



Commission on Disability

## INFORMATION CALENDAR

May 28, 2019

To: Honorable Mayor and Members of the City Council  
 From: Commission on Disability  
 Submitted by: Alex Ghenis, Chairperson, Commission on Disability  
 Subject: Update on Concerns about Informational Kiosks and Accessibility, Obstacles

### SUMMARY

Following its meeting on February 6, 2019, the Commission on Disability submitted an item for the Information Calendar titled “Concerns about Informational Kiosks and accessibility, obstacles”. (This informational item was not submitted to Council at that time, but is attached to this report for reference.) The informational item outlined the Commission’s concerns about the City’s plans to install informational kiosks in certain public areas of Berkeley. Namely, the Commission raised concerns about universal accessibility of the kiosks (i.e. usability and ease-of-navigation for persons with disabilities) and that the kiosks may obstruct pathways used by people with disabilities.

The Commission would like to follow up on the Information Calendar item filed earlier this year. Our main updates are to acknowledge that a representative from the Ike Kiosk manufacturer visited the Commission’s March meeting and recognized accessibility concerns; he then informed the Commission that the kiosks already have some – but not all – accessibility features. We also understand that the kiosks, as a product/service, can be beneficial to individuals with disabilities in Berkeley. We finally reiterate that it is imperative for the City to ensure that all products and services in the City meet Americans with Disabilities Act (ADA) requirements; if there are not yet concrete federal regulations on specific product features, it is proper for the City to pursue maximum disability access and usability as a matter of civil rights and legal prudence.

### CURRENT SITUATION AND ITS EFFECTS

The kiosks are manufactured and designed by Ike and will be located in several areas of the City that serve as hubs of social and commercial activity. They are intended to provide information about Berkeley, its businesses, events, etc. As was noted in our earlier calendar item, the Commission acknowledges that there are potential benefits from kiosks, if they are accessible to all.

The Commission discussed our concerns about accessibility with Mr. Steve Jaffe, a representative from Ike Smart Cities, during the Commission on Disability meeting on March 6, 2019. Mr. Jaffe informed the Commission that Ike kiosks include certain

accessibility features, e.g. the functional area of the kiosk screen/control-pad can move down for individuals unable to reach the standard height. This feature is useful for individuals using wheelchairs or persons of short stature, among other groups.

The Commission inquired about whether kiosks are fully operable by blind/low-vision individuals, for example by having tactile buttons and audio navigation options. Mr. Jaffe confirmed that the kiosks do not currently include full accessibility for blind/low-vision individuals. Ike is exploring product updates that will allow blind/low-vision individuals to use the kiosks; however, the product as currently manufactured does not have appropriate features. The Commission remains concerned about this lack of full accessibility and that kiosk accessibility may ultimately be difficult to upgrade depending on necessary adjustments for hardware and software.

The Commission has noted a recent legal case in the Ninth Circuit, *Robles v Domino's Pizza LLC*, in which the court ruled that Domino's must redesign its website to be accessible to people with blindness who use screen-reading software. Domino's used the defense that there are not established regulations under ADA code for accessibility of websites; the court ruled that a lack of concrete regulations does not preclude the responsibility to offer full accessibility and that Domino's did not pursue due diligence in making their website universally accessible.

The aforementioned case raises concerns that the lack of universal accessibility for the proposed kiosks—including the lack of accessibility for blind/low-vision individuals—could present legal liabilities (in addition to shirking the civil rights responsibility of ensuring equal access to products and services). Claims under the ADA may carry financial penalties and/or requirements to fix accessibility shortcomings.

By licensing kiosks that are not fully accessible and entering a private/municipal collaboration, the City of Berkeley may ultimately be legally and financially liable to claims under the ADA regarding informational kiosks in Berkeley. The Commission cannot state the extent of potential liabilities but believes that it is non-negligible and may be significant.

As we noted in our previous Informational Item, the City needs to fulfill responsibilities under the Americans with Disabilities act, and council may want to further consider the nature of the private/municipal responsibilities of the collaboration in placing potentially inaccessible kiosks in a public space, and taking on potential liabilities.

*Accessible Ike City Smart Kiosks* are a Strategic Plan Priority Project, advancing our goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

#### BACKGROUND

The Commission on Disability had a presentation at the December 5, 2018 meeting, below are the minutes from that portion of the meeting:

**“Ike Smart City Kiosks** – Mr. Steve Jaffe (Ike Smart City Western region operations manager) presented information on kiosk ADA features and provided a handout of key features. CM Leeder inquired about any audio features and Mr. Jaffe said that IKE was experiencing challenges implementing audio features. CM Walsh requested Mr. Jaffe further research audio features and report back to the CoD. Lighthouse Center for the blind and Ed Roberts Campus may be good resources for IKE designers to tap for discussion of audio options. Discussion about people with disabilities actually using the IKE kiosks with response from Mr. Jaffe that the kiosks are currently deployed in San Antonio, Texas and are being used successfully by persons with disabilities. CM Ghenis appreciated that IKE was attempting to solve the audio challenges, but expressed concerns about possible rollout of kiosks without audio and suggestion was made to at least install a speaker for possible future upgrade to audio. Discussed timeline of kiosk installation with installation of first 15 kiosks (31 total planned/approved by City Council) likely to occur in March/April 2019. Motion to recommend council require that IKE kiosks be fully ADA compliant including blind & deaf by employing audio/tactile features (Walsh/Schwartz)” The vote was as follows: ayes—Walsh, Schwartz, Weiss, Leeder, Ramirez, Ghenis; nays—none; abstain—none; absent—Singer.)

Mr. Jaffe returned to the Commission on Disability during its meeting on March 6, 2019. (As of the writing of this Informational Item, the Commission does not have full minutes from March 6 meeting.) Mr. Jaffe noted during the meeting that Ike Kiosks have some accessibility features including a screen that can be lowered for better use by people with disabilities, such as individuals using wheelchairs and persons of short stature. Several commissioners inquired about navigation features for blind/low-vision individuals, e.g. tactile buttons and audio navigation. Mr. Jaffe noted that these features are not available on existing Ike Kiosk models. He stated that Ike Smart City is exploring audio navigation and other functions for potential future upgrades.

**Links to additional information about accessibility and kiosk concerns:**

<https://www.adakiosks.com> (a particular company)

<https://usability.com.au/2014/04/automated-kiosks-and-accessibility/> (for an international perspective)

<https://www.lflegal.com/2018/01/kiosks18/> (a law firm)

<https://developer.paciellogroup.com/blog/2017/11/considerations-for-making-an-accessible-kiosk/> (considerations for making a kiosk accessible)

**ENVIRONMENTAL SUSTAINABILITY**

The Commission on Disability has no information about environmental sustainability of the kiosks.

**POSSIBLE FUTURE ACTION**

Unknown.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Unknown.

CONTACT PERSON

Alex Ghenis, Chair, Commission on Disability

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Attachments:

1: 2019 2.09 adopted informational item city kiosk



Commission on Disability

INFORMATION CALENDAR  
(Drafted but Not Submitted)

To: Honorable Mayor and Members of the City Council  
From: Commission on Disability  
Submitted by: Alex Ghenis, Chairperson, Commission on Disability  
Subject: Concerns about Informational Kiosks and accessibility, obstacles

INTRODUCTION

The Commission on Disability is aware that the City of Berkeley is planning to trial/demonstrate a particular type of informational Kiosk, and wishes to share some concerns with the council regarding accessibility issues and sidewalk obstruction.

Given the planned installation and potential for ADA liabilities for the City, we are asking this informational item to be high priority. Prepared for submission and adopted by the Commission on Disability on 2019-02-06

CURRENT SITUATION AND ITS EFFECTS

The kiosks under discussion may not meet accessibility needs. They are a collaborative between a private company and municipalities, and it is unclear if accessibility has been considered in the design, placement, and operation of the kiosks. For example, there is no audio navigation at this time for individuals who are blind, blind/deaf, low vision, or have cognitive or other relevant disabilities. There are other issues as well that will require review.

The Commission is recommending that kiosks need to be accessible, and accessible to all individuals with disabilities, including but not limited to: visual impairment, hearing impaired and Deaf community, and mobility impaired.

The City needs to fulfill responsibilities under the Americans with Disabilities act, and council may want to further consider the nature of the private/municipal responsibilities of the collaboration in placing potentially inaccessible kiosks in a public space, and taking on potential liabilities.

An additional ongoing concern of the Commission is sidewalk safety and obstacles, and the kiosks may impede the right of way of individuals with mobility needs or visual impairment, while not providing services to all individuals with disabilities.

The City has expressed interest in Vision Zero, and pedestrian safety is part of the vision. Pedestrian safety and accessibility is important to civic life and a constant topic of concern for the Commission on Disability. ADA accessibility is #1 of the 10 elements of vision zero streets for NYC, and they have seen a decline in pedestrian fatalities.

The commission acknowledges that there are potential benefits from kiosks if they are accessible to all, and is looking to prevent anticipatable problems with design, placement, and use.

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### **Vision zero:**

<https://www.visionzerostreets.org>

ADA accessibility is #1 of the 10 elements of vision zero streets for New York

<https://www1.nyc.gov/office-of-the-mayor/news/016-18/vision-zero-mayor-de-blasio-pedestrian-fatalities-dropped-32-last-year-making-2017#/0>

pedestrian fatalities down in NYC.

### **Some links about accessibility and kiosk concerns:**

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#### ENVIRONMENTAL SUSTAINABILITY

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#### POSSIBLE FUTURE ACTION

unknown

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown

#### CONTACT PERSON

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