

SMART STREETLIGHTS

Wasted Investments

SUMMARY

In 2016 the City of San Diego purchased Smart Streetlights Technology to increase the brightness and provide a substantial energy cost savings. It was anticipated the savings in energy costs would be sufficient to service the debt on the \$30.23 million loan from General Electric used to make the initial purchase.

The Smart Streetlights technology consists of cameras mounted on existing street poles. The cameras were stationary and did not record conversations. In addition, the cameras were not monitored but images could be retrieved when needed by City workers. In 2018, the San Diego Police Department (SDPD) began utilizing this technology to investigate crimes and enhance public safety. In 2020, citizens learned of the SDPD use and expressed concerns about privacy rights. Subsequently, the Mayor at the time placed a moratorium on the use of the Smart Streetlights that remains in place today.

The 2021/2022 San Diego Grand Jury recommends the San Diego Mayor and San Diego City Council strongly consider taking actions to authorize and fund reinstatement of use of Smart Streetlights by the San Diego Police Department; taking this action immediately even if the recently enacted Privacy Advisory Board (PAB) is not yet up and running; while acknowledging that authorization of such use of surveillance assets will be subject to periodic review once the PAB is up and running.

INTRODUCTION

Relevant events in the history of Smart Streetlights in San Diego include:

2016

- The San Diego City Council approved an agreement with General Electric (GE) to upgrade the City's Smart Streetlights system by retrofitting or replacing existing Smart Streetlights with energy saving light-emitting diodes (LED).
- The project was funded with a \$30.23 million loan from General Electric (GE).
- Interest on the loan, which the City of San Diego continues to pay, is \$2.3 million annually.

2018

- After becoming aware that the Smart Streetlights cameras had video recording capabilities the SDPD began using the capability for investigative purposes.

2020

- A moratorium was issued by the previous Mayor terminating this use of this technology after concerns that the SDPD 'Policy and Procedure on Intelligent Lights' raised privacy issues. A citizens' Privacy Advisory Board was proposed by citizens' groups.

- The City of San Diego continues to make the annual payments of approximately \$2.3 million on the GE loan while the equipment remains unused.

2022

- On April 5, 2022, a proposed ordinance to create a Privacy Advisory Board was passed on unanimous vote of the San Diego City Council on a second reading, two years after its first reading.
- Although this PAB in the future will be involved in reviewing and providing recommendations based on privacy concerns to the City Council, there is no expectation it will be up and running in the immediate future.

Smart Streetlights are a form of screening surveillance technology that the City of San Diego has used. Smart Streetlights use LED lighting for superior, efficient lighting. Cameras are embedded in the system with video capability, Wi-Fi, and an array of environmental sensors.

In 2016 San Diego spent approximately \$30 million on the purchase of hardware and start-up costs for a system that has a dual purpose: (1) to save money on utilities, and (2) to improve the lighting of our streets.

In 2018, when the SDPD determined that Smart Streetlights have valuable potential for safety, they began using them to investigate crimes. This provoked concern from citizens' groups regarding personal privacy and civil liberties.

In 2020 after the mayor received complaints, he issued a moratorium on the use of Smart Streetlights. The creation of a Citizens' Advisory Board was proposed as a group that may provide the balance between the alleged intrusiveness and invasion of personal privacy and public safety. Citizen Advisory Boards/Committees are the reported standard.¹ There are sound foundational principles of creating Citizen Advisory Boards/Committees as described in the article *Creating Effective Citizen Advisory Committees*, by the University of Tennessee and *Citizen Advisory Boards in Contemporary Practice: A Practical Approach*, published in the *Journal of the International Association of Police Chiefs IACP*.^{2 3 4}

As structured in the April 5, 2022 ordinance "[t]he Commission [Board] shall consist of nine (9) members . . . the Mayor shall appoint Commission [Board] members through the City Council

¹ *How San Diego's Privacy Laws Stack Up Against 16 Others*, <https://sandiegoprivacy.org/berkley-review-of-surveillance-oversight.html>, March 23, 2021.

² David Angerer, Municipal Management Consultant, *Creating Effective Citizen Advisory Committees*, The University of Tennessee Municipal Technical Advisory Service, https://trace.tennessee.edu/cgi/viewcontent.cgi?article=1079&context=utk_mtaspubs, July 2009.

³ John G. Reese, PhD, Colorado Mesa University and Judy 4Macy, Chief of Police, Fruita, Colorado Police Department, *Citizen Advisory Boards in Contemporary Practice: A Practical Approach in Policing*, <https://www.policechiefmagazine.org/citizen-advisory-boards-in-contemporary-practice-a-practical-approach-in-policing>.

⁴ EPA, United States Environmental Protection Agency, *Public Participation Guide: Citizen Advisory Boards*.

recommendations who will then be confirmed by Council as identified through the Charter.”⁵ Legislation provides that the PAB will have the following prescribed array of representatives:

1. At least one attorney or legal scholar with expertise in privacy, civil rights, or a representative of an organization with expertise in the same such as but not limited to the American Civil Liberties Union, etc.;
2. One auditor or certified public accountant;
3. One hardware, software, or encryption security professional;
4. One member of an organization which focuses on government transparency and openness or an individual, such as a University researcher, with experience working on government transparency and openness;
5. At least four members shall represent equity-focused organizations serving or protecting the rights of communities, religious minorities, and groups concerned with privacy and protest.

Notably absent is any representation from law enforcement and Victims’ Rights Advocacy Groups.

Some of the published basic principles outlined for these types of organizations are as follows:

- It is unethical to use these committees to diffuse public criticism, avoid responsibility for making a decision, or validate a pre-determined outcome.
- It must be understood by all that the governing agency is the final authority, and this committee is advisory only and therefore is not a policy making committee.
- City Council cannot obtain this information by any other means and does not have the skill set to make an informed decision they must make.
- Qualified knowledgeable residents are a must.
- The advisory committee should be culturally diverse and have broad geographical representation.
- This citizens’ committee should be limited in scope and purpose.
- Members with political ambitions and agendas should be discouraged from serving on these committees.
- City Council decisions are more likely to be seen as fair and considerate if all people having a stake in the outcome are involved.

METHODOLOGY

The 2021/2022 Grand Jury interviewed:

- Law enforcement on the policies and procedures on the use of surveillance equipment
- City Council Member on the use of surveillance by the police
- High ranking City officials on the status of the use of surveillance equipment

⁵ City of San Diego Ordinance No. XX, Date of Final Passage April 5 2022, Section 4 a.

Additionally, the Grand Jury reviewed:

- Academic research documents
- Legislative history and state law
- City Attorney documents
- Nationwide legislation concerning use of surveillance technology
- Legal opinions and scholarly dissertations on privacy issues and use of surveillance equipment

DISCUSSION

In a SDPD memorandum dated May 18, 2020, a rationale was presented for the use of Smart Streetlights.⁶ At that time, 3,030 Smart Streetlights with camera capability were in operation throughout the nine City Council Districts. The memorandum documented that the SDPD used data from these cameras a total of 322 times from August 2018 through May 2020. The data obtained was used to investigate cases that involved serious crimes. The memorandum also summarizes the following: “Smart Streetlights are inextricably linked to essential areas of governance. . . .” As outlined in a presentation given by the SDPD, since the use of Smart Streetlights technology starting in April 2018, to the cessation of its use in September 2020, it was referred to as a “game changer” by law enforcement in investigating crimes. Smart Streetlights enhance public safety.⁷

In 2018, footage from cameras in the Gaslamp district was used to help determine that a suspect in a homicide was acting in self-defense when he killed the perpetrator as opposed to committing murder or voluntary manslaughter.

In the Grand Jury’s investigation, no objective data was presented that the use of Smart Streetlights by the San Diego Police Department presents any abuse of privacy issues. The Smart Streetlight technology is non-discriminatory. Smart Streetlights take photos/video on a 24/7 basis with stationary cameras. The technology records images in a stationary field of view. It is not maneuvered by a person, is not monitored, and is not used to surveille citizen activity. This technology is used as an investigative tool, after the fact, when a crime has been committed. No source has been identified that demonstrates that this technology is being used to control a person’s behavior or targets a specific individual or group of people. This technology is used in public places where there is no expectation of privacy.

Smart Streetlights were purchased with a \$30.23 million dollar loan from GE.⁸ The City of San Diego continues to pay \$2.3 million dollars per year on this loan. The original purchase of this technology was solely for energy savings. The savings from reduced energy use was to cover this loan payment, but the savings never materialized because not all Smart Streetlights were ever installed. This loan was executed December 13, 2016. It dedicated \$11 million dollars to Smart Streetlights sensors. Ongoing costs continue and additional capital will be needed to

⁶ Memorandum to Chief of Police, re: Budget Considerations - Smart Streetlights, May 18, 2020.

⁷ San Diego Police Department Smart Streetlights Slide Presentation, June 5, 2019.

⁸ Internal memorandum dated February 12, 2020, Smart Sustainable Communities, City of San Diego.

upgrade the devices as they have not been used for over 18 months. Renegotiation of contracts with San Diego Gas and Electric, GE, and other vendors will be required to put this technology to its fullest use. In the February 12, 2020, memorandum from City management, it is noted that only estimates for the additional costs can be stated, since no Requests for Proposals for these contracts can be issued to restart services.^{9 10}

Since the 2020 Moratorium, use of Smart Streetlight *video* remains unavailable to the SDPD without the lengthy process of obtaining a search warrant, removing a SIM card, getting it analyzed, which thereby renders the Smart Streetlight camera inoperable for future use.

In the first months of 2022, the City of San Diego has experienced a significant rise in violent crime.

FACTS AND FINDINGS

Fact: In 2018, the SDPD determined that the Smart Streetlight cameras could provide valuable evidence in investigation and began using the cameras as needed.

Fact: In 2020, the then Mayor of San Diego issued a moratorium on police use of the Smart Streetlights after receiving complaints from special interest groups about privacy issues.

Fact: Prior to the moratorium on police use of the Smart Streetlights, the SDPD used footage from the equipment to assist in the investigation and prosecution of major crimes occurring in the areas where the fixtures had been installed.

Fact: Although since the moratorium, under very strict guidelines, the SDPD may, with a signed search warrant, look at footage from Smart Streetlights when investigating a serious crime, this is unwieldy and very time consuming compared to the pre-moratorium uses.

Finding 1: The use of Smart Streetlights cameras as previously used prior to September 2020, enhances public safety.

Fact: As previously used, the proposed usage of Smart Streetlight camera footage is as an investigative tool only.

Finding 2: A resumption of utilization of Smart Streetlights would not create any valid privacy issues.

Fact: Violent crime in the City of San Diego is on the rise.

Finding 3: 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.

Finding 4: This exigent need requires one time accelerated legislative action to make needed contracts fiscal appropriations.

⁹ Ibid.

¹⁰ San Diego Police Department Slide Presentation, op. cit.

Fact: In 2016, the City of San Diego bought Smart Streetlights Technology financed with a loan from General Electric (GE) in the amount of \$30.23 million.

Fact: Between 2016 and 2018, the City of San Diego installed some, but not all, of the Smart Streetlights.

Fact: Although the cameras are no longer in use, the City of San Diego continues to make annual payments of \$2.3 million to repay the GE loan.

Finding 5: 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.

Fact: Special interest groups, including law enforcement, are understandably concerned about an invasion of their privacy rights when the government uses new technology.

Fact: Privacy Advisory Boards/Boards are good tools to help legislators understand the complexities of new technology.

Fact: The April 5, 2022, legislation establishing a Privacy Advisory Board makes no provision for inclusion of representatives from law enforcement or Victims’ Rights Advisory Groups.

Fact: Best practices documents state that “city council decisions are more likely to be seen as fair and considerate if all people having a stake in the outcome” are involved.

Fact: The City Ordinance establishing the Privacy Advisory Board requires the Mayor to appoint 9 members subject to City Council approval.

Finding 6: 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.

RECOMMENDATIONS

The 2021/2022 San Diego County Grand Jury recommends the Mayor of San Diego:

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.

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.

The 2021/2022 San Diego County Grand Jury recommends the San Diego City Council:

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.

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

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

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if

requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	22-44 through 22-45	9/21/22
City Council, City of San Diego	22-46 through 22-48	9/21/22