



2016
Annual Report
Office of the
San Diego City Attorney



A Message From City Attorney Mara W. Elliott

I am honored to serve as your newly elected City Attorney, and pleased to present this Office's Annual Report for 2016.

As your City Attorney, my job is to protect our city and the interests of all San Diegans. My priorities are based on your priorities. My office will work with all City

officials and every community to guarantee the responsible management of public funds, and the fairness and efficiency of neighborhood services. We will enforce the laws that were written to protect our environment and natural resources, to preserve the character of our communities, and to halt unscrupulous business practices. We will protect taxpayers by defending the City from lawsuits and, even when the City is at fault, fighting for judgments that are fair and appropriate. We will zealously defend the city's interests, but do so in keeping with our shared values as San Diegans and in a way that we can always be proud of. We will prosecute the criminals who harm our quality of life or endanger our citizens, especially our children, the elderly, and the most vulnerable among us. We will work to put greater resources into our Neighborhood Justice Unit so that families feel safe in every part of every neighborhood, and we will work hard to build bridges and strengthen trust in all our communities. We will increase our vigilance in protecting consumers and our environment, and continue to create programs that promote principles of restorative justice and early intervention in dealing with young and low-level offenders. And we will work hand in hand with our law enforcement partners to prioritize neighborhood safety, crack down on hate crimes, and protect victims of domestic violence and abuse.

Thank you for the opportunity to lead the City's finest municipal law firm, and for the honor of your trust.

Sincerely,

Mara W. Elliott

San Diego City Attorney

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The Office of the San Diego City Attorney

[The Office of the San Diego City Attorney](#) is an independent office that protects the interests of our city and its residents. The City Attorney advises the Mayor, City Council, and all City departments, prosecutes and defends lawsuits and cases to which the City is a party, and prosecutes person charged with violations of State and local laws occurring within the City's jurisdiction for misdemeanor offenses. The City Attorney is accountable to the people and serves the public.

COMMITTED TO SERVING OUR CLIENTS

The San Diego City Attorney's Office is divided into four divisions. Each division is subdivided into units and sections based on specializations:

- [The Civil Advisory Division](#) advises the City Council, the Mayor, and all City departments.
- [The Civil Litigation Division](#) prosecutes or defends, as the case may be, civil lawsuits in which the City is a party.
- [The Criminal Division](#) prosecutes criminal misdemeanors and infractions committed within the City limits.
- [The Community Justice Division](#) defends our quality of life by protecting consumers, our neighborhoods, and our environment.



The Office's Mission

The City Attorney's Office protects the City of San Diego through its dedication to justice and the welfare of our people. We advise the City on the law, the responsible management of public funds, and the fairness and efficiency of neighborhood services. We enforce and prosecute laws that protect our natural resources, ensure fair wages, strengthen community character, and halt unscrupulous business practices. We protect the taxpayer by defending the City from lawsuits, and we prosecute crimes that harm our quality of life and endanger our citizens, especially the most vulnerable. We live up to the highest standards of ethics, performance, and service.



The Advisory Division

The Advisory Division, which is led by Assistant City Attorney Mary Nuesca, is comprised of six sections.

The Economic Development Section

Supervised by Chief Deputy City Attorney Kevin Reisch, the six attorneys in the Economic Development Section provide legal advice concerning local economic development programs, and they advise the City and the Successor Agency to the former Redevelopment Agency of the City of San Diego (Successor Agency) with respect to winding down redevelopment operations and various post-redevelopment matters. The attorneys prepare legal memoranda, reports, and resolutions, and drafted, negotiate, and review sophisticated contracts and documents.

With respect to local economic development programs, the attorneys assist staff with the creation, funding, and operation of assessment districts, including Maintenance Assessment Districts (MADs), Business Improvement Districts (BIDs), and the Tourism Marketing District (TMD). Further, they assist City staff with issues and agreements involving Community Development Block Grant (CDBG) and Transient Occupancy Tax (TOT) funds and Community Parking Districts. The attorneys advise staff regarding the City's Storefront Improvement Program, the Small Business Enhancement Program, the Foreign-Trade Zone, and other programs and initiatives that increase economic development. The attorneys advise the Council Committee on Economic Development and Intergovernmental Relations and provide legal

support related to local boards, such as San Diego Workforce Partnership, the International Affairs Board, and the advisory panel that decides appeals of certain City-based property tax assessments.

With respect to post-redevelopment functions, the attorneys advise the City as Successor Agency and the City as Housing Successor, attend Oversight Board meetings, and work with staff to protect and preserve public assets and on projects, such as the continued buildout of the former Naval Training Center (Liberty Station), implementation of the North Embarcadero Visionary Plan, the urban park adjacent to the Horton Plaza Retail Center, and numerous affordable housing projects.

Highlights of 2016

Financing Districts, Assessment Districts, Parking Districts, and Related Programs

- Prepared documents for the formation of the Otay Mesa Enhanced Infrastructure Financing District, which will provide a reliable stream of property tax revenue to finance construction of public infrastructure in the Otay Mesa area.
- Advised on a detailed feasibility analysis for potential formation of one or more Community Revitalization and Investment Authorities in San Diego.
- Facilitated the ongoing operation of 64 MADs and 18 BIDs throughout the City, including the approval of agreements to provide services (e.g., landscape maintenance, consultant services, and right-of-entry agreements), the revision of agreements to reflect changes in the City's procedural ordinance for MADs, and the provision of advice regarding compliance with federal, state, and local laws in addition to the City's internal policies and procedures.
- Advised with respect to the Council-approved formation of the La Jolla MAD, which will provide funding for improvements and activities beyond what the City currently provides, and on the potential future formation of several other MADs.
- Addressed legal issues addressed in City audits.
- Overhauled the City's procedural ordinance for MADs and advised on the collection and use of property-based assessments.
- Analyzed legal issues related to the ongoing operation of the Downtown Property and Business Improvement District.
- Assisted with legal issues related to the ongoing operation of the TMD, which levies assessments that finance marketing and promotional services for San Diego.
- Drafted numerous documents and provided legal advice in obtaining approval of the FY 2017 annual plans and budgets for the City's six Community Parking Districts.
- Provided legal advice and drafted documents related to Phase 1 of the East Village Green Project, which includes the design of street and park improvements and a public parking

garage to be funded through a combination of development impact fees and parking meter revenue from the Downtown Parking District.

State and Local Funding and Incentive Programs

- Assisted with the City's implementation of the FY 2014-2016 Economic Development Strategy (EDS), as well as its formulation of the FY 2017-2019 EDS.
- Provided legal advice related to contracting and administration of the City's various incentive programs, such as: the Business and Industry Incentive Program, Small Business Enhancement Program, Storefront Improvement Program, San Diego Regional Loan Fund, and Small Business Micro Revolving Loan Fund, which offer benefits such as permit assistance, tax incentives, fee reductions, and financing to qualifying local businesses.
- Advised City staff with respect to new potential business development and governmental incentive programs, including the Water and Sewer Capacity Bank, Capacity Building Initiative, Activation Grants, Place-making Loans, and other fee payment incentives.
- Drafted, reviewed, and approved agreements to facilitate execution of the City's Economic Development and Tourism Support Program, which promotes the City as a visitor destination.
- Drafted an ordinance to establish an Urban Agriculture Incentive Zone, which will permit the City to enter into contracts with property owners who restrict the use of vacant, unimproved, or otherwise blighted parcels for small-scale production of agricultural crops (such as community gardens) and other agricultural uses in exchange for favorable property tax benefits.
- Advised on the former San Diego Regional Enterprise Zone and its wind-down activities resulting from the State's elimination of enterprise zones effective January 1, 2014, including the transition of program offerings and funding to State and local replacement business incentive programs.
- Assisted City staff in securing services of outside consultants, and addressing legal aspects, to create online portals and specialized software that will enable the City to streamline zoning and permitting services and to process applications for local awards of grant funds.

Local Administration of Federal Programs

- Advised on a substantial amendment to the City's FY 2015-2019 Consolidated Plan for CDBG and other federal funding sources, and drafted numerous agreements for projects and programs that achieve the goals of the Consolidated Plan.

- Advised regarding the City's CDBG Reinvestment Initiative, establishing new City programs for the expenditure of more than \$200 million of program income anticipated over the next 10 to 15 years.
- Prepared a Memorandum of Understanding (MOU) with the SDHC for implementation of the City's first Affordable Housing Revolving Loan Fund financed with CDBG program income.
- Advised regarding the designation and formation of a federal promise zone in San Diego for a ten-year period beginning June 6, 2016, which aims to revitalize high-poverty areas by creating jobs, increasing economic activity, improving educational opportunities, reducing violent crime, leveraging private capital, and assisting local leaders in navigating federal programs.
- Provided legal advice related to administration of the City's grant program with the Federal Office of Economic Adjustment, which funds research and development of local business opportunities to stabilize the local economy and support existing resources whenever federal defense spending decreases.

Post-Redevelopment Activities

- Assisted the City, as Successor Agency, in complying with State law related to the winding down of redevelopment operations and fulfillment of contractual and financial obligations.
- Prepared and evaluated numerous documents with respect to implementation of the Long-Range Property Management Plan, which establishes the State-approved use or disposition of each real property asset owned by the Successor Agency, including the disposition of many properties to the City for governmental use and future redevelopment.
- Provided extensive legal advice to the Successor Agency's financial team concerning two rounds of redevelopment bond refunding (i.e., refinancing at a more favorable interest rate). The first involved 22 bond series and closed in early 2016, and the second involved 13 bond series and closed in early 2017, resulting in substantial cost savings.
- Negotiated an out-of-court resolution with the County of San Diego that will result in the allocation of approximately \$41 million in City Heights property tax increment revenues to the City's General Fund over the next 25 years that the County initially indicated would be allocated to other local taxing entities.
- Provided legal advice and facilitated the completion of numerous documents related to the construction of the Bayside Fire Station project in the Little Italy neighborhood, which will include a three-story fire station, below-grade parking, and sustainability features, such as a green roof and a photovoltaic system.

- Facilitated the completion of numerous documents and the resolution of complex issues related to the development of an urban park on Broadway Avenue next to the Horton Plaza Retail Center.
- Drafted and negotiated a proposed Disposition and Development Agreement (DDA) with a private developer for construction of up to 125,000 square feet of commercial and industrial space and creation of at least 72 new jobs in Valencia Business Park.
- Provided legal advice and assisted in preparation of a Request for Proposal (RFP) for adaptive reuse of the former Central Library site in downtown San Diego.
- Drafted agreements and provided legal advice in connection with the Park Boulevard At-Grade Crossing Project, which involves the \$13.8 million extension of Park Boulevard to Harbor Drive across six existing railroad tracks and will improve traffic flow in the East Village area surrounding Petco Park and provide a more direct link to Balboa Park.
- Provided legal advice and transactional support related to continued redevelopment of the former Naval Training Center, now known as Liberty Station, including transactions related to future construction of three new hotels near Harbor Drive.

Affordable Housing

- Facilitated the City's implementation of the amended Affordable Housing Master Plan, which outlines priorities and strategies for effective use of the City's housing assets.
- Coordinated with City staff to comply with complex affordable housing requirements in Senate Bill (SB) 341 and other legislation affecting the City as Housing Successor to the former Redevelopment Agency, including the City's completion of its annual audit report.
- Provided legal advice in connection with the proposed establishment of a Transit-Oriented Development Revolving Loan Fund for affordable housing projects, involving the City, Civic San Diego, and the SDHC.
- Negotiated and drafted an Owner Participation Agreement (OPA) with a nonprofit affiliate of the SDHC providing a City loan of nearly \$2 million in affordable housing funds to help finance the substantial rehabilitation of the single room occupancy New Palace Hotel, which will be made available for rental by low-income senior citizens.
- Drafted and negotiated a DDA related to the Seventh & Market Project, a 55,000 square foot mixed-use project that will include market-rate apartments, affordable apartments, office space, and retail, hotel, and public uses.
- Drafted and negotiated a DDA related to the Park & Market Project, a mixed-use project that will include 427 residential units (including 86 affordable units), commercial and retail space, public open space, and underground parking.



- Provided legal advice and negotiated and drafted documents in connection with the conversion, from temporary construction financing to permanent financing, for large-scale affordable housing projects, including the COMM22 family and senior citizen housing projects and the Celadon at Ninth & Broadway housing project.
- Advised on the RFPs and the Exclusive Negotiation Agreement for the proposed development of the 8.5-acre Hilltop & Euclid site with a mixed-use residential project.
- Assisted staff in finalizing implementation of an Owner Participation Agreement with a nonprofit affiliate of the SDHC, providing a City loan of \$3 million to help finance the substantial rehabilitation of the historic single room occupancy Hotel Churchill, which had been in a substandard condition. All rehabilitated dwelling units will be supportive housing units available for the special-needs population who are homeless or at risk of homelessness.
- Facilitated the City's grant of \$458,000 in affordable housing funds to the SDHC to rehabilitate multiple properties in North Park and North Bay that will be subject to long-term affordable housing restrictions.
- Provided legal advice and prepared a MOU with the SDHC to provide housing for participants in the new San Diego Misdemeanors At-Risk Program, which offers diversion to treatment for chronic misdemeanor offenders with substance abuse problems.

The Government Affairs & Finance Section

The eight full-time attorneys in Government Affairs & Finance provided legal advice and support to the Council, Mayor's Office, City Clerk, Independent Budget Analyst, City Auditor, City Treasurer, Financial Management, Commission on Arts and Culture, Redistricting Commission, Funds Commission, Civil Service Commission, Salary Setting Commission, Council Charter Review Committee, Council Committee on Rules, Council Committee on Budget and Government Efficiency, Audit Committee, and the Ethics Commission. Supervised by Chief Deputy City Attorney Prescilla Dugard, the section provided legal opinions and analysis concerning core municipal functions relating to the City Charter, San Diego Municipal Code (Municipal Code), Mayor-Council form of governance, open meeting laws, public records, record retention, ethics and conflicts of interest, boards and commissions, taxes, special events, municipal finance, debt management, corporate partnerships, contracts, and elections.

The section's Public Finance, Securities and Disclosure unit, under Deputy City Attorney Brant Will, advised the City's Chief Financial Officer and reporting departments, including Debt Management, Financial Management and the City Comptroller. The unit provided legal advice to the City and its related entities regarding disclosure obligations with respect to state and

federal securities laws. The attorneys also provided advice to the Council Committee on Budget and Government Efficiency and the Budget Review Committee.

Highlights of 2016

Government Affairs

This was one of the busiest election seasons in recent memory. This section provided the legal advice and legislative drafting to place a record 22 ballot measures before voters, including 20 measures initiated by the City Council and two controversial citizens' initiatives involving the construction of a new stadium in East Village and the Chargers. Each of the measures required significant legal work.

- Drafted ballot measures, analyzed related legal issues, and wrote Impartial Analyses, ballot titles, and summaries for the measures on the June and November ballots under tight time constraints. This included constitutional and statutory legal analysis and memoranda for the Council regarding a ballot measure to change the City's candidate election process and eliminating the idea that one can win in the primary with 50%+1 of the vote, and a ballot measure requiring certain ballot measures to be on the November ballot.
- Drafted an ordinance to have voters decide whether San Diego High School can stay in Balboa Park and analyzing the vote required for its passage.
- Provided legal support to the Clerk on all legal issues related to certification of the Chargers and Briggs/Frye initiatives and the November ballot matters and candidate issues.
- Updated and amended 34 City conflict of interest codes.
- Drafted an ordinance rewriting the City's redistricting laws in the Municipal Code.
- Drafted an ordinance for the Ethics Commission to update the Election Campaign Control Ordinance.
- Advised on board and commission issues and appointments.
- Staffed the Charter Review Committee, the Rules Committee, and Council staff docket briefings.

Corporate Partnerships and Development

- The section worked closely with the Corporate Partnership Program, providing legal advice and support on ongoing and new partnerships, and with new partnership opportunities, including catering for the City's iconic downtown central library and on golf equipment for the City's Golf Division, providing for equipment to enhance City golf courses.

Arts and Culture

- Provided legal advice and support to City in the allocation of more than \$6 million dollars in funding from TOT to over 80 nonprofit organizations in the City for arts and culture projects and events.
- Provided legal advice and support in the procurement of artists within the context of the City's Public Art Program, including handling the artwork in the City's civic art collection.

Treasurer Functions

- Advised on enforcement of the City's newly enacted Earned Sick Leave and Minimum Wage Ordinance and the Cannabis Sales Tax.
- Advised on a multimillion dollar RFP for Parking Citation Processing System (PCPS) contract. The PCPS provides all of the City's back- end citation processing for parking citations. This was a high priority for the Mayor's office.

Municipal Finance

- Worked closely with the Chief Financial Officer and Debt Management on more than a billion dollars in bonds, either refunded or issued, resulting in millions of dollars of savings.
- The City as the Successor Agency to the former Redevelopment Agency successfully refunded over 22 outstanding series of bonds issued by the Redevelopment Agency. The refunding bond issuance included \$145 million in tax-exempt bonds and 30 million in federally taxable bonds.
- In March, the City, through the PFFA, issued approximately \$403 million in Sewer Revenue Refunding Bonds, which reduce costs for the Sewer Utility and benefits ratepayers.
- In May, the City completed the refunding of the 2007 Ballpark Refunding Bonds. This refunding by the PFFA was delayed for approximately one year due to litigation. The City prevailed and the lower interest costs of the \$103 million refunding bonds resulted in substantial savings to the General Fund.
- In May, the City, again through PFFA, refunded approximately \$523 million in Water Revenue Bonds and issued approximately \$40.5 million in new money bonds for the Water Utility reducing costs for the utility and again benefitting ratepayers.
- In June, Community Facilities District No. 4 (Black Mountain Ranch Villages), a City-administered Mello-Roos district, issued approximately \$16.4 million in refunding and new money bonds resulting in relief to taxpayers in the district.

- Worked with the City Council, the San Diego Housing Authority, and the SDHC to authorize nearly \$280 million in multifamily revenue bonds that will provide 1,078 low-income housing units in various neighborhoods in the City.
- In December, the City entered into a lease financing structure with the San Diego Convention Center Corporation and the State Infrastructure and Economic Development Bank to finance improvements to the Convention Center, including the replacement of the Sails Pavilion Roof. This borrowing is the first of its kind for the City and, at \$25.5 million, the largest such transaction undertaken by the Infrastructure Bank. The City and the Corporation were co-lessees for this transaction.
- Began work on several deals totaling nearly \$500 million, expected to close in 2017.
- Worked with the Debt Management Department and various asset-owning departments in the acquisition of equipment and software through lease-purchase arrangements, including a \$30 million Master Lease Agreement with Banc of America Public Capital Corporation (BAPCC) to support fleet replacement through the Equipment and Vehicle Finance Program. Also with BAPCC, the City financed the acquisition of an Infrastructure Asset Management system in an amount of \$10 million. The City financed the acquisition of energy efficient adaptive control street lamps through GE Government Finance in an amount of \$30 million and the acquisition of approximately 14,000 energy efficient adaptive control street light fixtures.

Public Safety, Labor, Employment & Training Section

Deputy City Attorney Joan Dawson supervises the team of deputies who provide legal support to the City's Human Resources, Personnel, and Risk Management Departments. The deputies:

- Advised the City's labor negotiations team in ongoing meet and confer matters under the Meyers-Milias-Brown Act, the state collective bargaining law binding on the City.
- Worked with staff and Council in 2015 and 2016 to obtain approval multi-year collective bargaining agreements with each of the City's six recognized employee organizations.
- Provided legal support on all matters that affect City employees and members of City boards and commissions. Advised on federal and state employment laws, including laws relating to harassment, discrimination, retaliation, reasonable accommodation, protected leaves, due process, workplace violence, and privacy rights.
- Advised on issues concerning immigration and constitutional equal protection laws.
- Advised several boards and commissions, including the Citizens' (now named the Community) Review Board on Police Practices, the Human Relations Commission, and the Defined Contribution Trustee Board for the City's defined contribution plans.

- Prepared the City's annual salary ordinance and related Council actions.
- Advised City departments and City officials on California Public Records Act requests, and obtained workplace violence restraining orders when necessary to ensure the safety of City employees.
- Performed all legal work required for implementation of the City's Earned Sick Leave and Minimum Wage Ordinance, which was approved by City voters in June 2016. This included drafting an amendment to the Earned Sick Leave and Minimum Wage Ordinance that established the City's enforcement office, developed the procedures for administrative enforcement, strengthened the penalties and damages for non-compliance, and clarified ambiguities in the law. On an ongoing basis, we assist the City Treasurer in analyzing and interpreting the Earned Sick Leave and Minimum Wage Ordinance as well as responding to inquiries from the public. In 2016, our published memos on the Earned Sick Leave and Minimum Wage Ordinance included *Local Minimum Wage Enforcement, Applicability of Earned Sick Leave and Minimum Wage Ordinance to Public Agency Employees; Private Businesses on Public Agency Land; Employees Traveling Through the City; and Businesses Located on Federal Enclaves and Interpretation of San Diego Municipal Code Section 39.0105(g)*. Worked with City staff to ensure compliance with key developments in the federal Affordable Care Act and Fair Labor Standards Act, and with Proposition B, the voter-approved pension reform act.
- Issued memos on the *Authority Over Public Disclosure of Body Camera Videos and Third-Party Videos Retained by the San Diego Police Department (SDPD), Recruitment Incentives, City Council Authority to Adopt Ordinance Pertaining to the Citizens' Review Board on Police Practices*, and guidance on the legal issues related to *Rebuild San Diego*, a Charter amendment approved by City voters in June 2016. We also published legal opinions on *Retiree Health Reimbursements for Health Eligible Retirees, Payment of Workers' Compensation Benefits to Public Safety Officers Retiring Out of the Deferred Retirement Option Program, Authority to Sponsor an H1B Visa Applicant, and Constitutionality of San Diego Municipal Code section 26.16*. We also advised on and drafted an implementing ordinance related to open government and disclosure of records contained on private devices, and we worked with City staff and provided legal advice on Proposition G, which amended San Diego Charter section 43(d) relating to the Citizens' (now Community) Review Board on Police Practices.

Deputy City Attorney Linda Peter leads the deputies assigned to the City's public safety departments, including the Police Department, the Family Justice Center, Fire-Rescue, Lifeguard Services, Emergency Medical Services, and the Office of Homeland Security. Achievements include:

- Court appearances on approximately 53 *Pitchess* motions.
- Filed 24 firearms petitions.
- Reviewed and updated 16 Department policies and procedures.
- Reviewed 67 investigative reports, 72 cases involving various labor and employment issues, and almost 700 subpoenas.
- Assisted their respective Departments to secure grant funds, including \$235,604 for the DNA Backlog Reduction Program, \$736,605 for the Internet Crimes Against Children Task Force, \$2.6 million for the National Incident Based Reporting system, \$1.3 million for a Selective Traffic Enforcement Program grant to reduce the number of persons killed and injured in crashes involving alcohol, including bicycle and pedestrian crashes, a \$2.1 million COPS grant for front line enforcement activities and/or equipment, and \$546,793 for a Justice Assistance Grant for the purchase of ruggedized laptops and a document management system to migrate police records and data from CRMS to NetRMS.
- Negotiated MOUs, MOAs, and contracts including an agreement for a free trial of lie detection equipment; a bid for flooring; license agreements for use of office space; a proposed MOU with a federal agency regarding cyberspace crimes; a proposed contract for an electronic citation system; an MOU with the Border Patrol for use of the Police Department's sniper range; a multi-agency MOA for the Domestic Cannabis Eradication Suppression Task Force; a multi-agency MOU for a Computer and Technology Crime High-Tech Response Team to investigate, apprehend, and prosecute high-tech computer-related identity theft crimes; an MOU with the San Diego Military Family Collaborative and the Community Prevention and Safety Alliance to implement crime-free multi-house programs in military housing developments; an MOA with the County Sheriff for reimbursement of overtime expenditures for entering unregistered latent prints into an automated fingerprint ID system, enhancing the ability to identify fingerprints and solve crimes; and updating the license agreements at the Family Justice Center to reduce some insurance requirements authorized by Risk Management and incorporate provisions required by the City's Real Estate Assets Department.
- +Resolution of an ongoing issue concerning the City's role in administering the emergency response contract that had been in dispute for years, and working with the City's ambulance provider to ensure that their contract obligations are fulfilled.
- Assisted the Lifeguard Division in updating its Boating Safety Unit. And in 2016, the Civil Service Commission issued a favorable ruling in a personnel matter that Mr. Brazier handled for the Fire-Rescue Department.
- Participated on a City-wide Task Force for drones, drafting a drone ordinance for the City, and researching the ways the Fire-Rescue Department may use the drones.
- Aided Homeland Security in updating emergency procedures in the Municipal Code.

- Worked with Homeland Security to ensure the City continues to receive federal funding to prepare for natural or man-made disasters.
Drafted mutual aid agreements for the Fire-Rescue Department, ranging from routine training exercises to the re-designation of the Fire-Rescue Department as the sponsoring agency for the National Urban Search and Rescue California Task Force 8. Under the umbrella of the Department of Homeland Security and the Federal Emergency Management Agency (DHS/FEMA), California Task Force 8 is one of 28 Federal Urban Search and Rescue Teams (US&R) ready to respond to a multitude of natural and man-made disasters. Task Force 8 is one of only eight such teams in the state of California.
- Argued a case at the Fourth District Court of Appeal following the revocation of a police permit for a nude adult entertainment establishment (Cheetahs). In a published opinion, the Court unanimously upheld revocation of the permit, found the City's Municipal Code constitutional, and determined the Police Department's application of the regulations complied with due process.
- Reviewed and finalized a complex contract for gunfire location and alert services. Prepared two Invitations to Bid, one for toxicology testing services for the SDPD Forensic Science Unit, and one for live foreign language telephone interpretation services for the SDPD's Communications Unit.
- Prepared an ordinance to repeal the sunset clause of the Neighborhood Parking Protection Ordinance (NPPO), sometimes referred to as the Oversized Vehicle Ordinance, and developed a training bulletin to provide direction and clarification for officers enforcing the regulations.
- Trained SDPD command staff on the Public Safety Officers Procedural Bill of Rights Act.
- Advised SDPD on matters related to homelessness, including compliance with existing lawsuit settlements, property impounds, and other enforcement related questions. This involved regular meetings and worked with the legal advisors for other City departments, as well as the litigation attorneys, to provide comprehensive and coordinated legal advice.
- Researched and analyzed The Adult Use of Marijuana Act, known as Proposition 64, to address complex legal questions and work with SDPD to revise its enforcement procedures, and educate officers on the new laws.
- Drafted an ordinance amending the public safety marijuana-related sections of the Municipal Code, including guidelines for medical and non-medical marijuana-related activities.
- Drafted an ordinance prohibiting possession and sale of synthetic drugs, commonly known as "spice" and "bath salts," in response to a series of overdoses in San Diego. The ordinance addresses all aspects of synthetic drugs currently unregulated by state law.

- Advised SDPD on the legal requirements of a Presidential Executive Order significantly impacting acquisition of certain police equipment, and on the City's options for regulation of "mini-satellite" horse racing.
- Responses to almost 700 subpoenas that were served on the SDPD. This included the handling of out of state criminal subpoenas, the availability of sanctions for abuse of process, and trial subpoenas issued by the State Bar.
Oppositions to 16 *Pitchess* motions.
- Research regarding the impact of state enacted legislation on Municipal Code provisions that regulate tobacco and e-cigarette retailers, the application of the smoke-free workplace requirements of Labor Code 6404.5 to smokers' lounges that also sell alcohol, and of enacted legislation on Municipal Code provisions related to purchasing cellphone surveillance equipment.
- Research associated with establishing a "designated online transaction space," known as DOTS, resulting in a pilot program where a parking space will be designated as a location for members of the public to carry out or complete on-line transactions and private sales.
- Extension of the current towing dispatch contract for an additional two years to ensure uninterrupted dispatch services while the Police Department implements the upgrade to its Computer-Aided Dispatch (CAD) system.
- Worked with the Police Department's Air Support Unit on a RFP for helicopter maintenance for the Police Department's fleet of four helicopters.
- Reviewed contracts for the purchase of body worn camera (BWC) equipment, updated and refined the SDPD's BWC procedures, and participated in a working group to develop a County-wide protocol for release of BWC video relating of officer-involved shootings.
- Advising on First Amendment issues pertaining to special events during 2016, including a visit from President-elect Donald Trump, the Major League Baseball All Star Game, Comic Con, and a meeting of the International Association of Chiefs of Police.
- Drafted a Training Bulletin and updated the SDPD's procedure relating to interviews of minors at school.
- Worked with SDPD on an ordinance to repeal a portion of the Municipal Code relating to law enforcement inspection of hotel guest registers upon demand, and advised on protocol when the County Health Department needed access to the yards of private residences in parts of the City to spray for the Zika virus.

The Public Services Section

Led by Interim Chief Deputy City Attorney Steve Lastomirsky, the seven attorneys in the Public Services Section provided advice to City departments, divisions and programs which include: Communications, Environmental Services, Energy Conservation and Management, Information Technology (IT), Purchasing and Contracting, Transportation and Storm Water, Library, Equal Opportunity Contracting, Office of ADA Compliance and Accessibility, CityTV, Living Wage, Prevailing Wage and Wireless Technology Services. Additionally, attorneys in this section assist with other entities, including the Environment Committee, the Commission on Gang Prevention and Intervention, and the Sustainable Energy Advisory Board.

Highlights of 2016

Communications

- We drafted contracts and regulatory documents to facilitate the Communications Department's goals of promoting City programming in support of the local community, developing the City's online presence, better employing City social media accounts, and improving operational infrastructure. We also expanded legal support for the City's intellectual property and licensing needs by maintaining registered trademarks, compiling music licensing contracts, and clarifying licensing requirements for City projects.

Public Library

- We drafted and negotiated multiple contracts fostering the Library's goals of creating welcoming and innovative Library environments, improving access to Library materials and resources, developing innovative programming, expanding partnerships to sustain and improve the Library, and supporting creativity from Library personnel. One contract implemented a uniform and comprehensive radio frequency identification (RFID) system throughout all 36 Library locations that will provide patrons a simple and efficient way of checking out materials, improve circulation, and improve security, tracking, inventory, and organization.

Environmental Services

- We assisted on amending the Municipal Code amendments relating to solid waste franchise requirements in order to provide increase funding for implementation of the City's Zero Waste Plan. The Zero Waste Plan sets City targets of 75% waste diversion by 2020, 90% waste diversion by 2035, and Zero Waste by 2040. Successful

implementation of the Zero Waste Plan will extend the life of the Miramar Landfill and will maintain lower disposal costs for City-generated refuse.

- We also assisted with Municipal Code amendments to the Construction and Demolition (C&D) ordinance to increase minimum C&D diversion levels for regulated development to receive their full C&D debris diversion deposit. This contributes to achievement of the City's Zero Waste Plan by encouraging greater C&D diversion from development within the City.
- Our attorneys also provided advice on the City's Single-Use Carryout Bag Reduction ordinance and associated environmental impact report (EIR). The ordinance prohibited the use of plastic single-use carryout bags and limited the use of paper single-use carryout bags at regulated stores within the City. Additional projects included assisting with the procurement of services for the City's Landfill Gas Collection (LFG) system at Miramar Landfill and new cogeneration facilities to produce energy for the City's Pure Water Program and USMC Miramar (an ongoing multi-year process that involves collaboration between our Office, ESD, PUD, U.S. Marine Corps, and NAVFAC), and aiding with ongoing planning and procurement of potential new diversion structures and facilities for the Miramar Landfill, including Aerated Static Piles (ASP) at the Miramar Greenery, a Resource Recovery Facility, and an organics diversion facility. Those facilities were identified as potential diversion strategies within the City's Zero Waste Plan.
- Finally, we assisted with the ongoing process to update the General Development Plan for the Miramar Landfill. The GDP is a comprehensive master plan for the future development of the Miramar Landfill, such as for the expansion of current facilities and for the development of new solid waste facilities.

Storm Water

- We worked with Storm Water staff to assist with the implementation of a new storm water inspections regime, an escalating enforcement program, selection of environmental projects, and settlement discussions with the San Diego Regional Water Quality Control Board. Additionally, we coordinated with Division staff and with counsel and staff from the US Navy, the San Diego Unified Port District, and the San Diego Regional Airport Authority, to prepare for the remediation and final disposition of the boat channel at the former Naval Training Center, now known as Liberty Station. The parties are in final negotiations over the cleanup strategy and disposition plans for the boat channel.

- Other highlights included our role in assisting with planning and providing a legal framework for the proposed new Waterways Maintenance Plan, which would replace the extant Master Maintenance Program in 2018. Both the Waterways Maintenance Plan and Master Maintenance Program provide the framework for the Storm Water Division's maintenance of storm drain channels, pipes, and other facilities. Storm Water attorneys provided comprehensive advice to the department regarding CEQA compliance issues and permitting requirements.
- We also provided ongoing advice to the Division regarding numerous Clean Water Act and California Water Code compliance issues, including the adoption of new numerical targets for copper and zinc loads in Chollas Creek, analysis of the requirements of a new California state trash policy for waterways, regulations pertaining to the control of bacterial contamination in local waterbodies, and compliance with various San Diego Regional Water Board orders and directives. We reviewed recent decisions by the California Supreme Court regarding unfunded mandates and the responsibility of the State Water Resources Control Board to provide funds for the implementation of, and compliance with, water quality directives to local municipalities. Additionally, we provided legal support to the Storm Water Division regarding long-term planning and compliance costs, including analysis of Propositions 26, 218, and 13, and provided options for the City to manage future liabilities and costs associated with water quality control, compliance, and cleanup.

ADA

- We assisted in resolving numerous accessibility issues including accessible parking spaces, curb ramps and sidewalks, website accessibility, service animals, effective communication, and accommodations for various City programs. We also worked with staff to respond to a Department of Transportation investigation regarding a complaint about the accessibility of a parkway in front of a residence, and assisted with updating Administrative Regulation 96.20.
- One focus has been assisting with ensuring accessibility of technology. The Department of Transportation staff said they surveyed overall ease-of-use and content on the ADA portion of the City's website and were pleased that it included links to all City ADA-related policies and regulations and that it was easy to locate grievance procedures and contact information.

Information Technology

- We assisted the Department of IT with agreements related to the award winning redesign of the City's website, acquisition and implementation of fiber infrastructure for the improvement of the City's network, cybersecurity enhancements, and implementation of additional modules to make the City's SAP system more robust. Our legal advice also helped the City use grant funding to pay for the expansion of our emergency communications system to ensure interoperability with emergency responders in the region.

Purchasing & Contracting

- Our attorneys worked with Purchasing & Contracting staff to revise contract templates to make the procurement process more efficient. We also assisted the Equal Opportunity Contracting Division with enforcement of living wage and prevailing wage requirements, including debarment of a contractor that did not provide living wage payments to its employees.

The Public Works Section

The Public Works Section provides legal advice on the construction, operation and maintenance of City infrastructure, including the water and wastewater systems and the City's 3,000 mile transportation system, all among the largest in California. These lawyers also provide legal advice related to the construction and repair of park and recreation facilities, libraries, police, fire and lifeguard stations, airports, sports stadiums and the convention center. The Public Works Section also advises the City in purchasing and maintaining City vehicles and equipment.

The Public Works Section is an integral part of implementing the Capital Improvements Program, which is budgeted at \$421 million in fiscal year 2017.

There are nine lawyers in the Public Works Section who together present an impressive resume. Combined they have 137 years of legal experience, 102 years in the City Attorney's Office, and 80 years' experience in the Public Works Section. They include a mechanical engineer, a former Marine Corps reservist, a financial auditor, three former prosecutors, two former Eagle Scouts, two union officers, a former law school instructor, and a patent lawyer. Their academic achievements include one law school *Valedictorian*, one *Summa Cum Laude*, *Cum Laude*, a LLM in Securities and Financial Regulations, and a Masters Degree in American History. They include alumni of Theta Xi, Lambda Chi Alpha, and Phi Kappa Sigma. And they have a true native of Pacific Beach.



Construction at Miramar Water Treatment Plant two

These lawyers primarily serve as in-house counsel for the Public Utilities Department, the Public Works Department, and the Transportation Division of the Transportation and Stormwater Department. These departments generate a substantial amount of legal work because they collectively account for over 40% of the entire City budget and over 25% of all City employees, or roughly 350 employees for each of our eight lawyers. The day-to-day questions that come up with operating and maintaining the water, wastewater, and street systems consume most of our lawyers' time. In addition, last fiscal year the City awarded \$482 million in construction contracts, nearly all of it drafted or reviewed by the Public Works Section. The Public Works Section



also drafted or reviewed numerous contracts for services, supplies, and equipment necessary to keep City infrastructure, vehicles and equipment running smoothly.

The Public Works Section advised and represented the City at local, state and federal administrative proceedings and at mediation to resolve disputes with contractors and vendors. The lawyers provided legal advice in diverse areas of law including intellectual property, taxes and fees, competitive bidding, bonds and insurance, contracts, prevailing wages, the California

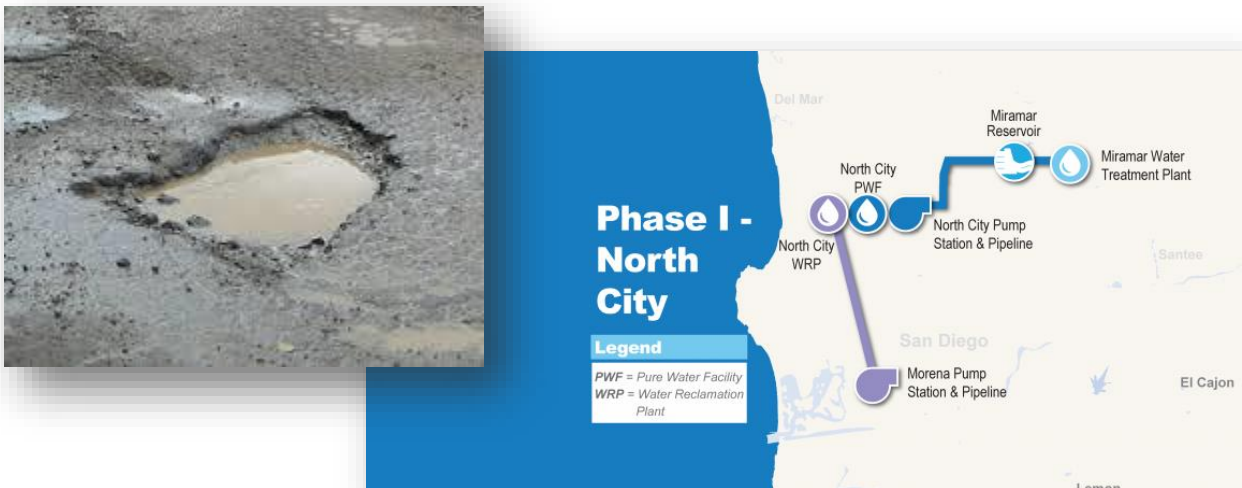
Environmental Quality Act, the Federal Clean Water Act, and the Safe Drinking Water Act. The lawyers may wear suits when they appear at City Council meetings, but they also wear boots and hard hats to help our City employees in the field to resolve legal issues quickly and inexpensively.

Most of the work the Public Works Section does is behind-the-scenes and protected by attorney-client privilege. On occasion, though, these lawyers take the lead on projects that are of public interest and knowledge. Here are a few highlights.

Highlights of 2016

Streets, streets, and more streets

- Complaints about potholes are common in almost every city. The City of San Diego is tackling the problem with a goal of repairing 1,000 miles of City streets in five years. The City is ahead of schedule having repaired almost 300 miles of City streets last fiscal year. No, our attorneys are not out there with boots or shovels, but we are in the background drafting contracts, providing legal advice, and helping resolve disputes – whatever we can to support City staff in this extra effort.



Pure Water San Diego

- The City is implementing Pure Water San Diego, a program which will offload the Point Loma Wastewater Treatment Plant by diverting wastewater and treating it to create 83 million gallons per day of potable water. The first phase of the project is underway, with the goal of producing 30 million gallons per day by late 2021. The Public Works Section

worked hard with City staff to create the contractual relationships and obtain the regulatory approvals necessary to implement the program. If the program is successful, by the year 2035 the City will be able to provide about a third of its water needs through wastewater recycling.

The Real Property & Land Use Section

The eleven attorneys in the **Real Property and Land Use Section** provided legal advice to the City on issues involving the management and leasing of the City's extensive real estate portfolio, and public and private development projects. Primary areas of responsibility included the Airports, Development Services, Facilities Financing, Housing, Neighborhood Code Compliance, Park and Recreation, Planning, Real Estate Assets, and various Stadium facilities, including Qualcomm, PETCO Park, and the Valley View Casino Center (Sports Arena). The lawyers frequently drafted memoranda of law, opinions, reports, resolutions, and ordinances for the City departments, as well as drafted and reviewed property-related contracts, documents, and correspondence. Additionally, these lawyers staffed and provided advice to the Planning Commission, Historical Resources Board, Hearing Officers, Airport Advisory Committee, Smart Growth and Land Use Committee, Park and Recreation Board, and the Housing Authority of the City of San Diego. They also provided the City departments with advice on conflict of interest, the Ralph M. Brown Act (open meeting law), and Public Records Act issues.

Real Property

- The Real Property attorneys assisted staff in the City's Real Estate Assets Department in managing the City's extensive portfolio of owned and leased property. The attorneys negotiated, drafted, and reviewed numerous real property-related contracts and associated documents, including purchase and sale agreements, leases, right-of-entry permits, and deeds. The attorneys also drafted and reviewed revisions to the San Diego Municipal Code, and assisted Department staff with legal issues involving key assets of the City, including Montgomery-Gibbs and Brown Field Airports, Qualcomm Stadium, PETCO Park, and the Valley View Casino Center. This assistance regularly involved interactions with other governmental agencies, such as the Federal Aviation Administration, Caltrans, various branches of the military, and other state and federal agencies.

Land Use

- The Land Use attorneys assisted City staff with all aspects of public and private development in the City, including land use entitlements, condominium conversions, telecommunication facilities, building code issues, community planning issues, financing issues, housing projects, and the associated environmental review. These lawyers reviewed environmental documents to ensure the City's compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and advised on compliance with the Multiple Species Conservation Program (MSCP), and the state and federal Endangered Species Act. In addition, the attorneys drafted or reviewed deferred improvement agreements, subdivision improvement agreements, reimbursement agreements for the construction of public facilities, public facilities financing plans, landscape maintenance agreements, development agreements, contracts for consultant services, grant applications and awards, right-of-entry permits, and special use permits. They also assisted staff with revisions to the Land Development Code, the General Plan, and Community Plans.

Highlights of 2016

Real Property

- Worked closely with City staff on implementing the Mayor's goal of expanding the number of City and Joint Use Parks, as well as updating the Park Master Plan.
- Assisted with securing valuable property rights for the City's downtown office space needs, including a lease-to-own agreement for the former Sempra building.
- Analyzed numerous legal issues and prepared San Diego City Charter amendments for the November ballot allowing San Diego High School to remain in Balboa Park, and streamlining use of the Mission Bay Park and Regional Parks Improvement Fund.
- Assisted with drafting and reviewing the Request for Proposals and lease agreement for the San Diego Polo Fields, an important regional youth soccer venue.
- Assisted with drafting and reviewing numerous use agreements for Qualcomm Stadium, including agreements with the Bowl Association, Auto Connection, and San Diego State University.
- Assisted with drafting numerous types of permits for recreational uses throughout the City, including the Mission Bay Golf Course, San Diego Visitor's Center in Mission Bay Park, and various tennis court facilities.
- Assisted with drafting and reviewing numerous leases for City-owned land, many of which replaced leases that had been in holdover status.

- Assisted with drafting and reviewing all documentation necessary to acquire property necessary for critical projects throughout the City, including the Pure Water Program and the Mid-Coast Corridor Transit Project.
- Processed amendments to the San Diego Municipal Code, including an alcohol ban and curfew at certain City parks.
- Drafted and reviewed documentation necessary to sell excess City property.
- Assisted with drafting and reviewing agreements allowing telecommunications equipment to be placed on City property, which enhances communications ability for emergency personnel and ensures citizens are able to maintain telecommunications service.
- Advised on numerous topics of public interest, including the Horton Plaza Urban Park, Fairbanks Ranch Golf Course, Torrey Pines Gliderport, the proposed development by Metropolitan Air Park at Brown Field, City-wide brush management services, and Belmont Park.

Land Use

- Prepared legal documents for the Council to impose a moratorium on sales of recreational marijuana until new City regulations were passed, in response to the passage of State Proposition 64, which legalized recreational marijuana.
- Processed amendments to the San Diego Municipal Code to streamline review of affordable housing projects.
- Provided legal review and guidance related to numerous Community Plan updates, including Ocean Beach, Southeastern San Diego, Encanto, San Ysidro, North Park, Uptown, Golden Hill, and University City.
- Reviewed and advised on the Development Services Department's Accela contract, which will replace the Project Tracking System to better serve the public.

- Provided legal review and guidance related to the City’s adoption of a Climate Action Plan Consistency Checklist to allow projects to streamline CEQA review with respect to greenhouse gas emissions.
- Assisted with the formal adoption of a greenhouse gas emissions significance threshold, pursuant to CEQA.
- Advised the Historical Resources Board on numerous projects of public interest, include the Agua Caliente sign/California Theatre in downtown San Diego.
- Drafted and reviewed legal documents associated with various public and private development proposals, including the Glen at Scripps Ranch, One Paseo in Carmel Valley, Plaza de Panama, Inn at Sunset Cliffs, 4th and J, Del Sur Court, and new International Cottages in Balboa Park.
- Assisted staff in updating Public Facilities Financing Plans and Impact Fee Studies, which identify potential funding sources for critical public infrastructure for various



communities throughout the City, including Scripps Miramar Ranch, Mira Mesa, Del Mar Mesa, Torrey Pines, North Park, Golden Hill, Uptown, and San Ysidro.

- Advised the City Council on numerous appeals of CEQA determinations and development projects, including medical marijuana consumer cooperatives.
- Worked with Code Enforcement staff to update Civil Penalty and Notice Orders to better achieve compliance.
- Worked with the Development Services Department to update its Fee Schedule to provide full cost recovery for City review and inspection services.
- Processed numerous amendments to the San Diego Municipal Code, addressing

issues such as high occupancy single dwelling units, historical resource regulations, the California Building Code, density bonus, housing, previously conforming uses, and various updates to the Land Development Code.

- Advised staff on numerous topics of public interest, including short-term vacation rentals, marijuana issues, the Downtown Mobility Plan, and actions related to housing and homeless issues.

The Civil Litigation Division

The Civil Litigation Division prosecutes or defends civil lawsuits in which the City is a party. The Civil Litigation Division is divided into five units. Assistant City Attorney George Schaefer oversees the litigation division.

A few highlights from our Civil Litigation Division include:

The Civil Prosecution Unit

The San Diego City Attorney's Civil Prosecution Unit (CPU) currently consists of Chief Deputy City Attorney Jon Taylor, Deputy City Attorneys Paul Prather, Catherine Turner, Charles Bell, and Daniel Horlick. During the past year, former Chief Deputy City Attorney Clay Welch retired and Deputy City Attorneys Erin Kilcoyne and Molly Hoot transferred into other sections within the office.

The CPU is charged with a number of tasks which include initiating litigation against those that owe the City money and/or have damaged the City in some manner. The CPU initiates civil cases, engages outside counsel to litigate some cases, and coordinates and monitors other litigated matters that are initiated for the benefit of the City. The CPU is responsible for litigating cases referred to the City Attorney from the Treasurer's office to collect from debtors that have been invoiced for services, but who have not paid. The CPU is also charged with representing the City in construction litigation, landlord /tenant disputes, contract litigation, Qui tam actions, public nuisance, TOT appeals, bankruptcy, and foreclosure work related to municipal bonds.

The CPU litigated on behalf of many City departments which include, the City Treasurer, Public Works, Public Utilities, Environmental Services, Transportation and Storm Water, Debt Management, Library, General Services, Real Estate Assets, and Risk Management – Revenue and Recovery. The CPU handled a variety of cases which can range from collecting for unpaid



water bills to contract litigation involving public/private partnerships. Other matters handled by the CPU included seeking compensation from those that damage public property including environmental contamination, construction defect, unlawful detainer actions, and worker's comp subrogation.

As a unit, during 2016, the CPU obtained judgments, assisted with revenue recovery, and settled cases for a total amount of \$28,564,819.74 brought into the City.

The General Litigation Unit

The San Diego City Attorney's General Litigation Unit consists of Chief Deputy City Attorney John Riley, Deputy City Attorneys, Jane Boardman, Pamela Chalk, Hannah Grier-Rosenkrantz, Erin Kilcoyne, Kelly McGeehan, Brian Murphy, Stacy Plotkin-Wolff, Beverly Roxas, David Scott, Rayna Stephan and Casey Sweda.

The General Litigation Unit handled a large volume of cases. Each attorney handled a heavy case load defending the City of San Diego, the agencies within the City, and its agents. The types of cases handled by the General Litigation Unit included police false arrest and excessive force cases, state common law torts, constitutional claims, dangerous condition cases, motor vehicle accidents, and an assortment of other tort and personal injury cases. The attorneys in the General Litigation Unit were highly successful in resolving a variety of lawsuits favorable to the City. Numerous lawsuits were terminated by way of summary judgment motions, motions to dismiss, and demurrers.

During the past year, the General Litigation Unit received 97 new cases, in addition to the carry-over of cases from 2015. Nearly half of these cases were disposed of through trials, motion practice, tender letters, and settlement negotiations. In addition to resolving cases which monetarily benefit the City, the General Litigation Unit obtained legally significant rulings. Several examples include:

Jasmin Beckom v. City of San Diego

- A sixteen year old plaintiff was hit on the head by a falling palm tree frond as she was standing on a City sidewalk. She claimed she sustained a traumatic brain injury with resultant memory loss and depressive symptoms. Plaintiff refused the City's \$10,000 offer to compromise and asked the jury for nearly \$650,000 in damages. The jury found the condition was not dangerous and found in favor of the City.

Cynthia Reynolds v. City of San Diego

- Plaintiff was seriously injured by a driver of a car when he drove into a parade of people participating in the annual Zombie Walk parade. Plaintiffs, including passengers in the car sued the City of San Diego alleging that City created a dangerous condition in the planning of the parade route. The City successfully obtained a dismissal by way of a demurrer by showing that the facts of the case did not give rise to a legally recognized claim.

Walters v. COSD, et al.

- Plaintiff alleged that five San Diego police officers violated his 14th Amendment Equal Protection Rights by selectively enforcing the City's nudity ordinance due to his sexual orientation during the 2011 LGBT Pride Festival. Plaintiff sought monetary damages against the officers and an injunction against the City prohibiting enforcement of the ordinance at the annual Pride Festival. At trial, the City proved that the officers and the special events unit enforce the law the same with regardless of a person's sexual orientation. The jury returned a defense verdict.

Gideon v. COSD

- Plaintiff sustained severe injuries, including a broken back, when she fell approximately ten feet off the Ocean Beach seawall. She filed suit against the City claiming a dangerous condition of public property. On the day of trial, the Court heard the City's motions in limine, including two immunity motions – one for design immunity and one for trial immunity. The Court granted the City immunity based on trial immunity and dismissed the case.

Cobb v. Ramirez, et al.

Plaintiff filed suit alleging eighteen causes of action arising from his detention, arrest and search at Redwood Circle in Balboa Park on June 27, 2012 for being under the influence of a controlled substance. By way of motions all but three causes of action were dismissed. The remaining claims – 1) Fourth Amendment Search and Seizure arising out of his arrest and search; 2) State Law claim for false arrest; and 3) Civil Conspiracy – proceeded to a jury trial. The jury exonerated the officers and the City on all counts.

Lowry v. COSD

- Plaintiff sued the City of San Diego on a *Monell* claim for excessive force arising out of an alleged dog bite to her upper lip. The City successfully petitioned the Ninth Circuit Court of Appeals to review, *en banc*, the opinion of the appeal panel that had reversed the trial court's order granting the City's motion for summary judgment. Numerous interested parties have submitted amici curiae to join the City in the pending hearing.

Trudy Hughes v. The City of San Diego

- Plaintiff fell on the roadway outside of the restaurant. Plaintiff alleged that a crowd of people in front of the restaurant forced her to step into the roadway where she tripped and fell in a pothole. The restaurant brought a third-party action against the City of San Diego alleging a dangerous condition. After meeting and conferring prior to protracted discovery, the restaurant dismissed the City from the action.

Derrick Marable v. The City of San Diego et al.

- Plaintiff sued the City of San Diego and an employee for serious injuries he sustained when he was run over by a City vehicle driven by a park ranger during a routine patrol. Plaintiff's demanded seven million dollars. Liability was not at issue. The City, however, aggressively defended the matter based on the unreasonable demand of Plaintiff. Prior to trial Plaintiff reduced his demand and the City accepted the offer to settle for a significantly lower sum.

Maltman v. City of San Diego, et al

- Plaintiff filed an action for negligence alleging that the City's sanitation truck turned into his vehicle causing him injuries and vehicle damage. Plaintiff sought in excess of \$25,000 in general and special damages. After an investigation, the City filed a Cross-Complaint for property damage against the Plaintiff. Plaintiff dismissed his action and stipulated to a monetary judgment in favor of the City.

Mestre v. City of San Diego, et al.

- Plaintiff claimed that at the time he was arrested, the officers involved in his arrest used excessive force, including kicking and punching him to the face and body and allowing their canine to bite his arm. In addition to the excessive force claims, Plaintiff alleged due process violations for "deliberate indifference to medical condition" claiming that he was left bleeding profusely in the back of the police car before being transported to

the hospital. Plaintiff sought over \$339,000 in damages. The City filed a Motion for Summary Judgment. Rather than respond to the City's motion, Plaintiff settled for nuisance value.

Mendez v. City of San Diego

- The parents of a fifteen-year-old girl filed suit against multiple parties, including the City of San Diego for wrongful death. This minor was fatally injured in a crosswalk when she was run over by a truck. Plaintiffs alleged a dangerous condition of public property against the City, claiming dangerous conditions of the roadway, signs, and traffic signals. The City obtained a dismissal showing that the City had no ownership or control of the subject intersection at the time of the accident.

Sialoi v. City of San Diego et al.

- Police responded to a call on a Saturday evening, at approximately 10:00 pm which described two men lying in wait, an apparent ambush, one with a shotgun and one with a handgun. The location of the incident was a high crime apartment complex known for violent crime and gang affiliations. First contact by police was with three males who had weapons in hand. These males plus one other male associated with a group of suspects were placed in police cars. The remaining group of the suspects, all family members celebrating a birthday party, were detained, the majority handcuffed until police could confirm that no crime was committed. Police learned that 3 teenage boys were playing with a paintball gun and a makeshift weapon. A jury found that there were no unlawful detentions, arrests or excessive use of force. The jury found one plaintiff was negligently injured during the handcuffing process. The jury found that one officer was liable for entering a suspect's apartment for a safety check. A motion is pending before the court for dismissal of the unlawful entry verdict.

Holquin v. City of San Diego, et. al.

- Plaintiff, an off-duty Los Angeles police officer, was arrested at a Chargers football game. Plaintiff filed his complaint in November 2011. Plaintiff contended that he lost his job as a Los Angeles police officer based upon his false arrest. Plaintiff also alleged excessive use of force by San Diego police officers. After protracted motion work in litigation, the court granted the City's motion for summary judgment with respect to the lawfulness of the arrest. The matter was set for trial in April 2016, but within weeks of the trial, Plaintiff settled the matter for \$750.

Harrison v. COSD SDSC 37-2015-00007591-CU-PO-CTL (June 17, 2016)

- Plaintiff alleged that while fast walking/jogging across the street, mid-block, in front of her residence, she tripped over a raised section of concrete and fell, breaking her elbow. Plaintiff argued that the 1 ¼ inch raised concrete was dangerous, that the risk of injury was foreseeable and that the City had actual and constructive notice. The court granted the City’s motion for summary judgment, ruling that the raised section of concrete was a trivial defect and was not a dangerous condition, the risk of injury at the accident site was not foreseeable, the City did not have actual notice of the alleged dangerous condition and the City did not have constructive notice of the alleged dangerous condition.

Larson v. Bailiff, et al. USDC 13cv2790 BAS (JLB) (July 15, 2016)

- Plaintiff Sacha Buck Larson filed a Complaint case against SDPD Officers Ronald Bailiff, Andres Ruiz, Thomas Curran, Richard Widner and Christopher Cummings as a result of his arrest on November 19, 2011 for burglary first degree, vandalism, malicious mischief, resisting arrest and being under the influence of a controlled substance. Plaintiff filed a Complaint alleging sixteen causes of action against Defendants, including Excessive Force, Unreasonable Seizure, Torture, Conspiracy, and Supervisor Liability (*Monell*). The Court granted the City’s motion for summary judgment dismissing all claims against all defendants. The court found that the use of pepper spray, hand strikes, taser, carotid restraint and a police dog were reasonable under the totality of the circumstances. Further, the Court ruled there was no cause of action for conspiracy or falsifying police reports.

The Land Use Litigation Unit

The Land Use Litigation Unit prepared and defended civil actions on behalf of the City in state and federal court, including challenges based on the California Environmental Quality Act (CEQA), eminent domain, constitutional issues related to the use of land, real estate development, failure to comply with the Municipal Code or City procedures, and land use-related decisions by the City Council or City staff. The Land Use Litigation Unit employed five seasoned and proven litigators to navigate the complex and unique issues raised in land use cases. Last year, we handled approximately 90 cases and 20 appeals. The appeals resulted in 6 published decisions, all in the City’s favor. In addition, we proactively advised the City Council and City Departments about potential litigation risks and settlement of claims involving land

use matters, to help protect the City and taxpayers from adverse judgments. The Unit is supervised by Senior Chief Deputy City Attorney Leslie FitzGerald. Deputy City Attorneys Jana Mickova Will, Glenn Spitzer, M. Travis Phelps, Jenny Goodman, and Carmen Brock have all contributed to the Unit's success.

Highlights of 2016

Union of Medical Marijuana Patients v. City of San Diego

- This case challenged the City's Medical Marijuana Ordinance, which allows a fixed number of medical marijuana consumer cooperatives to operate in certain areas of San Diego. The Petitioner alleged that adoption of the ordinance would cause effects on the environment that should have been analyzed under CEQA – namely that medical marijuana patients would have to drive greater distances to the dispensaries and would be forced to grow more marijuana in their homes. The trial court rejected these arguments, and found that the City complied with CEQA before adopting the ordinance. The Court of Appeal agreed in a published decision. The California Supreme Court granted review.

Brandon v. City of San Diego

- The plaintiff challenged the City's right to proceed with building Olive Park, a park long-awaited by the community to implement the City's Uptown Community Plan goal of creating desperately needed public park area in the inner City. The City prevailed in this complex case involving documents dating back to the early 1900s. The Court of Appeal agreed with the trial court's decision.

San Diego Navy Broadway Complex Coalition v. California Coastal Commission, et al.

- Petitioner challenged the Coastal Commission's approval of the Convention Center Expansion project, which would add more than 300,000 square feet of exhibit and meeting room space to accommodate larger conventions, as well as outdoor amenities. After a bench trial on the City's statute of limitations defense and a writ trial on the merits, the trial court upheld the approval and agreed with the City that the project conforms with the California Coastal Act.

Finch Aerospace Corp. v. City of San Diego

- Finch Aerospace Corp. accused the City of slandering the title of its airport hangars. Finch’s complaint sought over \$300,000 in attorney fees and costs incurred to clear title, as well as an unspecified amount of damages for impairment of vendibility of its hangars. The trial court sustained the City’s demurrer, finding public entity misrepresentation immunity applied to the City’s alleged slanderous publication. In a published



decision, the Court of Appeal found that the immunities did not apply, but that the complaint failed to state a slander of title cause of action. Therefore, the trial court decision was affirmed.

San Diegans for Open Government (SDOG) v. City of San Diego

- The City approved changes to a project using the City’s “Substantial Conformance Review” process, which allows minor project changes. The approval of the minor changes was determined by staff to have been analyzed under a previous environmental document, consistent with CEQA. SDOG sued the City after the City refused to allow an appeal of this CEQA determination to the City Council. The trial court held that the City’s process is proper and that an appeal of this type of decision to the City Council is not required under CEQA. In a published decision, the Court of Appeal agreed with the City on this controversial and untested topic.

San Diegans for Open Government v. Bahia

- Petitioner challenged the City’s extension of the Bahia Resort lease in Mission Bay on numerous grounds including Pueblo Lands, Brown Act, and Municipal Code violations.

The City showed that the land was not within the Pueblo Land and therefore not restricted by Pueblo Land rules, that the documents were timely provided to the public consistent with the Brown Act, and that the City properly interpreted its Municipal Code with respect to the use of an independent appraiser to value the land. The trial court entered judgment in favor of the City, and the Court of Appeal affirmed in a published decision.

City of San Diego v. San Diegans for Open Government

- After the plaintiffs succeeded in invalidating the special tax and formation of the Convention Center Facilities District, SDOG sought \$862,404 in attorneys' fees. The trial court awarded SDOG \$258,629. The City appealed the trial court's decision, contending that SDOG was not entitled to *any* attorneys' fees because SDOG was a suspended corporation at the time it answered the City's complaint. In a published opinion, the Court of Appeal agreed, which saved the City substantial money. The City will recover its legal costs for pursuing the appeal. The California Supreme Court declined to hear the case.

Citizens for Odor Nuisance Abatement v. City of San Diego

- The plaintiffs alleged that the City is legally responsible for the smell caused by sea lions and birds who inhabit the cliffs at La Jolla Cove. The City filed a motion for summary judgment and argued (1) it has no duty to control wild animals; (2) it did not cause the problem; and (3) there is no nuisance as a matter of law because the animals are protected by federal law. The trial court agreed and entered judgment in favor of the City, and the Court of Appeal affirmed in a published decision.

City of San Diego v. Palomar Community College District

- The City challenged the Palomar School District's expansion of its college, alleging CEQA violations related to parking and traffic impacts. After Palomar agreed to provide a number of additional mitigation measures to address these issues, the parties agreed to settle the case.

Friends of Children's Pool v. City of San Diego

- Lawsuits involving the Children's Pool beach have been going on for years. In the latest lawsuit, the Orange County Superior Court ruled that the Marine Mammal Protection Act preempted the City authority to close the Children's Pool beach during seal pupping season. The City appealed. In administrative mandamus actions, the agency's decision is

automatically stayed during the pendency of appeal – therefore, the City could not implement its beach closure ordinance. The City, however, filed a motion with the Court of Appeal to lift the automatic stay so that the City could close the beach while the appeal was pending. On the first day of pupping season, the Court of Appeal granted the motion, and the City was able to implement the beach closure ordinance this season.

City of San Diego v. Fashion Valley Mall, LLC et al.

- The City is moving forward on a long-planned and much needed road widening improvement project in Mission Valley. The State Route 163/Friars Rd improvement project will add lanes to Friars Road and the 163 on ramps, helping ease significant congestion in that area. The City filed an eminent domain action to acquire necessary right-of-way property interests from three property owners with whom the City had been unsuccessful in negotiating acquisition. There were atypical impacts to these particular properties that made valuation difficult. Working with the project team to find a pragmatic (rather than legal) resolution, the City Attorney’s Office successfully negotiated solutions to these issues to avoid a costly and time consuming trial to resolve the valuation disputes. The project is expected to break ground in May of 2017.

Stephen Stopper, et al. v. City of San Diego

- The City obtained dismissal of this case challenging the City’s lease of the Starlight Theater in Balboa Park in exchange for waiver of costs.

Don’t Cell Our Parks v. City of San Diego

- The City approved Verizon’s cell tower designed as a faux eucalyptus trees and equipment structure in a dedicated park, using a CEQA exemption. Petitioner argued the approval violated CEQA and the City Charter section 55 restriction against allowing a use of the park for non-park purposes. The City interprets the Charter section provision to restrict uses that are inconsistent with park uses. The trial court upheld the approval and agreed with the City’s interpretation of the Charter.

Clews Land and Livestock v. City of San Diego

- The City approved a school project using a mitigated negative declaration (MND) under CEQA. Petitioner challenged the approval on a number of grounds under CEQA including that the project does not sufficiently mitigate for fire, public safety, and noise impacts.

The trial court agreed with the City that the MND was appropriate and entered judgment in favor of the City.

City of San Diego v. Caryon Properties

- In this eminent domain lawsuit filed by the City to obtain property needed for the City/CalTrans HOV project, the trial court made a pre-trial evidentiary ruling about the proper way to calculate the fair market value of the property. That ruling saved the City more than \$3.8 million of taxpayer funds. The Court of Appeal upheld the ruling.

Eric A. Smith, et al. v. City of San Diego

- The homeowners of four neighboring properties in the Scripps Ranch area sued the City in an attempt to maintain their backyard encroachments onto City-owned land that has been dedicated for “park and recreation purposes.” The trial court entered summary judgment in favor of the City. The plaintiffs agreed to remove their encroachment from City property and pay up to \$19,000 each in civil penalties.

Peeling v. City of San Diego

- The plaintiff challenged the City Council’s denial of permits needed to subdivide his Point Loma property from three lots with two homes to six lots with five homes and personally sued Councilmember Harris. The complaint sought compensatory and punitive damages against all defendants on grounds they “acted with callous indifference” to his alleged property rights. The trial court agreed with the City that the project was properly denied because it did not meet the requirements of the Municipal Code.

San Diegans for Open Government v. City

- Representatives from the hotel industry partnered with the City to establish the original Tourism Marketing District (TMD) as a citywide benefit assessment district designed to improve tourism activity and increase hotel room night consumption in the City of San Diego. SDOG challenged the validity of the City’s renewal of its TMD in 2012. After four years of litigation, the City obtained a judgment in its favor on all claims.

San Diegans for Open Government v. City of San Diego

- This case challenged the City’s approval of its 57 Maintenance Assessment Districts (MADs). The MADs create funding to maintain neighborhood common areas, such as

street medians, landscaped rights-of-way, and adjacent sidewalks. The judge sustained the City's demurrer because Petitioner could not demonstrate standing to pursue its lawsuit. The Court of Appeal agreed. The California Supreme Court denied review.

San Diegans for Open Government v. City of San Diego

- San Diego's Business Improvement Districts (BIDs) are City-designated geographic-based areas where the business owners are assessed annually to fund activities and improvements to promote their individual business districts. SDOG challenged the City's Fiscal Year 2014 BID levies. SDOG dismissed its lawsuit before the City's motion for summary judgment was heard. The City was awarded \$16,671.28 in costs.

Alliance for Responsible Development v. City of San Diego

- This lawsuit challenged the approximately \$750 million development of the One Paseo Project in Carmel Valley. The court granted the City's motion to dismiss the case based on Petitioners' failure to comply with CEQA filing requirements.

Lowe v. City of San Diego

- This case involved a dispute over the amount of rent the City owed for the Civic Center Plaza building downtown. The City negotiated a favorable settlement, saving the taxpayers nearly \$620,000.

The Special Litigation Unit

The City Attorney's Special Litigation Unit is for defending the City of San Diego, its affiliated entities, employees, officials and departments in a variety of civil actions that do not fall under the General Litigation category. Each attorney in the Special Litigation Unit handles a broad variety of cases such as: (a) employment-related lawsuits against the City alleging claims including discrimination, retaliation, harassment or unpaid wages; (b) class action lawsuits against the City relating to City fees and charges or employment issues; (c) lawsuits challenging the constitutionality or legality of City ordinances, resolutions, actions and policies; (d) any lawsuit designated as complex by a court; (e) proceedings before the Civil Service Commission or CalOSHA; (f) appeals to state and federal courts; (g) lawsuits relating to the city's compliance with the Brown Act and the California Public Records Act; and (h) lawsuits relating to elections.

Deputy City Attorneys assigned to the Special Litigation Unit in 2016 include Charles E. Bell, Jr., Laura M. DePoister, Michael McGowan, Angela Mullins, Danna W. Nicholas, Keith Phillips,

Catherine Richardson, Kathy J. Steinman and Kristen Zlotnik and the unit is supervised by Chief Deputy City Attorney Meghan Ashley Wharton. Additionally, Assistant City Attorney George Schaefer, Chief Deputy City Attorney David J. Karlin and Lead Attorneys Walter C. Chung and Joe Cordileone successfully handled Special Litigation Unit cases during 2016.

Employment Cases

- The City was successful in the defense of several employment matters during the year. The City's employment litigators conduct an early assessment of all employment claims, determine if there is any validity to the claim and offer a fair and reasonable offer early on with a goal to saving both sides the expense and inconvenience of protracted litigation. However, in instances where an attorney determines that an employment claim lacks merit, the attorney vigorously defends the City.

Ahmadi v. City of San Diego

- Plaintiff, a Transportation Engineering Operations employee, filed suit against the City for race, age and disability discrimination, failure to accommodate and engage in the interactive process, and retaliation against the City. This Office settled the case for a nominal amount and the plaintiff continues to work for the City.

Castro, et al. v. City of San Diego, et al.

- Plaintiffs, Latino SDFD employees, sued the City under a disparate impact theory pertaining to the 2012 Fire Captain's Promotional Examination. Through motions to dismiss, all federal claims against the City were dismissed. One of Plaintiff's claims was entirely dismissed through the elimination of the federal claims. The remaining Plaintiffs voluntarily dismissed all of their claims against the City.

Howell v. City of San Diego, et al.

- Plaintiff, a former employee who was failed on probation, sued the City for retaliation and three former City supervisors for defamation. The City and the former supervisors prevailed on a motion for summary judgment, and the City was awarded costs in the amount of \$5,802.29.

Hoppe v. City of San Diego

- Plaintiff claims she was passed over for promotion on four separate occasions and that each time a lesser qualified male received the position instead. Plaintiff sued the City for

gender discrimination and failure to prevent discrimination. In summary judgment proceedings, the Court found in favor of the City on both counts and entered judgment in favor of the City.

Hershman v. City of San Diego

- Plaintiff, a police detective, received an unwanted transfer to a different unit. Plaintiff sued the City alleging gender discrimination. After a two week trial, the jury returned a verdict in favor of the City.

Harris v. City of San Diego

- Plaintiff, an employee with the City's Transportation and Storm Water Department did not receive a promotion he sought and was later transferred to another department. Plaintiff alleged that his failure to get the promotion and the subsequent transfer were due to discrimination, harassment, retaliation and that the City failed to prevent harassment against him. After investigation, this office denied the allegations in the complaint. After discussion with this Office, Plaintiff agreed to dismiss the case.

Civil Service Commission Appeals

- Deputy City Attorneys defend the City's employment actions in employee appeals of such actions to the Civil Service Commission. In these appeals, deputies from the Special Litigation Unit successfully defended City decisions to terminate an employee who engaged in misconduct in the workplace.

Complex and Multi-Party Cases Involving the City of San Diego

Agent Anonymous v COSD

- Plaintiff, a female FBI agent, was one of several women who was secretly videotaped as she used a bathroom at a Border Patrol facility. The camera had been placed in the bathroom by a Border Patrol supervisor, who has since been convicted and is in prison. Plaintiff, sued the federal government, Border Patrol, the supervisor, the City/SDPD and the County/DA. The claims against the City and County were tenuous, alleging a negligent investigation, "code of silence" and a cover up for a fellow law enforcement officer. The City moved to be dismissed from the case arguing that the City was immune from liability for the claims per Govt. Code 821.6 and that Plaintiff failed to state a claim against the City for the other state and federal causes of action. In

December 2016, the Court granted the City's motions, ordered the City dismissed from the case and denied Plaintiff's leave to amend.

Alvarez v. Mission Federal, et al., City of San Diego

- Plaintiff sued the City and a City police officer alleging claims from an incident that occurred in a credit union parking lot when the police officer was off duty. Believing that Plaintiff was an intoxicated driver, the off-duty officer notified the police and then followed the driver into a parking lot. After the officer identified herself as a police officer, the Plaintiff sprayed the officer with pepper spray. When the officer attempted to grab the pepper spray, the Plaintiff attempted to drive away with the officer's arm in the window. A security guard eventually rescued the officer. Plaintiff sued the City for damages for emotional distress. Attorneys from this office obtained a very favorable settlement to which the City paid a nominal amount and the Plaintiff dismissed the City from the lawsuit.

Reden v. City of San Diego (Phillips)

- Plaintiff, an eight year old boy who broke his leg at a park in De Anza Cove, sued the City for damages. The management company operating the park under a contract with the City demanded that the City defend and indemnify it. An attorney from the Special Litigation Unit carefully analyzed the De Anza contracts and wrote a letter outlining the rights and responsibilities of the parties including interpreting the contract and applying legal precedent as to the duties to defend and indemnify. Following receipt of the letter from this Office, the operator accepted responsibility for the City's defense in the case.

Litigation Involving Bob Filner (Schaefer, Zlotnik)

Stacy McKenzie v. Robert Filner and City of San Diego

- Plaintiff, a Park & Recreation Department employee, brought a sexual battery and harassment case against the City and former Mayor Filner. Attorneys from the Special Litigation Unit obtained a full defense jury verdict for the City and Mr. Filner. The trial received daily attention; there were members of the press and TV cameras filming in the courtroom; and video of the trial was live-streamed on the Internet. The City successfully defeated the Plaintiff's post-trial motions for a new trial and judgment notwithstanding the verdict.

Marilyn McGaughy v. Robert Filner, et al. v. City of San Diego:

- Plaintiff sued former Mayor Bob Filner and the City for sexual harassment and Bob Filner for gender violence and sexual battery. Plaintiff dismissed her lawsuit against the City for a waiver of costs.

Cases Defending the Legality of City Actions

ArchitectureArt, LLC v. City of San Diego

- Plaintiff, an outdoor mural advertising company, located its murals in San Diego commercial zones on leased private property wall space. Plaintiff made the leased wall space available to local and national advertisers. Plaintiff's murals violated the City's prohibition on off-premise signs, except for public interest messages. Plaintiff alleges that the City enforced the off premise sign prohibition unfairly, and used unfettered discretion to arbitrarily and unfairly decide which off-premise advertisements would be permitted. Plaintiff's complaint challenged the legality of the City's prohibition and its implementation as violations of the Plaintiff's First Amendment right to freedom of speech and Fourteenth Amendment rights to equal protection and due process. In ruling on the City's motion for summary judgment, the trial court found in favor of the City on all causes of action in a very detailed and thorough written opinion.

Abbe v. San Diego City Employees' Retirement System; Abitria v. San Diego City Employees' Retirement System

- In 2003, SDCERS sold service credits to City employees at a reduced cost. Subsequently, SDCERS implemented a correction process that required credit purchasers who bought service credits in 2003 to pay the correct cost or have the value of the credits reduced. Over 300 current and former city employees sued the City seeking to overturn an SDCERS correction. The City had the case dismissed in its early phases. In March 2016, the Court of Appeal affirmed the trial court's order dismissing the action.

Bedwell v. Maland

- Petitioner sought a writ of mandate ordering the City to include his name on the ballot for City Council District 9 and to prevent the printing and distribution of ballot information for the June 2016 election. Petitioner argued that his name should be included on the ballot because he substantially complied with the nomination requirements of the Municipal Code. In an emergency proceeding, the Court ruled in favor of the City and found that the City Clerk rightly refused to place the petitioner's

name on the ballot because strict compliance with the clearly-defined minimal nomination requirements is required.

Collins v. City of San Diego

- Plaintiff filed an action against the City seeking an injunction to restrain the City from making executive decisions due to the alleged illegality of certain 2010 Charter amendments and other fraudulent actions. The City successfully defeated Plaintiff's request for a temporary restraining order and motion for a preliminary injunction early in the case. After the City demurred to the complaint, Plaintiff dismissed the action in its entirety.

Gibson v. City of San Diego

- In 2012, the City changed retiree health care benefits from a defined benefit plan to implement the City's agreement with the employee unions to make the changes. Plaintiff brought a class action against the City claiming that the City could not make changes to his retiree health benefit without his consent. The City prevailed on summary judgment, and the Plaintiff appealed. The Court of Appeal affirmed the judgment in favor of the City and ruled that the Plaintiff did not have a contractual right to any specific amount of retiree health benefit.

Ostwald v. City of San Diego

- Plaintiff sought an injunction to allow her to keep a very large tree planted in the public easement in front of their home. The tree roots damaged the sidewalk and it appeared that the tree would become unstable if the sidewalk were repaired. The City arborist determined that the tree was a substantial risk of falling. This Office arranged for additional tests regarding the safety of the tree and then negotiated a settlement of the dispute that allowed the City to trim the tree to make it more stable.

Schutz v. City of San Diego

- Plaintiffs were disabled persons who claimed to have encountered discriminatory barriers when visiting the Torrey Pines Gliderport. Plaintiffs sued the City for violation of the Americans with Disabilities Act and similar state laws. After negotiations involving the Plaintiffs and the City's licensed operator of the site, the parties agreed upon the imposition of a consent decree requiring the installation of two disabled parking spots, an accessible portable toilet and a compliant counter at the concession stand.

Sukumar v. City of San Diego

- Plaintiff filed an administrative writ of mandate following a Public Records Act request for records relating to Neighborhood Code Compliance enforcement actions. After trial on the writ petition, the trial court denied the writ, and the appellate court summarily refused to overturn the trial court's decision. The City then defeated the Petitioner's motion for attorney's fees.

Cases Claiming Property Damage and/or Lost Business Revenue

Lana LLC v. City of San Diego

- Plaintiff sought damages for out of pocket expenses incurred after an interruption in water service. This Office negotiated a very favorable settlement in which the City did not have to pay out any money to the Plaintiff.

Malcolm v. City of San Diego

- Plaintiffs sued the City and a City contractor for property damage from a burst pipe allegedly caused by a change in pressure when the City contractor turned the water service on and off to the property during construction of a water project. At the conclusion of multi-party negotiations, the City contractor and its insurance company made payments to the Plaintiffs for damages, and the City was dismissed from the case for a waiver of costs.

The Workers' Compensation Unit

The Workers' Compensation Unit has five attorneys, Diana Adams, Linda Godinez, Michael Herrin, Thomas Griffin and Daniel Horlick, whose primary responsibility is to work closely with the Risk Management Department by providing timely, accurate and high quality legal advice. Our Unit provided legal advice to 18 claims adjustors on a multitude of workers' compensation issues.

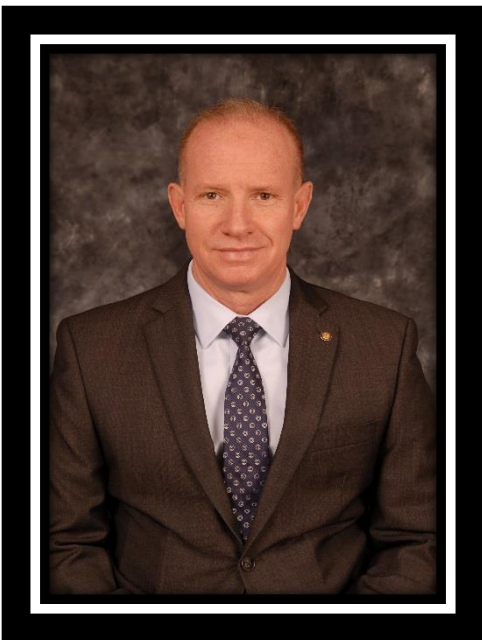
Our goal is to ensure that every City employee that is injured on the job receives all legally entitled benefits, while preventing fraudulent claims and abuses. Accomplishing these seemingly conflicting objectives requires a strong emphasis on personal integrity and professional independence.

Our unit's contributions to cost savings occur on a daily basis while guiding the handling of Workers' Compensation claims. Due to continual reformation in the workers compensation system, we are charged with providing advice to the Risk Management Department on a wide range of issues, from interpretation of wholesale legislative changes such as those of 2004 and 2012, to day to day operational decisions regarding benefits and medical care.

Our unit provided savings of hundreds of thousands of dollars, by preventing over payment of benefits, redirecting medical expenditures, and limiting exposure to penalties.

In addition to its advisory role, our unit defended the City against fraudulent and abusive workers' compensation claims by handling all aspects of litigation at the Workers' Compensation Appeals Board including trials, mandatory settlement conferences, expedited hearings, appeals, medical liens, death benefits, discovery, motions and other petitions.

In 2016 our unit had over 1,390 open, active cases, resulting in 374 hearings, 70 depositions, 10 appeals, and 16 trials at the Workers' Compensation Appeals Board. These actions resulted in cost savings of more than \$3,218,699 for the City of San Diego.



The Community Justice Division

The Community Justice Division prosecutes cases that the community has identified as important to quality of life. Prosecutors work with the community, police and other law enforcement agencies to establish and maintain security, fair business dealing and to promote justice. Assistant City Attorney John Hemmerling oversees the division.

The Community Justice Division is divided into three units. A few highlights from our Community Justice Division include:

The Consumer & Environmental Protection Unit

Overview

The Consumer and Environmental Protection Unit (CEPU) is led by Chief Deputy City Attorney Kathryn Lange Turner and five experienced prosecutors: Michael Hudson, Kristine Lorenz, Michael Neumeyer, Cheryl Shitabata, and Michael Rivo. Deputy City Attorneys in CEPU handled all aspects of prosecution from administrative hearings to criminal and civil trials and appeals.

The attorneys are supported by two investigators, two paralegals and two secretaries. Secretaries also answered the Consumer Hotline (619-533-5600). CEPU accepts and investigates complaints directly from consumers. A complaint form is located here:

<https://www.sandiego.gov/sites/default/files/legacy/cityattorney//pdf/cepucomplaintform.pdf>

Over 300 complaints were received by CEPU in 2016, a 30% increase from 2015. Complaints are also referred to CEPU from a variety of local and state law enforcement and regulatory agencies. In 2016 these agencies included:

- SDPD (including Narcotics and Vice)
- San Diego Transportation and Storm Water Department
- California Highway Patrol
- State Bar of California
- California Department of Alcohol Beverage Control
- California Department of Consumer Affairs
- California Department of Fish and Wildlife
- California Department of Insurance
- California Department of Motor Vehicles
- California Contractors State License Board
- California Dental Board
- San Diego County District Attorney's Office
- San Diego County Sheriff's Department
- San Diego County Department of Environmental Health

CEPU accomplished the following in 2016:

- Investigated and prosecuted cases of false/misleading advertising or packaging
- Prosecuted individuals for a variety of unlicensed and unpermitted professional and commercial activities

- Investigated and prosecuted businesses that deplete or endanger marine resources
- Worked with prosecutors throughout California to investigate large retailers for unlawful storage and disposal of hazardous wastes
- Investigated and prosecuted predatory tow companies
- Conducted training for law enforcement and regulatory agencies on Consumer & Environmental Protection
- Chaired the San Diego Consumer Fraud Task Force and attended the San Diego County Hazardous Waste Task Force
- Provided important consumer and environmental information to the public via press conferences and media interviews, community speeches, social media, and consumer newsletters.

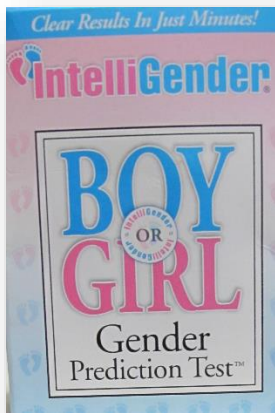


Consumer Protection

- The mission of CEPU in this area is to protect consumers and commerce by ensuring a fair marketplace. If there was a theme for CEPU in 2016, it involved inorganic chemistry. This chemistry took CEPU from the dark side of aggressive "Mompreneurs," who preyed on pregnant women's curiosity about the gender of their unborn babies, to evil foreign chemists who created mind-altering synthetic cannabinoids which were offered for sale in some San Diego retail stores. Although CEPU prevailed against this bad chemistry, the fight is not over, and CEPU will continue its aggressive efforts to protect the public by prosecuting those who violate consumer and environmental laws in San Diego.

People v. IntelliGender, LLC

- After a seven-week civil trial, CEPU prevailed against IntelliGender, LLC, a Texas company stemming from the sale of bogus gender prediction tests that contained undisclosed ingredients. The trial revealed tremendous greed and callousness in the marketing and sale of the defendants' *Gender Prediction Test*. Beginning in 2006, and without any real scientific research and development, the defendants sold the product on the Internet, and then via drug stores and large retailers including Walgreens, CVS, Rite Aid, Target, Toys-R-Us and Amazon.com as a product scientifically proven to accurately detect gender early in pregnancy.

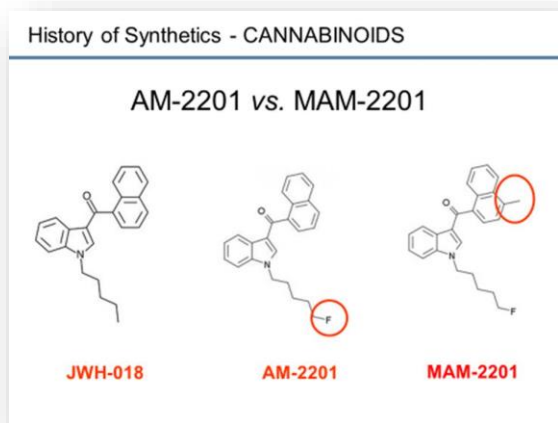


- Although the defendants' advertising and product packaging claimed the product was 90% accurate (with "real world" results of 82%) the plaintiff's expert found the product to be no more accurate than 50% – the same as a flip of the coin. Even the defendants' own scientists (hired long after the product was on the market in California), said the product was only about 64% accurate. In finding against the defendants, the trial judge described the product as more like a *Ouija Board* than a gender test.
- What was more disturbing was the revelation that the defendants and their scientists *knew* the product contained lye – a corrosive chemical – which exploded during use on hundreds of pregnant women, causing burns and skin irritation, paint to peel off the walls of their homes, lightbulbs to shatter, and other reported damage. Just days before trial, the defendants finally put the legally-required poison and safety warnings on the product's packaging.
- As a result of the successful prosecution, the product is no longer sold in San Diego by any of the retailers in the litigation. In addition to specific terms limiting the marketing

of the product in San Diego, the judge ordered the defendants to pay a six-figure civil penalty, which does not include litigation costs to be determined in a future court hearing. Although the Texas manufacturer of the product, and one retailer have settled the claims against them with CEPU, a second trial is scheduled for late 2017 against the remaining five retailers who sold the product to consumers in San Diego.

Spice (Novel Synthetic Cannabinoid and Psychoactive Drugs)

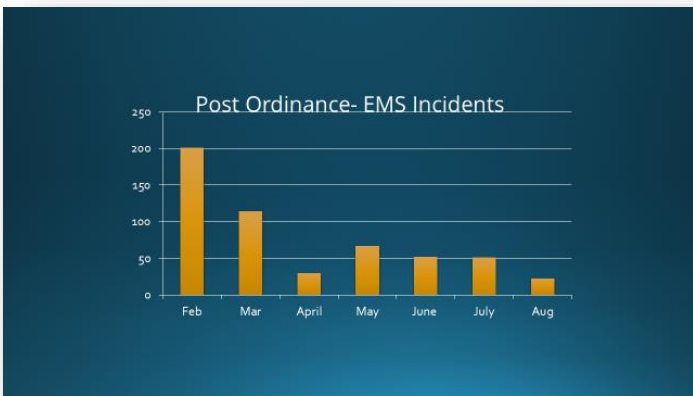
- In the fall of 2015, CEPU was contacted by the City Attorney's Neighborhood Prosecution Unit regarding community concerns over the alarming rise in overdoses related to the use of "Spice" – a synthetic cannabinoid that was being sold on the street and from local smoke shops and convenience stores in San Diego. The troubling legal issues with these synthetic drugs was the ability of unscrupulous chemists to slightly adjust the molecular structure of the compound to stay just ahead of California regulations. Thus, the compounds found in San Diego were illegal under Federal law, but not illegal under California law. And, because the City Attorney's jurisdiction does not include prosecuting Federal felony crimes, the Office explored alternative enforcement tools. As a result of those efforts, the City Attorney's Office drafted a new City ordinance banning the sale of these dangerous synthetic drugs, and CEPU is now prosecuting offenders for violations of the ordinance.



- In late 2015 and early 2016, CEPU worked with undercover officers from the Narcotics Unit of the SDPD and its lab and joined forces with the San Diego County District Attorney to file civil law enforcement cases against two local retailers, the Cave Smoke Shops located on 5th Avenue and El Cajon Boulevard and Andy's Smoke Shop located on University Avenue. Both owners agreed to a Preliminary Injunction prohibiting them from selling Spice.



- At the same time, CEPU assisted Case Issuance Deputy City Attorney Ann Marie Council and San Diego Police Legal Advisor Michelle Garland in crafting a new ordinance authorizing the Police Department to seize any Spice found in San Diego shops, and authorizing the City Attorney’s Office to prosecute offenders who manufacture and/or sell Spice within the City. The ordinance was passed unanimously by the City Council and has had a dramatic impact on lowering the emergency response calls related to Spice overdoses. Such success would not have been possible without the coordination and leadership provided by the City Attorney’s Office and the SDPD. <https://www.sandiego.gov/sites/default/files/nr160523a.pdf>



- As a result of teamwork between the Police Department and the City Attorney’s office, the owner of Andy’s Smoke Shop was recently arrested for the continued sale of Spice in his shop. The Civil and criminal cases are pending against him.

Predatory Towing

- The City Attorney's Office receives numerous complaints each year from drivers in San Diego who contend their vehicles were towed illegally. CEPU investigates these complaints and, utilizing its civil and criminal enforcement tools, is effective in prosecuting these illegal towing offenders, obtaining restitution to victims and other court sanctions, thereby curbing this illegal business practice.



Unlicensed and Regulated Activities

- CEPU routinely works with state and local agencies that license and regulate the vast range of professions in California. In 2016, CEPU's efforts in this arena spanned almost the entire alphabet – from A (an unlicensed Acupuncturist) to V (unlicensed Vehicle dealers). These offenders, who may pose health and safety risks to unsuspecting consumers as well as unfairly competing against their licensed counterparts, are prosecuted criminally. CEPU requires guilty pleas, probation, restitution, fines, and public and community work service to address unlicensed conduct and prevent its reoccurrence. Cases successfully prosecuted by CEPU in 2016 included the following unlicensed/unpermitted professionals:
 - Acupuncturists
 - Bartenders (for serving alcohol to obviously intoxicated patrons)
 - Commercial and recreational fishermen
 - Commercial truck drivers (for motor carrier permit violations)
 - Dental hygienists
 - Food vendors
 - Hazardous material/waste handlers/disposers
 - Home improvement contractors

- Massage therapists
- Pedicab drivers
- Used vehicle dealers

Several businesses in San Diego which ran afoul of regulations involve:

- Commercial fishing
- Entertainment
- Gambling
- Overweight trucks
- Tobacco

Tax Evasion

- CEPU works with Homeland Security and the California Board of Equalization investigators prosecuting cases involving individuals who smuggle, transport, and sell untaxed cigarettes, from the San Ysidro border crossing to the streets of San Diego.

Protecting the Environment

- CEPU obtained convictions in criminal cases and settlements in civil cases involving individuals/businesses that violated state and local environmental laws. From small to large businesses, the violations involved natural resource regulations, failing to obtain environmental permits and the unlawful disposal of solid or hazardous waste.

Disposing of Hazardous Materials

- CEPU continues to be a vital part of statewide investigation and enforcement actions against major retailers for the unlawful handling and disposal of hazardous materials and wastes.



Unlawful Fishing

- The marine-protected areas off the coast of San Diego were designated as off-limits to most fishing by the State of California in 2012, including the South La Jolla State Marine Reserve and State Marine Conservation Area. Poaching in these areas has been significantly reduced by CEPU's aggressive enforcement and prosecution of offenders who

violate these environmental laws. CEPU seeks “stay away” orders to protect marine resources in these protected areas, and repeat offenders face stiff consequences for repeat violations.



The taking of undersized fish and spiny lobster by local fishermen depletes marine resources. CEPU works closely with California Fish and Wildlife wardens to prosecute those offenders.



Administrative Enforcement

- Deputy City Attorneys and CEPU’s Senior Investigator assist City Departments by providing enforcement support in administrative actions against businesses operating unlawfully in the City. In addition, CEPU provides a variety of training to City Departments from basic report writing and photography to preparing witnesses to testify at administrative enforcement hearings.

Community Outreach, Public Education and Training

- One of the many goals of CEPU is to reduce incidences of fraud by educating the public to recognize fraud *before* becoming a victim. To achieve this goal, CEPU provides valuable fraud alerts through media outlets, public speeches, and newsletters located at: <http://www.sandiego.gov/cityattorney/media/newsletters.shtml#cepu>
- In 2016, CEPU spoke to such varied groups as the San Diego Mystery Club and law students attending *California Western School of Law* in San Diego.
- Successful prosecution of consumer fraud and environmental crimes is aided by early detection and strong law enforcement. To this end, CEPU trains and makes substantive presentations to other Deputy City Attorneys for issue spotting and referrals to CEPU, to City Departments such as Transportation and Storm Water on report writing and case preparation, and to local, national, and even international law enforcement agencies on consumer and environmental subjects. In 2016, these efforts included presentations to the Downtown Partnership's meeting on "Spice" and the International Association of Chiefs of Police. Lastly, CEPU met with the newly founded *Better Business Bureau of Mexico* to share its experience in, and support and guidance on, the very critical areas of consumer and environmental protection.

The Code Enforcement Unit

The Code Enforcement Unit (CEU) worked in close partnership with the SDPD, City code inspectors, and the community to address a variety of code enforcement and public nuisance cases throughout the City. Violations addressed in



2016 included; nuisance properties negatively affecting neighborhoods; substandard housing; illegal construction; fire and safety violations; destruction of environmental and historical resources; and numerous zoning and land use violations. Public nuisance cases with drug or prostitution activity were also aggressively prosecuted by CEU using specialized enforcement statutes. At the same time, code deputies worked closely with community members, police officers, and inspectors to achieve a long term solution to these problem properties which attracted nuisance activity and jeopardized the safety of surrounding neighborhoods. CEU investigators and staff assisted code enforcement inspectors with investigations, provided trainings, and obtained inspection or abatement warrants as necessary. Some of the cases resolved by CEU in 2016 are highlighted below:

SUBSTANDARD HOUSING CASES

An important function of CEU is to ensure that citizens are living in safe decent housing and that landlords are held accountable to keep their rental units in compliance with the requirements of the California Health and Safety Code and local regulations. When tenants are found to be living in deplorable conditions, code inspectors and CEU prosecutors work quickly

to relocate tenants to safe housing and ensure that the substandard housing violations are corrected. Three cases are highlighted below:

3180-3182 L Street

- Deplorable conditions existed at this dilapidated single family home where 4 children resided. When the case was referred to CEU, a 2 year old child had already tested positive for lead poisoning. There was a structural failure of the entire roof system of the house due to its dilapidated and damaged condition. Not only did the roof endanger the occupants, it was even unsafe even for workers to attempt repairs. Other conditions included: extensive rat droppings in the attic space; lack of required heating; exposed electrical wiring; unpermitted conversion of a single unit into two dwellings; and no working smoke or carbon monoxide detectors. Pursuant to the California Health and Safety Code, the City required the owner to pay \$4,334 in relocation costs to one family and \$2,306 to another family so they could move to safe decent housing elsewhere. The property owner is now under strict timelines to make repairs to the property and is not allowed to lease it until it is brought up to code.

People v. Home

- CEU was successful in obtaining strict sentencing terms against the owner of a substandard single family home at 8518 Kenova Street. The owner kept re-entering and residing there, despite it being posted substandard and uninhabitable. The Court ordered the defendant not to reside at the property and authorized the City to continually abate the public nuisance conditions in the interior and exterior of the structure. This was due to the defendant's failure to comply with his probationary terms requiring him to remove all inoperable cars, weeds, overgrown and dead vegetation, rodent harborage, excessive storage, and trash and debris from the property. All costs of abatement will constitute a lien against the property to allow the City to recover its costs.

People v. Sikking

- This substandard nuisance property located at 4814 Auburn Drive in Mid-City was referred to CEU by the SDPD. Officers had responded to 93 calls for service in one year! The calls involved mainly public disturbance calls and drug activity. There were 2 paying tenants but squatters were also using this single family house as a flophouse. The structure had been modified without permits and there was no kitchen as it had been completely gutted some time ago. CEU worked with code inspectors to issue proper notices and ordered the property owner to pay relocation costs of \$2,306 to each of the tenants pursuant to the Health and Safety Code. The property was vacated and due to the fact that the owner did not rehabilitate the property as required by the Notice and Orders issued by the City, CEU filed a criminal complaint against the owner, alleging multiple violations of the Health and Safety Code and building codes. The owner pleaded guilty and entered into a plea bargain requiring him to timely make the repairs to the property or demolish the structures or ultimately sell it. He was also ordered to reimburse the City for all costs incurred.

RECEIVERSHIP CASES

In 2016, CEU aggressively employed a cost effective enforcement tool authorized by state law to abate substandard properties where owners have failed to comply with City orders. Emergency circumstances and conditions exist at these properties which threaten the health and safety of the occupants and public. In addition to filing for injunctive relief, and after showing the Court the long history of code violations and nuisance activity at these properties, CEU successfully petitioned the Court to appoint a receiver over the properties, pursuant to California Health and Safety Code Section 17980.7. The receiver took control of these properties, evicted squatters, worked with Police on reducing crime, and cleaned the properties using funds derived from the property. The City also recovered the costs of investigation and prosecution. Receivership cases in 2016 include:

People and City v. Flick

- Extreme hoarding conditions existed at this property located at 10950 Belgian Street that caused neighbors to endure years of blight, overwhelming odors, rats, and flies. Large piles of junk, trash, and debris completely covered the exterior of the property and blocked the public right of way. The interior of the dwelling was completely filled with piles of storage which reached the ceiling. Animal Control investigators frequently responded to the property to investigate complaints of animal cruelty and hoarding. The City's Fire Marshal determined that the dangerous hoarding conditions posed a

significant fire hazard to the occupant and to the surrounding community. After obtaining a forcible inspection warrant, CEU worked with the neighbors and the Police Department to successfully petition the Court to appoint a receiver over the property. The abatement of the property uncovered numerous dead animals and workers filled dozens of dumpsters and storage containers with trash and stored items. Explosive experts from the Metro Arson Strike Team were called to the property several times during the abatement to confiscate rounds of ammunition, aerial practice bombs, booby traps with small explosive charges, machine gun blank rounds and even empty ordinance tubes. The receiver took loans from the property to finance the abatement. After much work, the property was completely cleaned and was recently sold by the receiver, much to the satisfaction of the neighbors who had endured the nuisance conditions at the property for years.

People and City v. Parry

- Despite a previous permanent injunction obtained by the City enjoining the property owner from maintaining her property at 3489 Glade Street as a public nuisance with waste and storage, the hoarding situation escalated. The interior of the dwelling became full of rubbish, trash, and debris which was stacked wall to wall and floor to ceiling. The accumulation of waste on the exterior of the property resulted in a rodent infestation that severely affected the neighborhood. The Fire Department also deemed the property a fire hazard. Due to the extreme hoarding conditions inside the dwelling, the property owner lived outside in her truck. CEU filed a civil action and successfully convinced the Court to hire a receiver. The receiver promptly hired contractors to clean the entire property and make significant repairs. In addition CEU recovered the City's investigative costs of approximately \$2,600.

People and City v. Espinoza

- This property located at 2427 Hornblend Street in the neighborhood of Pacific Beach was a longstanding public nuisance. The elderly property owner continually maintained substandard housing conditions and allowed criminal activity to occur at the property despite abatement notices by the City. The owner's sons resided at the property and allowed a large transient encampment in the back yard. As many as 20 transients occupied the back yard living in tents and tarps without water or electricity service. The Police frequently visited the property to investigate reports of assaults, drug trafficking, drug use, loud disturbances, and theft. Fearing for their safety, neighbors were forced to stay inside their homes. CEU deputies and investigators worked with the community to obtain declarations and filed a civil injunction and petition seeking the appointment of a

receiver. The Court was convinced by the overwhelming evidence and allowed the receiver to take control of the property. The nuisance conditions were abated, giving the community back their peace of mind. The property is now on the market for sale.

People and City v. Castro

- This property located at 605 64th Street in the neighborhood of Encanto was a notorious hub for drug and nuisance activity. Defendants allowed drug activity to regularly occur at the property. Substandard conditions also existed at the property, including lack of water, heating, and electricity. An occupant was arrested for selling heroin from the property to an undercover detective. Police officers then executed a search warrant at the property and recovered methamphetamine, heroin, drug paraphernalia, syringes loaded with drugs, and scales used in the sale of drugs. CEU filed a civil action to abate the public nuisance and criminal activity and petitioned the Court to appoint a receiver. A receiver was appointed and completely rehabilitated the property. The property was sold by order of the Court.

VACANT ABANDONED PROPERTIES

This past year CEU prosecutors continued to work closely with police, building and zoning inspectors, and citizens to quickly address crime and nuisance activity occurring at abandoned vacant structures throughout San Diego. These properties present fire hazards to the community and are often frequented by transients. Police regularly respond to incidents of prostitution, drug activity, and alcohol use on the premises. It is not enough to ensure that the vacant structures are properly secured, rather, it is imperative that they be rehabilitated and put to productive use as quickly as possible. The Code Enforcement Unit filed six court actions in 2016 against the owners of abandoned properties where crime was occurring. Some of these properties had been left abandoned for over eight years and were a source of frustration to the community. CEU also assisted inspectors with administratively abating the property described below, which represents a typical abandoned property case:

4631 E. Mountain View

- Code inspectors responded to neighborhood complaints of serious sewage spills in the alley behind this abandoned property. The City abated the sewage problem and discovered that squatters had taken over the property and were living in extremely substandard conditions. There were broken windows, dilapidated ceilings, and trash, debris, and drug paraphernalia was strewn throughout the property. The squatters resided there with no plumbing, water, or electrical service. CEU assisted in drafting a Notice and Order to Vacate the substandard structure and abate the public nuisance

conditions at the property. CEU investigators discovered the owner had died and the property was slated for a tax auction by the County. They worked with inspectors and the Police Department to post the property and arrest the squatters. In less than 30 days the City secured the structure, demolished an illegal shed, cleaned the property and installed a fence around its perimeter to prevent entry.

DRUG ABATEMENT RESPONSE TEAM

CEU is an important member of the City's Drug Abatement Response Team (DART) which consists of the City Attorney's Office, SDPD DART detectives, narcotics teams, and code inspectors. The team focuses on problem properties with ongoing narcotic activity; develops an appropriate long term strategy to abate the nuisance activity; and ensures that all code violations are corrected. When a property owner fails to address narcotic activity at the property, CEU's DART deputy regularly files a civil action under California Health and Safety Code Sections 11570-11587, a specialized public nuisance statute designed to make property owners and managers civilly liable for illegal drug activity conducted on their premises. A few of the problem properties resolved by the Drug Abatement Response Team in 2016 include:

Knights Inn- Nuisance Motel

- Southern Division police officers worked closely with CEU's DART deputy to abate the nuisance and criminal activity at a motel located at 230 Via De San Ysidro. The Police responded to this motel frequently and officers made multiple arrests for drug possession, prostitution, assaults, theft and vandalism involving the motel's customers. CEU served a demand letter on the property owners requiring them to abate the nuisance and criminal activity at the property. A meeting was also held with the owners, police and the DART prosecutor. The owners of the motel agreed to implement suggested corrective measures to abate the nuisance activity, including the installation of security cameras and posting no trespassing signs. They also hired an experienced property manager and security guard company. Motel staff was also ordered to attend the City's Crime Free Multi Housing Training. The nuisance and criminal activity has since significantly diminished.

4634 Georgia Street

- Western Division police referred the property located at 4634 Georgia Street to the DART team due to its long-standing history of drug arrests from the property. Neighbors frequently complained to police about the criminal activity occurring on the premises. An inspection by the Code Enforcement Division discovered substandard

conditions including an excessive accumulation of junk, trash, and debris on the interior and exterior of the dwelling. The path of egress in the interior of the dwelling was obstructed creating a potential hazard to the occupants and the public. The property owners were ordered to repair the substandard building and abate the public nuisance. The owners evicted the problem occupants and completely rehabilitated the property.

MARIJUANA DISPENSARY LITIGATION

- In 2016 the City Attorney continued to aggressively shut down marijuana dispensaries operating in violation of the City's zoning laws. CEU deputies filed 32 civil complaints in 2016 resulting in immediate shut down orders and civil injunctions against property owners and dispensary operators. Similar to previous years, the dispensary cases prosecuted by CEU typically had crime occurring at the property due to the large amounts of cash at the dispensary and large amounts of high grade marijuana (with values from \$3,000 to \$4,000 per pound). Many of the cases had incidents of violent crimes such as assaults, robberies and burglaries. Citizens regularly complain to the police and the City Attorney's Office about the negative effects caused by marijuana dispensaries in their neighborhoods, especially those that are located near schools. Typical complaints are that school children witness drug sales in parking lots, the smoking of marijuana in public, and foot traffic or loitering. Another legitimate concern of law enforcement is the manufacturing of hashish oil which involves the use of heat and highly flammable solvents which can result in explosions, injuries, and death.
- In 2016 CEU entered into 41 stipulated civil settlements and obtained 16 default judgments in dispensary cases. The Unit was also successful in prevailing in 13 Motions for Summary Judgment. All of the property owners and dispensary operators are now permanently enjoined from operating or maintaining illegal dispensaries. In addition the defendants were ordered to pay civil penalties and investigative costs to the City. A total of \$4,498,175 in civil penalties and \$42,454 in investigative costs was ordered by the Court to be paid by these defendants.
- In addition to filing numerous civil complaints, CEU worked with the Police Department to ensure that those violating court orders were held accountable. For example, in ***People v. Ceballos***, CEU filed a criminal contempt action against the security guard of a dispensary. The guard had been served with a court order requiring the dispensary to shut down. In defiance of the order, he continued to maintain the dispensary open. The case went to trial and the jury found him guilty. The Judge sentenced him to three years' probation, and ordered him to pay a \$1,000 restitution fine and complete 20 days of

public work service. He was also ordered not to work at or enter another medical marijuana dispensary.

ZONING VIOLATIONS

The enforcement of zoning violations is critical to neighborhoods to prevent incompatible uses or over-density from interfering with the quality of life of neighborhoods, especially in residential zones. Cases prosecuted by CEU with significant zoning violations include:

People v. Moshy, et.al.

- This case involved an illegal auto repair business being conducted outdoors right in the middle of a neighborhood. To the dismay of the neighbors, numerous customer vehicles were parked and stored in the public right of way. The illegal use included the operation of paint spray booth; extensive unpermitted structural and electrical alterations, some of which were fire hazards; and unpermitted outdoor storage. The neighbors were continuously impacted by the lack of parking and congestion on the streets, noise, and strong paint odors. CEU filed a criminal complaint against both the tenant/business owner and the property owner. The tenant pleaded guilty and was ordered to pay a \$2,000 fine and \$1,504 in investigative costs. He was placed on 3 years' probation with 35 days of custody imposed but stayed, pending successful completion of all terms and conditions of probation. He was ordered to immediately cease the illegal activity. Subsequent to entering a guilty plea, CEU twice successfully argued motions to revoke his probation due to noncompliance. The business finally vacated the property. The property owner also pleaded guilty and paid \$1800 in fines with 13 days custody stayed pending successful completion of probation. She was also ordered to use all legal means to ensure that the tenant vacated the property permanently.

City v. Inspired Inc., et. al.

- CEU entered into a civil settlement with the property owner of 417 Sea Ridge Drive which is located in the Bird Rock area of La Jolla, along the top edge of a near-vertical coastal bluff estimated to be 30 feet high. The City had issued a Notice of Limited Entry or "yellow tag" restricting occupant access to a rear pool and deck area at the property, due to a local coastal bluff failure. Inspections subsequently determined that the pool deck had been undermined as a result of bluff failure, leaving the pool's foundation exposed. In addition, repair work had been attempted without prior City approval, and the required discretionary and ministerial permits. A "Red Tag" restriction was then issued by the City which required that the pool be emptied, prohibited occupants in the

patio and pool deck area, and required the owner to obtain the required permits as well as correct all damage caused by the unauthorized grading and development. The terms of settlement obtained by CEU through civil prosecution resulted in a court order requiring the owner to diligently obtain all required permits to correct the unpermitted work, stabilize the property, and restore the coastal bluff. The owner was also required to pay \$40,000 in civil penalties, with an additional \$260,000 in penalties suspended, pending full compliance with the terms of the Stipulation and pay \$1,126 in investigative costs.

TRAININGS AND PRESENTATIONS

CEU regularly attends community meetings and provides training on specific topics to law enforcement, code inspectors, and community groups. Some presentations provided by CEU deputies in 2016 are:

- Presentation at the 2016 International Municipal Lawyers Association Conference on “Perennial Remodels”
- Presentation at the 2016 International Municipal Lawyers Association Conference on “Collaborative Approaches to Code Enforcement”
- Hosted a Bus Tour for the 2016 International Municipal Lawyers Association Conference – the tour profiled code enforcement cases and historic properties. It also focused on the redevelopment and revitalization of Barrio Logan and viewed the historic murals of Chicano Park with a presentation and tour by muralist David Ochoa.
- Marijuana Awareness Training and Dispensary Prosecution to law enforcement and prosecutors
- Presentation at Central Elementary School to parents and community members on Marijuana Dispensary Enforcement
- Presentation on Hoarding Cases at the Department of Animal Services’ Regional Animal Law Enforcement Academy
- Presentation on DART cases as part of the SDPD’s Crime Free Multi Housing Training
- Provided training on code enforcement throughout the year to City inspectors

The Neighborhood Prosecution Unit and Collaborative Courts Unit



Under the direction of Chief Deputy City Attorney Lara Easton, in 2016 the Neighborhood Prosecution and Collaborative Courts Unit (NPU) had six prosecutors whose primary responsibility was to work in partnership with local law enforcement agencies, including the SDPD, the community, and external stakeholders to creatively address and aggressively prosecute crimes that impact the quality-of-life. These crimes included trespassing, prostitution, alcohol and drug offenses, and illegal lodging. Most crimes committed within the City of San Diego were misdemeanors, the types of offenses that impact residents and business owners on a daily basis. NPU's goals were to improve the quality-of-life and hold offenders accountable to both the criminal justice system and the

community.

Neighborhood Prosecutors were assigned to work alongside SDPD officers in the command divisions of Central, Eastern, Mid-City, Northern, Southeastern, and Western¹. These prosecutors worked closely with law enforcement by assisting with the screening of cases and reviewing evidence submitted by SDPD at their assigned police division. Their focus was to review cases involving chronic offenders in their assigned communities and/or cases that need special attention or alternative sentencing options. Additionally, they provided training to officers and answered questions at line-up briefings.

¹ Neighborhood Prosecutors serve as liaisons to SDPD's Northeastern and Northwestern Divisions as necessary. Southern Division misdemeanors are primarily handled by the District Attorney's Office.

- In 2016, six Neighborhood Prosecutors screened over 6,500 cases submitted by SDPD at their assigned police divisions. Neighborhood Prosecutors were a big part of the communities they served, attending various community



meetings, from Town Councils to Planning Groups, listening to community concerns and priorities.

- In 2016, NPU attended more than 350 community meetings.

- Additionally, NPU served as liaisons to the Serial Inebriate Program (SIP) and SDPD's Homeless Outreach Team (HOT). As liaisons, Neighborhood Prosecutors provided training to SDPD with the support of the SIP team. NPU also reviewed cases and made recommendations to encourage SIP defendants to accept treatment as an alternative to custody.

- HOT, together with the Psychiatric Emergency Response Team (PERT), provide outreach and engagement services throughout the City. They are the City's initial point of contact with both the chronic homeless and chronic inebriates living on the streets. The HOT Team is composed of police officers, County psychiatric clinicians and County Mental Health eligibility technicians. The Teams seek out and engage chronically homeless persons and, for those who are willing, place them in housing linked with appropriate services.

- SIP is offered to chronically homeless, alcohol dependent people who have been arrested. Each of these programs offers offenders an opportunity to participate in treatment, sober-living environments (as an alternative to incarceration), access to emergency room care, transitional housing, or long-term care.

- The teams provide care, resources, and assistance to approximately 700 individuals per year.

Collaborative Courts

- NPU participated in Behavioral Health Court, Drug Court, Veteran's Treatment Court, and Homeless Court.

Behavioral Health Court (BHC)

- A post-filing court dedicated to address offenders with serious, diagnosed mental illnesses, BHC combines the resources and expertise of the mental health and criminal justice communities to hold accountable, stabilize, and reduce recidivism among mentally ill offenders.
 - In 2016, 99 offenders were screened by Telecare, BHC's service provider.
 - Throughout the 23 court sessions, 31 of the 99 screened offenders were accepted.
 - BHC currently has 41 offenders participating in the 18-month program.

Drug Court (DC)

- DC is a collaborative court for non-violent drug offenders. An eligible DC participant receives outpatient or residential treatment, while making regular court appearances in order to monitor progress. DC takes approximately 18-24 months for the offender to complete 5 phases of individualized treatment. The DC team is comprised of substance abuse counselors, law enforcement, probation, the DC judge, and other criminal justice professionals.
- For the past decade, funding issues have forced DC to focus solely on felony offenders. However, since the passage of Proposition 47 (Prop. 47) in 2014, many felony drug possession charges became misdemeanor offenses. As a result, DC is now accepting misdemeanor offenders, and our office is once again a fully committed partner in DC.
- At the end of 2016, 35 of the 71 participants have active City Attorney cases.

Veterans Treatment Court (VTC)

- VTC is a collaborative court for former and current U.S. military members convicted of criminal offenses eligible for probation under Penal Code section 1170.9. To be considered for VTC, offenders must be able to show some type of medical or mental health issue related to their military service, such as post-traumatic stress disorder,

traumatic brain injury, or military sexual trauma. While trauma from combat is not always required, there must be a connection between the criminal offense and a military-related mental health issue.

- The VTC team is comprised of mental health providers, substance abuse counselors, program mentors and criminal justice professionals. Participants undergo extensive personalized treatment programs, which teach and encourage substance-free and crime-free life coping skills.
- The VTC team closely monitors every participant's progress at weekly organizational meetings and review hearings.
- At the end of 2016, there were 41 active participants in the program, including 6 active City Attorney cases.



Homeless Court (HC)

- NPU partnered with various agencies to clear warrants and efficiently process cases for homeless individuals with low-level misdemeanor and infraction offenses. HC is held monthly at two local homeless shelters.

- In 2016, HC addressed approximately 625 offenders with approximately 1,405 City Attorney cases.
- NPU provides similar services for homeless veterans at the annual “Stand Down” event held every July.
 - This year, 165 homeless veterans registered to participate in the Stand Down court proceedings.
 - 504 cases from 85 homeless veterans were adjudicated.
 - A special overflow calendar was created in October for those veterans who did not pre-register to have their cases heard at Stand Down.
 - In total, 160 cases from 57 veterans were adjudicated.

Alternative Sentencing Options and Restorative Justice Programs

- NPU is also charged with leading the efforts to integrate restorative justice principles throughout alternative sentencing programs. These programs include the Community Justice Initiative (formerly San Diego Community Court), the San Diego Misdemeanors At-Risk Track (SMART) pilot program, Beach Area Community Court, the Prostitution Impact Panel, and Survivors of the Streets.



Community Justice Initiative (CJI)

- Launched in November, 2014, CJI is a post-plea alternative sentencing option for eligible low-level misdemeanor offenders. CJI partners include the San Diego Sheriff’s Department, the Office of the Public Defender, the San Diego Association of Governments (SANDAG), the American Civil Liberties Union, and two service providers, Alpha Project and the Urban Corps of San Diego County (Urban Corps).

- Eligible defendants have the opportunity to avoid a criminal record by completing 16 hours of community service with Alpha Project or Urban Corps. These organizations are experienced at linking participants with resources and services appropriate to their situation, including alcohol and drug addiction programs, mental-health services, and job training.
 - Since its inception, over 2,220 offers have been accepted.
 - Through the end of 2015, 1,630 of the 2,220 participants, or 73% percent, successfully completed the terms of the offer, thereby earning a dismissal of their case and the removal of their conviction from their record.

- Participants completed more than 25,000 hours of community service work by performing tasks, such as planting trees, recycling waste products, helping provide services to the homeless, painting out graffiti, and clearing neighborhoods of illegally dumped trash in the City. This service amounts to approximately \$250,000 of taxpayer savings, based on the current minimum wage.

- In 2016, CJI expanded in scope to allow more low-level and first-time offenders to choose a path leading them away from further criminal activity. The expansion, which was partly funded by a \$415,599 grant from the U.S. Department of Justice’s Smart Prosecution Initiative.

- Key CJI enhancements under the Smart Prosecution Initiative included:
 - Screening of CJI participants to assess individual needs (such as housing, education, job training, and treatment programs) that may put them at risk of committing additional crimes.

 - A dedicated case manager to provide participants with personal counseling and direction in accessing service providers and enrolling in treatment programs.

- Critical to the expansion is conducting a risks and needs assessment after a participant pleads guilty and accepts a CJI offer. This formal screening distinguishes high-risk from low-risk participants and assesses participants who may benefit from individualized approaches to prevention and intervention. Those individuals are connected with a case manager at Alpha Project and offered services to address their underlying needs. The case manager has aided CJI participants with life skills, such as completing financial aid forms to apply to community college, applying for food stamps and benefits, and creating a personal budget to pay court fees.

San Diego Misdemeanants At-Risk Track (SMART)

- Launched in December 2016, SMART is designed to address chronic, low-level misdemeanor offenders who repeatedly cycle through the criminal justice system, without access to services, coordination of care, or meaningful incentives to engage in treatment. To stop this revolving door, the City Attorney's Office collaborated with SDPD and the San Diego County Sheriff's Department to establish SMART.

SMART prioritizes chronic offenders with acute drug addictions and complex social service needs. These offenders have one or more drug offenses since Prop. 47 took effect in 2014 and have been arrested at least twice in the past six months for a quality-of-life offense.

- SMART safely diverts chronic misdemeanor offenders, particularly those who are otherwise resistant to intervention, to a case manager and offered individualized substance abuse disorder treatment through Family Health Centers of San Diego, and tailored housing placements with the San Diego Second Chance Program.
- A SMART offer for case management, treatment, and housing is not only available once a case is filed and an individual is in a courtroom, but rather, at various stages earlier in the criminal justice continuum:
 1. At the point of social contact, in a non-enforcement capacity.
 2. At the point of arrest by SDPD.
 3. At arraignment by the City Attorney's Office.
 4. At sentencing as an alternative to incarceration.
 5. While a person is serving a custodial sentence.
 6. Upon being contacted by the SMART service provider, after rejection of a SMART offer in court.



- In addition, once an offender is in the criminal justice system, outreach workers may offer SMART during non-enforcement social contacts.
- Under the pilot program, SMART offers made in court were made as an alternative offer. If the offender rejected the SMART offer, the case would proceed as normal, with the otherwise standard offer and sentencing.
- Transportation and bus passes are provided to participants to assist in the completion of the required intake and assessment.
- Building on the success of SMART and working with the County, the City intends to expand SMART with Prop. 47 funds from the Board of State and Community Corrections. The City is requesting \$3 million dollars in funding over three years.

Beach Area Community Court (BACC)

- BACC is a pre-filing restorative justice program for eligible infraction offenders in the beach area communities of Pacific Beach, Mission Beach, and Mission Bay Park. BACC is a collaborative effort between the City Attorney’s Office, SDPD, the Park and Recreation Department, and Discover Pacific Beach.
- Eligible offenders have the option to have their citation dismissed by participating in a community impact panel and work service to restore the affected community.
 - BACC hosted 12 court sessions in 2016, which addressed 264 participants.
 - These participants completed over 1,584 hours of community service in the beach area.
- Additionally, BACC hosted Instant Justice, in July 2016, allowing people who received eligible citations over the Fourth of July weekend to immediately complete community service and resolve their citation.
 - 36 participants completed 216 hours of community service.

Prostitution Impact Panel (PIP)

- PIP is an educational, community-based victim impact panel designed to inform first-time sex buyer offenders (i.e. “Johns”) who solicit or agree to engage in prostitution about the far-reaching impact of prostitution. The panel consists of former prostitutes (survivors), former John/consumer side offenders, mental health clinicians, a health practitioner, SDPD Vice Officer, and community members.
- Participants are asked to consider these various perspectives, to reconsider their choices, and to contemplate whether prostitution is a “victimless” crime. Family Health Centers of San Diego is also on-site to offer HIV testing and counseling to offenders.
 - In 2016, 3 PIP sessions were conducted.

Survivors of the Streets (SOS)

- SOS is an alternative sentencing option for first-time seller prostitution offenders to participate in individual low or no-cost group counseling for a reduction in their criminal charge.

Human Trafficking and Child Sexual Exploitation

- The San Diego Human Trafficking Task Force (HTTF) is a task force of various local, state and federal law enforcement and prosecution agencies. Although the City Attorney's Office is not responsible for the prosecution of human trafficking (a felony crime), Deputy City Attorneys frequently need to assess whether defendants in prostitution cases may be victims of human trafficking. NPU dedicated an experienced prosecutor, Jeff Brooker, to serve as a liaison to the HTTF and SDPD's Vice Unit.
- The goal of the HTTF is to create a coordinated law enforcement system to investigate and prosecute human trafficking and related crimes, as well as identify, rescue, and provide support to victims through social and legal networks. In 2016, the HTTF arrested 37 offenders suspected of human trafficking. As a result, the HTTF rescued 60 victims.
- In 2016, NPU also participated in the San Diego Regional Human Trafficking and Commercial Sexual Exploitation of Children Advisory Council. As an active participant, NPU has a heightened awareness of the many challenges facing trafficking victims. Our collaboration with law enforcement, victim services, child welfare services, and professionals from the education and research sector, continues to provide opportunities to identify best anti-human trafficking practices.



Crime-Free Multi Housing Management Training

- We continue to provide training to multi housing property managers on the topic of quality-of-life crimes in support of Social Advocates for Youth (SAY) San Diego and SDPD's crime prevention and intervention efforts.

Community Outreach, Engagement, and Trainings

- In 2016, NPU participated in several community outreach events including staffing a booth at the first ever City Heights Law Day, participating in National Night

Out, attending the Freedom Now Fair to combat Human Trafficking, and engaging with the community at Better a Block events hosted by the non-profit, One San Diego.

- In October, the International Association of Chiefs of Police hosted their annual conference in San Diego.



During this conference, NJU presented on CJI, SMART, and the Prostitution Impact Panel. Deputy City Attorney Ann Marie Council co-presented on the City's Spice Ordinance with Chief Deputy City Attorney Kathryn Lange Turner and members of SDPD.

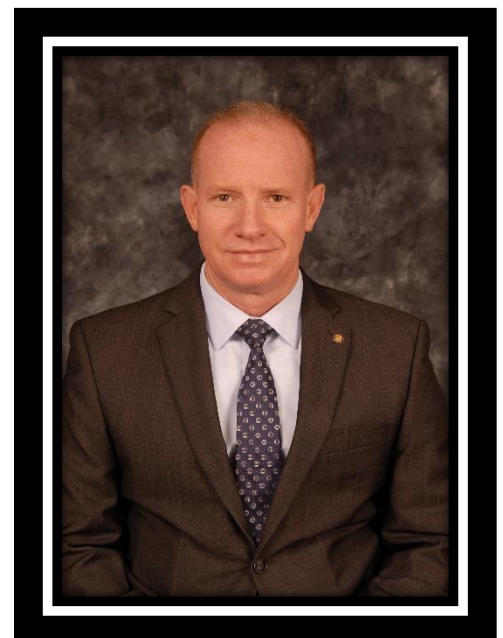
Heading into 2017

- With the election of the new City Attorney, Mara W. Elliott, there is a renewed focus on NPU and City Attorney presence in the community, including attendance at more community meetings and outreach events.
- In 2017, NPU looks forward to expanding its coverage to the Northwestern, Northeastern, and Southern divisions of SDPD. This will allow for a renewed focus on quality-of-life crimes and other issues affecting these parts of the City.

The Criminal Division

The Criminal Division prosecutes criminal misdemeanors and infractions committed within the City limits. Assistant City Attorney John Hemmerling oversees the Criminal Division.

The Criminal Division is divided into five units. Here are a few highlights from our Criminal Division:



The Appellate Unit

The Appellate Unit provided legal support for the Criminal Division. Our Unit is comprised of Chief Deputy City Attorney Jonathan Lapin, four deputy city attorneys and two and one-half clerical positions. The Appellate Unit handles all pre-trial motions and writs as well as all post-trial appeals for the General Trial Unit and the Domestic Violence and Sex Crimes Unit.

Most appeals are handled in the San Diego Superior Court Appellate Division, but the Appellate Unit also had cases in the Fourth District Court of Appeal, United States District Court, Southern District of California and the Court of Appeals for the Ninth Circuit.

The Appellate Unit also provided training, research, legal updates, and other legal support for all units in the Criminal Division. Appellate deputies trained new deputy city attorneys and provided research and legal opinions to deputies in the case issuance and trial units. While the core mission of the Appellate Unit involved legal research and writing, specific unit responsibilities included the following:

Pre-Trial Motions

- The Appellate Unit handled all pre-trial motion of behalf of the General Trial Unit. Typical motions included defense motions to suppress evidence based on the Fourth Amendment, demurrers, dismissal based upon civil compromises, petitions to seal and destroy arrest records, and motions to dismiss based upon Speedy Trial grounds.

Post-Trial Motions

- The Appellate Unit handled all post-trial motions on behalf of the General Trial Unit as well as the Domestic Violence Unit. Typical motions included motions for new trial, motions to withdraw guilty pleas, motions to vacate convictions due to immigration consequences, and motions to seal arrest records.

Appeals

- The Appellate Unit handled all appeal matters on behalf of the General Trial Unit as well as the Domestic Violence Unit. Most appeals are filed by defendants after convictions, but the Appellate Unit also filed appeals to correct judicial errors.

Training

- The Appellate Unit took part in training each new class of deputy city attorneys. The Unit provided training on such topics as statutory criminal law and procedures, appellate issues, and Constitutional issues.

Legal Advice

- The Appellate Unit served as a resource for deputies who have questions on criminal law and procedure. Trial deputies, case issuance deputies, and arraignment court deputies seek legal advice on a daily basis. The Appellate Unit also provided legal memos on various topics to the Criminal Division at large.

Highlights of 2016

- The Appellate Unit handled more than 51 appeals, and over 350 motions.
- In a continuing case, Senior Deputy City Attorney Shelley Webb successfully argued against a petition for habeas corpus relief before the United States Court of Appeals for the Ninth Circuit in the case of *People v. Steven Kassab*, (No. 15-56191).
- Deputy City Attorney Michael Ficken successfully briefed and argued before the Appellate Division of the Superior Court and the Fourth District Court of Appeal in the published case of *People v. VanVleck*, 2 Cal. App. 5th 355 (2016), that military diversion is not available for misdemeanor driving under the influence (the issue is now pending before the California Supreme Court Case No. S237219).
- Senior Deputy City Attorney Shelley Webb and Chief Deputy City Attorney Jonathan Lapin drafted new approaches to respond to motions to suppress, helped to implement new advisals for local law enforcement agencies to give to those arrested for driving under the influence, and provided new guidelines to issuing driving under the influence cases in order to comply with the U.S. Supreme Court case of *Birchfield v. North Dakota*, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). In *Birchfield* the Supreme Court held that states may not impose criminal penalties on a motorist for refusal to submit to a blood test when not lawfully required to submit as noted in their implied consent statutes. *Birchfield* also held that state must demonstrate either exigency circumstances, consent by the defendant, or a warrant to lawfully obtain a blood test as part of an arrest for driving under the influence.
- Deputy City Attorney Kathleen McManus successfully argued a series of cases involving demurrers, motions to quash subpoenas, and non-statutory motions to dismiss regarding the San Diego City Attorney's Office authority to prosecute cases arising in Poway/4S Ranch.

The Case Issuance Unit

The Case Issuance Unit operates within the Criminal Division of the San Diego City Attorney's Office. The Case Issuance Unit is responsible for receiving, processing, and reviewing all reports submitted by local law enforcement agencies. Attorneys in the Unit review misdemeanor and infraction violations occurring within the City of San Diego, the City of Poway, and the unincorporated area of 4S Ranch.

The Case Issuance Unit files three types of charges:

1. Felony Wobblers: Crimes that may be prosecuted either as misdemeanors or felonies at the discretion of the prosecutor. The District Attorney's Office elects to send certain felony cases to the City Attorney's Office for misdemeanor review after the case has been re-directed/rejected as a felony filing.
2. Misdemeanors: Crimes punishable by a fine and/or one year or less in the county jail.
3. Infractions: Crimes punishable only by a fine.

Over 1,600 cases are received, reviewed and processed each month of which an estimated 1,300 complaints are filed. Each case is reviewed by an attorney who makes the issuing decision. If criminal charges are filed, the case is prepared for arraignment. The Unit is jointly responsible with the General Trial Unit for ensuring the arraignment is in accord with the procedures of the court, rights of victims and the rights of the persons accused.

The supervisors within the Unit are responsible for the training and development of new attorneys and staff members. Attorneys are trained in the legal and technical requirements of reviewing cases and issuing appropriate charges against an individual. Staff members are trained on office and court procedures for filing cases in court. Some staff members are also trained to work in the Misdemeanor Arraignment Department as vital assistants to the attorneys, judges, and court personnel.

Staffing of the Case Issuance Unit

- In 2016, the Case Issuance Unit was headed by Chief Deputy City Attorney Heily Hernandez and supported by nine deputy city attorneys, one paralegal, one victim service coordinator, one provisional investigator and twenty-four staff members. The staff members within the Unit were divided into three groups: 1) Case Intake, 2) Custody, and 3) Complaints/Data Entry. Each group was tasked with a unique set of responsibilities within the case issuing process.

Cooperation with Law Enforcement Agencies

- The Case Issuance Unit receives cases from a variety of law enforcement agencies. Attorneys and staff work closely with each agency to ensure successful prosecution of each charged case. These agencies include: San Diego Police; San Diego County Sheriff; California Highway Patrol; San Diego Harbor Police; San Diego State University Police; University of California – San Diego Police; San Diego Community College Police; San Diego City School Police; Department of Animal Services; The Humane Society; Department of Health Services; Department of Fish and Wildlife; San Diego Park Rangers; San Diego Lifeguards; Metropolitan Transit District and the Department of Alcoholic Beverage Control.
- Attorneys from the Case Issuance Unit work with partner law enforcement agencies to facilitate open communication, free flow of necessary information and continually maintain an ongoing dialogue regarding the prosecution of misdemeanor cases. The chief and senior deputies frequently attend law enforcement meetings in an effort to address questions and maintain consistency throughout the law enforcement community.

Case Issuance Statistical Information

- In 2016, the Case Issuance Unit reviewed approximately 20,286 cases from law enforcement agencies and the District Attorney's Office. This represents approximately 87 percent of the criminal cases submitted to the City Attorney's Office as a whole. The Unit transferred some cases to other units for vertical prosecution and often receives cases from other vertical units for our review. In 2016, the Case Issuance Unit filed approximately 15,300 complaints which amounts to 75 percent of the total cases reviewed.
- Issuing attorneys must be well versed in many areas of criminal law. The types of offenses reviewed and filed include: driving under the influence of alcohol (DUI); petty theft; resisting arrest; prostitution; drug possession; vehicular "hit and run"; assault with a deadly weapon; battery with serious bodily injury; furnishing alcohol to a minor; unlawful possession of a firearm; restraining order violations; harassing telephone calls; credit card/check fraud and identify theft.

- In 2016, the Case Issuance Unit filed approximately:
 - 3,135 driving under the influence (DUI) of alcohol cases:
 - 13 driving under the influence (DUI) of alcohol cases with injury.
 - 4,611 drug-related offenses;
 - 983 under the influence of controlled substance cases;
 - 105 vehicular “hit and run” cases;
 - 1,862 theft related offenses;
 - 323 violence related offenses;
 - 1,127 trespass and quality-of-life related offenses.

- The Unit also reviewed other types of weapons cases, suspended driver license cases, municipal code violations, vehicle code related violations and many more.

Impound and Forfeiture Hearings

- The Case Issuance Unit assigns a deputy city attorney to handle vehicle impound and forfeiture hearings generated by the unlicensed driver enforcement component of the San Diego Police.
- The assigned deputy acts as a liaison between the City Attorney’s Office and the SDPD’s Traffic Division. The assigned deputy handles matters that arise from the SDPD Tow Administration and Auto Theft Unit and serves as a great resource to other deputy city attorneys on DMV, traffic, and other vehicle related matters.
- In addition to prosecutorial duties, in 2016, the assigned deputy oversaw ten civil vehicle impound hearings and conducted one vehicle forfeiture hearing pursuant to various procedures in the California Vehicle Code. Case Issuance Unit interns prepared written motions in opposition to the early release of vehicles impounded for thirty days. The assigned deputy reviewed the motions and assisted the interns in their preparation for the hearings.
- As part of the Tow Administration impound process, the assigned deputy pre-screened Vehicle Code section 23019.2 impound cases in advance of any appeal requests to determine if charges would be likely filed. These cases included charges of reckless driving, speed contests and exhibition of speed.
- Additionally, the assigned deputy also handled a Vehicle Code 10751 hearing where the California Highway Patrol (CHP) enlisted our help when a semi-trailer crossed the border from Mexico into the US that was modified so that it was missing its hidden identifiers.

The vehicle was forfeited pursuant to the statute as the evidence strongly suggested it was likely stolen.

- Lastly, the assigned deputy identified thirteen driving under the influence (DUI) cases where the auto forfeiture allegation was charged due to two prior DUI convictions. The assigned deputy filed a Vehicle License Title Hold due to the Vehicle Code 23596 auto forfeiture allegation. Of those, seven vehicles were released as part of a guilty plea. The assigned deputy filed six noticed motions to forfeit the vehicles of which one was forfeited after being declared a nuisance.

Community Justice Initiative

- The City Attorney's Office continues with its Community Justice Initiative project launched at the end of 2014. The Community Justice Initiative is an innovative approach to handling low-level misdemeanor offenses. The Case Issuance Unit attorneys continue to evaluate each case to determine whether a case is eligible for Community Justice Initiative diversion.
- An offer to divert an eligible case to Community Justice Initiative is made by the Case Issuance Unit attorneys and made available to the offenders at their initial Court Appearance. The Case Issuance attorneys made over 2,080 Community Justice Initiative offers in 2016.

Highlights of 2016

- In 2016, the Case Issuance Unit attorneys reviewed approximately 2,978 cases with body worn camera video (BWC) footage submitted to us by the SDPD. Case Issuance clerks continued to utilize E-Discovery procedures to provide discovery to defense counsel for in-custody cases.
- Additionally, the Intake unit mailed out pre-filing Restitution letters to victims of crime submitted to our office. The Intake unit was responsible for sending out over 5,810 letters notifying victims of their right to receive restitution. As a result, victims were able to submit restitution requests for out-of-pocket expenses incurred prior to the case being reviewed by an attorney. Once requests are submitted, attorneys are able to review and incorporate the request into the disposition of the case.
- In an effort to keep victims informed, the Case Issuance Unit notifies victims of crime when submitted cases are not issued for evidentiary reasons. In 2016, our victim services coordinator sent out more than 850 letters notifying victims about the outcome of the case.

- Lastly, in addition to their daily responsibilities, both Case Issuance Unit senior deputies were able to attend the City of San Diego’s Supervisor Academy training.

Cross-Training of Trial Attorneys

- In 2016, the Criminal Division implemented a plan for rotations between the General Trial, Case Issuance and Appellate Units. Attorneys in the Trial Unit serve a four-to-six month rotation in the Case Issuance Unit and a two-month rotation in the Appellate Unit. When assigned to the Case Issuance Unit, General Trial attorneys learn how to review and issue cases in the City Attorney’s Criminal Division Case Management System (CMS); learn how to read an offender’s criminal history; and how to make an appropriate sentencing recommendation. In 2016, eight attorneys participated in the Case Issuance rotation; one of which was selected to participate in a second rotation in order to fill a deputy opening in the Unit.

San Diego Spice Ordinance

- Deputy City Attorney Ann Marie Council was instrumental in the creation, drafting and passage of the San Diego Spice Ordinance. Anne Marie collaborated with a coalition of local stakeholders to develop the San Diego Spice Ordinance, which was presented to the San Diego City Council and was ultimately passed into law in June 2016. The San



Diego Spice Ordinance prohibits the manufacturing, sale, distribution and possession of spice, bath salts, kratom, and other synthetic and psychoactive drugs.

- Ann Marie was able to capitalize on her knowledge of California drug laws and craft a local ordinance that helps protect residents. Her work provided the City with a new tool to deal with the current drug epidemic. Ann Marie's work involved extensive research and communication with other jurisdictions, laboratory analysts and experts, law enforcement entities and City Council Members' offices. Ann Marie responded to numerous media questions about the new ordinance, remained a point of contact for law enforcement; and continued to train on the model ordinance, all while maintaining her demanding workload in the Case Issuance Unit.

Proposition 64

- Effective November 9, 2016, Proposition 64: The Adult Use of Marijuana Act legalized specified personal use and cultivation of marijuana for adults 21 years of age or older and reduced criminal penalties for some marijuana related offenses such as possession of marijuana for sale and transportation for sale. Many of these offenses have been reclassified to misdemeanors and are now being handled by our office.
- In anticipation of the passage of Proposition 64, the Case Issuance Unit Chief collaborated with local law enforcement and laboratory analysis partners in an effort to identify and address potential issues in anticipation of these changes. Additionally, the chief and senior deputies attended training presented by the League of CA Cities on various aspects of Proposition 64. The Unit also attended a training provided by The San Diego District Attorney's Office on possession of marijuana for sale cases.

Training and Law Enforcement Outreach

- In 2016, the Case Issuance Unit provided training for new criminal deputy city attorneys on our case management system (CMS) and issuing basics, law enforcement database introduction, and drug offenses.
- In October 2016, the Case Issuance Unit Chief provided affidavit training to SDPD's Central Division. The training focused on drafting affidavits in support of arrest warrants.
- In November 2016, the Case Issuance Unit Chief provided training to new Animal Control Officers. The training focused on report writing, case submission, and drafting affidavits in support of arrest warrants.

Collaboration with the District Attorney

- Approximately 178 cases were referred to the District Attorney's office by issuing attorneys for felony review. In addition to case referrals, Case Issuance Unit attorneys maintained relationships within all the county branches of the District Attorney's Office in order to exchange information on cases and defendants of mutual interest.

Collaboration with the San Diego Superior Court

The Case Issuance Unit proposed more than forty code section additions and five changes to the San Diego Superior Court Misdemeanor and Infraction Bail Schedule. The changes included updating the Bail Schedule to include crimes commonly charged by our office that were not previously part of the Bail Schedule. The remaining additions involved California Code of Regulation offenses reclassified to be charged as infractions instead of a misdemeanor. The Unit Chief and Senior Deputy Kristen Fossler attended the annual meeting of the San Diego Superior Court Judges Bail and Jail Committee where our proposal was unanimously adopted.

Outlook for 2017

- The Case Issuance Unit continues to look forward to continuing to make Victim Services a priority. The issuing attorneys continue to work with a victim services coordinator to contact victims and act as a resource to the attorneys. The Unit will continue to foster relationships with local justice partners and diligently work to put forth strong cases for prosecution. Case Issuance will continue to work with the other units in the Criminal Division to effectively handle the cases that are issued by the Unit, resulting in effective and efficient prosecution.

The Domestic Violence & Sex Crimes Unit

The Domestic Violence & Sex Crimes Unit ("DV Unit") reviews, issues, and prosecutes all misdemeanor Domestic Violence, Child Abuse, Elder Abuse, Stalking, and Sex Crimes within the City of San Diego, Poway, and 4S Ranch. Domestic Violence cases, including Elder Abuse and Child Abuse, specifically present unique challenges. The victims of these crimes are particularly vulnerable – either because they live with their abuser, are financially dependent on the perpetrator, or harbor sentimental feelings for the defendant due to their close interpersonal relationships.

Prosecutors, victim advocates, and investigators vertically investigate and litigate cases, from the pre-issuing stage, to jury trial, and beyond to ensure victims receive justice. Each victim is matched with one prosecutor, one victim advocate, and one investigator who will handle their case from beginning to end. These familiar voices provide victims with stability and a reprieve from having to retell the story of their abuse over and over again.

The attorneys receive specialized training on how to communicate with victims and to understand the dynamics of these disturbing crimes to make the victim's journey through the justice system easier.



Domestic Violence

- Every year the San Diego City Attorney's office dedicates substantial resources to the prosecution of Domestic Violence cases. 2016 was no exception. When Assistant City Attorney John Hemmerling published the Criminal and Community Justice Division Strategic Plan in September 2016, he, along with then City Attorney Jan Goldsmith formally recognized the importance of Victim Services and Domestic Violence prosecution. New City Attorney Mara W. Elliott who took office in December 2016 not only recognizes the importance of Victim Services and Domestic Violence, but has made seeking justice for Victims a top priority of our Division.



(Left to Right) Assistant City Attorney John Hemmerling, City Attorney Mara W. Elliott, Chief Deputy City Attorney Nicole Crosby, Lizbet Perez – Alliance for HOPE International, Casey Gwinn – Alliance for HOPE International, Senior Deputy City Attorney Jonathan Fraenkel.

- The DV Unit is a key member of the High Risk Team, which brings law enforcement, community services, and victim advocates together to ensure that our most at-risk victims receive the services they need to escape life-threatening situations at home. The goal of the High Risk Team is to create an environment where the City Attorney, District Attorney, SDPD, San Diego Sheriff’s Department, and

community partners instantly

communicate, pooling resources to prevent DV homicides in San Diego County.

- The DV Unit also represents the City Attorney’s Office on the Executive Board of the Domestic Violence Council. The mission of the Domestic Violence Council is to bring our community together to end domestic violence and promote healthy relationships in San Diego County.
- The DV Unit is led by Assistant City Attorney John Hemmerling and Chief Deputy City Attorney Nicole Crosby. Chief Deputy Crosby was a prosecutor specializing in domestic violence and stalking in San Francisco for several years before joining the San Diego City Attorney’s Office in 2014. Senior Deputy City Attorney Jonathan Fraenkel, a former deputy district attorney, assists Chief Deputy Crosby in managing attorneys, staff, training, and coordinating with law enforcement to ensure that justice is done in each and every case.
- At the beginning of the 2016 the unit was comprised of 11 full time attorneys, 3 investigators, 2 victim advocates, 4 legal secretaries, and 5 court support clerks.
- Due to the high demands and increase in case load 2 full time attorneys and a victim advocate were added to the team.
- In 2016, the DV deputies reviewed 2,894 police reports involving DV and Sex Crimes, and issued 976 of them. This is an increase of 22% more cases reviewed and 9% more cases issued than in 2014.

- Achieving these significant increases came with a tremendous amount of teamwork, good judgment, and improved efficiency.
- In 2016, of cases that went to trial (not including hung juries, the unit had a conviction rate of 78.8%, up from 74.1% in 2015. The DV Units overall conviction rate for 2016 was 95.8%, up from 95.6% in 2015.

How does the City Attorney's Office Receive and Process Cases?

- Police reports are delivered to our office by various law enforcement agencies in the City and County. Once at the City Attorney's Office, the cases pass through the hands of many DV Unit team members.
- Initially, all police reports are channeled through the court support clerk team. The clerks create a case file for each report submitted to our office, whether a complaint is drafted or not. The files include various police reports, "RAP" sheets for suspects, victims, and witnesses, as well as a suspects booking history. The cases may also include photographs, audio, and video evidence that the police gathered. Individual case files are necessary for the prosecutors to evaluate the DV and Sex Crimes, the suspect's general criminality, and specific recidivism issues inherent in DV and Sex Crime cases. Prior acts of DV and Sex conduct is admissible in court, so preserving the records is imperative.
- After the court support clerks create case files, the DV Unit cases are assigned to individual DV Deputy City Attorneys in order for an issuing decision to be made. Deputies are selected to handle these sensitive cases based on their specific training and experience. Each class of crime has different proof requirements, specific legal standards, and defenses that must be evaluated carefully. The Deputies must also review Body Worn Camera footage from the police officers, photographs, witness statements, jail calls, 911 audio recordings, and any other evidence that is available, before a case is filed in court.
- Prior to making case decisions the Deputy City Attorneys reach out to each victim to personally check on their well-being and inform them that the case is under review.

- The DV clerks prepare complaints, file them in with the Superior Court, and deliver the case files to the legal secretaries. The legal secretaries’ work includes the format and



preparation of all the DV Unit’s motions, briefs, petitions, subpoenas, and a variety of protective orders. The legal secretaries are also tasked with the detailed work of transcribing 911 calls, interviews with victims, witnesses, and defendants, the Body Worn Camera footage, jail calls, and any other audio or video file that

will be used in court.

- Before court, the Victim Service Coordinators (“Advocates”) personally contact the victims of crime to let them know the DV Unit has filed a complaint against the perpetrator. The Advocates explain the court process, City and State services available, and provide a comforting voice.



(Left to Right) Jessica Yaffa - President San Diego Domestic Violence Council and No Silence, No Violence, Assistant City Attorney John Hemmerling, City Attorney Mara W. Elliott, Chief Deputy City Attorney Nicole Crosby, Deputy District Attorney Claudia Grasso.

- Meanwhile, the City Attorney Investigators (“Investigators”) assist the DV Unit members by developing information and gathering evidence to support prosecution. The Investigators are out in the field daily, locating hard-to-find victims, witnesses, and other evidence. They make contact with the victims’ family, take witness statements, photographs, and obtain medical and court records from around the county.

Featured Case: People v. Brown

- Over the course of one and a half years the Defendant physically abused the Victim on five separate occasions. The Victim bravely testified about them all. In March 2014, the

Defendant grabbed her by the throat and threw her on the ground. In March 2015, the Defendant came to Victim's house in the middle of the night and punched her in the back while she was lying in bed. In April 2015, the Defendant took Victim's laptop after looking at photographs on her Facebook page. In May 2015, Defendant waited for the Victim at work, chased her around her car, seized her cell phone, and threw it on the ground. In July 2015, the Defendant went to Victim's house for sex and the Victim refused him. The Defendant took her cell phone away from her and the Victim had to physically struggle to retain control of the phone. Victim was so often traumatized that she could not recall an April 2015 incident where Defendant punched her in the face.

- Finally, in July 2016, a jury found Defendant guilty of three counts of battery upon a significant other, (violations of Penal Code section 243(e)(1)), two counts of theft (violations of Penal Code section 484), one count of vandalism, (a violation of Penal Code section 594), and dissuading a Victim from reporting a crime, (a violation of Penal Code section 136.1).

Child Abuse

- Child abuse prosecution is particularly difficult due to the challenged inherent in obtaining testimony from a child, in court, in front of his or her abuser. DV Unit prosecutors are charged with filing petitions for judicial permission to gather confidential evidence from juvenile courts, family courts, and Child Welfare Services. DV Unit prosecutors vigilantly ensure that convicted child abusers attend rehabilitation cases and petition the court for protective orders to shield these defenseless victims from further harm.

Featured Case: *People v. Ramirez*

- Defendant shared a home with a couple and their 7 year old daughter. Over the course of a year the Defendant repeatedly touched the young girl's genital region for sexual gratification. On at least one occasion, he attempted to kiss her and told her not to tell her family about what had happened. This was not the Defendant's only victim. He also touched a 6 year old girl who lived nearby in the genital region.
- In June 2015, the neighbor victim and two other girls between 6 and 8 years old were playing in the victim's driveway. The Defendant, standing 10 feet away, masturbated as he watched the girls play. During SDPD's investigation, Defendant admitted to masturbating as he watched the girls.

- In November 2016 a jury found the Defendant Guilty of Lewd Conduct in Public (a violation of Penal Code Section 647(a)) and Annoying or Molesting a child (A violation of Penal Code Section 647.6.) He was sentenced to time in county jail, and placed on formal probation to the San Diego Adult Probation Department. Further, he is required to complete sex offender classes, is precluded from contacting the victims, and was required to register as a sex offender for the rest of his life.

Elder Abuse

- Perpetrators of Elder Abuse exploit the advanced age of their victims to physically, mentally, or financially abuse them. Prosecuting elder abuse cases requires creative investigation, because many victims are afraid to testify or have memory issues related to declining health.

Featured Case

- The Victim was an 80 year old woman who could stand and get around with the assistance of a walker. She had undergone multiple surgeries on her back and was very frail. The Defendant was a 45 year old transient female who had never seen the Victim before.
- In October of 2015 the Victim was crossing the street at a busy intersection. The Victim told the Defendant not to jaywalk, which enraged the Defendant.
- The Defendant ran to the Victim who was now attempting to cross the street, screamed in her face, and pushed the Victim to the ground. The Victim was left helpless, lying in the middle of the street for almost fifteen minutes until an ambulance arrived and provided assistance to her.
- In March of 2016 the Defendant was convicted of elder abuse, battery on an elder, and simple assault. She was sentenced to almost one year in county jail and the court issued a criminal protective order preventing the Defendant from contacting the Victim for 10 years.

Sex Crimes

- Specially trained deputies are assigned to prosecute sex crimes cases. Sex crime litigation includes prosecuting individuals who commit sexual batteries, masturbate in public for lewd purposes, and sex offenders who deliberately fail to update their registration. Because these defendants represent a clear danger to public safety – particularly those offenders who target children – the City Attorney’s Office dedicates significant resources to ensuring that these individuals receive proper punishment for their crimes.
- Chief Deputy Crosby and Senior Deputy Fraenkel personally attend twice-monthly SAFE (San Diego County Sexual Assault Felony Enforcement) and SOMC (Sex Offender Management Council) meetings with local, state, and federal law enforcement to ensure that registered sex offenders who attempt to escape being monitored are brought to justice.

Featured Case: *People v. Rosas*

- In August of 2015, the Defendant was running the America’s Finest City Half Marathon. When he began to stagger, a female paramedic and a male emergency medical technician attempted to treat him. The Defendant became hostile, spit at them, and was physically restrained for the medics’ safety. During treatment the Defendant began saying sexually explicit things to the female paramedic, including that he was on probation for rape. The Defendant threatened to rape her as he pulled his pants down and exposed his genitalia.
- The Defendant broke free from his restraints and punched the female paramedic in the face. He grabbed her shirt and bra, ripped her clothing, exposing her breasts. The Defendant trapped the female paramedic inside the ambulance. The female paramedic punched the Defendant repeatedly and even fractured her own hand in her attempt to escape.
- A number of officers were finally able to subdue the Defendant. Evidence of the Defendant’s 2013 acts of forcible rape, forcible sodomy, oral copulation by force, and assault with intent to commit rape were introduced into evidence, even though the prosecutor was unable to secure a conviction on those charges. On 12/6/16 the Defendant was found guilty of indecent exposure (violation of Penal Code section 314), battery on an Emergency Medical Technician (violation of Penal Code section 243(c)(1)), Criminal Threats (violation of Penal Code section 422), and simple battery (violation of Penal Code section 242). The Defendant was sentenced to 2 years custody and formal

probation, the Defendant was required to register as a sex offender for life, complete sex offender classes, pay over \$35,000 in restitution to the victim for her medical expenses, and the court issued a criminal protective order to protect the victim.



The General Trial Unit



Left to Right: Chief Deputy Mike Giorgino, Senior Deputy Sam Park, & Chief Deputy Heily Hernandez recruiting interns at Thomas Jefferson School of Law

The General Trial Unit of the Criminal Division (Trial Unit) prosecutes misdemeanor criminal cases in the City Attorney's Office, including driving under the influence, theft, and drug cases. As the largest unit in the Criminal Division, the Trial Unit handles over 90% of the issued criminal cases in the City Attorney's Office and the vast majority of misdemeanor crimes in the City of San Diego.

In 2016, the Trial Unit was led by Chief Deputy City Attorney Eric Pooch and Senior Deputy City Attorney Sam Park. The Trial Unit consisted of 13 full-time trial attorneys, 2 paralegals, 4 legal secretaries, 3 investigators, 2 trial support assistants, and 18 clerical staff and supervisors in the Discovery and Records and Information Units.

Deputy City Attorneys in the Trial Unit prosecute many serious cases that affect the daily lives of the residents of San Diego. They handle all proceedings on criminal cases after they are issued, including: arraignment, negotiating offers, preparing evidence for trial, writing and arguing all pre-trial motions, trying the case, arguing the appropriate sentences. They also appear on many post-conviction court events, including restitution hearings and probation violations. In addition, they appear in felony departments, mental competency hearings, and drug court. Through their interactions with the court, law enforcement, victims and witnesses, these attorneys serve as the face of the Trial Unit.

Effective prosecution of these misdemeanor cases is vital to the quality of life in San Diego.

Cases that made up the work of the Trial Unit in 2016 included:

- Driving under the influence of alcohol and/or drugs;
- Resisting or delaying arrest;
- Shoplifting, Embezzlement, and other forms of Theft;
- Fraud and Forgery;
- Assaults and Batteries;
- Crimes against Police Officers;
- Brandishing or possessing illegal weapons;
- Vandalism;
- Being under the influence of controlled substances;
- Possessing illegal drugs, including methamphetamine, cocaine, and heroin;
- Prostitution;
- Hate crimes;
- Municipal Code violations;
- Driver's license-related offenses;
- Drunk in public;
- Trespass;
- Violations of Court Orders;
- Hit-and-Run; and,
- Reckless driving.

Highlights of 2016

Trial Statistics

- Most of the cases handled by the Trial Unit result in a criminal convictions based upon a guilty plea before trial. Trial deputies appear at the plea and sentencing hearings to make sure the correct plea is entered and to argue for appropriate sentencing terms based upon the defendant's conduct. Trial Unit deputies argue for additional sentencing terms in cases that warrant punishment beyond the standard sentencing guidelines.
- For cases that do not reach a disposition, each case set for jury trial was reviewed by a supervising prosecutor and prepared for trial. The process of trial preparation includes interviewing witnesses, sending subpoenas to witnesses, preparing exhibits, obtaining police reports, ordering documentation from several crime laboratories, and securing physical evidence such as photographs, 911 recordings, maps, videos, weapons, and drug paraphernalia. Once this process is completed, many cases still resolve with a guilty plea to all charges on the day of trial.
- In 2016, 5,441 defendants pled not guilty at arraignment and their cases required additional work by the Trial Unit. In addition, 386 cases did not reach a disposition until the day of trial, which required a significant effort by the attorneys and staff to prepare each case to take before a jury. Some 107 cases proceeded to trial. Of the 97 cases where a verdict was rendered, 84 cases (86.6%) resulted in a guilty verdict on at least one count of the complaint and 13 cases (13.4%) resulted in an acquittal. The remaining 10 cases resulted in a hung jury and mistrial. Those cases were subsequently resolved by a plea bargain or a dismissal. In addition, the Trial Unit prosecuted more jury trials than in 2013 with a higher trial conviction rate and improved to an over-all misdemeanor conviction rate of 89.3%. The Trial Unit prosecuted slightly fewer jury trials than in 2015. However, the over-all misdemeanor conviction rate improved significantly from 2015 to 89.3%.

Driving Under the Influence of Alcohol and/or Drugs

- In October 2014, the Trial Unit was the proud recipient of a \$263,000 grant from the Office of Traffic Safety to establish an Alcohol and Drug Impaired Driver Vertical Prosecution Program. This grant was renewed for 2015 and funding was increased in 2016 to \$287,610. By vertically prosecuting these cases and sharing information with peers and law enforcement personnel, the Trial Unit continues to educate the public on

the dangers of drug impaired driving and establish protocols to hold these dangerous drivers accountable for their impact on public-safety.



- In March 2016, Mothers Against Drunk Driving named Deputy City Attorney Taylor Garrot, the MADD Prosecutor under the DTS Drug DUI Grant, as its Outstanding Prosecutor of the Year.

Notable cases in 2016 included:

- In *People v. Vourman* (M223220), a witness called 911 to report that the defendant appeared to have been in a collision and was weaving in and out of lanes in downtown San Diego. The witness followed the driver onto the freeway and onto Bayview Heights Drive. The defendant then hit three parked cars at high speed, pushing one of the parked cars onto the curb, and flipping his own car. The defendant had a .11% BAC, Xanax, Amphetamine, and very high levels of Ambien in his blood. Defendant was sentenced to 5 years of probation, \$2,133 in fines, 90 days of outpatient treatment, 80 hours of volunteer work service, and 60 days custody, stayed.



- In *People v. Jacovino* (M212469), the defendant was smoking Synthetic cannabinoids (“spice”) while driving. He lost control of the car and drove up onto the sidewalk, hitting a bus stop and a light pole. He continued across an intersection and nearly struck another light pole and car. When approached by a witness, the defendant still had a marijuana pipe in his hand and was incoherent. The defendant pled guilty at arraignment to all DUI counts and was sentenced to 5 years of probation, \$2,133 in fines, and 90 days of custody in addition to the standard DUI sentencing terms.

The deputies in the Trial Unit continue to receive highly-specialized training on DUI cases, learning how to properly review the police reports, order necessary documentation from various crime laboratories, and interview police officers, civilian witnesses, and criminalists. Many of these cases involve collisions with other vehicles or property, and some include injuries sustained by drivers, passengers, and pedestrians. Adding to the difficulty are cases

with low blood alcohol concentrations, and no apparent poor driving. Despite these obstacles, the Trial Unit continues to have success with DUI prosecutions, with a 99.2% over-all conviction rate.

Prostitution and Human Trafficking

- Although Trial Unit deputies rarely prosecute perpetrators of human trafficking (a felony crime), they frequently need to assess whether defendants in prostitution cases may be victims of human trafficking. Through their training, Trial Unit deputies have a heightened awareness of the many challenges facing trafficking victims. Our collaboration with law enforcement, victim services, child welfare services, and professionals from the education and research sector, continues to provide opportunities to identify best anti-human trafficking practices.
- The Trial Unit maintains policies to increase awareness about the dangers and risks of prostitution for first-time customers of prostitution through collaboration with the Prostitution Impact Panel (PIP) and education-based plea agreements. Survivors of the Street (SOS) offers also provide first-time prostitutes with the opportunity to earn reduced charges after participation in the educational program. However, the Trial Unit continues to take a firm stance on repeat perpetrators of these crimes that deeply impact our communities.

Victim Services

- Victim Services has been identified as a strategic priority for the entire Criminal Division. Several organizational changes were implemented in 2016 to ensure early contact with victims and to maximize restitution orders within the Trial Unit. These changes included a new procedure for obtaining orders to recover the cost of emergency services that are incurred during DUI crashes and investigations. A criminal restitution order can require significant effort and skill to obtain, but it has the unique feature that it cannot be discharged in bankruptcy court, thereby providing the victim some measure of restorative justice. In 2016, Trial Unit deputies were able to successfully advocate for court orders in the amount of \$601,771.96 on behalf of crime victims. Our attorneys and staff continue their pursuit to ‘make victims of crime whole’ through reimbursement by restitution orders.

Electronic Data Management

- The Trial Unit has proactively implemented new technologies to improve attorney access to evidence and police reports and to aid in prompt discovery of evidence, as required by law.

- In late 2015, the Trial Unit, in cooperation with the Issuing Unit and the San Diego County Office of the Public Defender, established procedures to electronically disclose evidence *before* an in-custody defendant is arraigned. This procedure allows the Public Defenders to get the information they need to quickly and accurately arraign their clients. The system conserved far more resources than expected, saving the City Attorney's Office approximately 90 hours of staff time and over 18 cartons of paper in the first quarter of 2016 alone. Our process of pre-arraignment electronic discovery is believed to be the first of its kind in the State of California.
- To build on this success, in 2016, Trial Unit management worked closely with the county of San Diego to implement post-arraignment electronic discovery using *eShare*. Our connection with this system saves staff time, eliminates copying of costly media, and provides immediate proof of disclosure of evidence. In addition, workflows within the office have been re-evaluated to best utilize the *eShare* system and digital media content. These improvements are expected to continue to reap rewards in the future.

SUMMARY

The attorneys and staff members in the Trial Unit demonstrated their commitment as advocates for the People by vigorously prosecuting criminal cases in San Diego and achieving outstanding results in 2016. The Trial Unit will continue to make informed and proper decisions at each stage of the criminal process in order to achieve our primary goals of enhancing public safety and maintaining the citizens' quality of life through the thoughtful prosecution of misdemeanants.

The Special Prosecutions Unit

This unit was created in 2015 to vertically prosecute complex criminal cases. Cases are submitted and reviewed for prosecution, and then handled from arraignment to sentencing by senior prosecutors in the office. The unit is responsible for prosecuting all cases involving charges of misdemeanor vehicular manslaughter where the driver of a vehicle negligently commits a misdemeanor or infraction which causes the death of another person. The unit also specializes in the criminal prosecution of unlawful marijuana dispensaries which operate in violation of state law and the San Diego Municipal Code. Lastly, the unit also handles many cases which garner media attention when the conduct impacts public safety, such as incidents related to protests, violent demonstrations, or reckless thrill seekers.

The Special Prosecutions Unit was staffed by Chief Deputy City Attorney Mark Skeels, Senior Deputy City Attorney Nicole Carnahan, Investigators Sharon Robles and Lew Roberts, Trial Support Assistant Ricki Daugherty, Senior Paralegal Cassie Bedore, and a legal intern.

Manslaughter

In 2016, the Special Prosecutions Unit handled fifteen (15) cases related to vehicular manslaughter investigations. Here are some highlights from those cases:

People v. Pedro Dairo (M198051)

- The defendant was convicted of vehicular manslaughter when he negligently lost control of his vehicle, which triggered a chain reaction of striking a metal sign, another vehicle, and a light pole. The 91-year-old passenger in the defendant's vehicle suffered fatal injuries from this collision.

People v. Oscar Diaz (M204926)

- The defendant was convicted of reckless driving and giving false information to a police officer when he struck and killed a motorcyclist on Market Street. The defendant backed into oncoming traffic and then lied to police about the collision.

People v. Douglas Squires (M209229)

- The defendant was convicted of vehicular manslaughter after he struck and killed an 86-year-old pedestrian who was lawfully walking in an unmarked crosswalk at the intersection of Richmond Street and Essex Street. The defendant was sentenced to 210 days in jail and ordered to surrender his driver's license. (The defendant had also previously been convicted of vehicular manslaughter from an offense in 2007 which occurred at the same intersection.)

People v. Richard Applin (M209289)

- The defendant was convicted of reckless driving when he struck and killed a pedestrian at the intersection of Rancho Bernardo Road and Acena Drive.

People v. Alicia McLaughlin (M211690)

- The defendant was convicted of vehicular manslaughter after she struck and killed a pedestrian who was jogging across the street at the intersection at the intersection of Del Mar Trails Road and Mona Lisa Street.

People v. Jillian Zwerenz (M211761)

- The defendant was convicted of vehicular manslaughter after she struck a bicyclist on Camino Del Sur.

People v. Lui Shermen (M212167)

- The defendant was convicted of vehicular manslaughter when he struck and killed a 66-year-old pedestrian who was walking in a marked crosswalk at the intersection of India Street and Washington Street.

People v. Amyas Keith (M214867)

- The defendant was convicted of vehicular manslaughter after he struck and killed a pedestrian who was lawfully walking in an unmarked crosswalk at the intersection of Grand Avenue and Dawes Street. The victim was a retired veteran who often visited with local residents in Pacific Beach.

People v. Daniel Aranda (M216274)

- The defendant was convicted of vehicular manslaughter after he struck a van in an adjacent lane on Interstate 15. The defendant lost control of his vehicle after he took his eyes off the road to look at his passenger's cell phone. The defendant struck the van, which flipped over and careened off the freeway, killing the passenger in the van.

People v. Wilbert Cegueda (M216331)

- The defendant was convicted of vehicular manslaughter when he pulled into the path of an oncoming motorcyclist and collided with the victim at the intersection of 47th Street and Magnus Way.

People v. Randy Gaster (M224959)

- The defendant was convicted of vehicular manslaughter when he lost control of his vehicle drove through the wall of a retirement home in La Jolla, killing a 96-year-old resident who was asleep in his bed.

People v. Mario Acosta (M225695)

- The defendant has been charged with vehicular manslaughter for striking and killing a motorcyclist. The incident occurred on Santa Fe Street. The defendant failed to appear for arraignment, and there is an active warrant for his capture.

People v. Robert Bortner (M226023)

- The defendant has been charged with vehicular manslaughter for striking an 89-year-old person that was crossing the intersection of Fifth Avenue and Hawthorn Street in a motorized wheelchair, which caused fatal injuries. This case is pending trial.

Illegal Marijuana Dispensaries

On March 25, 2014, the City of San Diego approved a process whereby medical marijuana dispensaries could lawfully operate as long as they received a Conditional Use Permit and complied with local zoning regulations. The City of San Diego has issued fifteen (15) Conditional Use Permits to operate lawful medical marijuana dispensaries.

Unfortunately, several unlawful and unpermitted marijuana dispensaries have illegally operated throughout the city. In addition to strong civil actions taken by deputy city attorneys in the Code Enforcement Unit, the Special Prosecutions Unit began working with the SDPD to take additional enforcement measures. Police officers now obtain search warrants which are reviewed and approved by judges from the San Diego Superior Court. Armed with search warrants, the police now raid illegal dispensaries and have arrested and cited landlords, tenants, employees, budtenders, and security guards. Here are some dispensaries that were investigated, raided, and shut down:

1. ***Miramar Private Club*** located at 9350 Trade Place;
2. ***North Park Collective*** located at 3375 Dale Street;
3. ***The Center of Holistic*** located at 7558 Trade Street;
4. ***Exclusive Alternative*** located at 8514 Commerce Avenue;
5. ***Pot of Gold*** located at 3275 Adams Avenue;



6. ***Outer Reach Meds*** located at 688 Hollister Street;
7. ***All Star Meds*** located at 4227 Market Street;
8. ***Luxury Cure Healing Center*** located at 154 West San Ysidro Boulevard;
9. ***Limitless Care Collective*** located at 1737 Garnet Avenue;
10. ***The Green Room*** located at 4218 Market Street;
11. ***Exotic*** located at 4274 El Cajon Boulevard;
12. ***6 Way Greens*** located at 4008 Taylor Street;
13. ***The Blvd*** located at 5255 El Cajon Boulevard;
14. ***Bank of Dank*** located at 4274 El Cajon Boulevard;
15. ***BLVD Greens*** located at 5549 El Cajon Boulevard;
16. ***North Park Cure*** located at 2828 University Avenue;
17. ***Firehouse Meds*** located at 2205 Logan Avenue; and
18. ***Kush Mart*** located at 1915 Una Street.



Additional Noteworthy Cases:

People v. Hansen (M218504)

- This case involved a battery against a pregnant woman and her small child who was in a stroller.

People v. Chaifetz (M221638SC)

- This case involved a sexual battery outside the Sushi Deli restaurant in downtown San Diego. The victim was suddenly groped as she waited to celebrate her birthday with a co-worker. The suspect ran away and was not immediately identified. A week later, the victim and her co-worker saw the suspect again and were able to videotape and photograph him. A BOLO flyer was created and disseminated downtown. Nearly 9 months later, law enforcement officers saw the suspect and contacted him, finally identifying him. A detective followed up and the defendant admitted being at Sushi Deli, but said he must have bumped into the victim on accident. The defendant admitted that he had been struggling with sexual urges to touch random women and that he would follow them around downtown. He also admitted that he was working as an Uber driver. The defendant had a previous sexual battery from 1998, with very similar facts, and was already a registered sex offender. Despite the long period of time when the suspect was unidentified, the case was issued just before the statute of limitations expired. The defendant pled guilty to sexual battery. The victim e-mailed Senior Deputy City Attorney Nicole Carnahan and stated: "I really appreciate how helpful and compassionate you've been through this entire process. Your team is lucky to have such an attorney in the unit."

People v. Baier (M201851)

- This case involves a chronic offender who is a nuisance to the SDPD. The defendant is a freelance photojournalist who abuses his media credentials, interfering with officers in the line of duty. The defense had a special attorney fly out from New York to appear for this case, on behalf of the National Press Photographers Association, to litigate the First Amendment issues which were in dispute. At the conclusion of the lengthy evidentiary hearing, the judge found the defendant to be in violation of the terms of his probation on a previous resisting arrest conviction. The defendant is pending sentencing after revocation.

Protest Cases:

- The Special Prosecutions Unit has also reviewed cases related to protests both before and after the Presidential election. These cases have involved numerous people who were either cited or arrested for a variety of charges, including battery against officers, interfering with arrest, vandalism, and various riot-related offenses.
- On May 27, 2016, anti-Trump protestors congregated near the Convention Center and there were 37 cases submitted for review of potential criminal conduct.
- On November 9, 2016, protests against the election results broke out in the Gaslamp District and there were 17 cases submitted for review of potential criminal conduct.
- In sum, five criminal cases have been filed for various misdemeanor offenses and additional cases remain under review.

Community Outreach:

- Senior Deputy City Attorney Nicole Carnahan is also the City Attorney representative for the GRIP (Gang Reduction and Intervention Partnership) Program being spearheaded by the U. S. Attorney's office, in conjunction with the District Attorney's Office, San Diego Unified School District, and other various agencies. The program is focused on preventing participation in gangs, targeting children as young as 4th grade.

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