

Communication from Public

Name: Amy Gustincic

Date Submitted: 11/08/2022 03:28 PM

Council File No: 22-1154

Comments for Public Posting: We do not want or need 500 eight-foot digital ad kiosks on our sidewalks. The sidewalks are barely passable for pedestrians as they are. These new obstructions will not make them any better. Has anyone asked what problem these are trying to solve or how they will improve life for residents of the city? These signs will exist to make a lot of money for the sign companies and a little money for the city, while the residents will have to suffer from even more blight. Vote NO on digital ad kiosks.

Communication from Public

Name: Elisa Paster on behalf of IKE Smart City
Date Submitted: 11/08/2022 03:37 PM
Council File No: 22-1154
Comments for Public Posting: See attached.



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November 8, 2022

VIA EMAIL

City Council President Paul Krekorian and Members
of the City Council
200 Spring Street
Los Angeles, CA 90012

Re: Council File No. 22-1154: Contracting procedure for interactive kiosks and CEQA

Dear President Krekorian and City Councilmembers:

We are writing on behalf of our client IKE Smart City, LLC (IKE) with regards to Council File No. 22-1154 and in response to the City Attorney's report dated October 20, 2022 (Report Re: Installation And Maintenance Contract of Interactive Kiosks In The City Of Los Angeles) (the "Report"). In particular, we write to clarify that the City Council has legal authority to move forward with the negotiation of a piggyback contract while the City completes the analysis required by the California Environmental Quality Act.

As set forth in the adopted Tourism Master Plan the kiosk program is an essential tool for wayfinding and tourist experiences in Los Angeles, especially in light of the upcoming momentous tourism events including the World Cup and the Olympics. After extensive discussions with multiple City departments, direction from the City Council and the Board of Public Works, a piggyback contract with the City pursuant to Section 371(e)(8) of the Charter and Section 10.15(a)(8) of the Los Angeles Administrative Code was proposed as the most efficient and preferable means of implementing the kiosk program. On October 4, 2022, the City Council memorialized the years of work between the City's Convention and Tourism Department (CTD), Streets LA, and LA Tourism with the introduction of a motion directing the City Attorney to prepare a piggyback agreement for the City Council's consideration within 30 days.

We understand that there is some concern from the City Attorney about timing of compliance with CEQA as it relates to the piggyback contract between the City and IKE. We agree with the City Attorney, as articulated in its Report and at the Trade Travel & Tourism Committee on October 25, 2022, that the City must comply with CEQA prior to the adoption of the final legal instrument that enables the installation and maintenance of IKE kiosks, which in this case would be either a contract between IKE and the City or an MOU between the Public Works Commission and CTD. However, for the reasons discussed herein, CEQA does not bar the City from negotiating the terms and form of the piggyback contract while the CEQA analysis is completed and documentation is prepared.

CEQA focuses on whether a project will have physical impacts on the environment. “In evaluating the significance of the environmental impact of a project, the lead agency shall consider **direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.**”¹ CEQA does not require analysis of non-physical impacts, such as social or economic effects, unless they will directly or indirectly lead to an adverse physical change to the environment.²

The term “project” refers to the activity which physically impacts the environment, not just to the government approvals themselves which merely result in pieces of paper.³ Indeed, the CEQA Guidelines state, “The term “project” refers **to the activity which is being approved** and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval.”⁴ Thus, CEQA’s concern is not with the procedure, but the impact, and ensuring that the decisionmaker (here, the City Council) make its decision with any potential environmental consequences in mind.⁵

Whether the City uses the piggyback contract or some other type of contract to approve the terms for the kiosk program is irrelevant to the project’s CEQA impacts. IKE has proposed to the City a detailed program for installation of the kiosks, including siting criteria that was reviewed by the Board of Public Works in December of 2020 following extensive discussions among CTD, Streets LA and IKE. This detailed program constitutes the “project” that must be analyzed under CEQA because it is what establishes whether the kiosks will have any adverse physical impacts on the environment. For example, the CEQA documentation will analyze whether the project would result in traffic hazards to drivers (it will not), adversely impact a historic resource (it will not) or create air quality impacts above established thresholds (it will not). Those impacts (or lack thereof) will be the same whether or not a piggyback contract is used or not. The form of approval must also be included in the project description, but it is not the driver of the analysis.

Indeed, a review of the Houston contract to be used for the piggyback makes it clear that only a minimal part of the contract involves the project’s physical impacts. The contract largely deals with economic issues (payments to the City, responsibility for implementation, fees), procedure (who approves the permits and what types of permits are required, timing for the permitting), content (type of advertising, City content) and standard contractual terms (force majeure, indemnity, taxes, term, termination, etc.) There are very few provisions that actually deal with physical impacts. Of the provisions that do relate to the physical environment, like the siting criteria reviewed by the Board of Public Works, we would expect these provisions to be included in the contract. However, these terms are not considered material terms to the contract that should prevent the City Council from moving forward to negotiate the contract. Changes to the siting criteria or to the number of kiosks will not materially impact the financial terms that must be negotiated by the parties. If during the CEQA process

¹ Cal. Code Reg., tit 14 (“Guidelines”) § 15064(d), emphasis added.

² Guidelines § 15064(e); *Friends of David v. City of Davis* (2000) 83 Cal.App.4th 413, 424-25.

³ See *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1977) 52 Cal.4th 1165, 1188.

⁴ Guidelines § 15378(c).

⁵ *Bozung, supra*, 13 Cal.3d at 283.

the City determines that certain project design features should be implemented, then those can be included in the contract without any material change to its terms.

For the above reasons, while we agree that CEQA analysis is required to be completed prior to the adoption of the final documentation governing the program, the City Council has legal authority to direct that the contract be negotiated during the completion of the CEQA analysis. IKE looks forward to working with the City to finalize the terms of a piggyback contract to expand the City's tourism assets and wayfinding services available to visitors and residents alike.

Sincerely yours,

A handwritten signature in cursive script that reads "Elisa Paster".

Elisa Paster
Managing Partner
of RAND PASTER & NELSON, LLP

EP

cc: Doane Liu: doane.liu@lacity.org
Kimberly Miera: kimberly.miera@lacity.org

Communication from Public

Name: Marian Dodge

Date Submitted: 11/08/2022 05:13 PM

Council File No: 22-1154

Comments for Public Posting: Dear Councilmembers: I strongly urge you to vote NO on the IKE program. We do not want any more visual blight in our city. The revenue that you think you will be getting is going largely to the sign industry; the city will get pennies. Voting in favor will be proof positive that the sign industry controls the city. Do not follow in the footsteps of your indicted colleague Jose Huizar. Vote No on IKE CF 22-1154.

Communication from Public

Name: David McDonald
Date Submitted: 11/08/2022 04:03 PM
Council File No: 22-1154
Comments for Public Posting: NO on the IKE. Please follow a more transparent process, including public input, and Neighborhood Council involvement.

Communication from Public

Name: Lois Becker on behalf of Bel Air Skycrest Property Owners' Association

Date Submitted: 11/08/2022 04:38 PM

Council File No: 22-1154

Comments for Public Posting: I am writing to you on behalf of Bel Air Skycrest Property Owners' Association (BASPOA) to express our community's vehement opposition to the IKE Program and CF-22-1154. Time and again we have expressed our opposition to the proliferation of digital billboards on L.A. streets and sidewalks. We have just learned about this latest motion, which is being fast tracked to City Council over the City Attorney's objections and his clear, reasoned, legally sound recommendations that the project go through a number of steps including a proper environmental analysis. BASPOA supports the City Attorney's recommendations AND WE SUPPORT THE MINORITY REPORT REQUESTING A DETAILED REPORT-BACK THAT WAS SUBMITTED BY OUR COUNCILMEMBER, MIKE BONIN! We don't want any more visual blight! We don't want further commercialization of our public streets! We don't want the risks to public safety posed by digital billboards! We don't want these proposed kiosks blocking ADA access to public streets! We don't want WE DON'T WANT CF-22-1154! And we are sick and tired of the City not listening to what the public wants and making end runs around proper process. Say "NO" to the IKE Program and CF-22-1154. Respectfully, Lois Becker, BASPOA Community Liaison