

File No. 200222

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: July 2, 2020

Board of Supervisors Meeting:

Date: _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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Prepared by: John Carroll

Date: June 26, 2020

Prepared by: John Carroll

Date: _____

1 [Urging Invalidation of 2019 Revenue Agreement - JC Decaux]

2

3 **Resolution urging Public Works and the Office of the City Attorney to take immediate**
4 **steps to cancel the City and County of San Francisco’s Revenue Agreement with JC**
5 **Decaux, including ceasing implementation of its lucrative Grant of Advertising Rights.**

6

7 WHEREAS, Since August 2, 1994, the City and County of San Francisco and JC
8 Decaux San Francisco, Inc. (formerly JC Decaux United Street Furniture, Inc., hereinafter “JC
9 Decaux”) has provided public toilets and newspaper kiosks which also serve as advertising
10 space in San Francisco’s public rights of way pursuant to a contractual agreement that has
11 been amended from time to time over the past quarter century; and

12 WHEREAS, On April 26, 2016, the San Francisco Department of Public Works (“Public
13 Works”) issued a competitive solicitation through its Request for Proposals public toilets and
14 advertising kiosks to which JC Decaux was the sole respondent, only two months later, on
15 June 24, 2016; and

16 WHEREAS, The April 2016 Request for Proposal followed an initial Request for
17 Proposal in 2015 which, among other provisions, required submissions within an abbreviated
18 period of just 120 days, which was ultimately altered and re-issued as the April 2016 Request
19 for Proposal; and

20 WHEREAS, On July 23, 2019, the Board of Supervisors retroactively approved the
21 resulting Revenue Agreement between Public Works and JC Decaux (the “2019 Revenue
22 Agreement”) for an automatic public toilet and public service kiosk program with anticipated
23 revenues of approximately \$12,950,000 over a term of 21.5 years commencing on
24 July 1, 2019; and

25

1 WHEREAS, Under the Revenue Agreement, the approximately \$12,950,000 in
2 revenue over 21.5 years consists of a one-time payment of \$1,500,000, an Annual
3 Administrative Fee, and an Advertising Revenue Percentage Fee, and a Non-Advertising
4 Percentage Fee; and

5 WHEREAS, Over the course of 20 years between 1997 and 2017, JC Decaux
6 generated approximately \$125 million in ad revenue through its kiosks situated in San
7 Francisco’s public rights of way, and paid a dismal 5.8 percent of that revenue to the City, for
8 a total of about \$7.3 million in revenue, or approximately \$365,000 per year; and

9 WHEREAS, The analogous advertising revenue agreement between the City and
10 County of San Francisco and Clear Channel for utilization of advertising space on Muni
11 shelters requires the remittance of 55 percent of ad revenue to the City, while the advertising
12 revenue agreement between the City and County of San Francisco and Titan Outdoor for the
13 utilization of advertising space on Muni vehicles requires the remittance of 65 percent of ad
14 revenue to the City; and

15 WHEREAS, On January 28, 2019, the United States District Court for the Northern
16 District of California unsealed a 75-page criminal complaint announcing fraud charges against
17 former Director of Public Works Mohammed Nuru, who in his capacity as Director of Public
18 Works oversaw the terms set forth in both the 2015 and 2016 Requests for Proposal and the
19 negotiations which resulted in the renewed 2019 Revenue Agreement; and

20 WHEREAS, Throughout this process, then-Director Nuru personally lobbied several
21 members of the Board of Supervisors to ensure that the 2019 Revenue Agreement would
22 ultimately be adopted by the City and County of San Francisco; and

23 WHEREAS, In the wake of voluminous allegations of fraud on behalf of then-Director
24 Nuru over the course of this time period, additional concerns have surfaced regarding the
25 relationship between Nuru and JC Decaux, including concerns set forth in local news outlet

1 Mission Local that Nuru was “wined and dined” at JC Decaux’s “elegant waterfront farmhouse
2 in the bucolic Parisian suburb of Plaisir;” and

3 WHEREAS, The Board of Supervisors understands that the independent Office of the
4 City Attorney is investigating the circumstances surrounding these allegations specifically as
5 they relate to the 2019 Revenue Agreement; and

6 WHEREAS, The Board of Supervisors is deeply concerned that those allegations will
7 result in findings that the City was misled as to its leverage in the crafting of the Request for
8 Proposal and resulting 2019 Revenue Agreement, including with respect to the Advertising
9 Revenue Percentage Fee, and that it was fraudulently induced into the 2019 Revenue
10 Agreement; now, therefore, be it

11 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
12 urges the San Francisco Department of Public Works and the Office of the City Attorney to
13 inform the Board of Supervisors of its legal status relative to canceling the City’s contract with
14 JC Decaux as reflected most recently in the 2019 Revenue Agreement; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors urges Public Works and the
16 City Attorney’s Office to take all legal steps to cease any further implementation of the 2019
17 Revenue Agreement, including invalidating the Grant of Advertising Rights which have
18 generated enormous profits for JC Decaux through its appropriation of public rights of way,
19 with minimal reciprocal benefit to San Francisco residents and visitors.

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File No. 200222-1
2020-1-13

March 2, 2020

VIA MESSENGER

Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2020 MAR -2 PM 4:40
BY [Signature]

Re: File No. 200222; Resolution Urging Invalidation of the 2019 Revenue Agreement — JCDecaux

Dear Board of Supervisors:

This office represents JCDecaux San Francisco, LLC (“JCDecaux San Francisco”) and its parent company JCDecaux North America, Inc. (together, “JCDecaux”). Just seven months ago, the Board approved, by a 10-0 vote, Resolution No. 341-19, a copy of which is attached, approving the City’s entry into a Public Toilet and Public Service Kiosk Agreement with JCDecaux San Francisco. As recited in that resolution, the Board’s approval of the Agreement followed a competitive solicitation and an extensive public review process, and JCDecaux is confident that it followed the rules and complied with all City laws throughout this process. The Agreement was executed on behalf of the City by the Deputy Director of the Department of Public Works on October 8, 2019 and is now in effect.

Item 38 on the Board’s March 3, 2020 agenda is a resolution urging the Department of Public Works and the Office of the City Attorney “to cease any further implementation of the [Agreement], including by invalidating” the rights granted to JCDecaux San Francisco. There is simply no basis for approval of the proposed resolution or for the invalidation of the Agreement.

The proposed resolution asserts, apparently in reliance upon an unsupported claim in the *Mission Local* newspaper, that former Director of Public Works Mohammed Nuru was “wined and dined” at JCDecaux’s head office in Plaisir, France. This assertion is untrue. Mr. Nuru has never visited any JCDecaux facility in France. Mr. Nuru was neither wined nor dined by JCDecaux in France or anywhere else.

The proposed resolution also refers to “additional concerns . . . regarding the relationship between Nuru and JCDecaux,” though it does not identify those concerns. We would appreciate the opportunity to have reasonable notice of the specifics of any concerns and an opportunity to address them prior to the Board’s voting on this or any similar resolution.

Upon learning of the City Attorney’s broad public corruption investigation, JCDecaux, through this office, contacted the Office of the City Attorney and offered to cooperate in any investigation

The San Francisco Board of Supervisors
March 2, 2020
Page 2

the City Attorney undertakes with respect to the Public Toilet and Public Service Kiosk Agreement. We expect to meet with representatives of the City Attorney's office later this week.

That said, JCDecaux takes this opportunity to state unequivocally its belief that the Public Toilet and Public Service Kiosk Agreement reflects a wholly appropriate arms-length negotiation between JCDecaux and the City and County of San Francisco. JCDecaux followed a complex regulatory process involving multiple government agencies including the Office of the City Attorney, the Department of Public Works, and this Board; was responsive to the input of numerous stakeholders including the San Francisco Arts Commission and the Historical Preservation Commission; and supported a competition of City-selected architectural firms to design the facilities that it is now diligently engineering and manufacturing. We respectfully suggest that it would be premature for the Board to act on the proposed resolution during the pendency of the City Attorney's investigation, especially when it appears that the resolution may have been prompted by a misunderstanding of the facts.

JCDecaux is proud of its relationship with the City and County of San Francisco and looks forward to continuing to serve its residents for years to come.

Respectfully submitted,



Harry O'Brien
For Coblentz Patch Duffy & Bass LLP

Attachment: Resolution 341-19

cc: All Supervisors
Keslie Stewart, Deputy City Attorney
Martha Bailey, General Counsel, JCDecaux North America

1 [Revenue Agreement - Retroactive - JC Decaux San Francisco, LLC. - Public Toilets and
2 Public Service Kiosk Agreement - \$12,950,000]

3 **Resolution retroactively approving a Revenue Agreement between Public Works and**
4 **JC Decaux San Francisco, LLC, for an automatic public toilet and public service kiosk**
5 **program with anticipated revenues of over \$12,950,000 and a term of 21.5 years**
6 **commencing on July 1, 2019; and affirming the Planning Department’s determination**
7 **under the California Environmental Quality Act.**

8
9 WHEREAS, San Francisco Public Works issued a competitive solicitation through its
10 Request for Proposals dated April 26, 2016, for Public Toilets and Advertising Kiosks; and

11 WHEREAS, JC Decaux San Francisco, LLC (“JC Decaux”) was the only company that
12 responded to this solicitation with a proposal dated June 24, 2016; and

13 WHEREAS, JC Decaux has been providing similar services for over 20 years under the
14 First and Second Amended and Restated Automatic Public Toilet and Public Service Kiosk
15 Agreement, effective as of August 2, 1994, and as further amended from time to time; and

16 WHEREAS, After receiving comments on the initially proposed design, Public Works
17 and JC Decaux ran an invitation-only design competition of local San Francisco design and
18 architecture firms and on May 28, 2018 selected a winning design; and

19 WHEREAS, This new design received approval from the Historic Preservation
20 Commission on October 17, 2018 and the Arts Commission on December 3, 2018; and

21 WHEREAS, On October 5, 2018, the Planning Department issued an Addendum to the
22 Final Negative Declaration for the Kiosk and Automatic Toilet Replacement Project, originally
23 issued September 23, 1993, and concluded that the analyses conducted and the conclusions
24 reached in the Final Negative Declaration adopted and issued on September 23, 1993 for the
25 original project remain valid and that no supplemental environmental review is required, and a

1 copy of the Addendum to the Negative Declaration for the Kiosk and Automatic Toilet
2 Replacement Project is on file with the Clerk of the Board of Supervisors in File No. 190579
3 and is incorporated by reference; and

4 WHEREAS, In the new Agreement, JC Decaux will maintain and operate automatic
5 public toilets free of charge for the public on public right of ways and public land, replace and
6 upgrade all 25 existing and approved automatic public toilets with a new design, compensate
7 the City in the form of guaranteed fee payments and potential payments tied to gross
8 advertising revenue, display public service messages, and provide 48,180 hours of attendant
9 services annually in exchange for the right to operate up to 114 advertising kiosks on public
10 right of ways, replace and upgrade 114 existing advertising kiosks, and add digital screens to
11 its current advertising program over the course of a 21.5 year term; and

12 WHEREAS, In implementing the static and digital public service messaging program
13 and allocating the use of space within the vending kiosks, Public Works will develop and
14 adopt a policy defining the fair and equitable use of these public spaces as well as continue
15 the Arts Commission's role in programming the public service messages for the kiosks on
16 Market Street; and

17 WHEREAS, Upon completion of the policy, Public Works will bring it before the Board
18 of Supervisors for approval by Resolution; and

19 WHEREAS, The anticipated value of attendant services is an estimated \$57,760,000
20 over the term of the Agreement; and

21 WHEREAS, Anticipated revenues from this Agreement are an estimated \$12,950,000
22 and Charter Section 9.118(a) requires that all contracts that when entered into by a
23 department, having anticipated revenue to the City and County of \$1,000,000 or more shall be
24 subject to approval of the Board of Supervisors by resolution; and

1 WHEREAS, The term of this Agreement will be 21.5 years, commencing on July 1,
2 2019, and Charter Section 9.118(b) requires that all agreements entered into by a department
3 having a term in excess of ten years shall be subject to approval of the Board of Supervisors
4 by resolution; now, therefore, be it

5 RESOLVED, That the Board of Supervisors approves the proposed Public Toilet and
6 Public Service Kiosk Agreement; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors has reviewed and considered
8 the Final Negative Declaration and Addendum, and affirms the Planning Department's
9 determination that the analyses conducted and the conclusions reached in the Final Negative
10 Declaration for the original project remain valid and that no supplemental environmental
11 review is required; and, be it

12 FURTHER RESOLVED, That within 30 days of the Agreement being fully executed by
13 all parties, Public Works shall provide the final amendment to the Clerk of the Board for
14 inclusion into the official file.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 190579

Date Passed: July 23, 2019

Resolution retroactively approving a Revenue Agreement between Public Works and JC Decaux San Francisco, LLC, for an automatic public toilet and public service kiosk program with anticipated revenues of over \$12,950,000 and a term of 21.5 years commencing on July 1, 2019; and affirming the Planning Department's determination under the California Environmental Quality Act.

July 10, 2019 Budget and Finance Sub-Committee - CONTINUED

July 17, 2019 Budget and Finance Sub-Committee - RECOMMENDED

July 23, 2019 Board of Supervisors - ADOPTED

Ayes: 10 - Brown, Fewer, Mandeliman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

Absent: 1 - Haney

File No. 190579

I hereby certify that the foregoing
Resolution was ADOPTED on 7/23/2019 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved

Print Form

RECEIVED
2/25/2020 @ 5:28pm
A

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Peskin, HANEY, MAW

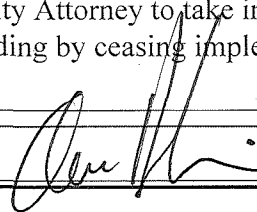
Subject:

[Resolution Urging Invalidation of the 2019 Revenue Agreement with JC Decaux]

The text is listed:

Resolution urging the Department of Public Works and Office of the City Attorney to take immediate steps to cancel the City and County of San Francisco's contract with JC Decaux, including by ceasing implementation of its lucrative Grant of Advertising Rights.

Signature of Sponsoring Supervisor:



For Clerk's Use Only