



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: April 13, 2023 REPORT NO. PC-23-017

HEARING DATE: April 20, 2023

SUBJECT: Recommendation to the City Council to adopt an ordinance providing an exception to the City's prohibition against signs in the right of way and off-premises messages, and an exception to certain automatic changing copy regulations as provided and limited to the terms and conditions set forth in the Ten-Year Marketing Agreement among the City of San Diego, Downtown San Diego Partnership, and IKE Smart City, LLC for a Digital Wayfinding System in a portion of Downtown San Diego

PROJECT NUMBER: N/A

REFERENCE: N/A

OWNER/APPLICANT: Downtown San Diego Partnership and IKE Smart City, LLC(Owner/Applicant)

SUMMARY

Issue(s): Should the Planning Commission Recommend to the City Council adoption of an ordinance providing an exception to the City's prohibition against signs in the right of way and off-premises messages, and an exception to certain automatic changing copy regulations as provided and limited to the terms and conditions set forth in the ten-year-marketing agreement among the City Of San Diego, Downtown San Diego Partnership, and Ike Smart City, LLC?

Staff Recommendations:

1. Recommend the City Council ADOPT an ordinance providing a limited exception to the signage and off premises messaging regulations contained in Chapter 14, Article 2, Division 12 of the San Diego Municipal Code and providing a limited exception to the automatic changing copy regulations contained in Chapter 14, Article 1, Division 11 of the San Diego Municipal Code for the placement of digital wayfinding kiosks with off-premises messages in the right-of-way as provided and limited to the terms and conditions set forth in that certain ten-year- marketing agreement among the City Of San Diego, Downtown San Diego Partnership, and Ike Smart City, LLC.

Environmental Review:

This activity, the IKE digital advertising and wayfinding kiosks program, is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301(c) (Existing Facilities, Highways and Streets), 15303 (New Construction or Conversion of Small Structures), and 15304 (Minor Alterations to Land). This activity is exempt pursuant to CEQA Guidelines Section 15301(c) (Existing Facilities), as the kiosks would be added to existing City right-of-way (ROW). The activity is also exempt pursuant to CEQA Guidelines Sections 15303 (Small Structures) and 15304 (Minor Alterations to Land), as the kiosks are small structures that would require minor alterations to the public ROW during installation. None of the exceptions to the exemptions as outlined in CEQA Guidelines Section 15300.2 would apply.

Discussion

Project Description:

On October 2021, a Request for Sponsorship (“RFS”) was released to the public to identify a company with experience that has interest in partnering with the City to identify wayfinding solutions that would benefit residents, visitors, and local businesses specifically in downtown San Diego. Interested proposals were required to have the ability to implement a city wayfinding strategy designed uniquely for specific targeted communities/neighborhoods of interest in portions of downtown San Diego including the Civic/Core, Columbia, Marina, Horton Plaza/Gaslamp Quarter, East Village, Cortez, and the Convention Center district, as described in Section 6 of the Downtown Community Plan (“Downtown San Diego”). In exchange, the City will provide marketing benefits that would provide a business benefit for the selected partner.

The Downtown Community Plan identifies the public benefit for city wayfinding and states “as downtown evolves, it may be necessary to expand the wayfinding sign program” and “the sign policies of the Community Plan are intended to balance the public interest—in promoting a safe, well maintained and attractive city—with the interests of businesses and organizations in ensuring the ability to identify products, services, and ideas”.

The city wayfinding partnership goals include but are not limited to providing information to the public regarding wayfinding, storm warnings, emergency updates, information on homeless services, and bus schedules. Improving navigation solutions for a range of modalities of travel; guiding residents and visitors to destinations, retailers, restaurants, hotels, parks, facilities, services and other businesses and attractions; promoting diverse mobility solutions (walking, bicycling, use of mass transit and other non-vehicular modes of transportation); providing helpful context and useful information while adhering to principles of environmental sustainability and equitable access.

The City received two proposals in response to the RFS. One proposal was determined to be unresponsive to the City’s request. The other proposal was responsive and submitted by IKE Smart City (IKE), an advertising agency, in collaboration with Downtown San Diego Partnership (DSDP) a 501(c)3. Together, they proposed a marketing partnership agreement to install fifty (50) digital wayfinding kiosks in the City of San Diego (City) right-of-way downtown. After careful consideration by the selection committee IKE Smart City/DSDP’s proposal was chosen by the selection committee.

Staff began negotiations with representatives from IKE for a Marketing Partnership Agreement.

IKE's proposed kiosks are designed ADA-compliant and feature a large, interactive digital display that either shows eight advertising content slots with 10 second intervals (when not in use) or allows for touch-based interaction. The interactive display will provide information about a range of public desired topics, including transit information, wayfinding, local business directories, free Wi-Fi hotspot, a touch keypad as required by accessibility regulations for person's interacting with the kiosk that require a keypad, an emergency call button, in addition to social services including a shelter locator, a comprehensive event and activity listing for the City. More features on the kiosk include content from DSDP and other community organizations such as; job listings, emergency government communication such as storm warnings, amber alerts and road closures, including health and safety notifications. The key Partnership terms negotiated with IKE are reflected in the "Summary of Key Terms" below.

California Government Code section 65854 requires that the Planning Commission hold a public hearing on a proposed zoning ordinance. The proposed ordinance authorizing an exemption from the City's sign regulations constitutes a zoning ordinance and requires a Planning Commission hearing under California Government Code section 65854 and San Diego Municipal Code section 111.0107.

San Diego Municipal Code section 142.1210(a), 142.1206(a)(1), and 142.1210(b)(5)(A), prohibit signs in the right-of-way and off-premises messages, the signs proposed for use in the Agreement may be located in the right-of-way and carry off-premises messages under and limited to the terms and conditions set forth in the Agreement. San Diego Municipal Code section 141.1105(c) and 141.1105(d), limits information that signs with automatic changing copy can include, the signs proposed for use in the Agreement may include information and messages as provided and limited to the terms and conditions set forth in the Agreement. An ordinance providing an exemption from the City's sign regulations for the placement of advertising at wayfinding kiosks and an exemption from certain automatic copy regulations will be required for approval of the Agreement.

The Marketing Agreement contains provisions to limit and control the size, amount, and type of advertising at each wayfinding kiosk to promote the City's important interests while preserving and improving the City's safety and aesthetics. The City's guidelines for Advertising are included in the Agreement as Exhibit B-Kiosk Advertising. The City's will follow the guidelines based upon the Metropolitan Transit Memorandum Of Understanding Policies and Procedures for display advertising on bus and trolley benches and wraps as seen in Attachment G.

The City's mobility, sustainability, health, economic, and social goals reflected in the City's 2008 San Diego General Plan support goals and policies that will help develop a city where walking is a viable travel choice, particularly for trips of less than one-half mile, foster a safe and comfortable pedestrian environment, creating a complete, functional, and interconnected pedestrian network, that is accessible to pedestrians of all abilities, and achieve greater walkability through pedestrian friendly street, site and building design (City of San Diego General Plan (2008), Mobility Element, Policy ME-F.4. The proposed wayfinding kiosks further the City's interest in safety by promoting awareness and vibrancy through incorporation of kinetic lighting on the pedestrian side of the

kiosks, having an emergency call button to access DSDP's 24-hour Clean and Safe hotline, providing real-time emergency alerts, and providing public access to a wide range of topics, in a number of languages, including information on how to access social services and public safety resources. The wayfinding program furthers the City's stated interest in the Downtown Community Plan to make downtown more visitor-friendly by providing detailed maps in strategic locations and furthers the City's stated interest in promoting a safe, well-maintained, and attractive City by controlling the size, quantity, and type of allowed signage, which also furthers the City's interest in aesthetics.

The City's sign regulations are based on and designed to further the City's interests in preserving the beauty of San Diego and promoting safety. The courts have emphasized that when sign regulations are based on interests of safety and aesthetics, any exceptions to those regulations must further an interest that is even stronger and more important than the City's interest in safety and aesthetics, or must not affect those interests. The City Council could make findings and adopt legislation to support limited and controlled advertising at Kiosk locations for the express purpose of providing this amenity to the public while furthering the goals of the sign ordinance.

Summary of Key Terms:

- Operational Term Commences after a three-year construction period.
- Term length: Ten years, with mutually agreed upon five-year renewal option.
- Capital Investment/Expense: IKE Smart City shall pay all costs to supply, install, operate, and maintain the IKE Kiosks and associated equipment, including all permitting, labor, and infrastructure expenses. There will be no cost to the City.
- Payment- IKE shall pay 35% of the total annual Public Benefit Revenue to DSDP and the other 65% of the total annual Public Benefit Revenue to the City; payments made quarterly.
- Repair/Maintenance: IKE maintain kiosks in first class condition as well as promptly and adequately repair all damage to the IKE Kiosks and replace the kiosks as reasonably necessary throughout the term to ensure they are capable of operating for their intended purposes, including responding to all maintenance requests within 24 hours of notification.
- ADA Considerations-A Certified Access Specialist (CASp) will review kiosks after installations; all kiosks are equipped with a call button connecting to live person and a keypad with corresponding audio to provide manual navigation for the full menu of kiosk information available to those using the touchscreen.
- Advertising restrictions - Limited and controlled advertising at kiosk which requires Council's determination that an exception to City's existing sign restrictions is justified and consistent with promoting traffic safety and aesthetics. No Advertising will be permitted that is defamatory, condoning criminal conduct, obscene, or false or that promotes the sale of alcoholic beverages, tobacco or tobacco products, or firearms.
- Locations - City works with IKE/DSDP to identify locations, implement, and market wayfinding program to the public. engage in reasonable community outreach efforts for the siting and deployment of IKE Kiosks.
- Privacy - Kiosk will not contain surveillance technology. A photobooth feature may be added to the IKE Kiosk only upon City determination of compliance with all applicable surveillance ordinance requirements.
- Public Interest Content - Kiosks will contain content such as time, temperature, weather, emergency alerts, wayfinding, and homelessness resources and display of the menu of

interactive public services available by the kiosk to users for at least 51% of the time. During passive mode, at least one (1) spot out of every eight (8) spots shown on an IKE Kiosk screen will contain Public Interest Content as provided and managed by DSDP.

- Full Indemnification- IKE agrees to defend, indemnify, and holds the City harmless.
- DSDP will provide passive and active mode content for the kiosks, coordinate and schedule the City and community content among participating neighborhoods and stakeholder groups, assist IKE with submitting, obtaining, and maintaining the required approvals, communicate with IKE regarding the ongoing needs, maintenance, and cleaning of kiosks, answer incoming IKE emergency call button activations for maintenance or safety request.

The criteria for kiosk location sites is located in section 5 of the marketing agreement attached. The City would grant to IKE the limited right to install wayfinding kiosks in the public right-of-way after outreach to the public and subject to the City's approval of site locations and the City's encroachment removal conditions, all as set forth in the agreement. In summary, the process laid out in the agreement details that IKE shall propose the location of the IKE Kiosks using the information gained from their analysis of feasibility and accessibility of the location conducted as well as taking into consideration input received through outreach to stakeholders and the community. No IKE Kiosk shall be located where there is a reasonable possibility that the Kiosk will have a significant effect on the environment, in an environmentally sensitive area; along a highway officially designated as a state scenic highway, on a designated hazardous waste site included on any list compiled pursuant to Government Code section 65962.5, or so as to cause a substantial adverse change in the significance of a historical resource. Additionally, IKE Kiosks will not be permitted in single family residentially zoned areas. The process outlined in the agreement is for IKE to provide plans for each Kiosk for review by the City Engineer. Kiosks and any associated equipment shall provide adequate pedestrian clearances on sidewalks and comply with the Americans with Disabilities Act (ADA), all applicable accessibility requirements, and the Accessibility Checklist contained in the agreement. IKE shall, at its sole cost and expense, have a third party certify that the IKE Kiosk Site, IKE Kiosks, and any associated equipment and software comply with all applicable accessibility regulations including but not limited to the Americans with Disabilities Act, Revised Section 508 Standards, WCAG 2.1 Level AA, and California accessibility regulations at the design phase (prior to installation). After installation at its sole cost shall have a certified access specialist certify that each installed IKE Kiosks Site is ADA compliant.

Installation of Kiosks is permitted within historic district(s) areas subject to the following. Any Kiosk located on a parcel containing a designated historical resource or located within a designated historical district shall be submitted to the City's Historical Resources Section staff for a conformance review with the City's Historic Resources Regulations (SDMC Chapter 14, Article 3 Division 2 and the U.S. Secretary of the Interior's Standards. If a Kiosk is located within the Gaslamp Quarter Planned District, review shall also include conformance with the applicable provisions of the Gaslamp Quarter Planned District Design Guidelines provided that the prohibition on Multi-Media signage within the Guidelines shall not apply to the Kiosks. IKE shall obtain City approval of the General Location and Specific Location and enter into a Public Improvement Maintenance Agreement (PIMA) prior to installing an IKE Kiosk. The City shall have the authority to approve or deny the location of each Kiosk. City will review and approve the Specific Location and applicable PIMA within 30 days. City staff may deny a proposed specific location if it notifies IKE within the 30 day review period, in

writing, of an inconsistency with the Location Criteria. If the City does not approve or deny the proposed specific location in writing within the 30 day review period, the specific location is deemed approved and a PIMA shall be issued for that location.

City of San Diego Strategic Plan:

Priority Area: Protect & Enrich Every Neighborhood.

The Corporate Partnerships Program within Economic Development Department supports San Diego businesses' local marketing initiatives while creating new non-tax revenue for the City's general fund. This wayfinding program assists San Diegans with connecting to neighborhood assets that anchor community life, foster interaction, and promote well-being. Additionally, the kiosk program will provide San Diegans and visitors a guide to access to arts, culture opportunities and experience local culture. The wayfinding program provides San Diegans the ability to locate accessible, convenient, safe, and comfortable recreational spaces in their communities.

Climate Action Plan Implementation:

Measure 3.1: Safe and Enjoyable Routes for Pedestrians and Cyclists

Measure 3.2: Increase Safe, Convenient, and Enjoyable Transit Use-Digital.

Wayfinding kiosks may help tourists and San Diegans plan trips by walking, bicycling, or using public transit such as MTS. These modes of travel assist in the reduction in greenhouse gas emissions and air pollution.

Previous Council and/or Committee Actions:

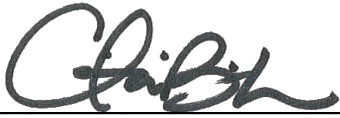
This item was heard at Economic Development and Intergovernmental Relations Committee on March 8, 2023.

Key Stakeholders and Community Outreach Efforts:

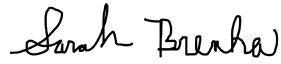
Stakeholders: Downtown San Diego Partnership and IKE, LLC.

The Downtown San Diego Partnership and Ike Smart City have embarked on a robust community and stakeholder outreach effort to educate the Downtown community about the project and gather any feedback necessary to inform its implementation. They have met with, or plan to meet with all relevant Downtown community groups and business improvement districts. They have communicated with large property owners, trade groups, and representatives of the business, arts and culture, and homelessness resources communities. Feedback has been very positive. They have received various letters of support and have addressed and ensured that the program resolves each of the concerns communicated throughout the outreach process to date. DSDP and Ike look forward to continuing to engage with the community between now and full implementation.

Respectfully submitted,



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Director
Economic Development Department



Sarah Brenha
Program Manager
Economic Development Department

Attachments:

1. Attachment A-Marketing Agreement
2. Attachment B-Keyser Marston Associates Analysis
3. Attachment C-Request for Sponsorship
4. Attachment D-Planning Commission Ordinance
5. Attachment E-City Council Ordinance 2023-136
6. Attachment F-CEQA Notice of Exemption
7. Attachment G- MTS Policies and Procedures