



THE CITY OF SAN DIEGO

November 6, 2023

Honorable Judge Michael T. Smyth
Presiding Judge
San Diego Superior Court
1100 Union Street, 10th Floor
San Diego, CA 92101

**Re: Grand Jury Report: "Downtown Area Public Restrooms in the City of San Diego:
Stop Kicking the Can Down the Road"**

Honorable Judge Smyth,

Pursuant to California Penal Code Section 933.05(c), the City of San Diego provides the attached response from the City Council and Mayor to the applicable findings and recommendations included in the above referenced Grand Jury Report.

If you require additional information, or have any questions, please contact Luz Anaya Luna, Director of Legislative Affairs, at lanayaluna@sandiego.gov.

Sincerely,

A stylized, handwritten signature in black ink, appearing to be "S".

Council President Sean Elo-Rivera

A handwritten signature in black ink, appearing to be "Todd Gloria".

Mayor Todd Gloria

Encl: 1. City of San Diego Response to San Diego County Grand Jury Report Titled "Downtown Area Public Restrooms in the City of San Diego: Stop Kicking the Can Down the Road"
2. City Council Resolution R-315175

**City of San Diego Response to
San Diego County Grand Jury Report Titled
“Downtown Area Public Restrooms in the City of San Diego:
Stop Kicking the Can Down the Road”**

Pursuant to California Penal Code Section 933(c), the City of San Diego Mayor and City Council provide the following responses to the findings and recommendations included in the above referenced Grand Jury Report.

RESPONSE TO FINDINGS:

Finding 01: *Current restroom facilities in the downtown San Diego area are inadequate to provide 24/7 public access.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

There are currently 15 public restrooms in the downtown area¹ with 24/7 public access, as shown on this map: <https://www.sandiego.gov/restroom>, of which three are permanent facilities and 12 are portable restrooms. Restroom icons are color-coded based on their hours of operation. Restroom facilities are adjusted (added, removed, repositioned) in response to need, construction impacts, and health concerns. Additionally, the City provides access to bathrooms for our unsheltered population as part of our City-funded shelter network.

Because the 24/7 restrooms in the downtown area are primarily utilized by the City’s unsheltered population, the City agrees that the current number of these restrooms is insufficient. The City is committed to addressing the core issue of homelessness by providing more shelter options, as referenced in the Comprehensive Shelter Strategy released in June 2023. Through the expansion of these resources, the City anticipates both improving access to 24/7 restrooms citywide for the City’s unsheltered population and reducing the need for those 24/7 restrooms.

Finding 02: *There is no comprehensive plan for restroom siting or assuring best practices are instituted for current and future restroom facilities in the downtown San Diego area.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

The City does not have a single comprehensive plan for restroom siting downtown because downtown public restroom use and requirements vary depending upon the needs of the different populations served. Instead, the City's approach to downtown restrooms has several components, including plans maintained in connection with facilities in parks, and as part of its sheltering strategies. The City also works with development projects in downtown to site accessible restrooms as part of their projects, including Faultline Park, Horton Plaza Park (lease executed, in permitting, and soon will be under construction), Portland Loo at Park & Market (reopened 2022),

¹ The 15 public restrooms are those included in the downtown area as outlined in Figure 1 of the Grand Jury report. There are 19 public restrooms with 24/7 public access in the downtown area when counting two restrooms east of I-5 and two restrooms south of Commercial Street.

Children's Park, the East Village Green (under construction), and the Homeless Resource Center. Additionally, the City utilizes available reports and data, including Get It Done, to site restrooms in areas of need. Further, the City Planning Department is currently updating the City's General Plan and will include updated policies to address the need for public restrooms.

Finding 03: *The City has not recently brought together partners including academia, private business groups, community associations, or homeless individuals/advocates to explore solutions for better access to public restrooms.*

Response: The Mayor and City Council partially disagree with the Grand Jury's finding.

The City of San Diego has consistently engaged with service providers, community stakeholders, other government agencies, and academic institutions, including the University of California San Diego (UCSD) and City College, around the deployment of temporary restrooms and the development of permanent restrooms in downtown San Diego. These meetings with potential partners help support and clarify the different restroom plans mentioned in the response to Finding 02.

Finding 04: *Adequate public restrooms may help mitigate outbreaks such as hepatitis A, shigella, and COVID-19.*

Response: The Mayor and City Council agree with the Grand Jury's finding.

Finding 05: *Open, clean, and secure public restrooms are hard to locate throughout the San Diego downtown area.*

Response: The Mayor and City Council partially disagree with the Grand Jury's finding.

The City has created online resources such as sandiego.gov/restroom for members of the public to locate open restrooms. Restroom facilities have been strategically deployed downtown based on data indicating potential need. Many restrooms have on-site security and lighting to improve safety for users; cleaning frequency for each restroom facility occurs between two to six times per day. In addition, downtown San Diego has a wayfinding program that includes over 200 vehicular signs, pedestrian signs, and kiosks that include location maps with public restroom information. As discussed in the City's response to Recommendation 23-36, the wayfinding program recently received a SANDAG Smart Growth Incentive grant to provide additional and updated signage including the locations of recently installed public restrooms. The new maps will be installed by the end of 2023.

Finding 06: *The City has encountered barriers in following its 1987 policy to site and encourage public restrooms in specific types of facilities in the downtown area.*

Response: The Mayor and City Council partially disagree with the Grand Jury's finding.

The City of San Diego Council Policy 800-07 notes that the City will encourage non-residential developers to locate public restrooms in each project where appropriate. The City has had some success with various projects providing public restrooms

including Faultline Park, Horton Plaza Park (lease executed, in permitting, and soon will be under construction), Portland Loo at Park & Market (reopened 2022), Children's Park, the East Village Green (under construction), and the Homeless Resource Center. The City recognizes that there are some limitations to this approach and has proposed additional incentives for the siting of public restrooms as described in the response to Recommendation 23-38.

Finding 07: *City policies and agreements need to be followed and enforced to assure accessible and adequate public restrooms.*

Response: The Mayor and City Council agree with the Grand Jury's finding.

City policies and agreements are only effective in achieving desired outcomes for accessible and adequate public restrooms if they are implemented and enforceable.

Finding 08: *The City has not performed a comprehensive economic analysis on the costs of constructing, securing, and maintaining public restrooms, which would include current costs attributable to not having adequate restrooms (e.g., sidewalk cleaning, municipal code enforcement.)*

Response: The Mayor and City Council partially disagree with the Grand Jury's finding.

The City has information on the costs of constructing, securing, and maintaining public restrooms but has not conducted an analysis that includes a review of costs attributable to not having adequate restrooms.

RESPONSE TO RECOMMENDATIONS:

Recommendation 23-32: *In the first half of the 2023-2024 fiscal year, form a team of government officials, to include the County of San Diego, the San Diego Unified Port District, Metropolitan Transit System, as well as homeless services providers, representatives of downtown residents and businesses, academic institutions, and concerned members of the public to develop a comprehensive plan and budget for siting, security, maintenance, and funding of permanent public restrooms with hand-washing access in the downtown and contiguous areas of the City of San Diego.*

Response: The recommendation will not be implemented because it is not warranted.

The City suggests that this recommendation be reviewed and studied by the County of San Diego. The County of San Diego serves as the lead Health and Human Services Agency for the region and is best suited to convene a multi-agency group to develop a comprehensive plan to address public health matters, including the budget for siting, security, maintenance, and funding of permanent public restrooms with hand-washing access. The City is willing to participate and collaborate in this group, when it is established. The City currently provides portable restrooms based, in part, on direction given by County Public Health.

Recommendation 23-33: *Develop a cost-tracking system for public restroom-related expenditures including contracts, maintenance, City staffing, security, and capital outlays.*

Response: The recommendation has been implemented.

The City is able to track costs associated with public restrooms, including rental costs, maintenance fees, and security expenses through its enterprise resource planning system.

Recommendation 23-34: *Include and enforce in all agreements with downtown and contiguous area developers, directives in accordance with the relevant community plans and City policies, including City Policy 800-07, for siting and the long-term security and maintenance of public restrooms.*

Response: The recommendation has been implemented.

Council Policy 800-07 provides guidance on public restroom facilities but has not been updated since 1986. This Council Policy, as well as community plans, are not regulatory by nature.

Council Policy 800-07 states that the policy of the City Council is “to actively encourage all ... public and private entities within the City that have facilities that meet the criteria [of the Policy] to provide public restroom facilities...” To that end, the City has incentivized, developed, and, when appropriate, taken enforcement actions, with respect to several City-owned properties, including but not limited to:

- Faultline Park
- Horton Plaza Park (lease executed, in permitting, and soon will be under construction)
- Portland Loo at Park & Market (reopened 2022)
- Children’s Park
- East Village Green (under construction)
- Homeless Resource Center

The City Planning Department is currently updating the City’s General Plan and will include updated policies to address the need for public restrooms. It is anticipated that these changes will be proposed by the Mayor and considered by the City Council in early 2024.

Recommendation 23-35: *Study public restroom programs in other U.S. cities, and in other countries, to provide best practices and lessons learned for San Diego planning and implementation including adoption of new restroom design and innovative technologies.*

Response: The recommendation has not been implemented but will be implemented in the future.

Prior to proposing updates to the City’s General Plan and associated policies discussed in the City’s response to Recommendation 23-34, City staff will study public restroom programs in other U.S. cities and countries to provide best practices and lessons learned for San Diego.

Recommendation 23-36: *Develop or enhance physical signage to direct the public to available restrooms which includes the following:*

- Standardizing signage elements throughout the downtown area via collaboration with the County, Port, MTS and other relevant partners.

- *Adding resources for sign development and maintenance in contracts with partnering groups and working with them to facilitate approval for new signs.*

Response: The recommendation has been implemented.

While the City does not have the jurisdiction to standardize signage elements across agencies, the City has made significant progress toward developing and enhancing signage programs. The City implemented a downtown San Diego wayfinding program funded by the SANDAG Transnet Smart Growth Incentive Program and parking meter revenue. This program includes over 200 vehicular signs, pedestrian signs, and kiosks that include location maps. The installation of the wayfinding signs and kiosks was completed in 2015 and includes key destinations and attractions including the locations of public restrooms. The wayfinding program recently received another SANDAG Smart Growth Incentive grant and is currently adding additional and updated signage including the locations of recently installed public restrooms. The new maps will be installed by the end of 2023.

In addition, on August 1, 2023, the Council adopted an ordinance with a ten-year corporate partnership agreement with the Downtown San Diego Partnership and IKE Smart City, LLC to pilot a digital wayfinding system in downtown San Diego. This digital wayfinding system will install at least 50 digital kiosks that will include information related to downtown public restroom access. IKE and the Downtown San Diego Partnership will have three years to identify and set up the 50 kiosks per their agreement.

Recommendation 23-37: *Enhance the City restroom/hand-washing wayfinding system to direct the public to available restrooms, which includes the following:*

- *Regularly updating the City's restroom website information, including days/hours of operation and points of contact for problems with usage.*
- *Assure access in at least English and Spanish.*
- *Leverage existing wayfinding systems, e.g., MTS PRONTO application.*

Response: The recommendation has been implemented.

The City has created online resources such as sandiego.gov/restroom for members of the public to locate open restrooms and handwashing stations. Restroom icons are color-coded based on their hours of operation. Restroom facilities are adjusted (added, removed, repositioned) and updated on the website in response to need, construction impacts, and health concerns. The website is available at sandiego.gov/baño and sandiego.gov/bano and is available in both English and Spanish.

Further, as mentioned in the response to Recommendation 23-36, the City implemented the downtown San Diego wayfinding program which was funded by the SANDAG Transnet Smart Growth Incentive Program and parking meter revenue, as well as entered into a ten-year corporate partnership agreement with the Downtown San Diego Partnership and IKE Smart City, LLC to pilot a digital wayfinding system in downtown San Diego. Information in the digital kiosks, including downtown public restroom access, will be available in multiple languages.

Finally, while the City is not able to unilaterally change other agencies' wayfinding systems, the City is open to having discussions with other agencies about leveraging their existing wayfinding systems to the extent that would be fiscally and technologically appropriate for the City.

Recommendation 23-38: *Explore and create financial incentives or other innovative mechanisms for business owners to make their restroom facilities available to all persons upon request.*

Response: The recommendation has been implemented.

As part of the 2022 Land Development Code Update, the City adopted new regulations (SDMC 156.0309(d)(2)) to incentivize the inclusion of public restroom facilities in private developments located within the Downtown Community Planning Area. Specifically, any development which includes a public restroom containing a minimum of two stalls receives a significant Density Bonus consisting of an additional 6.0 of Floor Area Ratio. This new incentive is intended to increase public restroom availability throughout Downtown. As part of the Annual Land Development Code Update process, staff will monitor the success of this recently-enacted incentive program and propose modifications and/or additional incentive programs based on the results.

While current City funding to incentivize existing business owners is limited, the City has incentivized the development of several City-owned properties to make public restrooms available to all persons, including but not limited to:

- Faultline Park
- Horton Plaza Park (lease executed, in permitting, and soon will be under construction)
- Portland Loo at Park & Market (reopened 2022)
- Children's Park
- East Village Green (under construction)

Recommendation 23-39: *Explore mechanisms to fund public restroom infrastructure including development impact fees.*

Response: The recommendation has been implemented.

The City currently collects Development Impact Fees that fund parks, mobility improvements, libraries, and fire stations. The California Government Code defines a development impact fee as a monetary exaction imposed on a specific project for the purpose of defraying the cost of public facilities related to the development project (Cal. Gov't Code 66000(b)). For any fees imposed, the City must determine that there is a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed per Cal. Gov't Code 66001(b). The City must also determine that there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed, and that there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed (Cal. Gov't Code 66001(a)(3)-(4).) A fee shall not include the costs attributable to existing deficiencies in public facilities (Cal. Gov't Code 66001(g).)

In order to impose a development impact fee on new development for public restrooms, the City would be required to show a reasonable relationship between a new development project and the need for public restrooms. The need for public restrooms is largely an existing deficiency. To the extent that new development would contribute to the need for downtown public restrooms, a nexus study would be required, and it is unlikely that a significant nexus could be shown that results in funding anywhere close to sufficient to meet the need for public restrooms that would serve the greater downtown area. There is a clear nexus between downtown development and the need for increased park spaces, however. Part of the provision of new parks is a need for public restrooms to serve park users. While the City finds that a development impact fee would not be useful in this circumstance, the City believes that the better course of action is to work with new development to incentivize the construction of onsite park facilities, and to encourage the provision of public restrooms within those facilities where feasible.

202 10-30-23

(R-2024-141)

RESOLUTION NUMBER R- 315175

DATE OF FINAL PASSAGE OCT 30 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE CITY COUNCIL'S RESPONSE TO THE 2022/2023 SAN DIEGO COUNTY GRAND JURY REPORT TITLED "DOWNTOWN AREA PUBLIC RESTROOMS IN THE CITY OF SAN DIEGO: STOP KICKING THE CAN DOWN THE ROAD."

WHEREAS, on May 24, 2023, the 2022/2023 San Diego County Grand Jury (Grand Jury) issued a report titled "Downtown Area Public Restrooms in the City of San Diego: Stop Kicking the Can Down the Road" (Report) that focused on issues concerning the lack of available public restrooms in Downtown San Diego; and

WHEREAS, the Report made eight findings and eight recommendations, all of which were directed to the Mayor and Council of the City of San Diego (Council); and

WHEREAS, the Report requires a response by the Mayor and Council, in accordance with California law; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of a Grand Jury report, each public agency, which the Grand Jury reviewed and about which it issued a report, must respond to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, in this instance, the Council President's office requested and received an extension for the response to November 10, 2023; and

WHEREAS, the Office of the Independent Budget Analyst (IBA) has proposed a response to the Report as set forth in IBA Report No. 23-27 REV., dated October 12, 2023, for the Mayor and Council's consideration; and

WHEREAS, the IBA has conferred with the Mayor and his staff, who have approved the components of the proposed response applicable to the Mayor; and

WHEREAS, on October 5, 2023, the Council's Community and Neighborhood Services Committee approved the components of the IBA's proposed response applicable to the Council, with modifications, and voted to forward it to the full Council for consideration; and

WHEREAS, under Charter section 280(a)(1) this resolution related to approval of the Council's response to the Report is not subject to veto by the Mayor because this matter is exclusively within the purview of the Council and does not affect the administrative service of the City under the control of the Mayor; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, the Council approves and adopts as its own the response to the 2022/2023 San Diego County Grand Jury report titled "Downtown Area Public Restrooms in the City of San Diego: Stop Kicking the Can Down the Road" as set forth in the components of the proposed response applicable to the Council in IBA Report No. 23-27 REV., dated October 12, 2023 as prepared by the Independent Budget Analyst and modified by the Community and Neighborhood Services Committee.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the Council, to sign and deliver the above-described response to the Presiding Judge of the San Diego Superior Court no later than November 10, 2023.

APPROVED: MARA W. ELLIOTT, City Attorney

By Colin Morrison for
Jane M. Boardman
Deputy City Attorney

JMB: nja
10-16-23
Or. Dept: IBA
Doc. No. 3449758

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 30 2023.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Passed by the Council of The City of San Diego on OCT 30 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 30 2023.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 315175