



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Maria Öberg

SUBJECT: Apple Developer License
Agreement for City Mobile
Applications

DATE: February 18, 2025

Approved

Date:

2/21/2025

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Adopt a resolution authorizing the City Manager or her designee to execute the Apple Developer License Agreement to host City mobile applications on the Apple App Store.

SUMMARY AND OUTCOME

Approving this recommendation would allow the City to maintain the SJ311 mobile application on the Apple App Store (App Store). It would also allow any future applications developed by the City to be hosted on the App Store.

BACKGROUND

Apple requires application owners to sign a Developer License Agreement¹, before they can host their applications on the App Store. The City had been using a third-party vendor account to host its SJ311 application on the App Store since 2017. The City expended a lot of time, effort, and resources to develop the SJ311 application and it proved to be popular with the public. Usage reports show the app was downloaded 31,450 times between July 2020 and June 2024. Staff would like to transition the ownership of the App Store account from the vendor to the City to ensure full control of the application and continue to provide application enhancements to better serve San José residents.

¹ <https://developer.apple.com/support/terms/apple-developer-program-license-agreement/>

ANALYSIS

In reviewing the Apple Developer License Agreement, staff identified a number of terms and conditions that could pose risks to the City. These are non-standard terms that place all the risks and liabilities on the City. These terms are listed below.

1. The City will be solely responsible for all costs, expenses, losses, liabilities incurred, and activities undertaken by it and its authorized developers in connection with the Apple Software and Apple Services.
2. Apple may change the program requirements or terms of the agreement at any time.
3. The City agrees to indemnify and hold harmless, and upon Apple's request, defend, Apple, its directors, officers, employees, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys' fees and court costs (collectively, "Losses"), incurred by an Apple Indemnified Party and arising from or related to any of the following (but excluding for purposes of this Section, any Application for macOS that is distributed outside of the App Store and does not use any Apple Services or Certificates).
4. Limitation of all liability on the part of Apple for all personal injuries and damages for loss of profits, loss of data, business interruption, or any other commercial damages or losses arising out of or related to the agreement to \$50.

Apple has indicated to the City that it is not willing to negotiate these terms and conditions. Its position is that the terms are required for everyone who elects to have their applications hosted on the App Store. It is difficult to quantify the risk and potential liability associated with the agreement. The risks would mainly stem from (i) the City's potential violation of the many different requirements, terms, and conditions in the agreement or (ii) third party/end-user unauthorized access or use of the City's applications on the App Store. Staff have determined that the risk associated with the Apple agreement is low due to Apple's respected safety practices and the type of data collected through the applications. To try and limit the risks and City's liability should City Council approve the recommendation herein, staff will implement the following measures:

1. Finance Department will manage the agreement based on the established standard processes and will review updates to terms, as needed, to assess if the City should consider terminating the agreement.
2. Information Technology Department will manage all City owned applications on the App Store for all departments to ensure compliance. Departments will be responsible for submitting requests to publish or update applications to the

Information Technology Department with all supporting technical documentations and follow change management processes.

3. Information Technology Department will require all City staff who will be involved in managing the City's application on the App Store to read and acknowledge the terms and conditions in the Apple Developer License Agreement.
4. End-users will be required to acknowledge the terms and conditions in the Apple Developer License Agreement and agree to indemnify the City for any claims arising out of their use of the application.

EVALUATION AND FOLLOW-UP

This memorandum will not require any follow-up from staff.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Information Technology Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the March 11, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

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PUBLIC SUBSIDY REPORTING

This item 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/
Maria Öberg
Director of Finance

For questions, please contact Albie Udom, Deputy Director and Chief Procurement Officer, Finance Department, at email albie.udom@sanjoseca.gov or Namrata Batra Agrawal, Project and Product Manager, Information Technology Department, at email namrata.batraagrawal@sanjoseca.gov.