

BROKEN GARBAGE CANS, CITY APATHY, FREE CANS FOR A FEW – WHAT A MESS!

SUMMARY

Since 2010, some San Diego City Council Members have been discreetly providing replacement refuse bins to some of their constituents at no cost while everyone else is charged \$70 and, in many cases, a \$25 delivery fee. The 2016/2017 San Diego County Grand Jury (Grand Jury) learned of this while investigating a growing number of complaints that City automated refuse collection trucks are causing the damage that necessitates replacement of these same refuse bins. The investigation revealed an apparent violation of the City Council policy that governs how Community Projects Programs and Services (CPPS) money can be spent, a lack of oversight of the CPPS spending on replacement refuse bins by city officials, and a disturbing history of official indifference to this questionable spending activity.

The Grand Jury's investigation focused on three main areas:

- **Preferential free replacement of damaged bins for some residents**
- **Damage of bins because of aging and poorly maintained collection equipment**
- **Inadequate maintenance and repair of automated refuse collection vehicles**

To address the problems, the Grand Jury recommends amendments to the council policy to clarify how CPPS funds can **and cannot** be spent, as well as steps to repair and replace aging refuse collection equipment and bins in a fair, equitable, and transparent manner.

INTRODUCTION

Dilapidated City-serviced refuse bins are evident on many residential streets in San Diego on collection days. The Grand Jury wanted to know how they got that way and why they were not being replaced. In the process, the Grand Jury discovered some residents could get free replacement refuse bins but only if they lived in the right council district.

PROCEDURE

The Grand Jury conducted numerous interviews of Environmental Services Department (ESD) and Fleet Services Department personnel, City Council Members, council staff, and other City employees. Grand Jurors walked City neighborhoods on refuse collection days and inspected hundreds of refuse and recycling bins, noting their condition and any obvious damage. Video and photographs of refuse collection activities and damaged bins were taken.

The Grand Jury toured the Environmental Services Department maintenance and repair yard in Miramar, visited with ESD employees, and researched relevant laws, ordinances, and policies.

DISCUSSION

Bins for some at no cost

In 1994, the City began using automated refuse-collection equipment and initially provided free bins. In 2008, faced with declining tax revenue, the City Council amended the Municipal Code with Waste Management Regulation R-009-10,¹ assigning the responsibility of replacing damaged, lost, or stolen refuse bins to the homeowner. As the bins and automated collection trucks aged, complaints arose (see Chart 1) that City vehicles were causing the damage.^{2 3}

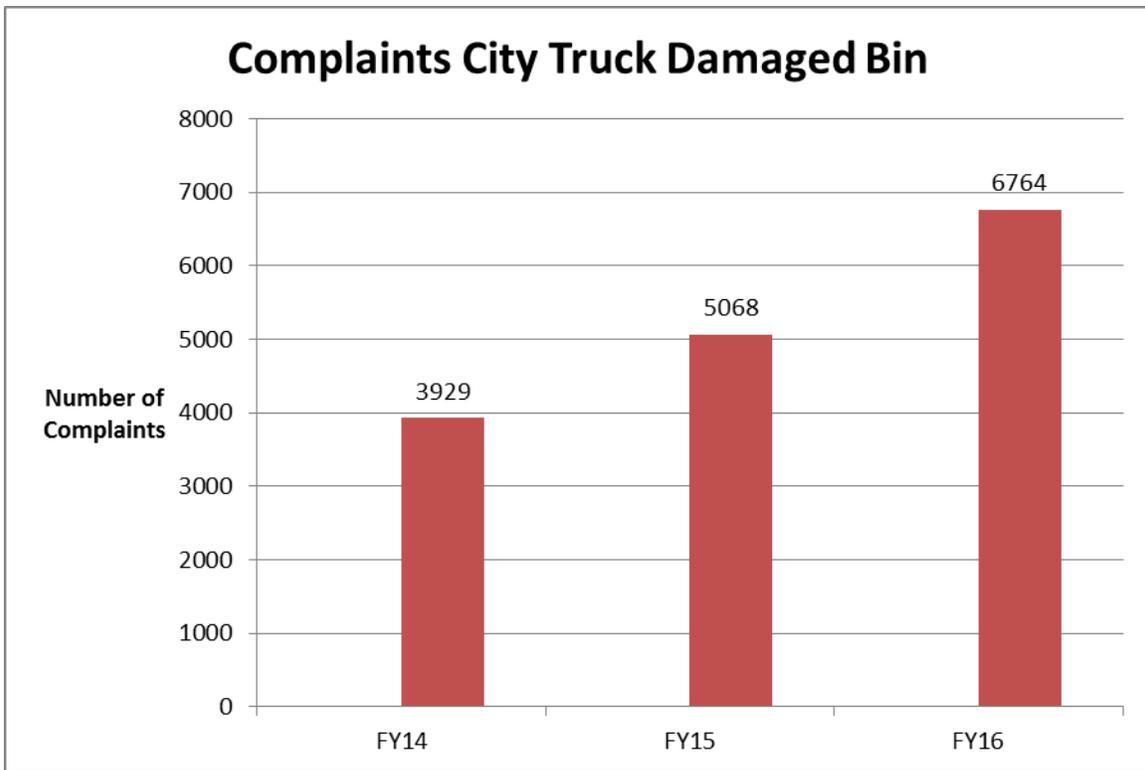


Chart 1 – Complaints

¹ <https://www.sandiego.gov/sites/default/files/legacy/environmental-services/pdf/SMiramarPla10080617330.pdf> (accessed January 26, 2017)

² <http://fox5sandiego.com/2015/03/31/garbage-collectors-accused-of-breaking-trashcans/> (accessed January 19, 2017).

³ <http://ourcitysd.com/politics-civic-issues/san-diego-trash-cans-reaching-old-age/#sthash.H78glwiL.dpbs> (accessed January 19, 2017).

As the growing chorus of complaints grew louder at City Hall that City trucks were damaging the bins, some City Council Members came up with a novel but questionable method of mollifying angry constituents. They started using their taxpayer-provided funds known as Community Projects, Programs and Services (CPPS) funds, technically called **infrastructure funds**, to pay for replacement refuse bins for those who complained. But the existence of the free replacement programs was not made public. After learning of their existence, the Grand Jury began questioning how the money transfers from the CPPS funds were justified, considering the council's policy governing CPPS funds, Council Policy 100-06,⁴ clearly prohibits using CPPS funds for any private purpose. The policy permits each council office to use money budgeted for personnel and office expenses unspent in previous years for future community projects, programs, and services that are not funded elsewhere in the City budget. It also allows the staff budget and personnel funds saved to be accumulated from year to year.

While most council district CPPS fund accounts are listed in the current City budget⁵ at \$90,000 to \$100,000, a few have grown well above that. The policy requires annual publication of the previous fiscal year's funding allocation showing where each council district spent its CPPS money. Most of it goes to non-profit groups and community organizations, which are required to submit lengthy and detailed request forms and expense reports.⁶ But the current funding allocation report shows three council offices allocating CPPS money to be transferred to an account used by the Environmental Services Department to pay for "*new trash containers for persons with disabilities, senior citizens, and/or low-income constituents,*" this despite the fact that the policy does not clearly authorize any such expenditure. In fact, the policy also contains an express prohibition of the use of CPPS funds for "*any private purpose.*" In numerous interviews not one person could cite the authority used to justify the practice of providing free replacement refuse bins. Without exception, those involved in the process stated they believed someone else was responsible for checking to see if the process was legal and proper. A few admitted to the Grand Jury that they ignored their own reservations about the propriety and fairness and consequently did and said nothing.

Documents provided to the Grand Jury show memorandums and emails were sent from the council offices to the Financial Management Department, requesting the transfer of CPPS funds to the Environmental Services Department for the residential refuse bin replacement programs.. The Financial Management Department confirmed the transfers, and the council district offices then provided Environmental Services via email or memos the names of the individuals who were to receive the free bins.

Copies of the memos and emails went to the City Attorney's office and that fact gave some the impression the fund transfers for free replacement trash cans was legal and

⁴ http://docs.sandiego.gov/councilpolicies/cpd_100-06.pdf (accessed January 19, 2017).

⁵ https://www.sandiego.gov/sites/default/files/fy17_adopted_budget_-_full.pdf (accessed January 19, 2017).

⁶ <https://www.sandiego.gov/citycouncil/cpps> (accessed January 19, 2017).

proper. The Grand Jury, however, was unable to ascertain whether or not councilmembers who participated in the free replacement programs ever sought or received legal guidance or authorization under the council's CPPS policy.

The Grand Jury learned neither the councilmembers nor their staff members receive detailed training on what is or is not allowed under the CPPS policy. A single training session dealing with the CPPS program outlines only the application forms, reports nonprofit agencies must fill out, and the deadlines that must be met to qualify for CPPS funding.

Six of the nine council offices reported to the Grand Jury they have not and do not provide free replacement refuse bins to their constituents. Documents provided by the three council offices that did show each used a different method of providing them. One provided the Grand Jury copies of application forms staff members used. Nothing on the form asks for information on an applicant's age, disability, or income.

All three council offices admitted no verification of an applicant's qualifying status was performed. All three listed names and addresses of those receiving free replacement bins. One council office provided a free replacement to someone who did not live in the councilmember's district.

The Grand Jury found no oversight of the councilmembers' free refuse bin replacement programs. The mere existence of the programs was not made public by either the council offices or the Environmental Services Department.

The Grand Jury believes the City should consider returning to the pre-2008 City policy of providing **all** homeowners with free replacements for any unserviceable bins beyond their normal service life or any damaged in the collection process.

Until then, the Grand Jury believes providing free replacement refuse bins for low-income citizens, seniors, and the disabled is a noble and worthwhile endeavor that should continue -- but only if it is administered fairly in **all** City Council districts and the program's existence is publicized. Applicants should also be screened to verify that they qualify.

How refuse bins are being damaged

There are more than 511,000 housing units in the City of San Diego,⁷ but only about 304,000 of them (roughly 60 percent) are eligible for free City refuse collection services. Most municipalities in California and elsewhere charge residents a separate fee for refuse

⁷ http://www.sandag.org/resources/demographics_and_other_data/demographics/fastfacts/sand.htm (accessed January 12, 2016).

collection. Thanks to the *“People’s Ordinance,”* San Diego does not. San Diego is one of only three cities in California with a population of more than 7,000 that do not charge a separate fee for refuse collection services. The ESD estimates that of the 300,000 black refuse bins placed out for collection each week, 50 percent to 70 percent are beyond their 10-year service life and should be replaced. Walking neighborhoods in the northern part of the City, Grand Jurors found more than 60 percent were visibly damaged, and many were held together with duct tape.



Photo 1 - Duct tape on damaged bin

Some homeowners used extraordinary methods to keep their bins serviceable and avoid paying \$95 for a replacement by gluing or bolting pieces of wood or metal to the cracked plastic.



Photo 2 – Repaired Bin



Photo 3 - Repaired Bin

One individual obtained a blue recycle bin, which is free, and simply painted it black. The ESD website⁸ details procedures for replacing bins at a cost of \$70 and a \$25 delivery fee. The City pays \$53.22 for the black 95-gallon refuse bin and \$47.08 for the smaller 65-gallon bin but charges homeowners \$70 for both sizes. ESD claims it does not profit on the sales, reasoning it spends that and more on the personnel assigned to provide replacements to the public at its Miramar Operations Center.



Photo 4 - ESD Operations Center

The department **does** provide free replacement lids and wheels, in some circumstances, but does not make that fact public.

⁸ <https://www.sandiego.gov/environmental-services/collection/general/containers> (accessed November 15, 2016).

City homeowners paid ESD to replace 6,483 black refuse bins in fiscal year (FY) 2014, 7,387 in FY 2015, and 11,925 in FY 2016.

As Chart 2 below shows, the number of black refuse bins replaced at homeowner expense has nearly doubled in recent years.

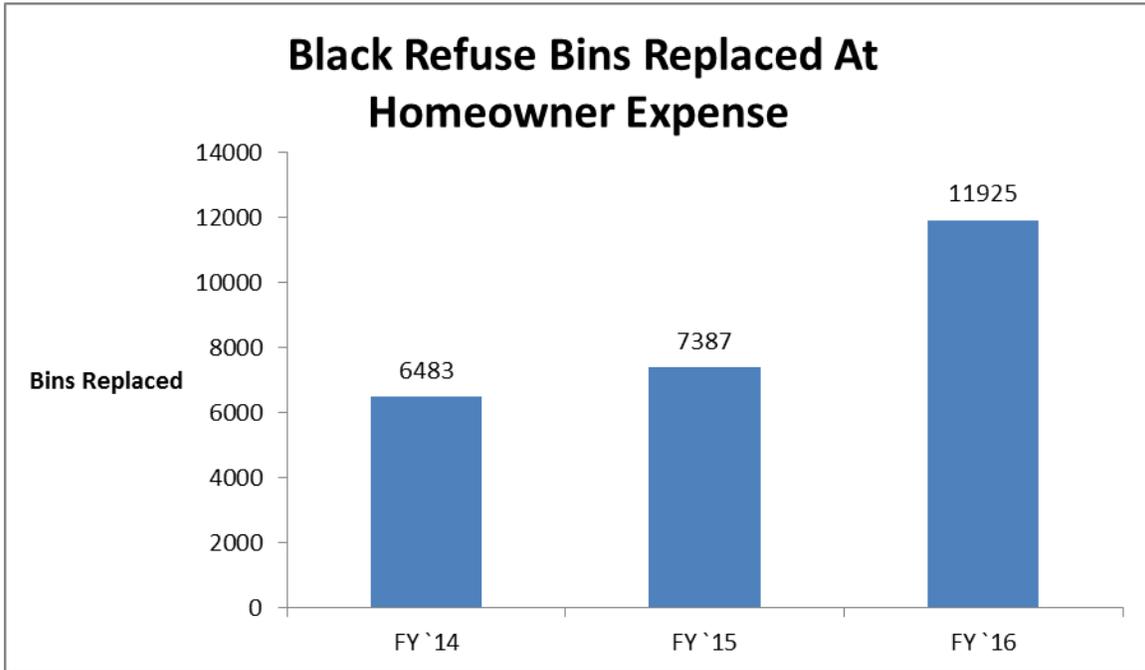


Chart 2 - Bins Replaced

Damaged blue recycle bins and green green-waste bins are usually replaced at no charge. They are paid for using some of the \$3.5 million the City makes each year from the sale of the recycled material it collects from its citizens. That amount of revenue would seem to provide the ESD with enough money to pay for replacing 50,000 unserviceable bins a year. Currently, it is being used to pay for fewer than 10,000 blue and green bins.

According to the ESD website, homeowners may purchase one of two approved black refuse bins at local home center stores. The Grand Jury found, however, only one model is available and only at a single local retail home center. That one model carries a retail price of \$89.99. The other model listed is no longer carried by any local retail stores. However, it is available online, but shipping charges bring the cost to more than \$200. The City of San Diego purchases bins under a “piggyback” contract arrangement with a vendor used by the City of Los Angeles but does not independently test suppliers’ bins for durability.

Proof that there **are** durable bins available is obvious on the streets of some Clairemont neighborhoods.



Photo 5 - New Bin & Old Bin

Homeowners there, the first City residents to get automated collection, were provided with bins made by a manufacturer that is no longer in business. Many of those bins, now more than 20 years old, are still serviceable. Authorities praise them as comparatively indestructible. The bins sold by the City today are a model condemned by homeowners as made of poor-quality materials that are not up to the stresses of weekly handling by City automated refuse collection trucks and many of the trucks themselves are clearly facing their own maintenance challenges.

Authorities explain the plastic bins deteriorate from constant exposure to sunlight, become brittle in cold weather and can crack where the trucks' gripper arms attach and some suffer abuse by homeowners who overfill them with heavy objects.

The photograph below shows one homeowner's black refuse bin that replaced a badly damaged bin just last summer. The Grand Jury learned that it was less than a month old when, after only a few collections, its lid was severely damaged.



Photo 6 - New bin with damaged lid

The vast majority of damaged bins seen during Grand Juror inspection trips were bins with broken lids, which citizens complain admit rainwater, insects, rats and other critters, and contribute to litter-strewn residential streets. It is not hard to figure out why so many lids crack when you observe the collection process, as Grand Jurors did, and see the lids slam against the truck chassis when the bins are emptied.

The Environmental Services Department does not offer discounts of any kind. Homeowners who must replace bins that fail in less than 10 years do get a break from the City's \$70 replacement fee. They are charged only \$7 for every year the damaged bin was in use.

Truck repair and maintenance backlog

The City's Fleet Services Department purchases and provides the Environmental Services Department with the automated collection trucks under a similar "piggyback" contract arrangement with the City of Los Angeles. In fiscal year 2016, ESD was assigned 97 automated refuse collection trucks, which were used to collect refuse on 67 automated routes in the City. The department admits 36 of them are beyond the normal service life,

or older than seven years, the typical lifespan for the rigs, which cost more than \$300,000 each. The Grand Jury was told seven to 10 of the automated collection trucks break down every day. Because of such breakdowns, a fleet of vehicles is kept in reserve as replacements for those that break down.

Towing the breakdowns is also an expensive proposition. The City, which once had its own large-vehicle tow truck, recently sold it. It now contracts towing to a private operator. The Grand Jury learned that in a six-month period last year, 169 automated refuse collection trucks had to be towed at a cost to taxpayers of \$600 to \$800 per tow. The Grand Jury was also provided records showing there are many days when more than 30 of the fleet were listed in nonoperational status. Most were waiting for repairs or maintenance by the Fleet Services Department. That suggests \$6 million to \$9 million dollars of taxpayer money was spent to deal with a maintenance and repair system facing numerous challenges.

Despite repeated requests to Fleet Services, the Grand Jury was unable to obtain documents detailing the extent of the current backlog in repairing and maintaining the automated collection trucks. Grand Jurors were told the Fleet Services record-keeping computer system is antiquated, prone to breakdown, and currently in the midst of an overhaul.

Early in 2016, the City received the first of a new fleet of automated refuse collection trucks powered by cleaner-burning compressed natural gas (CNG). The 25 new CNG automated refuse collection trucks on order will eventually enable the City to retire many of its aging, unreliable, and high-maintenance diesel-powered trucks that are long overdue for retirement.

A few years ago, the City moved its fire truck repair and maintenance operation to the ESD Miramar Operations Center, taking over a majority of the large-vehicle repair and maintenance bays and the mechanics who work in them during the day. That relegated repair and maintenance of refuse trucks to the second and third shifts, which are populated by the most recent hires and least-experienced mechanics. Sharing the space and personnel with the Fire Department, by all accounts, has exacerbated the Fleet Services repair and maintenance backlog for refuse collection trucks. Fleet Services is working to move the fire truck repair and maintenance operation to a new leased facility elsewhere but, so far, not enough funding is available to complete the move.

All of the City's automated refuse collection trucks are fitted with the same lift-arm mechanism that grabs, lifts, and empties the bins. With each truck averaging hundreds of residential pickups each day, the truck lift arms suffer a great deal of wear and tear, break down often, and can damage bins if not operating properly. This combination of lesser-quality bins, aging collection trucks, and poorly maintained lift arms has contributed to a rapid rise in the number of damaged bins.

FACTS AND FINDINGS

Fact: Some San Diego City Councilmembers are providing free replacement refuse bins to individual constituents.

Fact: Some City Councilmembers justify the practice as support for low-income citizens, seniors, or the disabled.

Fact: Council Policy 100-06 makes no mention of an approved use of CPPS funds for “*new trash containers for persons with disabilities, senior citizens, and/or low-income constituents.*”

Fact: Council Policy 100-06 expressly prohibits using CPPS funds for any private purpose.

Fact: No verification is made that those receiving free replacement refuse bins are low income, senior citizens, or disabled.

Fact: No public mention is contained on City websites that programs exist whereby residents may qualify for free replacement refuse bins.

Fact: Waste Management Regulation R-009-10 states damaged refuse containers that are not repairable must be replaced at the customer’s expense.

Finding 01: Some San Diego City Councilmembers are using questionable procedures to provide free replacement refuse bins that appear to violate Council Policy 100-06 and Waste Management Regulation R-009-10.

Fact: More than 11,000 black refuse bins were replaced and paid for by homeowners in the last fiscal year.

Fact: Several hundred homeowners who live in three council districts paid nothing for their replacement refuse bins in the last fiscal year.

Finding 02: Programs used by three San Diego City Council districts to provide free replacement refuse bins are inequitable.

Fact: A majority of black refuse bins now in use in the City of San Diego are beyond their normal service life.

Finding 03: A majority of black refuse bins now in use in the City of San Diego are damaged and should be replaced.

Fact: San Diego relies on the City of Los Angeles to select suitable refuse bins and automated collection vehicles.

Fact: San Diego does not independently test refuse bins and collection vehicles.

Finding 04: The City of San Diego fails to select the best refuse collection equipment and bins by simply choosing to select the least expensive.

Fact: The number of complaints of City trucks damaging refuse bins has nearly doubled in three years.

Finding 05: The City of San Diego needs to improve the maintenance and repair of aging refuse collection vehicles and lift arms.

Fact: Repair and maintenance of fire trucks at the ESD Miramar Operations Center has priority over repair and maintenance of automated refuse collection trucks.

Fact: Repair and maintenance of automated refuse collection trucks is relegated to the new hires and least-experienced mechanics.

Finding 06: Repair and maintenance of automated refuse collection trucks is negatively impacted by having to share space and personnel dedicated to fire trucks.

Fact: The ESD must maintain an expensive fleet of automated refuse collection trucks in reserve because of frequent breakdowns.

Fact: There are many days when dozens of automated refuse collection trucks are listed in nonoperational status with most waiting for repairs or maintenance.

Finding 07: Not enough mechanics are assigned to repair and maintenance of automated refuse collection trucks.

RECOMMENDATIONS

The 2016/2017 San Diego County Grand Jury recommends the San Diego City Council:

17-11: Amend the Municipal Code to establish procedures whereby severely damaged refuse collection bins beyond their normal service life, as well as any that are destroyed or damaged by collection vehicles, are replaced and delivered at no charge.

17-12: Amend Council Policy 100-06 to more clearly define what CPPS funds can and cannot be used for.

17-13: Establish a process to provide oversight of CPPS spending.

The 2016/2017 San Diego County Grand Jury recommends the Mayor of San Diego:

17-14: Urge the Fleet Services Department to speed up the process of moving the Fire Vehicles repair facility out of the ESD Miramar Operations Center maintenance yard as soon as practical.

17-15: Advise the Environmental Services Department to develop specifications and procedures for the selection of more-durable refuse collection bins.

17-16: Urge the Fleet Services Department to improve repair and maintenance of automated refuse collection vehicles to limit the damage inflicted upon bins during the collection process.

17-17: Advise the Fleet Services Department to provide a sufficient number of experienced mechanics and other personnel, or contract with third-party vendors to reduce the backlog and long delays in repairing automated refuse collection vehicles.

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>
San Diego City Council	17-11 through 17-13	06/12/17
Mayor, City of San Diego	17-14 through 17-17	06/12/17