

# *Scenic* San Diego

PO Box 16271  
San Diego, CA 92176  
(619) 985-0958  
plwilson2022@outlook.com  
April 13, 2023

City of San Diego Planning Commission  
William Hofman – Chairperson  
Dennis Otsuji  
Ken Malbrough  
1222 First Avenue, Mail  
Station 501  
San Diego, CA 92101

Kelly Modén - Vice-Chairperson  
Ted Miyahara  
Matthew Boomhower

Re: City Planning Commission April 20, 2023 Meeting, Agenda Item 1  
Application to Amend the City Sign Ordinance to Permit 50 Digital Ad Kiosks  
Downtown - *Scenic San Diego* Letter in Opposition

Honorable Commissioners,

This letter provides *Scenic San Diego*'s written comment in opposition to the application by outdoor advertiser IKE Smart City, LLC, and private nonprofit Downtown San Diego Partnership, for a marketing agreement that requires amendments to the City's Sign Ordinance and exemptions from the City's prohibition on off-premises messages, signs in the right of way and certain automatic copy regulations. These changes would permit a massive increase in currently banned new outdoor advertising in downtown San Diego.

## ***Scenic San Diego* Opposes Weakening the City's Sign Law**

*Scenic San Diego* is a community group which supports the continued beautification of San Diego through strong defense of the City's strict off-site outdoor advertising limits. These limits prevent the proliferation of sign pollution and make San Diego unique among major metropolitan areas nationwide. *Scenic San Diego* strongly opposes the proposal for digital ad platforms in the public right-of-way and urges this Commission to deny authorization for this drastic gutting of the City's 40-year ban on new outdoor advertising.

## **Historical Perspective**

City Attorney Office memos regarding past proposals to weaken the City's pioneering and unequalled sign ordinance have advised the Council of the risks of carving exceptions in our law. San Diego's ban on new outdoor advertising has endured for several decades, through multiple court challenges and a costly battle all the way to the U.S. Supreme Court. In 1972, after years of study and debate, the San Diego City Council enacted a city-wide ban on off-site advertising signs, including billboards.<sup>1</sup>

---

<sup>1</sup> *San Diego Union*, page B-1, Feb. 26, 1972, also discussed in *San Diego Union* articles, Feb. 18 and 23, 1972.

Litigation followed, ultimately reaching the U.S. Supreme Court, which in 1981 struck the City's ordinance but gave guidance how it could be amended to be constitutional.<sup>2</sup> The City Council enacted a revised ordinance which became enforceable after the U.S. Supreme Court held in that cities can ban commercial advertising signs for reasons including advancement of aesthetic values and traffic safety.<sup>3</sup> San Diego's law froze the total number of outdoor off-site advertising signs at the number in existence on July 19, 1983. All such signs and billboards are regulated in the Municipal Code. No new billboards are permitted; previously conforming signs may not be changed to *add flashing lights*, rotating or revolving parts; and repairs are regulated.

### **The Digital Ad Platform Proposal is Legally Flawed and Imperils Existing Sign Law**

The digital ad platforms were endorsed by the City Council Economic Development and Intergovernmental Affairs Committee on March 8, 2023, without any legal report from the City Attorney's office. More egregiously, the February 15, 2023, Staff Report included in the agenda materials omitted any reference to the Independent Budget Analyst's report last fall warning of the legal hazards of amending the sign law:

“When analyzing the legal impact of these (digital advertising) proposals, the City Attorney's Office has repeatedly cautioned that allowing for exceptions to the off-site advertising ban could undermine the legal defensibility of the Sign Regulations. . . Because the City has justified its off-site sign restrictions based on safety and aesthetics, an exception to the Sign Regulations should not undermine the City's stated purpose.”<sup>4</sup>

The Economic Development Department, supported by the Downtown San Diego Partnership and outdoor advertiser IKE Smart City, LLC, proposes reversing the City's decades-old ban on new outdoor advertising so DSDP and IKE can install 50 digital advertising kiosks throughout downtown. This 10-year contract, with a 5-year extension option, requires unprecedented amendments to the City's sign ordinance. When a similar proposal to neuter the sign ordinance was proposed in 2013, the City Attorney noted in an April 2013 memo that new signage “. . . would, in number, size, and type, be unlike anything currently permitted in the City.”<sup>5</sup> The 2013 proposal for a downtown sign district<sup>6</sup>, like the current application, included street level advertising kiosks in the public-right-of-way.<sup>7</sup> In the face of strong public opposition, it was shelved by the Land Use and Housing Committee. As in that proposal, the current project includes illuminated LED panels forecast to play advertisements changing as often as every 10 seconds, up to 24-hours per day.<sup>8</sup> The current ad platform proposal, like prior ones, with dozens of bright, monument scale signs, will significantly increase light pollution, create an advertising-dominated urban wasteland, and interfere with dark skies preservation efforts.

It is expected the Commission's agenda materials will include guidance from the City Attorney regarding the potential legal consequences of wholesale amendments to the City's sign limits as required

---

<sup>2</sup> *Metromedia v. San Diego* 453 US 490 (1981); *San Diego Union*, page A-1, July 3, 1981.

<sup>3</sup> *San Diego Union*, page A-1, July 3, 1981.

<sup>4</sup> (Report No. 22-31, p. 21)

<sup>5</sup> City Attorney Office memo dated April 2, 2013

<sup>6</sup> Cynically promoted as a downtown “Arts and Entertainment District.” No one missed the nearly one hundred new outdoor ads never installed downtown.

<sup>7</sup> Street level kiosks described in October 2012 email from Arts and Entertainment District (downtown sign district) proponent David Ehrlich to City Land Use and Housing Committee.

<sup>8</sup> Marketing Agreement, page 7 of 89, sections 4.6 and 4.7(b), included in March 8, 2023, EDIR Committee agenda packet.

by this application. Consequently, this letter focuses on the extralegal rationales to deny this application. *Scenic San Diego* will send this Commission a second comment letter once the City Attorney's guidance is public.

### **The Kiosks are Nothing More Than a Trojan Horse for a Massive Increase In Commercial Advertising Downtown**

The touted "wayfinding" benefit of the kiosks is ad agency lingo for "directions." This rationale for the ad program is dishonest. Most visitors have an internet-connected phone in their pocket for personal direction-finding. The rare instance of a passerby without a cell phone does not justify upending the City's outdoor ad freeze. The reality is the kiosks are platforms to introduce off-site commercial advertising throughout downtown. The fact paid ads will comprise about half or more of content demonstrates "wayfinding" is a fig leaf for a massive increase in outdoor ads. Public outreach to garner support letters for this project focused on likely advertisers and organizations anticipating benefits from public service announcements. This is the true reason City staff and downtown businesses are pushing the ad platforms - to make money, not to benefit the public. The City should not be in the outdoor advertising business. A massive increase in outdoor advertising is inconsistent with the City's mission to promote public health, safety and welfare.

### **Kiosks Are Capable of Data Capture and May Push Invasive Advertising to User Cell Phones**

The February 15, 2023, Staff Report claims these giant TVs in the public right-of-way do not "contain surveillance technology, as defined in San Diego Municipal Code section 210.0101(m)."<sup>9</sup> This misleading sentence does not reveal whether IKE kiosks contain surveillance and push advertising features that were included in the IKE kiosk design considered and rejected by San Diego Port Commissioners in 2018.<sup>10</sup>

During the Port Commission's 2017-2018 debate over massive building wraps and harborside digital ad platforms, winning vendor IKE touted the ability of its kiosks to gather personal data from cell phones of passersby and "push" or force onto the smart phones of nearby pedestrians undesired paid advertising.<sup>11</sup> According to the executive summary, each kiosk contained a sensor that identified the unique Radio Frequency Identification signal of a pedestrian's cell phone. Numerous news articles regarding digital ad platforms promoted by IKE and other vendors criticize the data capture capabilities of this technology.<sup>12</sup>

The February 15, 2023, Staff Report does not address the data capture features of the digital ad platforms. Hence, it is unknown if the IKE kiosks have this invasive capability. It would be deeply offensive to the public if the City endorses a commercial advertising platform that spies on and pushes commercial ads to the public. Such activity is in direct conflict with the City's responsibility to protect the public's best interests.

---

<sup>9</sup> February 15, 2023 Staff Report, pages 2-3, citing San Diego Municipal Code section 210.0101(m).

<sup>10</sup> San Diego Port District May 2017 board packet, file 2017-173

<sup>11</sup> May 2017 board packet, file 2017-173.

<sup>12</sup> *Scenic Los Angeles*: "IKE" Interactive Kiosk Experience, *Scenic America* <https://www.scenic.org/blog/scenic-los-angeles-ike-interactive-kiosk-experience/> ; An Eyesore By Any Other Name, *Biscayne Times* <https://www.biscaynetimes.com/news/an-eyesore-by-any-other-name/> The Price for Free Wifi Kiosks in Seattle: A Private Company Collecting Your Data, *Seattle Magazine* <https://seattlemag.com/news/price-free-wi-fi-kiosks-seattle-private-company-collecting-your-data/>

## **Global Cities Are Banning Outdoor Ads to Promote Human and Environmental Health**

Reversing San Diego's 40-year freeze on outdoor ads would be profoundly regressive. There is a growing critique internationally and in the US that outdoor advertising is directly contrary to social justice goals.<sup>13</sup> Advertising promotes inequality, consumerism, and overconsumption. Curbing rampant advertising that fuels materialism is key to addressing climate change. Outdoor ads harm not only our environment but also people's well-being by promoting junk food, especially to children and in low-income neighborhoods

## **Projected City Revenues are Paltry**

The City Staff Report estimated total annual revenues from the 50 ad platforms of \$604,500 to the general fund.<sup>14</sup> This is about three one-thousandths of the current year budget. The Keyser Marston study included in the agenda packet said this sum is less than 14 percent of the advertising revenue (13.81%). Advertiser IKEA gets the majority of revenues – at least 55%. *Scenic San Diego* contends this miniscule sum reveals the true motive for this project – to bust the City's sign limits and open it to a massive increase in outdoor ads.

## **Illuminated, Flashing Screens Pose Safety Hazards**

Numerous, peer-reviewed studies demonstrate that giant, flashing digital ad screens close to streets are distracting to pedestrians and car, bike, and scooter drivers.<sup>15</sup> These results have been found to be applicable to digital ad platforms on city streets, where they are even closer to drivers. Permitting this safety threatening technology would directly contradict the City's claim traffic safety is one of the important governmental interest justifying its sign limits.

## **The Proposal is Contrary to Open Government Principles**

Proponents' plan to vest authority for administering the kiosk project in a private nonprofit could exempt the project from open government and clean government guarantees, including the Brown Act, the Public Records Act and conflicts of interest rules found in the Political Reform Act and the Government Code. This would be contrary to San Diego's efforts to add transparency to government operations, not diminish it.

## **The Outdoor Ad Program Flaunts San Diego's Historic Role Limiting Outdoor Ad Blight.**

*Scenic San Diego* and other beautification advocates only learned last month that the City had embarked on an aggressive push to massively increase outdoor advertising downtown. Historically,

---

<sup>13</sup> BBC Worklife: How outdoor advertising can deepen inequality. <https://www.bbc.com/worklife/article/20200817-the-inequality-of-outdoor-advertising-exposure?> ; Rapid Transition Alliance: Adblocking – the global cities clearing streets of advertising to promote human and environmental health <https://www.rapidtransition.org/stories/adblocking-the-global-cities-clearing-streets-of-advertising-to-promote-human-and-environmental-health/>

<sup>14</sup> Staff Report, page 4, "Total Value of Revenue to City" table. Revenues to general fund and DSDP for 10 years estimated at \$9.3 million. This equates to \$930,000 per year. DSDP receives 45% of City share, leaving an estimated \$604,500 for the general fund.

<sup>15</sup> Compendium of a Decade's Worth of Research Studies on Distraction from Digital Billboards (Commercial Electronic Variable Message Signs [CEVMS]), Jerry Wachtel, CPE, President, The Veridian Group, Inc., Berkeley, California; linked to at <https://www.scenic.org/take-action/resources/digital-billboard-studies/>

public reaction has been uniformly negative to the large wrap and digital ads proposed in 2013 and 2017-2018. The present street-level ad program has not been addressed in public workshops where citizens could weigh in. Given the negative reaction to large format ads proposed in the past, once the facts are known, *Scenic San Diego* predicts these commercial ad platforms in the public right-of-way will also garner strong opposition. It is undeniable they represent a drastic departure from our region's historic leadership in limiting outdoor ad blight.

### **Our City Is a National Example of The Value of Preventing Sign Pollution**

San Diego is noticeably different in character from Chicago, Denver, Las Vegas, Los Angeles, Phoenix and other communities where outdoor advertisers have free reign. Scenic beautification advocates know our ordinance limiting outdoor advertising makes our area more livable than places littered by garish outdoor advertising on every corner. A massive increase in outdoor commercial ads is contrary to the City's responsibility to protect and preserve the scenic beauty of our City.

In May 2022, *Union-Tribune* reporter David Garrick explained the unique nature of San Diego's historic sign law.<sup>16</sup> The article emphasized that San Diego is a model for strict and successful billboard regulations nationwide. This is thanks to community leaders who four decades ago focused on ridding the local landscape of visual clutter. According to the story, our public officials frequently get calls from across the nation asking how San Diego managed to become one of the least friendly markets in the nation for outdoor advertising. This is not an accomplishment to be squandered for purported benefits every consumer can access on their cell or computer.

Outdoor advertisers are relentless in their push to clutter public vistas with unavoidable advertising for profit. Modern technology makes outdoor ads even more pervasive – advertisers can now invade visitors' cell phones with unwanted commercial messages and surveillance. In recent decades the industry focused on persuading government agencies to weaken sign laws in exchange for a cut of the profits. But this is at a significant price to our urban landscape. In the past decade, the cities of San Diego, Vista and Carlsbad, as well as San Diego County and the Port District, have all rejected proposed digital signs in their jurisdictions. These schemes touted by outdoor advertisers as benign revenue generators were vociferously opposed by the public. *Scenic San Diego* urges you to deny authorization for this application.

### **Conclusion**

San Diego's sign ordinance was pioneering when enacted and has stood the test of time. *Scenic San Diego* asks you to reject outright this latest effort to weaken it. The City has many priceless attributes, including our strict sign limits, that should not be sold for any price. Past elected officials understood San Diego's enduring legacy as a city where beautification is valued and defended, and commercial advertising blight abated. Changes to the City's sign law are profoundly regressive.

Sincerely,



Pamela L. Wilson  
Director, *Scenic San Diego*

---

<sup>16</sup> *San Diego Union-Tribune*, May 29, 2022.