Hitchens, Planner III, Department of Planning, Building, and Code Enforcement at cort.hitchens@sanjosecagov or (408) 794-7386.