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July 14, 2023

San Diego City Councilmembers
City Administration Building
202 "C" Street
San Diego, CA 92101

Re: *Scenic San Diego* Letter in Opposition to Agenda Item 200, Application to Amend the City Sign Ordinance to Permit Up To 75 Digital Ad Kiosks Downtown – San Diego City Council Meeting of July 17, 2023

Honorable Councilmembers,

Now that this proposal is before you for a new first reading, Scenic San Diego urges each Honorable Councilmember to review this proposal with a fresh eye, and reject it in its present form. Additional information in your agenda packet continues to leave unanswered, and intentionally obfuscate, important reasons you should reject this drastic departure from years of national leadership in limiting outdoor advertising sign proliferation in our beautiful city of San Diego.

IKE Collects and Shares/Sells Kiosk Users' Personal Information with "Third Party Partners"

Scenic San Diego has entered into the record for this meeting images from IKE's digital ad kiosks in Berkeley, CA. These screen shots of IKE's many disclosures and disclaimers about its data gathering technology establish that IKE Kiosks capture user information and transfer it to its Third Party Partners.

Neither Mayor Todd Gloria's July 7, 2023 Memo to the Honorable Council President Pro-Tern Monica Montgomery Steppe, nor the IKE Final Agreement Revised June 28, 2023, preclude the data gathering and transfer disclosed on IKE's kiosks in Berkeley. Your agenda documents state the IKE agreement does not violate the TRUST ordinance. This promises nothing regarding IKE's business practice of gathering users' personal information and sharing it with and selling it to Third Party Partners, as it admits it does in Berkeley.

The TRUST ordinance only pertains to actions by San Diego City personnel and technology, not by the business entity IKE. Personally identifiable information is not even defined in the IKE agreement. The only section of the agreement that uses these words, Section 4.2.12, states the Wayfinding System Requirement for Pedestrian Counting can be performed by IKE without gathering personally identifiable information:

4.2.12 Pedestrian Counting, including digital measurement of pedestrians within range of the Kiosk unit, and a web-based dashboard containing analytics for the Downtown Partnership and the City's use, provided the Kiosks shall not gather or obtain any personally identifiable information ("PII");

This section does not preclude IKE from gathering users' data and transferring it to its Third Party Partners in connection with the many other functions users interface with on the kiosks.

Only one of nine City Councilmembers have seen an actual IKE Kiosk. It is unknown if Councilmember Whitburn was shown the screens on that disclose the company's data gathering and transfer practices. You now have graphic images of the many notices on IKE's kiosks in Berkeley, regarding the myriad ways these devices gather and transfer users' personal data to IKE's Third Party Partners. You must reject this contract, at a minimum until you receive transparent information about IKE's business practices, which to date are not revealed in any agenda document.

The City Attorney Kiosk Memo Fails Law School Year One

At the final hour, City Attorney Mara Elliot's Office entered into the record its legal memo purporting to advise this Council on the legal ramifications of approving the IKE contract. For reasons that remain to be disclosed, this memo is stunningly empty of the basic components of any legal memo required of a first year law student. Students learn a legal memo advising a client must follow a prescribed format: A short summary of the question presented; a short description of the applicable facts; a brief summary of the law, a condensed conclusion, and a robust discussion of the legal and factual issues with ample citations to controlling statutes and court cases.

This format was carefully followed in earlier legal memos by the City Attorney's Office addressing proposals to weaken the City's sign laws. Two included in prior agenda packets for previous hearings on the IKE Kiosk proposal demonstrate this: City Attorney Legal Memo dated May 3, 2001 regarding Establishment of a Special Sign District, and the June 11, 2013 Memo evaluating Bikesharing Advertising Signs. In contrast, the June 1, 2023 memo regarding the IKE Kiosks, presents the question "Does the Council have authority to approve the Agreement, in light of the City's sign regulations?" Unlike the prior two memos, the June 1 document merely tells the Council what findings it must announce to approve the agreement. The memo makes no evaluation of the risk of weakening the City's sign law to approve the IKE contract, or the likelihood of legal challenges should the Council do so. Nor is there any reference in the memo to IKE's business practice of gathering users' personal data and sharing it with Third Party Partners. It appears the City Attorney's Office is unaware of these basic facts regarding the City's proposed ten-year business partner.

This inadequate legal analysis leaves the Council on its own trying to assess the potential hazards of approving the IKE contract. At the June 6, 2023 City Council meeting, deputy city attorneys repeatedly corrected councilmembers who sought to characterize the City Attorney's memo as minimizing these risks. At 4:07:54 hours and minutes into the meeting recording, Deputy City Attorney Leslie Fitzgerald flatly stated: "We can't say for sure what a court would do..." This Council should reject the IKE contract, pending credible legal advice on its adverse consequences.

Conclusion

Scenic San Diego asks you to reject outright this latest effort to weaken our nationally celebrated limits on new outdoor ads. At a minimum, vote to defer action until you receive transparent information on the significant harms posed by this project, including the monetizing of users' personal information, threats to the legal defensibility of our sign restrictions, and momentous environmental impacts to our unparalleled urban scenery. Reject this proposal and preserve San Diego's status as a national leader on urban beautification.

Re: *Scenic San Diego's* Opposition to Weakening the City Sign Ordinance to Permit 75 Digital Ad Kiosks

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Sincerely,



Pamela L. Wilson
Director, *Scenic San Diego*