



City of Culver City

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Staff Report

File #: 19-162, **Version:** 1

Item #: A-3.

CC - (1) Presentation and Discussion Regarding the Proposed Installation of Informational Kiosks in the Public Right-Of-Way, and (2) Direction to the City Manager as Deemed Appropriate.

Meeting Date: April 8, 2019

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Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☐ **Action Item:** ☒ **Attachments:** ☒

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (04/02/19); Chamber of Commerce (04/02/19); All recipients of Gov. Delivery (03/25/19)

Department Approval: Sol Blumenfeld, Community Development Director (03/21/19)

RECOMMENDATION

Staff recommends the City Council (1) receive a presentation from Smart City, LLC (Smart City) regarding the proposed installation of informational kiosks in the public right-of-way (ROW); and (2) provide direction to the City Manager as deemed appropriate.

BACKGROUND

On August 28, 2018, representatives from Smart City (developers of the kiosks) approached staff with a request to install Information Kiosk Experience kiosks (IKE Kiosks) in the public right-of-way. Since that time staff and the City Attorney's Office have had multiple meetings and discussions with Smart City regarding questions and issues associated with the potential installation of IKE Kiosks in the ROW.

The IKE Kiosks are multi-lingual, interactive, digital interfaces (including community information and advertising), that have been installed in Denver, Baltimore, Columbus and San Antonio. In addition,

Smart City has obtained entitlements and approvals for installation in St. Louis, Berkeley, San Antonio, Columbus, Cleveland, Baltimore and Coral Gables, and has executed contracts for installation in Beverly Hills, Oakland, San Jose, San Diego, St. Paul, St. Louis (Missouri), Raleigh, Detroit and Tampa. In all of these cities, IKE Kiosks are currently installed or are planned to be installed in the ROW.

An IKE Kiosk is a communication platform, with a passive mode (rotating display panels) and an active mode (interactive informational displays). A large portion of the passive mode would display advertising (as discussed below). The active mode provides information to City residents and visitors regarding:

- Mobility Options - IKE Kiosks can identify mobility options related to rail, bus, bike, walking, etc.;
- Social Services - IKE Kiosks can provide social services information related to shelters, services, food aid, addiction/recovery services, etc.;
- Emergency Access/Security - IKE Kiosks can provide an emergency call button that connects to local law enforcement. Further, if there is a citywide emergency the IKE Kiosks can be used to broadcast pertinent emergency information;
- Wayfinding - IKE Kiosks can provide directions to and information about businesses, facilities, venues and landmarks in the surrounding area;
- Connectivity - IKE Kiosks can be used as Wi-Fi hotspots in order to provide a public high-speed internet connection to the surrounding area; and
- Notification - IKE Kiosks can provide information related to City business/events and community information.

In addition, IKE Kiosks can be used as photo booths that users integrate with social media to brand the area. Further, the City may obtain from the IKE Kiosks data related to pedestrian counts, IKE Kiosk usage, area dwell time and surrounding air quality among others.

Smart City is proposing to locate approximately 20 IKE Kiosks in the ROW along major commercial corridors in areas with high pedestrian traffic (e.g. Downtown, Town Plaza, Transit Oriented District, business districts). IKE Kiosks would not be located in residential neighborhoods. If IKE Kiosks were to be installed, specific locations would be determined by staff in cooperation with stakeholders located in the immediate vicinity.

If the City determines to move forward with the IKE Kiosk program, all capital and operational costs would be funded by Smart City, via revenue generated from rotating advertising displays on the IKE Kiosk. When the IKE Kiosks are inactive (passive mode), the screen would convey eight different messages that appear for approximately 10 seconds each. Of the eight messages, six may be advertisements and at least two would be available to the City to convey a message it selects. Smart City has also agreed that any unsold advertising displays could be used as public information messages, in addition to the two designated community message displays.

DISCUSSION

Culver City Municipal Code (CCMC) Chapter 17.330 - Signs (Sign Code) currently prohibits privately owned or controlled signs in the public right-of-way, with a few exceptions. In addition, the Sign Code generally prohibits offsite signs, defined as “any sign with a message that does not relate directly to an active use of the premises on which it is displayed.” Further, there are restrictions on the type of signage- for example, electronic message signs are only permitted if the information displayed is public information; and digital signs are not permissible (digital signs currently are not contemplated by the Sign Code). If the City Council is interested in pursuing an IKE Kiosk program, the Sign Code and potentially other zoning provisions of the CCMC would likely need to be amended.

If the CCMC were to be amended, there are certain First Amendment issues that must be evaluated in relation to sign regulation. The degree to which the government can restrict speech on public property depends on who is doing the “speaking”, the character of the public property, and on whether the regulations are content-based or content-neutral. If the City Council is interested in pursuing the IKE Kiosk program, the City Attorney’s Office will carefully evaluate these issues and propose options for amending the CCMC for City Council’s consideration at a future meeting, based on City Council’s direction.

In this case, depending on the nature of the City’s contractual relationship with Smart City, the free speech analytical frameworks that would be used to specifically evaluate the IKE Kiosk program would be a “government speech” framework for the active mode (the interactive public information displays), and a limited public forum framework for the passive mode (rotating advertising and community information displays).

In general, if the government is the speaker, it can convey its own message, without being bound by content or viewpoint restrictions, or being obligated to allow competing viewpoints to be expressed. Thus, based upon a preliminary analysis, when the IKE Kiosk is in the active mode, the City would not need to provide any other speakers with airtime, nor would it be obligated to provide a range of viewpoints. As to the passive mode, the City has the legal ability to sell space to advertisers on its own property as a means of revenue generation, which means the City is not limited to recouping the cost of providing the service, but can in fact generate revenue from the sale of ad space. The courts have upheld a government’s policy for permitted ads, as long as the criteria are based on reasonable legislative objectives and are not arbitrary, capricious, or discriminating. As an example, the City’s bus advertising policy prohibits certain ads, including alcoholic beverages, tobacco and firearms. Even where the City is not the “speaker”, and another entity is doing the advertising, courts have further established the government can restrict the content of advertising on its property, but the restrictions must be reasonable and viewpoint-neutral.

Notwithstanding the current state of the law, the First Amendment is a nuanced and complex area, and it cannot be stated with absolute certainty how a court would rule if the IKE Kiosk program were challenged. As such, it is recommended if the City were to pursue such a program, Smart City be required to defend and indemnify the City in the event of a legal challenge.

If the City Council directs staff to proceed with the IKE Kiosk program, then the Sign Code, and potentially other zoning provisions, would need to be amended to allow for the type of signage proposed. If the City Council wishes to maintain certain restrictions in the current Sign Code, with regard to off-site signage and other provisions, staff would need to tailor the options for the IKE Kiosk program and related code amendments in order to carry out the City Council’s direction.

Next Steps

If the City Council is interested in pursuing the IKE Kiosk program, staff recommends the City enter into an agreement with Smart City setting forth, but not limited to, the following conditions:

- Smart City would fund the City's hiring of outside legal consultant(s) who will assist with evaluating the First Amendment issues associated with studying, drafting and processing proposed CCMC amendments. Such Smart City funds would be nonrefundable, even if the City Council ultimately decides to not move forward with the IKE Kiosk program;
- The City would prepare any agreements with Smart City, and with any nonprofit entity that might assist in running the IKE Kiosk program, including policies regarding the active and passive modes in which the City maintains control of the messages displayed;
- As a condition of implementing the IKE Kiosk program, Smart City would be required to indemnify and defend the City for any third party challenges to the program, including reasonable attorneys' fees;
- If a legal challenge materializes at any time during the program, the City reserves its right and full discretion to require removal of the IKE Kiosks or removal of all non-public information displayed on the IKE Kiosks; and
- All future public meeting notices would include potential stakeholders and businesses in areas where IKE Kiosks are proposed to be installed.

If an agreement is reached, then staff and the City Attorney's Office would work with Smart City to further refine its proposal (i.e. specific locations for the kiosks) and return to the City Council at a future meeting with proposed locations and proposed CCMC amendments for City Council's consideration.

FISCAL ANALYSIS

The City would not incur any cost for the IKE Kiosk's fabrication, installation or operation. All costs would be funded by Smart City, through proceeds derived from advertising revenue from the program. Further, Smart City, has agreed to enter into a revenue sharing agreement and reimburse the City for all administrative costs associated with the operation of the IKE Kiosks.

ATTACHMENTS

1. IKE Smart City Overview
2. IKE Technical Specifications
3. IKE Preliminary Culver City Design.
4. IKE Memo Addressed to City Manager

5. Public comments received to date

MOTION

That the City Council:

1. Receive a presentation and have a discussion regarding the installation of Information Kiosk Experience kiosks in the public right-of-way; and
2. Provide direction to the City Manager as deemed appropriate.