



THE CITY OF SAN DIEGO

MEMORANDUM

November 22, 2022

Judge Peter C. Deddeh  
Presiding Judge  
San Diego Superior Court  
1100 Union Street, 10<sup>th</sup> Floor  
San Diego, CA 92101

**Re: Grand Jury Report: "Smart Streetlights Wasted Investments"**

Dear Judge Deddeh:

Pursuant to California Penal Code Section 933.05(a), (b) and (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 Haley Lesser, Director of Legislative Affairs, at 619-415-6822.

Sincerely,

A handwritten signature in black ink, appearing to be "S. Elo-Rivera".

Council President Sean Elo-Rivera

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

Mayor Todd Gloria

Encl: 1. City response to Grand Jury Report: "Smart Streetlights Wasted Investments"  
2. City Council Resolution R-314376

**City Response to  
San Diego County Grand Jury Report Titled  
“Smart Streetlights - Wasted Investments”**

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 which are included in the above referenced Grand Jury Report.

**FINDINGS 01 THROUGH 06**

**Finding 01:** *The use of Smart Streetlights cameras as previously used prior to September 2020, enhances public safety.*

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

Prior to September of 2020, cameras, or optical sensors, within Smart Streetlights were used to enhance public safety. These smart sensors were not utilized to prevent crimes as they occurred in real-time. Rather, evidence recorded by this technology was later used in conducting investigations, arrests, and successful prosecutions of suspects involved in violent crimes.

Despite this beneficial use, legitimate privacy concerns exist, and use of surveillance technologies should be guided by appropriate protocols and oversight.

**Finding 02:** *A resumption of utilization of Smart Streetlights would not create any valid privacy issues.*

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

The Privacy Advisory Board (PAB) was established by the City Council to serve as an advisory body to the Mayor and Council on policies and issues related to privacy and surveillance.<sup>1</sup> The PAB will provide advice and technical assistance to the City on best practices to protect resident and visitor privacy rights in connection with the City’s acquisition and use of surveillance technology.<sup>2</sup> Until such time that the PAB is able to complete its review of the proposed use of Smart Streetlights, the full extent of potential privacy issues is unknown, and it is premature to reach any conclusions on the validity of potential privacy issues.

**Finding 03:** *The recent dramatic rise in crime in the City of San Diego, approaching the level of exigent circumstances, dictates that in the interest of public safety there is an urgent need for San Diego Police to be able to use Smart Street lights.*

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

The City’s Transparent and Responsible Use of Surveillance Technology Ordinance (Surveillance Technology Ordinance), adopted by the City Council on August 2, 2022,

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<sup>1</sup> Chapter 2, Article 6, Division 00, §26.42 of the San Diego Municipal Code

<sup>2</sup> Chapter 2, Article 6, Division 00, §26.43(a) of the San Diego Municipal Code

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defines “exigent circumstances” to mean “a City department’s good faith belief that an emergency involving danger of death or serious physical injury to any individual, or any imminent danger of significant property damage, requires the use of surveillance technology.” While the use of Smart Streetlights has a public safety benefit for investigations after a crime has taken place, the City does not believe that there is an “emergency involving danger of death or serious physical injury to any individual, or any imminent danger of significant property damage,” that the Smart Streetlights in and of themselves would address.

Moreover, while various types of crime have increased recently after generally declining during the pandemic, overall crime rates are historically low. As of the reporting period of January 2022 through June 2022, the Total Index Crime Rate Citywide (Crime Index) was 21.87 (reflecting crimes per 1,000 residents).<sup>3</sup> For the full calendar year 2021, the Crime Index totaled 23.75 which is similar to 2018 (23.08) and lower than 2016 (24.40)<sup>4</sup>. For context, crime in the City of San Diego peaked in 1989 when the Crime Index was at 94.78. With the exception of 2017 through 2020, the Crime Index in 2021 was lower than at any time since the 1960s.

**Finding 04:** *This exigent need requires one time accelerated legislative action to make needed contracts fiscal appropriations.*

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

As stated in the response to Finding 03, crime rates have not dramatically increased compared to historical levels. The need for accelerated action based on the premise that exigent circumstances have arisen is not supported by current crime rates.

**Finding 05:** *The City of San Diego’s continual annual loan repayments of \$2.3 million for equipment that is still in the possession of the City but no longer in use, is fiscally irresponsible.*

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

The Smart Streetlights were originally part of a multipurpose program that was intended to make the City one of the earliest adopters of “smart city technology”. This program included the installation of LED streetlights to improve energy efficiency, Lightgrid nodes to allow for remote control of the light fixtures, and smart sensors equipped with cameras. The original intent of the monitoring aspect of the smart sensors was to monitor traffic and pedestrian patterns in order to generate mobility data, rather than for police investigation purposes.

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<sup>3</sup> <https://www.sandiego.gov/sites/default/files/2022crime-rates.pdf>

<sup>4</sup> <https://www.sandiego.gov/sites/default/files/crime-rates1950-2021.pdf>

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The financing for the program paid for the procurement and installation of the required equipment, with the intention that these costs would be offset by the energy savings accrued due to the installation of the LED lights. Of the original \$30.2 million loan that was available, the City drew down \$19.9 million. The loan drawdown covered the purchase and installation of 9,000 LED light fixtures and Lightgrid nodes, as well as the purchase of 3,211 smart sensors, of which 3,051 were installed.<sup>5</sup> Of the \$19.9 million, \$2.0 million was for the purchase and initial operational costs of the light fixtures and Lightgrid nodes, \$11.8 million was for the purchase and initial operational costs of the smart sensors, and \$6.1 million was spent on a combination of light fixtures and the installation of the equipment purchased. The City currently makes annual payments of \$1.65 million to cover the debt service for the \$19.9 million loan drawdown.<sup>6</sup> As only \$11.8 million of the total loan drawdown is directly attributable to the smart sensors, only \$1.0 million of the total debt service is attributable to the smart sensors in particular. It is important to note that the \$1.0 million in debt service does not include an estimated \$2.4 million in annual operating costs (estimated in 2020) for maintaining the functionality of the smart sensors; and the City is not currently paying such operating costs.

Beyond the financing utilized on this program, the City also utilized \$2.9 million of Community Development Block Grant (CDBG) funds to purchase additional 1,000 smart sensors, all of which remain in storage. This aspect was cash financed, and as such there are no ongoing expenditures related to the 1,000 smart sensors currently in storage. However, since this equipment is not operational, the City will most likely need to refund the CDBG program for these costs, from either the General Fund or another eligible source.

Following the installation of the smart sensors, the City and its Police Department became aware that the cameras could be utilized for crime investigation purposes. The Police Department was able to utilize this function until privacy concerns were raised, which led to the City’s decision to forgo payment of the annual operating costs for the smart sensors. Because annual operating costs were not included in the City budget, the functionality of the smart sensors was reduced to the point that the video data cannot be remotely extracted, but rather, must be pulled directly from the smart sensor unit itself within five days of the footage being generated. In order to acquire the data from the smart sensors remotely, without physically touching the units, the City would have to renew the contract with the vendor that owns the technology contained within the smart sensors, as well as budget for those services. The contract would need to be renegotiated, which could increase the estimated \$2.4 million annual operating cost.

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<sup>5</sup> As of June 9, 2020, only 2,005 of these smart sensors were fully operational, as many sensors experienced failures following installation. It is unknown how many are currently operational.

<sup>6</sup> Currently, \$1.65 million in debt service is partially offset with \$475,000 in energy cost savings from the use of more energy efficient LED lights.

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Additionally, the Sustainability and Mobility Department, which oversees the program and was to be the main beneficiary of the mobility data generated from the smart sensors, has determined that the system is currently incapable of generating the types of mobility data that would be useful for the City’s mobility planning purposes. As such, reinstating software and remote control capabilities for these devices would *only* be for the potential benefit of allowing the Police Department to remotely access the camera footage.

While the finding notes the City is currently incurring \$2.3 million in annual loan repayments, the City provides a correction that the true cost of the loan repayment specific to the smart sensors is actually \$1.0 million. In addition to the loan repayment, the City would need to spend significant additional funds to allow for remote retrieval of camera footage for Police Department investigations. A full cost benefit analysis would need to be performed, after PAB review of privacy issues related to surveillance, in order to provide further information regarding the operational value and fiscal impact for Police Department use.

**Finding 06:** *A fair, balanced, and unbiased Privacy Advisory Board should include culturally diverse representation from across the spectrum of professions, to include law enforcement, and victims’ rights advocates to ensure citizen’s rights are being protected while enabling law enforcement to continue providing for the public’s safety.*

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

As cited in the response to Finding 02, the purpose and duties of the PAB primarily relate to the protection of privacy rights, rather than evaluating the public safety or other merits of surveillance technology. It is the City Council that will be responsible for considering the recommendations of the PAB concerning any privacy issues and weighing them against the public safety benefits of a particular surveillance technology, as advocated by the City Department seeking the use of that technology.

With that said, the City of San Diego agrees that culturally diverse representation would be a positive attribute of a PAB; and per San Diego Municipal Code Chapter 2, Article 6, Division 00, §26.42 (the PAB Ordinance), the City’s PAB will be required to include representatives from various professions and organizations, including a privacy or civil rights attorney, an auditing or CPA professional, a professional in IT areas including security, and individuals dedicated to government transparency and equity-focused areas. Victims’ advocates and individuals with law enforcement backgrounds may be considered as potential appointees to the PAB, provided they meet the requirements of the PAB Ordinance §26.42(d).

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**RECOMMENDATIONS 22-44 THROUGH 22-45**

Recommendations 22-44 and 22-45 are directed to only the Mayor and as such are approved by the Mayor only.

**Recommendation 22-44:** *Immediately consider issuing an executive order to rescind the previous Mayor’s order terminating San Diego Police Department’s use of Smart Streetlights.*

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

It is the Mayor’s view that the Smart Streetlights present a useful tool in solving crimes and maintaining public safety. However, any reinstatement of the Police Department’s use of Smart Streetlights will require compliance with the defined process for the use of surveillance technologies as outlined in Surveillance Technology Ordinance. The Mayor’s office plans to prioritize the adoption of Smart Streetlights technology through the defined process in the Surveillance Technology Ordinance.

**Recommendation 22-45:** *Consider appointing members of law enforcement and victims’ rights advocates to the Citizens’ Privacy Board to ensure it represents a fair and balanced composition.*

**Response: The recommendation has been implemented.**

The Mayor has the responsibility to appoint the nine members of the PAB, who are then confirmed by a vote of the Council, as outlined in the PAB Ordinance. In an effort to ensure the PAB reflects the diverse opinions and experiences in the San Diego community, the Mayor is committed to considering a wide range of potential appointees who meet the requirements of the PAB Ordinance §26.42(d), including victims’ advocates and individuals with law enforcement backgrounds who are interested in the positions and meet those Municipal Code requirements. It is important that the City appoint qualified and knowledgeable residents to the PAB.

**RECOMMENDATIONS 22-46 THROUGH 22-48**

Recommendations 22-46 through 22-48 are directed to only the City Council and as such are approved by the Council only.

**Recommendation 22-46:** *Consider, in the event the moratorium is lifted, enacting fiscal appropriations to install the currently warehoused Smart Street Lights, update software on all Smart Streetlights, and fund necessary contractual obligations for their full operation.*

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

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The Council disagrees with the premise of lifting the moratorium without completing the review process required under the Surveillance Technology Ordinance, including evaluation by the PAB. Therefore, this recommendation will not be implemented. Further, creating an effective surveillance system would need to be studied, as it would be a complicated and potentially costly undertaking as outlined in Finding 05.

**Recommendation 22-47:** *Recognize this immediate action is being taken because of exigent circumstances; while in the future such actions will require input from the Citizen’s Privacy Board; and the use of equipment of this nature will be subject to annual recurring review by the Privacy Advisory Board*

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

As stated in the responses to Findings 03 and 04, immediate action is not warranted, as crime rates have not dramatically increased compared to historical levels. The need for accelerated action based on the premise that exigent circumstances have arisen is not supported by current crime rates.

**Recommendation 22-48:** *Approve a composition of the Privacy Advisory Board that includes law enforcement and victim rights advocates.*

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

As stated in the response to Finding 06, the PAB is dedicated to protecting privacy rights, rather than advocating for law enforcement. The City’s PAB will be required to include representatives from various professions and organizations, including a privacy or civil rights attorney, an auditing or CPA professional, a professional in IT areas including security, and individuals dedicated to government transparency and equity-focused areas. Victims’ advocates and individuals with law enforcement backgrounds may be considered as potential appointees to the PAB, provided they meet the requirements of the PAB Ordinance §26.42(d).

#201  
10/10/2022  
(R-2023-150)

RESOLUTION NUMBER R- 314376

DATE OF FINAL PASSAGE OCT 10 2022

A RESOLUTION APPROVING THE CITY COUNCIL'S  
RESPONSE TO THE 2021/2022 SAN DIEGO COUNTY  
GRAND JURY REPORT TITLED "SMART STREETLIGHTS  
WASTED INVESTMENTS."

WHEREAS, on June 23, 2022, the 2021/2022 San Diego County Grand Jury (Grand Jury) issued a report titled "Smart Streetlights Wasted Investments" (Report) that recommended that the City of San Diego (City)'s Mayor and City Council (Council) "strongly consider taking actions to authorize and fund reinstatement of use of Smart Streetlights by the San Diego Police Department"; and

WHEREAS, the Report made six findings to the Mayor and Council and five recommendations, two of which were directed to the Mayor and three of which were directed to the Council; and

WHEREAS, the Report requires 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 23, 2022; and

WHEREAS, the Office of the Independent Budget Analyst (IBA) has proposed a City response to the Report as set forth in IBA Report No. 22-25, dated August 29, 2022, 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 September 7, 2022, the Council's Public Safety and Livable Neighborhoods Committee approved the components of the IBA's proposed response applicable to the City Council 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 not affecting 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, 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 2021/2022 San Diego County Grand Jury Report titled "Smart Streetlights Wasted Investments" as set forth in the components of the proposed response applicable to the Council in IBA Report No. 22-25, dated August 29, 2022.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the City Council, to sign and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than November 23, 2022.

APPROVED: MARA W. ELLIOTT, City Attorney

By     /s/ Joan F. Dawson      
Joan F. Dawson  
Senior Deputy City Attorney

JFD:jdf  
09/21/2022  
Or.Dept: IBA  
Doc. No.: 3094699

Passed by the Council of The City of San Diego on OCT 10 2022, 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"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 10 2022.

**(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)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 314376